

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT
WITH OPTION TO PURCHASE

ARLINGTON HEIGHTS AFFORDABLE HOUSING PROGRAM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005
Attn: Dept. of Planning & Community Development

(Space above for Recorder's Use)

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT
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TIMBER COURT CONDOMINIUMS

**WARNING: THIS DEED RIDER CONTAINS STRICT RESTRICTIONS ON THE USE,
LEASING, RENTAL, MORTGAGING, ENCUMBRANCE, TRANSFER, AND RESALE
OF THE SUBJECT PROPERTY. PLEASE READ IT CAREFULLY**

Owner: _____

Address of Home: _____

Income Category of Buyer
(Moderate Income): _____

Sales Price at Original Purchase (Owner's
Base Price): _____

This Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase (the "Agreement") is entered into as of this ___ day of _____, 200_, by and between the

Village of Arlington Heights (the "Village") and _____ (the "Owner").

RECITALS

A. Tandem Realty, the developer of Timber Court, LLC (the "Developer"), entered into an Arlington Heights Affordable Housing Agreement ("Developer Agreement") with the Village of Arlington Heights dated _____, 20__ [insert date of Agreement that appears in the second line of that Agreement], and the Developer agreed to sell certain homes in the Development to moderate income households at affordable prices (the "Affordable Units").

B. Owner intends to purchase the property located in the Village of Arlington Heights and more particularly described in Exhibit A attached hereto and incorporated herein (the "Home"). The Home is one of the Affordable Units. The Home has been designated by the Village and the Developer as a Moderate Income Home, and this Agreement restricts future sales of the Home only to persons who qualify as Moderate Income Households ("Eligible Purchaser").

C. The Developer and the Village shall ensure the continued affordability of the Home as an Affordable Unit, and the Village therefore requires the Owner to execute this Agreement as a condition of the Owner's purchase of the Home. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement to sell the Home to the Owner at an affordable price that is below the fair market value of the Home.

D. The purpose of this Agreement is to place resale controls on the Home. This Agreement also provides the Village an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the Village's Affordable Housing Program.

E. The Owner will provide the Village with a copy of the Owner's recorded First Mortgage within 10 days of the Owner's receipt of the recorded first mortgage.

F. This Agreement shall be recorded in the County of Cook and shall be subordinate to the lien of the First Mortgage.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the Village hereunder, the Owner and the Village agree, as follows:

1. The following exhibits are attached to this Agreement:
 - (1) Exhibit A: Legal Description of the Home
 - (2) Exhibit B: Form of Owner Occupancy Certification

- (3) Exhibit C: Form of Owner's Notice of Intent to Transfer
- (4) Exhibit D: Form of Owner Acknowledgement of Village Response Notice
- (5) Exhibit E: Form of Owner Request for Village Subordination to Refinance First Mortgage Loan
- (6) Exhibit F: Calculation of Maximum Resale Price and Worksheets

2. DESCRIPTION OF PROPERTY

This Agreement concerns certain real property in the Village of Arlington Heights, State of Illinois with the street address set forth on page 1 of this Agreement, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. OWNER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

A. The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above.

B. The Owner shall occupy the Home as the Owner's principal place of residence. The Owner shall be considered as occupying the Home if the Owner is living in the unit for at least ten months out of each calendar year. On or before February 1 of each calendar year, the Owner shall provide an annual written certification to the Village in the form shown in Exhibit B that the Owner is occupying the Home as his or her principal place of residence, and that Owner is not renting the Home to another party.

4. NO RENTING OR LEASING OF HOME

The Owner shall not rent or lease the Home to another party.

5. MAINTENANCE

A. The Owner shall maintain the Home in good repair and in a neat, clean and orderly condition and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Owner will not commit waste or permit deterioration of the Home, and shall make all repairs and replacements necessary to keep the Home in good condition and repair. Failure by the Owner to maintain the Home shall constitute a default under this Agreement for which the Village may exercise the Village Option to purchase the Home pursuant to Section 15 below.

B. In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of ten days after written notice from the Village with respect to graffiti, debris, waste material, and general maintenance or thirty days after written notice from the Village with respect to building improvements, then the Village, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter the Home and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the Village shall be permitted (but is not required) to enter the Home and perform all acts and work necessary to protect, maintain, and preserve the improvements and to attach a lien on the Home, or to assess the Home, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Village and/or costs of such cure. The cost of the cure to the Village shall be promptly paid by the Owner to the Village or a lien shall be recorded against the property in that amount.

6. RESTRICTIONS ON RESALE OR TRANSFER OF THE HOME

A. Transfer. Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, the Village Option described in Section 10 below. Transfer means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title, or a deed of trust. Any Transfer without satisfaction of the provisions of this Agreement is prohibited and shall constitute a default by Owner for which the Village may exercise the Village Option pursuant to Section 15 below. A Transfer shall not include a transfer: (i) to an existing spouse or domestic partner; (ii) by an Owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the Home; (iii) between spouses as part of a marriage dissolution proceeding; (iv) to an existing spouse or domestic partner of Owner by devise or inheritance following the death of Owner; (v) by Owner into an inter vivos trust in which Owner is the beneficiary; or (vi) refinance of the First Mortgage meeting the requirements of Section 21 of the Resale Restriction Agreement; provided, however, that Owner shall provide written notice of all such transfers to Village; and Owner shall continue to occupy the Home as his or her principal place of residence (except where the transfer occurs pursuant to subsection (iii) or (iv) above, in which event the transferee shall owner-occupy the Home and affirmatively assume Owner's obligations under this Agreement. All other Transfers shall require written notice to the Village pursuant to Section 7 below, shall be to Eligible Purchasers, and consideration received by the Owner for such Transfer shall not exceed the

Maximum Restricted Resale Price defined in Section 11 below. For purposes of this section, "domestic partner" shall mean two unmarried people, at least 18 years of age, who have lived together continuously for at least one year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of Illinois. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of an affidavit or other acceptable evidence by Owner to the Village.

B. Inheritance. In the event a Transfer occurs by devise or inheritance due to death of the Owner, the administrator of the Owner's estate or the person inheriting the Home shall provide written notice to the Village of the Owner's death within 30 days of the date of death and the following procedures shall apply:

(1) If the person inheriting the Home (the "Inheriting Owner") is the child or stepchild of the deceased Owner (an "Inheriting Child"), he or she shall provide the Village with documentation that he or she is the child or stepchild of the deceased Owner and with income information, to be verified by the Village, so that the Village may determine if the Inheriting Child is an Eligible Purchaser. If the Inheriting Child fails to provide required documentation of his or her relationship to the Owner, or financial information, he or she shall be deemed not to qualify as an Inheriting Child and/or Eligible Purchaser, as applicable. If the Inheriting Child qualifies as an Eligible Purchaser, he or she shall succeed to the Owner's interest and obligations under this Agreement and new documents shall be executed between the Inheriting Owner and the Village and recorded against the Home. If the Inheriting Child fails to qualify as an Eligible Purchaser, he or she shall be required to Transfer the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, pursuant to the procedures set forth in Sections 7 through 12 below and the Village may exercise the Village Option pursuant to Section 10 below; provided, however that the Inheriting Child may own and occupy the Home for up to 12 months prior to providing an Owner's Notice of Intent to Sell to the Village pursuant to Section 7 below, and provided further that the Inheriting Child remains in compliance with the requirements of this Agreement. The Inheriting Child shall not be required to occupy the Home during this 12-month time period, but shall not rent the Home.

(2) If the Inheriting Owner is not the child or stepchild of the deceased Owner, he or she shall Transfer the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, pursuant to the procedures set forth in Sections 7 through 12 below and the Village may exercise the Village Option pursuant to Section 10 below. In this event, the Inheriting Owner shall provide the Village with an Owner's Notice of Intent to Sell within 60 days of the date of death of the Owner.

(3) Failure of an Inheriting Owner to follow the procedures and file the notices described in this Section 6 shall constitute a Default under this Agreement and the Village may then exercise any of the remedies set forth in Section 13 below, including, without limitation, exercise of the Village Purchase Option upon Default.

7. NOTICE OF INTENDED TRANSFER; PREPARATION OF HOME FOR SALE

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the Village written notice of such intent (the "Owner's Notice of Intent to Sell") in the form shown in Exhibit C attached to this Agreement. The Owner's Notice of Intent to Sell shall be sent to the Village by certified mail, return receipt requested at the address provided in Section 29 of this Agreement. The Owner's Notice of Intent to Sell shall include the information necessary for the Village to determine the Maximum Restricted Resale Price of the Home, including the following information:

- (1) the address of the Home;
- (2) the date of purchase of the Home by the Owner;
- (3) the purchase price of the Home paid by the Owner at the time of his/her purchase;
- (4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;
- (5) the date on which the Owner intends to vacate Home;
- (6) the date Home will be placed on the market; and
- (7) the name and phone number of the person to contact to schedule inspection of the Home by the Village.

B. The Owner may not wish to contract with a real estate broker to sell the Home until the Owner has received the Village Response Notice pursuant to Section 8 below, as the services of a broker will not be required if the Village exercises the Village Option to purchase the Home pursuant to Sections 8 and 10 below.

C. Following delivery to the Village of the Owner's Notice of Intent to Sell, the Owner shall prepare the Home for sale, as follows:

- (1) within 30 days of the date of the Owner's Notice of Intent to Sell, the Owner shall allow the Village, or its designee, to inspect the Home to determine its physical condition and, if requested by the Village, following such inspection, the Owner shall obtain and deliver to the Village a home inspection report prepared by a licensed home inspector; and
- (2) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer.

8. VILLAGE RESPONSE TO OWNER'S NOTICE OF INTENT TO SELL

The Village shall respond in writing (the "Village Response Notice") to the Owner's Notice of Intent to Sell within 30 days of Village receipt of a complete Owner's Notice of Intent to Sell that includes all information required under Section 7 above. The Village Response Notice shall inform the Owner of the Village's election to proceed under one of the following two alternatives:

A. Village Exercise of Village Purchase Option. The Village Response Notice may notify the Owner that the Village or its assignee elects to exercise the Village Option to purchase the Home, as granted in Section 10 below, and shall include the Village's calculation of the Maximum Restricted Resale Price to be paid by the Village or its assignee pursuant to Section 11 below.

B. Owner Sale at Restricted Sale Price to Income Eligible Household. Alternatively, the Village Response Notice may notify the Owner that the Village will not at this time exercise the Village Option to purchase the Home and that the Owner may proceed to sell the Home to an Eligible Purchaser at a price not to exceed the Maximum Restricted Resale Price, pursuant to the procedure set forth in Section 12 below. In this event, the Village Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the maximum asset limitation for a qualifying purchaser, (3) the certifications required of an Eligible Purchaser; and (4) the Maximum Restricted Resale Price the Owner may receive for the Home, calculated by the Village pursuant to Section 11 below. The Owner may then proceed to request referrals from the Village pursuant to Section 12A below.

9. OWNER ACKNOWLEDGMENT OF VILLAGE RESPONSE NOTICE

No later than 12 days following the date of the Village Response Notice, the Owner shall acknowledge in writing to the Village, in the form shown in Exhibit D attached to this Agreement, that he/she has received the Village Response Notice and still intends to Transfer the Home.

10. VILLAGE PURCHASE OPTION

The Owner agrees that the Village shall have the option to purchase the Home (the "Village Option") for the Maximum Restricted Resale Price, calculated pursuant to Section 11 of this Agreement. The Village may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the Village Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. If the Village assigns its purchase option, the assignee shall sign the Village Response Notice and shall thereby be bound to purchase the Home pursuant to the terms of the Village Option as set forth in this Agreement. The Village Option may be exercised by the Village or its assignee in the Village Response Notice, as described in Section 8 above, to be sent by the Village to the Owner within 30 days of the Village's receipt of a complete Owner's Notice of Intent to Transfer. If the Village Response Notice notifies the Owner that the Village or its assignee will exercise the Village Option to purchase, the Village or its assignee shall purchase the Home within 90 days of the date of the Village Response Notice.

In the event of exercise of the Village Option and purchase of the Home by the Village or its assignee, the Owner shall permit a walk-through of the Home by the Village upon notifying the Village of the owner's intent to sell and a final walk-through of the Home by the Village or its assignee in the final three days prior to close of escrow on the Transfer.

11. DETERMINATION OF MAXIMUM RESTRICTED RESALE PRICE FOR VILLAGE PURCHASE OR OTHER RESTRICTED SALE

If the Village (or its assignee) exercises the Village Option, or if the Owner sells to an Eligible Purchaser, the Maximum Restricted Resale Price that the Owner shall receive from the Village or the Eligible Purchaser for purchase of the Home shall be the lesser of (i) the Indexed Value of the Home; (ii) the Affordability Cap or (iii) the Fair Market Value of the Home, less any reduction of the Maximum Restricted Resale Price for "Excessive Damage Amount."

A. Indexed Value. The Indexed Value of the Home means the sales price of the Home at the time of purchase by the Owner, increased by the percentage of increase in the Median Income from the date of the original purchase of the Home by the Owner to the date of receipt by the Village of the Owner's Notice of Intent to Transfer with a cap of 3.5% per year. "Median Income" shall refer to the median yearly income for a household size of 2 persons for the one-bedroom units and 3 persons for the 2-bedroom units, for the Chicago Metropolitan Statistical Area, as published by the United States Department of Housing and Urban Development ("HUD"), or, in the event such income determination is no longer published by HUD, or has not been updated for a period of at least eighteen (18) months, the percentage increase will be 3.5% for each year of ownership.

B. Affordability Cap. The Maximum Restricted Resale Price shall not exceed that which is determined by the Village to be affordable to and eligible purchaser. The affordable price is determined by taking the appropriate household size (two persons for a one-bedroom unit and three persons for a two-bedroom unit), identify 80% of median income for the appropriate household size, determine monthly allowance for housing payment (multiply 30% of 80% of median income for the appropriate household size), divide by 12 for monthly allowance, and determine the maximum sales price that the monthly household allowance for housing payment can support using the average national interest rate for a 30-year fixed rate mortgage for the past 6 months plus .25%, a 10% down payment, the assessments, homeowners insurance, homeowner association dues, and property taxes.

C. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home (the "Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Indexed Value exceeds the Fair Market Value in order to determine the Maximum Restricted Resale Price pursuant to this Section 11; and (2) where the Owner wishes to refinance the First Mortgage Loan as described in Section 21 below. If it is necessary to determine the Fair Market Value of the Home, it shall be determined by a qualified real estate appraiser approved in writing in advance by the Village. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three three-month period. The cost of the appraisal shall be shared equally

by the Village and the Owner, unless the appraisal is obtained from a new purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Mortgage Loan pursuant to Section 21 below, in which event the Owner shall pay the cost of the appraisal. Nothing in this section shall preclude the Owner and the Village from establishing the Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

D. Excessive Damage Amount. Shortly before the Maximum Restricted Resale Price is determined, the Village shall have the right to inspect the Home to determine whether the Owner has complied fully with the maintenance obligations set forth in Section 5 of this Agreement. If after such inspection, the Village determines, in its sole judgment, that the Owner has not fully complied with such obligation, the Village shall determine, in its sole judgment, the cost to complete the necessary repairs, maintenance, replacement, and other work to restore the Home in good, safe and habitable condition in all respects, and to bring it into full compliance with all applicable laws, ordinance, rules and regulations of any governmental authority or homeowners association with jurisdiction over matters concerning the condition of Property. This amount shall be called the Excessive Damage Amount, and shall be considered in calculating the Maximum Restricted Resale Price.

12. SALE OF HOME BY OWNER IF VILLAGE DOES NOT EXERCISE OPTION TO PURCHASE

In the event the Village Response Notice notifies the Owner to proceed to sell the Home to an Eligible Purchaser at a price not exceeding the Maximum Restricted Resale Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing. Immediately following receipt of a Village Response Notice informing the Owner that the Village will not exercise the Village Option, the Owner shall request the Village to refer Eligible Purchasers from the Village's Affordable Housing Eligibility Waiting List to the Owner. The Owner shall make every effort to sell the Home to an Eligible Purchaser referred by the Village. At the Owner's option, the Owner may also list the Home with a Realtor. The Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 12, including keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income and asset qualifications, and the Village's form of disclosure statement summarizing the terms of the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase. A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as an Eligible Purchaser, shall be referred to the Village for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the Village:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership.

(2) Agreement to Sign Buyer's Resale Agreement and to Cooperate with Village. The Proposed Purchaser shall agree to sign a buyer's occupancy and resale restriction agreement with option to purchase restricting future resale of the Home in the form provided by the Village and shall agree to cooperate fully with the Village in promptly providing all information requested by the Village to assist the Village in monitoring the Proposed Purchaser's compliance with the buyer's occupancy and resale agreement with option to purchase.

(3) Income and Asset Eligibility. The combined maximum income for all household members, and combines household assets, of the Proposed Purchaser shall not exceed the income and asset levels designated by the Village.

C. Maximize Sales Price and Closing Costs. The purchase price for the sale of the Home by the Owner to the Eligible Purchaser shall not exceed the Maximum Restricted Resale Price calculated by the Village as set forth in the Village Response Notice. The Maximum Restricted Resale Price shall not include closing costs paid by the Eligible Purchaser. The closing costs paid by the Eligible Purchaser shall not exceed reasonable and customary buyers' closing costs in the Village of Arlington Heights.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the Village:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form acceptable to the Village and any other supporting documentation requested by the Village. The financial information shall be used by the Village to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents that shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the Village that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the Village. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the Village. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the Village, the Village shall have the right to foreclose on the Home or file an

action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the Village and its designee harmless and reimburse the Village's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed Buyer's Occupancy and Resale Restriction Agreement and Option to Purchase, all in forms provided by the Village. The recordation of the resale restriction agreement with option to purchase shall be a condition of the Village's approval of the proposed sale.

(6) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(7) Upon the close of the proposed sale, certified copies of the recorded buyer's resale restriction agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the Village may reasonably request.

13. DEFAULTS

A. The following events shall constitute a Default by the Owner under this Agreement:

(1) The Village determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home or in connection with its obligations under this Agreement;

(2) The Owner fails to owner occupy the Home, as required pursuant to Section 3 above, and such failure continues following written notice by the Village and 60 days opportunity to cure following the date of such notice.

(3) The Owner rents the Home in violation of Section 4 above, and such failure continues following written notice by the Village and 60 days opportunity to cure.

(4) The Owner fails to provide information to the Village necessary to determine Owner's compliance with the requirements of this Agreement.

(5) The Owner makes a Transfer in violation of this Agreement;

(6) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the Village within 30 days after the date of written notice by the Village to the Owner of such violation; or

(7) A notice of default is issued under First Mortgage Loan or other financing secured by the Home.

(8) A lien is recorded against the Home other than the lien of a bona fide mortgage loan or home equity loan. Any loan secured against the property other than the first mortgage must be approved by the Village, and all loans secured by the property may not exceed the Maximum Restricted Resale Price at the time the loan is closed.

(9) Owner places a mortgage on the Home in violation of Section 21 below.

(10) Owner declares bankruptcy or makes an assignment of assets for the benefit of creditors.

B. Upon a declaration of Default by the Village under this Agreement, the Village may exercise any remedies at law or in equity, including without limitation, any or all of the following, none of which shall be an exclusive remedy:

(1) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(2) Take such enforcement action as is authorized under the Village of Arlington Heights Code;

(3) Declare a Default and pursue all Village remedies under the resale restriction agreement; and

(4) Enter the Home to correct maintenance failures, and place a lien upon the Property to collect Village costs to remedy maintenance failures, pursuant to Section 5(B) above.

(5) Exercise the Village Purchase Option Upon Default as described in Section 15 below.

14. NOTICE OF DEFAULT AND FORECLOSURE

A request for notice of default and any notice of sale under any mortgage with power of sale encumbering the Home shall be recorded by the Village in the Cook County Recorder's Office. The Village may declare a Default under this Agreement upon receipt of any notice given to the Village, and may exercise its rights as provided in Sections 13 and 15.

In the event of default and foreclosure, the Village shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the Village to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the Village failed to file the request for notice of default, the Village's right to purchase the Home shall commence from the date a notice of default is given by the Village to the Owner.

15. PURCHASE OPTION UPON DEFAULT

Notwithstanding, and in addition to, the remedies provided the Village in Section 14, and the Village Option provided to the Village in Section 10, the Owner hereby grants to the Village the option to purchase the Home following written notice by the Village to the Owner of the declaration of a Default by the Village under this Agreement.

The Village shall have 45 days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 15. Not later than 90 days after the notice is given by the Village to the Owner of the Village's intent to exercise its option under this Section 15, the Village shall purchase the Home for the Maximum Restricted Resale Price calculated in the manner set forth in Section 11.

16. NONLIABILITY OF THE VILLAGE

A. No Obligation to Exercise Option. The Village shall have no obligation to exercise any option granted it under this Agreement. In no event shall the Village become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 10 and 15 nor shall the Village be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the Village is solely that of an owner and an administrator of a Village affordable housing program, and that the Village does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The Village owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the Village for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold the Village harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the Village harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Village may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement; (2) the failure at any time of any of Owner's representations to the Village to be true and correct; or (3) Owner's purchase or ownership of the Home.

17. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Restricted Resale Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the Village in consideration of the benefits received by the Owner through purchase of the Home under the Village's program.

18. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the land and the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the Village and its successors in perpetuity.

19. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the Village and their respective successors.

20. SUBORDINATION

Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender mortgage or any subsequent First Lender mortgages hereafter recorded against the Home in compliance with Section 21 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement shall be subordinate to the mortgage of the First Lender and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the mortgage of the First Lender in the event of default under the mortgage of the First Lender by the Owner. Such remedies under the mortgage of the First Lender include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure.

21. REFINANCE OF FIRST MORTGAGE LOAN; FURTHER ENCUMBRANCE OF HOME

A. Refinancing. Refinancing may include the refinancing of the first mortgage on the Home and/or adding a second mortgage on the Home. Owner may refinance so long as the total outstanding balance of principal and any accrued interest on all loans secured by the Home do not exceed 90% of the Maximum Restricted Resale Price, calculated by the Village pursuant to Section 11 of this Agreement. The Village and the Owner agree that the requirements of this Section 21 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 21 shall constitute a Default under this Agreement. In no case shall this Agreement be in lower than third lien position on the Home. Any subordination agreement to be executed by the Village shall include notice and cure rights for the Village regarding any defaults in the mortgage to which the Village is subordinating. A form for use by the Owner in requesting Village subordination to a refinanced first mortgage loan is attached as Exhibit E to this Agreement.

B. Cash Out. Owner may take "cash out" from the refinancing proceeds so long as the refinancing requirements set forth in subsection (A) above are met.

22. NONDISCRIMINATION

The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

23. MONITORING AND INSPECTION BY VILLAGE

A. The Village (or its designee) may enter the Home for inspection following two business days advance written notice.

B. The Owner shall retain all records related to compliance with obligations under this Agreement for a period of not less than five years, and shall make such records available to the Village or its designee for inspection and copying upon five business days advance written notice.

C. The Village may periodically monitor Owner's compliance with the requirements of this Agreement on an annual basis. Owner shall cooperate with Village monitoring and provide required certifications and other information required by the Village to determine compliance within ten days of receipt of a written request by the Village.

24. RIGHTS OF BENEFICIARIES

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the Illinois Housing Development Authority ("IHDA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Mortgage or any subsequent First Lender mortgages hereafter recorded against the Home in compliance with Section 21 above.

25. HUD FORBEARANCE RELIEF

Notwithstanding other provisions of this Agreement, the Village Option on Default pursuant to Section 14 above shall not be exercised by the Village when a mortgage insured by HUD is secured by the Home, and: (i) the Owner is undergoing consideration for a HUD workout assistance; or (ii) the Owner is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

26. INVALID PROVISIONS

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of Illinois.

28. NO WAIVER

No delay or omission in the exercise of any right or remedy of Village upon any default by Owner shall impair such right or remedy or be construed as a waiver. The Village's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the Village's right thereafter to enforce the provisions of the Agreement. The Village shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the Village.

29. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

To the Owner:
At the address of the Home.

To the Village:
Village Manager
Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this section.

30. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Home and to ensure to the extent possible that its sales price and mortgage payments remain affordable to Eligible Purchasers.

31. COVENANTS RUNNING WITH THE LAND

A. Owner hereby subjects the Home to the covenants and restrictions set forth in this Agreement. Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land in perpetuity and shall pass to and be binding upon all parties having any interest in the Home throughout the term of this Agreement set forth in Section 18. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Home or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

B. The Owner and the Village hereby declare their understanding and intent that: (i) the covenants and restrictions contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title by Owner; (ii) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Home in that the Owner's legal interest in the Home may be rendered less valuable thereby; and (iii) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the enjoyment and use of the Home by Eligible Purchasers, the intended beneficiaries of such covenants and restrictions.

C. All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Owner for the benefit of the Village and Eligible Purchasers and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the Village is an owner of any land or interest therein to which such covenants and restrictions relate.

32. OWNER'S ACKNOWLEDGEMENT OF RESALE RESTRICTION

Owner hereby acknowledges and agrees that:

A. Owner hereby subjects the Home to certain restrictions, and limits the price for which Owner may sell the Home and the persons to whom Owner may sell the Home. The resale price limitation, and other provisions contained in this Agreement, restrict the full benefits of owning the Home. Owner may not enjoy the same economic or other benefits from owning the Home that Owner would enjoy if this Agreement did not exist.

B. Absent the provisions of the this Agreement , the Home could not be made available to Eligible Purchasers at an affordable price, including Owner.

C. Owner understands all of the provisions of this Agreement. In recognition of the acknowledgments and agreements stated in this Section 32, Owner accepts and agrees to the provisions of this Agreement with the understanding that this Agreement will remain in full force and effect as to the Home following any Transfer of the Home throughout the term of this Agreement.

D. OWNER UNDERSTANDS THAT THE DETERMINATION OF THE MAXIMUM RESTRICTED RESALE PRICE OF THE HOME TO AN ELIGIBLE PURCHASER CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INCREASES IN MEDIAN INCOME, MORTGAGE INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS AGREEMENT. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE HOME THE PRIMARY OBJECTIVE OF THE VILLAGE AND THIS AGREEMENT IS TO PROVIDE HOUSING TO ELIGIBLE PURCHASERS AT AFFORDABLE HOUSING COST. THE MAXIMUM RESTRICTED RESALE PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES THAT HAVE NO RESTRICTIONS.

[initialed by Owner(s)]

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

VILLAGE:

OWNER:

Village of Arlington Heights, a municipal corporation in the State of Illinois

By: _____

By: _____

Its: _____

(Type Name)

By: _____

(Type Name)

STATE OF ILLINOIS)
) ss.
VILLAGE OF ARLINGTON HEIGHTS)

On _____, 200_, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF ILLINOIS)
) ss.
VILLAGE OF ARLINGTON HEIGHTS)

On _____, 200_, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF ILLINOIS)
) ss.
VILLAGE OF ARLINGTON HEIGHTS)

On _____, 200_, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

EXHIBIT A

(Legal Description of the Home)

EXHIBIT B

Form of Owner Occupancy Certification

To: Village of Arlington Heights ("Village")

From: _____ [name of owner(s)] ("Owner(s)")

Address of Home: _____ ("Home")

Date: _____

By signature below, I _____ [insert name or names of Owner] hereby certify to the Village under penalty of perjury that I/we occupy the home located at _____ [insert address] (the "Home") as my/our principal place of residence and that I/we have occupied the Home for _____ (__) [insert number] months of the calendar year _____ [insert previous calendar year]. Attached to this letter is a copy of _____ [insert utility bill or driver's license] showing my place of residence.

I also certify that I have not leased part or all of the Home to a third party, except _____. (Note: prior written approval of Village required for any rental of the Home)

This Owner Occupancy Certification is signed on _____, 20__, under penalty of perjury.

By: _____
Owner [type name]

By: _____
Owner [type name]

Due Date: February 1 of each calendar year.

Attach copy of utility bill or driver's license showing address of Home and proof of property insurance (hazard).

Number of Bedrooms: _____

EXHIBIT C

Form of Owner's Notice of Intent to Transfer

To: Village of Arlington Heights ("Village")

From: _____ [name of owner(s)] ("Owner(s)")

Address of Home: _____ ("Home")

Date: _____

Please be notified pursuant to Section 7 of the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase between Owner and Village of Arlington Heights dated _____ (the "Resale Agreement"), that the Owner intends to transfer the Home listed above.

A. The following information is provided to the Village pursuant to Section 7 of the Resale Agreement:

1. Address of Home: _____
2. Date Owner purchased Home: _____
3. Purchase Price paid by Owner when Home was purchased: _____
4. Date Owner intends to vacate Home: _____
5. Date Home will be placed on market: _____
6. Name and phone number of person for Village to contact to schedule inspection:
_____ and _____
(name) (phone number)

B. As required by Section 7 of the Resale Agreement, the following documents are attached to this Notice:

1. Copy of HUD-1 Settlement Statement from Owner's purchase of the Home

C. I have not yet listed the Home for sale with a multiple listing service, or contacted a real estate broker or financial institution. I agree to prepare the Home for sale by:

1. obtaining a pest control report within 30 days of the date of this notice,

2. repairing all damage noted in the pest report within the sooner of: (i) 60 days from the date of this notice, or (ii) two weeks prior to close of escrow or the transfer of the Home
3. allowing the Village or its designee to inspect the Home within 30 days of this notice,
4. if requested by the Village following the Village's inspection, I will obtain a home inspection report from a licensed home inspector,
5. maintaining utility connections until the Home is transferred,
6. permitting a walk through by the Village prior to close of escrow or the transfer.

This Owner's Notice of Intent to Transfer is certified by Owner to be true and correct and is signed on _____ **[insert date]** under penalty of perjury.

By: _____
Owner

By: _____
Owner

EXHIBIT D

Form of Owner Acknowledgement of Village Response Notice

Name: _____

Address of Home: _____

Date: _____

I, _____ (insert name) hereby acknowledge that I received the Village Response Notice (as described in Section 9 of the Resale Agreement on _____ (insert date)).

By: _____

EXHIBIT E

Form of Owner Request for Village Subordination
to Refinanced First Mortgage Loan

To: Village of Arlington Heights ("Village")
From: _____ ("Owner")
Property Address: _____ ("Home")
Date: _____

The Owner hereby requests the Village to approve the Owner's refinance of the existing first mortgage on the Home. The Owner provides the following information which it certifies to be true and correct:

1. Original Purchase Price of Home: \$ _____
2. Original Principal Balance of exiting First Mortgage Loan \$ _____
3. Interest Rate of Existing First Mortgage Loan: \$ _____
4. Outstanding Principal and Interest on existing First Mortgage Loan (as of date of this Request) \$ _____
5. Outstanding Principal and Interest due on all other mortgage loans on the Home. \$ _____
 - (a) \$ _____
 - (b) \$ _____
6. Principal Amount of Proposed New First Mortgage Loan: \$ _____
7. Interest Rate of Proposed New First Mortgage Loan: \$ _____

Name, Address and Telephone Number of the Proposed New First Mortgage Lender: _____

The Owner hereby certifies the above information is true and correct and this Owner Request is executed under penalty of perjury on _____ **[insert date]**.

By: _____
Owner

By: _____
Owner

EXHIBIT F

Calculation of Maximum Resale Price.

The maximum resale price shall be the lowest of the following:

Indexed Value

A. Start with the Purchase Price paid by the selling Owner (not including any real estate commissions, loan origination fees, appraisal fees, title insurance premiums, closing prorations, and other similar transaction costs) (the "Start Price").

B. Add to the Start Price, the amount of permissible Appreciation as derived by multiplying the Start Price by the actual percentage change in the AMI as determined by HUD (for a two persons household for the one-bedroom units and the three person household for the two-bedroom units), starting with the date of the Owner's purchase of the Home (the "Start Date") to the date of the Owner's sale of the Home (the "End Date"), up to a maximum of 3.5% per year

C. Subtract Excessive Damage Amount, if any.

Index Value Worksheet

a. HUD 80% of Area Median Income for a household size of 2 for a one-bedroom unit and household size of 3 for a two-bedroom unit at the time the owners purchased:

b. HUD 80% of Area Median Income for a household size of 2 for a one-bedroom unit and household size of 3 for a two-bedroom unit at the time of resale: _____

c. Percentage increase in Area Median Income for the applicable household size during the period of ownership (up to 3.5% per year): _____

Owner's initial purchase price: _____

x percentage increase in Area Median Income (from c. above): _____

Allowed appreciation/increase to initial purchase price: _____

Maximum Resale Price:

Owner's initial purchase price: _____

Allowed increase to initial purchase price: + _____

Excessive Damage Amount: - _____

Maximum resale price: _____

Affordability Cap

- A. Determine the appropriate household size (a two persons household for the one-bedroom units and the three person household for the two-bedroom units).
- B. Identify 80% of median income for the appropriate household size as determined by HUD for the appropriate household size.
- C. Determine monthly household allowance for housing payment.
- D. Multiply 30% of 80% of median income for the appropriate household size.
- E. Divide amount by 12 for monthly allowance.
- F. Determine the maximum sales price that the monthly household allowance for housing payment can support using the average national interest rate for a 30-year fixed rate mortgage for the past 6 months plus .25%, a 10% down payment, the assessments, homeowners insurance, homeowner association dues, and property taxes.
- G. Subtract Excessive Damage Amount, if any.

Affordability Cap Worksheet

- a. 80% of Area Median Income for household size of 2 persons for a one-bedroom unit and 3 persons for a two-bedroom unit in year of resale: _____
- b. Monthly Income (a. divided by 12): _____
- c. Housing allowance of 30% (b. x .30): _____
- d. Purchase price that can be supported by monthly housing allowance using the average national interest rate for a 30-year fixed rate mortgage for the past 6 months plus .25%, a 10% down payment, the assessments, homeowners insurance, homeowner association dues, and property taxes _____
- e. Subtract Excessive Damage Amount: _____
- f. Maximum resale price: _____

Fair Market Value

- A. Fair Market Value as determined by a qualified real estate appraiser approved in writing in advance by the Village.
- B. Subtract Excessive Damage Amount, if any.

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