

Upon recording return to:
City of Somerville Housing Division
50 Evergreen Avenue
Somerville, MA 02145
Attn: Housing Counsel

AFFORDABLE HOUSING RESTRICTION

_____, a _____ with a usual address of _____ (“Grantor”), sole owner of the land together with the buildings and improvements thereon known as and numbered _____, Somerville, Middlesex South County, Massachusetts, more particularly described in Exhibit A attached hereto (the “Property”) and the City of Somerville, a Massachusetts body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, with a usual address of 93 Highland Avenue, Somerville, MA 02143 (“City” or “Grantee”), in consideration for certain zoning relief, hereby covenant and agree that the Property shall be subject, in perpetuity, to this Affordable Housing Restriction (“Affordable Housing Restriction”).

Property Address:

1. Governing Law.

The Grantor and the City intend and agree that this Affordable Housing Restriction shall be an “affordable housing restriction” as that term is defined in M.G.L. 184, s.31, with the benefit of s. 32, and used in M.G.L. c. 184, ss.26, 31, 32, and 33. The Grantor and the City hereby covenant that this Affordable Housing Restriction shall run with the land and shall be binding upon and enforceable against the Grantor, its successors and assigns; and notwithstanding the lack of privity of estate, and/or other statutes or rules of law which may impose time limitations on such restrictions, this Affordable Housing Restriction shall inure to the benefit of and be enforceable by the City and its successors and assigns, in perpetuity. Each and every instrument of conveyance subsequent to the date hereof shall expressly state that it is subject to this Affordable Housing Restriction, provided that the absence of such statement shall not affect its validity and enforceability.

2. Zoning Requirement/Purpose of Restriction.

The zoning decisions of the Somerville Zoning Board of Appeals, recorded in Middlesex County Southern District Registry of Deeds Book _____ at Page _____, granted a special permit to construct (____) residential units at _____ in Somerville, Massachusetts. Under then Applicable provisions of the Inclusionary Housing Section of the Somerville Zoning Ordinance, the Applicant is required to provide _____ (____) units of affordable housing.

The purpose of this Affordable Housing Restriction is to ensure that _____ (____) units at the Property shall be occupied in perpetuity as affordable housing units (“Affordable Units”).

All obligations of the Grantor under this restriction shall end upon the sale of the _____ (____) Affordable Units to Income Eligible Households as provided herein.

3. Terms of Affordability.

Unless otherwise agreed by the City, by a written amendment to this Affordable Housing Restriction recorded with the Middlesex South District Registry of Deeds, the Affordable Units shall be:

- i. owner-occupied condominium units, the leasing or subleasing of which, including use of for short-term rental, with or without a lease is strictly prohibited;
- ii. restricted for sale at an affordable price to income eligible first time homebuyer Households; and
- iii. occupied by such Households as their principal residence.

a. Designation of Affordable Units.

The Affordable Units are hereby designated as:

Unit ____ - a ____-bedroom unit measuring approximately sq. ft. with an undivided ¹ ____% residential percent interest in the common areas and facilities.

Unit ____ - a ____-bedroom unit measuring approximately sq. ft. with an undivided ____% residential percent interest in the common areas and facilities.

Unit ____ - a ____-bedroom unit measuring approximately with an undivided ____% residential percent interest in the common areas and facilities.

b. Affordable Price Defined.

Per Article 12.1.5 of the 2019 Ordinance, the maximum affordable sales price for each ownership ADU price tier is calculated as follows: The Area Median Income (AMI) for the Boston-Cambridge-Quincy, MA-NH HUD Metro Area published annually by the U.S. Department of Housing and Urban Development (HUD) is multiplied by the percentage specified in Table 12.1.5 (c) for the price tier and bedroom count of the subject ADU. The product is then divided by twelve and the standard deductions for private mortgage insurance, real estate taxes, condominium fees, homeowners insurance, and parking fees, if any, are subtracted from the result to determine a maximum monthly mortgage payment. The result of the above is used to calculate a maximum mortgage loan amount, assuming a thirty (30) year term and a current conventional interest rate, and the maximum mortgage loan amount is multiplied by 1.03 to determine the maximum affordable sales price. The Owner will provide verification to the OSPCD Housing Division of the component costs making up the common area fee. If there is a material change in the common area fee prior to the closing, the OSPCD Housing Division reserves the right to recalculate the sales price.

¹ **Note to draft:** Please provide a draft of the Master Deed and condo organizational documents

The initial sale price for each Affordable Unit shall not exceed the Affordable Price set forth in Exhibit C attached hereto. For each subsequent sale, the Affordable Price shall be determined in conjunction with the City, so that the total estimated annual costs for mortgage principal and interest, utilities, real estate taxes, private mortgage insurance, homeowner's insurance, and common area fees do not exceed twenty eight percent (28%) of the Annual Income of an Income Eligible Household at _____ Percent (___%) of the area median income for the Boston Metropolitan Statistical Area ("BMSA") for Units _____, and _____ Percent (___%) of the area median income for the BMSA for Unit _____. While affordability is calculated using 70% of area median income for Units _____ and _____% of area median income for Unit _____, income eligibility for Units _____ is up to _____% of area median income and income eligibility for Unit _____ is up to _____% of area median income, as defined further in section c below.

c. Income Eligible Household Defined.

A "Household" is defined as an individual, or two or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit and occupying one dwelling unit; or a group (but not more than four) or pair of individuals, not so related, but living together as a single housekeeping unit. "Annual Income" is defined under 24 CFR 5.609, or as shall be defined in any successor regulation, is the anticipated total income from all sources received by all members of the Household over the age of eighteen, including members who are temporarily absent. Without limiting the generality of the foregoing, Annual Income includes interest income from assets. The Household must be a first time homebuyer household, with members not owning a Property in the preceding three (3) years from the time of purchase, unless ownership of a Property was lost in a divorce, or otherwise meeting a then-current exemption policy of the OSPCD Housing Division.

Unit _____ shall be restricted for sale to a Household whose Annual Income does not exceed _____% of the median income for the Boston Metropolitan Statistical Area ("BMSA") based on Household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD).

Unit _____ shall be restricted for sale to a Household whose Annual Income does not exceed _____% of the median income for the Boston Metropolitan Statistical Area ("BMSA") based on Household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD).

Unit _____ shall be restricted for sale to a Household whose Annual Income does not exceed _____% of the median income for the Boston Metropolitan Statistical Area ("BMSA") based on Household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD).

The _____% and _____% BMSA median income limits in effect at the time of execution of this Affordable Housing Restriction are attached hereto as Exhibit B.

d. Principal Residence Requirement. The Affordable Unit must be occupied as the

principal residence of the Income Eligible Household owning such unit. An Affordable Unit may only be leased with prior written consent by the OSPCD Housing Division, which shall be granted in limited circumstances in accordance with the then-current OSPCD Housing policy. Use of an Affordable Unit for short-term rental, including but not limited to Vrbo and Airbnb with or without a lease, is strictly prohibited.

e. **Parking, Bicycle and Storage.** There shall be no charge to the Affordable Units or their occupants/Households for any bicycle space right or storage right. [Reference dedeed parking if any]

f. **Condition of Units/Property.** The Affordable Units and the Property as a whole shall be kept in good repair and maintained in a safe and sanitary condition, in full compliance with state and local law.

g. **Household Size/Number of Bedrooms.** The City reserves the right to withhold approval of an otherwise Income Eligible Household for occupancy of a particular Affordable Unit if the Household size is less than 1.0 persons per bedroom or greater than 1.5 persons per bedroom.

h. **Periods of Temporary Noncompliance.**

1) Over-income Households: A Household which was income eligible at the time of purchase shall not be in violation of this Affordable Housing Restriction as a result of an increase in income during its period of ownership, provided that (x) any subsequent transfer of the Affordable Unit by such Household is to an income eligible Household; and (y) if the transfer is by sale, it is at an affordable price; and (z) that such transfer is in all respects in compliance with the terms of this Affordable Housing Restriction.

2) Inherited Units: In the case of an Affordable Unit which has been transferred by descent or devise to a non-income-eligible Household, the City shall determine, on a case by case basis, the period of time within which such Affordable Unit must be resold to an income eligible Household at an Affordable Price; provided, however, that in no case shall the period of time be less than nine (9) months from the date of death of the transferor.

i. **Restrictions against Encumbrances.** Except for the first mortgage granted in connection with the initial conveyance of each Affordable Unit, no Affordable Unit may be mortgaged or otherwise encumbered without the prior written consent of the City. The purpose of this section is to ensure that no Affordable Unit is encumbered with monetary obligations exceeding the then current Affordable Price for such Unit.

4. Marketing/Income Certification.

The Grantor shall be responsible for marketing the Affordable Unit in accordance with a marketing plan approved by the Housing Division of the City of Somerville Mayor's Office of Strategic Planning and Community Development ("OSPCD"). OSPCD shall be responsible for certifying that the proposed purchaser is an Income Eligible Household. Each time an Affordable

Unit is sold, the city shall re-evaluate the income eligibility of the purchaser and the affordability of the price and shall provide written certification in recordable form, which shall be recorded with the unit deed transferring title, stating that the Affordable is being sold to an Income Eligible Household at an Affordable Price.

5. Non - Discrimination.

The Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin, source of income, status as a holder of a Section 8 or other voucher or certificate, or any other basis prohibited by law in the marketing, sale, use, or occupancy of any unit at the Property.

6. Changes to Affordable Units or Property.

No Affordable Unit shall be eliminated or reduced in size without prior written consent of the City, except in the case of taking by eminent domain or substantial damage or destruction of the unit by casualty, in which latter case, the Affordable Unit shall be restored upon the restoration of the building in accordance with the governing documents of the condominium.

7. Right of First Refusal.

If the Grantor or any subsequent owner of an Affordable Unit (“Owner”) desires to sell, dispose of, or otherwise convey an Affordable Unit, said Owner shall so notify the City in writing (“Owner’s Notice”). The Owner’s Notice shall include (i) a copy of the Owner’s deed; (ii) and a copy of any recorded mortgage(s); and (iii) current property tax and condo fee information. The City will calculate the resale price based on then current data and in conformance with the formula used in the original sale price calculations, which shall not exceed an Affordable Price as defined Paragraph 3b herein or, at the City’s sole discretion, such other affordable price acceptable to the City of Somerville as may be consistent with then current Inclusionary Housing provisions of the Somerville Zoning Ordinance. The City shall have thirty (30) days following the giving of the Owner’s Notice to respond in writing that the City or a designee of the City (including without limitation, a nonprofit entity such as the Somerville Housing Authority or Somerville Affordable Housing Trust Fund intends to purchase the Affordable Unit at the proposed sale price; or that the City will market the unit and locate an income eligible Household no later than ninety (90) days thereafter or within the timeframe outlined in the marketing schedule. The conveyance of the Affordable Unit to an eligible buyer, the City or its designee shall be by Quitclaim Deed conveying good and clear record and marketable title, and shall otherwise conform to the standard terms of a then current Greater Boston Real Estate Board’s (“GBREB”) standard form purchase and sale agreement for condominiums, or the then commonly used successor standard form if the GBREB standard form no longer exists.

If the City declines to market the Affordable Unit or the City or its designee does not elect to purchase the Affordable Unit within the time period set forth herein, then the Owner shall proceed to sell such Unit at the Affordable Price to an Income Eligible Household in accordance with Paragraph 3 of this Affordable Housing Restriction. Any sale made in violation of this Affordable Housing Restriction shall be null and void. A deed rider issued by the City and

substantially in the form of Exhibit D reiterating the terms of this Affordable Housing Restriction shall be affixed to the deed for any subsequent resale. A Certificate of Compliance issued by the City and recorded at the Middlesex South District Registry of Deeds shall be conclusive evidence that the City's resale restrictions have been complied with.

8. Enforcement/Effective Date of Restriction.

The Grantor hereby authorizes the City to file or record any notices or instruments appropriate to ensure the enforceability of this Affordable Housing Restriction, and the Grantor, on behalf of itself and its successors and assigns, appoints the City as its attorney-in-fact to execute, acknowledge and deliver any such notices or instruments on behalf of the Grantor. Without limiting the foregoing, the Grantor agrees to execute any reasonable instruments upon the reasonable request of the City. This Affordable Housing Restriction shall be effective and shall begin to run as of the date of execution hereof, and to the extent that enforceability depends upon the approval of governmental officials, such approval shall relate back to the date of execution.

9. Rights and Remedies of the City.

The City shall have the right to enter upon the Property with reasonable advance notice to a Unit Owner in order to verify compliance with this Affordable Housing Restriction. If such Unit Owner is not in compliance, the City shall give the Unit Owner written notice to that effect, stating what must be done to restore compliance. If the said Unit Owner fails to bring the Property into compliance within the time period specified in such written notice, the City shall have the right to bring an action for specific performance to compel such compliance; to bring an action for monetary damages sufficient to compensate the City for the loss of the Affordable Unit; to seek reimbursement for costs and reasonable attorney's fees; and/or to take such other action or actions and seek such other remedy or remedies as may be available to the City. The City may avail itself of any and all of the foregoing remedies and shall be under no obligation to make an election.

10. Rights of Mortgagees.

The holder of record of any mortgage on a condominium Affordable Unit (hereinafter, "Mortgagee") shall notify the City (see Section 12 of the Affordable Housing Restriction on notice) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice") not less than one hundred twenty days (120) prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure.

- (i) The Owner expressly agrees to deliver the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.
- (ii) The Owner grants to the City or its designee the right and option to purchase the Affordable Unit upon receipt by OSPCD Housing Division of the Foreclosure Notice. In the event the City or its designee intends to exercise its option to purchase the Affordable Unit, the City or its designee

shall purchase the Affordable Unit to be foreclosed within one hundred twenty (120) days of receipt of such notice at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the then-current Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Affordable Unit by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Affordable Unit shall be sold and conveyed in its then-current, as is condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal and state taxes (subject to a right of redemption for unpaid federal taxes), municipal liens and any encumbrances of record then in force and applicable to the Affordable Unit, having priority over the foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and substance to the one shown in Exhibit D for homeownership units under this Restriction, which the Owner hereby agrees to execute, to secure execution by the City or its designee, and to record with the Unit Deed, except that during the term of ownership of the Affordable Unit by the City or its designee the owner occupancy requirements shall not apply (unless the designee is an eligible purchaser) and the Maximum Resale Price shall be recalculated based on the price paid for the property by the City or its designee, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the City or its designee or the enforceability of the restrictions herein.

- (iii) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the City, and any senior Mortgagee(s) pursuant to section (ii) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Affordable Unit shall be sold and conveyed in its then-current, as is condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal and state taxes (subject to a right of redemption for unpaid federal taxes), municipal liens

and any encumbrances of record then in force and applicable to the Affordable Unit, having priority over the foreclosing Mortgagee's mortgage, and further subject to a deed rider as set forth below.

- (iv) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Affordable Unit is sold for a price in excess of the greater of the then-current Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the City for its Affordable Housing Trust Fund after final judicial determination or a written agreement of all of the parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Affordable Unit, that the City is entitled to such excess. The legal costs of obtaining such judicial determination or agreement shall be deducted from the excess prior to payment to the City. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the City under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the City.
- (v) If any Mortgagee shall acquire the Affordable Unit by reason of foreclosure or upon conveyance of the Affordable Unit in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Affordable Unit and to any purchaser of the Affordable Unit from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance to the one shown in Exhibit D for homeownership units under this Restriction, which the Mortgagee that has so acquired the Affordable Unit agrees to annex to the deed and to record the deed, except that during the term of ownership of the Affordable Unit by such Mortgagee the owner occupancy requirements shall not apply and the Maximum, Resale Price shall be recalculated based on the price paid for the Unit by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or to the enforceability of the restrictions herein.
- (vi) If a party other than a Mortgagee shall acquire the Affordable Unit by reason of foreclosure or upon conveyance of the Affordable Unit in lieu of foreclosure, the Affordable Unit shall be conveyed subject to a Deed Rider identical in form and substance to the one shown in Exhibit D for homeownership units under this Restriction, which foreclosing Mortgagee agrees to annex to the deed and to record the deed, except that if the purchaser at such foreclosure sale or assignee of a Unit Deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Affordable Unit by such Ineligible Purchaser, the owner occupancy requirements shall not apply and the Maximum Resale Price shall be recalculated based on the price paid for the Affordable Unit by such third

party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or to the enforceability of the restrictions herein.

- (vii) Upon satisfaction of the requirements contained in Section 12, OSPCD Housing Division shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Middlesex South District Registry of Deeds, shall be relied upon as conclusive evidence that the conveyance of the Affordable Unit is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction.
- (viii) The Owner understands and agrees that nothing in the Restriction in any way constitutes a promise or guarantee by the City that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property, or any other Price for the Affordable Unit, or impairs the rights and remedies of the Mortgagee in the event of a deficiency.

11. Owner Agreement with Annual Monitoring:

The Owner hereby agrees to cooperate with City’s annual monitoring process, and will provide responses and documentation as requested in a timely manner.

12. Notice.

Written notices shall be given by federal express, express mail, or any other nationally recognized overnight delivery service; or by facsimile, provided a copy is also sent by first class mail, postage prepaid,

to the City addressed to:

Housing Director
Mayor’s Office of Strategic Planning & Community Development
50 Evergreen Avenue
Somerville, MA 02145
FAX: 617-666-8035

with copies to

OSPCD Special Counsel
City Hall
93 Highland Avenue
Somerville, MA 02143
FAX: 617-776-8847

and

Planning Director
Planning Department
City Hall
93 Highland Avenue

Somerville, MA 02143
FAX: 617-625-0722; and

To the Grantor addressed to:

Owner/Manager, Title
Company Name
Street Address
City, State, Zipcode

Email: _____ with copies to:

_____, Esq.²

Seller's Attorney
Law Office
Street Address
City, State, Zipcode

Fax:
Email:

and

To the Grantor's successors in title to the Unit Owner named in the Unit Deed at the address set forth on the Unit Deed.

Any change in the foregoing shall be given by fifteen (15) days prior written notice. Notice shall be deemed to have been given on the earlier of (i) the date of actual receipt; or (ii) the date of tender of delivery by one of the above prescribed methods.

13. Waiver.

Nothing contained in this document shall limit the rights of the City to release or waive, from time to time, in whole or in part, any or all of the rights, restrictions, covenants or agreements contained herein with respect to the Property. Any such release or waiver must be made in writing executed by the Mayor.

14. Severability.

If any provision of this Affordable Housing Restriction, or its application to any person or circumstance is held to be invalid or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby, and every other provision and application shall be valid and enforceable to the fullest extent permitted by law.

² **Note to draft:** Please provide attorney notice information

15. Successors and Assigns.

References to the Grantor and the City shall be deemed to include their successors and assigns, whether specifically so stated or not.

16. Extension of Restriction.

The City, Grantor and/or its successors and assigns voluntarily agree these restrictions shall, insofar as permitted by law, be perpetual, and to that end they may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof.

17. Independent Counsel.

The Owner acknowledges that he, she or they have read this document in its entirety and has had the opportunity to consult legal and financial advisors of his, her or their choosing regarding the execution, delivery and performance of the obligations hereunder.

SIGNATURE PAGES TO FOLLOW

EXECUTED as a sealed instrument this _____ day of _____, 20__.

GRANTOR:

By: _____
Name of signer

Its: Manager, duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that _____ signed it voluntarily for its stated purpose, as duly authorized Manager of _____.

Notary Public
My Commission Expires:

CITY OF SOMERVILLE
ACCEPTANCE AND APPROVAL

The City of Somerville hereby accepts the grant of the foregoing Affordable Housing Restriction and hereby approves this Affordable Housing Restriction as meeting the Inclusionary Housing requirements of the City of Somerville Zoning Ordinance.

GRANTEE: CITY OF SOMERVILLE

Katjana Ballantyne, Mayor

Thomas Galligani, Executive Director
Mayor's Office of Strategic Planning & Community Development

Approved as to Form: _____
Cynthia Amara, City Solicitor

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Katjana Ballantyne, Mayor as aforesaid, proved to me through satisfactory evidence of identification, namely, that she is personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Mayor of the City of Somerville.

Notary Public
My Commission Expires:

EXHIBIT A
Property Description³

³ **Note to draft:** Please provide updated legal description for property

EXHIBIT B

Initial Median Income Limits, as published by HUD, effective [add month and year]

Household Size	Units set at 50% AMI	Units set at 80% AMI	Units Set at 110% AMI
1			
2			
3			
4			
5			

EXHIBIT C
Initial Affordable Price, effective [add month and year]

**EXHIBIT D
DEED RIDER
AFFORDABLE HOUSING RESTRICTION**

Made part of that certain deed (the “Deed”) of certain property, namely, _____
UNIT # ____ (“Affordable Unit”) from _____ (“Grantor”) to _____
 (“Grantee”) dated _____ 20__.

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the Deed to the Grantee at a consideration which is less than the fair market value of the property; and

WHEREAS, the property is part of a project which was granted zoning relief and under the then applicable provisions of the Inclusionary Housing Section of the Somerville Zoning Ordinance, the applicant was required to provide ____ units of affordable housing and _____ Unit _____, of The _____ Condominium, is one of the ____ affordable units. The condominium is subject to G.L. c. 183A, and was created by that certain Master Deed recorded with the Middlesex South District Registry of Deeds on _____ in Book _____, Page _____, and as may be amended from time to time, the address of which is _____, Somerville, MA 02143, shall be subject in perpetuity to the restriction set forth (i) in that certain Affordable Housing Restriction, dated _____ and recorded with the Registry in Book _____, Page ____ (the “Original Restriction”) and (ii) in this Deed Rider, which shall be an “affordable housing restriction” as that term is defined in M.G.L. 184, s.31, with the benefit of s. 32, and used in M.G.L. c. 184, ss.26, 31, 32, and 33 (the Original Restriction together with this Deed Rider the “Affordable Housing Restriction”). Each and every instrument of conveyance subsequent to the date hereof shall expressly state that it is subject to this Affordable Housing Restriction, provided that the absence of such statement shall not affect the validity and enforceability of said Affordable Housing Restriction.

WHEREAS, in accordance with the provisions of Article 12 of the City of Somerville Zoning Ordinance (“SZO”) governing Inclusionary Housing Units, unless otherwise agreed by the City of Somerville, the Affordable Unit shall be an:

- i) owner-occupied condominium unit;
- ii) restricted for sale at an affordable price to income eligible Household; and
- iii) occupied by such Household as their principal residence;

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market, the Grantor and the Grantee, including their heirs, successors and assigns, hereby agree that the property shall be subject to the following rights and restriction which are imposed for the benefit of, and shall be enforceable by, the City of Somerville (the “City”).

1. Affordable Price Defined.

The sale price for the Affordable Unit for the transfer from said Grantor to said Grantee shall not exceed _____ DOLLARS (\$_____). For each subsequent sale, the Affordable Price shall be determined in conjunction with the City of Somerville Office of Strategic Planning and Community Development, so that the total estimated annual costs for mortgage principal and interest, real estate taxes, private mortgage insurance, homeowner's insurance, and common area fees do not exceed twenty-eight percent (28%) of the Annual Income of an Income Eligible Household at _____ Percent (___%) of the area median income for the Boston Metropolitan Statistical Area ("BMSA") for the ___% AMI Units (Units _____), and _____% AMI for _____% Unit (Unit _____). While affordability is calculated using _____% of area median income for Units _____ and _____% of area median income for Unit _____, income eligibility for Units _____ is up to _____% of area median income and income eligibility for Unit _____ is up to _____% of area median income, as defined further in section c below.

Subsequent resales of the unit will require a Certificate of Compliance that includes among other things, certification of the affordable price (see Sections 8__ and 10__ herein).

2. Income Eligible Household Defined.

A "Household" is defined as an individual, or two or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit and occupying one dwelling unit; or a group (but not more than four) or pair of individuals, not so related, but living together as a single housekeeping unit. "Annual Income" shall be the anticipated total income from all sources received by all members of the Household over the age of eighteen, including members who are temporarily absent. Without limiting the generality of the foregoing, Annual Income includes net income from assets.

The Affordable Unit shall be restricted for sale to an Income Eligible First Time Homebuyer Household whose Annual Income does not exceed _____ Percent (___%) of the area median income for the BMSA based on Household size, as determined annually by the U.S. Department of Housing and Urban Development (HUD).

3. Principal Residence Requirement.

An Affordable Unit may not be leased. It must be occupied as the principal residence of the Income Eligible Household approved for and owning such Unit. An Affordable Unit may only be leased with prior written consent by the OSPCD Housing Division, which shall be granted in limited circumstances in accordance with the then-current OSPCD Housing policy. Use of an Affordable Unit for short-term rental, including but not limited to Vrbo and Airbnb with or without a lease, is strictly prohibited.

4. Condition of Units/Property.

The Affordable Units and the Property as a whole shall be kept in good repair and maintained in a safe and sanitary condition, in full compliance with state and local law. Each owner shall keep

their Affordable Unit insured against fire and such other casualties as are customarily insured against under a standard homeowner casualty insurance policy.

5. Parking.

[[Unit ___] does not have access to a deeded parking space.] [There shall be one (1) deeded parking space for Unit ___, and such parking space may not be conveyed to another unit owner of the ___ Condominium (or otherwise conveyed separately from the unit, nor may the exclusive easement and right of use to driveway(s) or parking area be leased.) [Grantee acknowledges that the Property is located in a Transit Area (a ten-minute walking distance to a rapid transit MBTA station) and received a certificate of occupancy after January 15, 2020, and is therefore subject to the City's Traffic Rules and Regulations Article XV, Section 15-2.1, prohibiting street parking permits for residents of new buildings. However, Households residing in deed restricted affordable units, residents with disabilities, and residents with extenuating circumstances are eligible for an exemption by submitting a Parking Permit Waiver Application to the City's Parking Department.]

6. Periods of Temporary Noncompliance.

a) *Over-income Households*: A Household that was income eligible at the time of purchase shall not be in violation of this Affordable Housing Restriction as a result of an increase in income during its period of ownership, provided that (x) any subsequent transfer of the Affordable Unit by such Household is to an income eligible Household; and (y) if the transfer is by sale, it is at an affordable price; and (z) that such transfer is in all respects in compliance with the terms of this Affordable Housing Restriction.

b) *Inherited Units*: In the case of an Affordable Unit that has been transferred by descent or devise to a non-income-eligible Household, the City shall determine, on a case by case basis, the period of time within which such Affordable Unit must be resold to an income eligible Household at an Affordable Price; provided, however, that in no case shall the period of time be less than nine (9) months from the date of death of the transferor.

7. Restrictions against Encumbrances.

Except for purchase money mortgages that do not exceed the fair market value of the Affordable Unit and are granted in connection with the initial conveyance, the Affordable Unit may not be mortgaged or otherwise encumbered without the prior written consent of the City. The purpose of this section is to ensure that no Affordable Unit is encumbered with monetary obligations exceeding the then current Affordable Price for such Unit.

8. Income Certification.

Each time an Affordable Unit is sold or transferred, the City shall evaluate the income eligibility of the purchaser and the affordability of the price and certify that the property is being sold to an Income Eligible Household at an Affordable Price. The certificate shall be recorded with the unit deed transferring title.

9. Non-Discrimination.

There shall be no discrimination on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin, source of income, status as a holder of a Section 8 or other voucher or certificate, or any other basis prohibited by law in connection with the sale of the Affordable Unit.

10. Right of First Refusal.

If the Grantee or its successor desires to sell, dispose of, or otherwise convey an Affordable Unit, he or she shall so notify the City in writing (“Owner’s Notice”). The Owner’s Notice shall include (i) a copy of the Owner’s deed; (ii) a copy of any recorded mortgage(s); and (iii) the proposed sale price, which shall not exceed an Affordable Price as defined herein or, at the City’s sole discretion, such other affordable price acceptable to the City of Somerville as may be consistent with then current Inclusionary Housing provisions of the Somerville Zoning Ordinance. The Owner’s Notice shall be accompanied by a written appraisal of the fair market value of such Affordable Unit (assuming it to be free of all restrictions set forth herein) prepared by a qualified real estate appraiser, using professional appraisal standards acceptable in Massachusetts. The City shall have thirty (30) days following the giving of the Owner’s Notice to respond in writing that the City or a designee of the City (including without limitation, a nonprofit entity such as the Somerville Housing Authority or Somerville Affordable Housing Trust Fund intends to purchase the Affordable Unit at the proposed sale price; and a Closing shall occur no later than ninety (90) days thereafter (“Closing Period”). The conveyance of the Affordable Unit to the City or its designee shall be by Quitclaim Deed conveying good and clear record and marketable title, and shall otherwise conform to the standard terms of a then current Greater Boston Real Estate Board’s (“GBREB”) standard form purchase and sale agreement for condominium sales, or the then commonly used successor standard form if the GBREB standard form no longer exists.

If the City or its designee does not elect to purchase the Affordable Unit within the time period set forth herein, then the Grantee shall proceed to sell such Unit at an Affordable Price to an Income Eligible Household in accordance with Paragraph one (1) and two (2) of this Deed Rider. Any sale made in violation of this Affordable Housing Restriction shall be null and void. A deed rider issued by the City and substantially in the form of this deed rider reiterating the terms of this Affordable Housing Restriction shall be affixed to the deed for any subsequent resale. A certificate of compliance issued by the City and recorded at the Middlesex South District Registry of Deeds shall be conclusive evidence that the City’s resale restrictions have been complied with.

11. Rights and Remedies of the City.

The City shall have the right to enter the Affordable Unit with reasonable advance notice in order to verify compliance with this Affordable Housing Restriction. In the case of noncompliance, the City shall give the Unit Owner written notice stating what must be done to restore compliance. If said Unit Owner fails to bring the Property into compliance within the time period specified in such written notice, the City shall have the right to bring an action for specific

performance to compel such compliance; to bring an action for monetary damages sufficient to compensate the City for the loss of the Affordable Unit; to seek reimbursement for costs and reasonable attorney's fees; and/or to take such other action or actions and seek such other remedy or remedies as may be available to the City. The City may avail itself of any and all of the foregoing remedies and shall be under no obligation to make an election.

12. Rights of Mortgagees.

The holder of record of any mortgage on a condominium Affordable Unit (hereinafter, "Mortgagee") shall notify the City (see Section 10 of the Affordable Housing Restriction on notice) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice") not less than one hundred twenty days (120) prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure.

- (i) The Owner expressly agrees to deliver the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.
- (ii) The Owner grants to the City or its designee the right and option to purchase the Affordable Unit upon receipt by OSPCD Housing Division of the Foreclosure Notice. In the event the City or its designee intends to exercise its option to purchase the Affordable Unit, the City or its designee shall purchase the Affordable Unit to be foreclosed within one hundred twenty (120) days of receipt of such notice at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the then-current Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Affordable Unit by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Affordable Unit shall be sold and conveyed in its then-current, as is condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal and state taxes (subject to a right of redemption for unpaid federal taxes), municipal liens and any encumbrances of record then in force and applicable to the Affordable Unit, having priority over the foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and

substance, which the Owner hereby agrees to execute, to secure execution by the City or its designee, and to record with the Unit Deed, except that during the term of ownership of the Affordable Unit by the City or its designee the owner occupancy requirements shall not apply (unless the designee is an eligible purchaser) and the Maximum Resale Price shall be recalculated based on the price paid for the property by the City or its designee, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the City or its designee or the enforceability of the restrictions herein.

- (iii) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the City, and any senior Mortgagee(s) pursuant to section (ii) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Affordable Unit shall be sold and conveyed in its then-current, as is condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal and state taxes (subject to a right of redemption for unpaid federal taxes), municipal liens and any encumbrances of record then in force and applicable to the Affordable Unit, having priority over the foreclosing Mortgagee's mortgage, and further subject to a deed rider as set forth below.
- (iv) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Affordable Unit is sold for a price in excess of the greater of the then-current Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the City for its Affordable Housing Trust Fund after final judicial determination or a written agreement of all of the parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Affordable Unit, that the City is entitled to such excess. The legal costs of obtaining such judicial determination or agreement shall be deducted from the excess prior to payment to the City. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the City under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the City.
- (v) If any Mortgagee shall acquire the Affordable Unit by reason of foreclosure or upon conveyance of the Affordable Unit in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Affordable Unit and to any purchaser of the Affordable Unit from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance, which the Mortgagee that has so acquired the Affordable Unit agrees to

annex to the deed and to record the deed, except that during the term of ownership of the Affordable Unit by such Mortgagee the owner occupancy requirements shall not apply and the Maximum, Resale Price shall be recalculated based on the price paid for the Unit by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or to the enforceability of the restrictions herein.

- (vi) If a party other than a Mortgagee shall acquire the Affordable Unit by reason of foreclosure or upon conveyance of the Affordable Unit in lieu of foreclosure, the Affordable Unit shall be conveyed subject to a Deed Rider identical in form and substance, which foreclosing Mortgagee agrees to annex to the deed and to record the deed, except that if the purchaser at such foreclosure sale or assignee of a Unit Deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Affordable Unit by such Ineligible Purchaser, the owner occupancy requirements shall not apply and the Maximum Resale Price shall be recalculated based on the price paid for the Affordable Unit by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or to the enforceability of the restrictions herein.
- (vii) Upon satisfaction of the requirements contained in Section 11, OSPCD Housing Division shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Middlesex South District Registry of Deeds, shall be relied upon as conclusive evidence that the conveyance of the Affordable Unit is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction.
- (viii) The Owner understands and agrees that nothing in the Restriction in any way constitutes a promise or guarantee by the City that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property, or any other Price for the Affordable Unit, or impairs the rights and remedies of the Mortgagee in the event of a deficiency.

13. Owner Agreement with Annual Monitoring:

The Owner hereby agrees to cooperate with City's annual monitoring process, and will provide responses and documentation as requested in a timely manner.

14. Notice

Written notices shall be given by federal express, express mail, certified mail return receipt requested or any other nationally recognized overnight delivery service; or by facsimile,

provided a copy is also sent by first class mail, postage prepaid,

to the City addressed to:

Housing Director
Office of Strategic Planning and Community Development
50 Evergreen Avenue
Somerville, MA 02145
FAX: 617-666-8035 with copies to

Law Department
City Hall
93 Highland Avenue
Somerville, MA 02143
FAX: 617-776-8847 and

Executive Director
Office of Strategic Planning and Community Development
City Hall
93 Highland Avenue
Somerville, MA 02143
FAX: 617-625-0722; and

To the Grantee addressed to:

Any change in the foregoing shall be given by fifteen (15) days prior written notice. Notice shall be deemed to have been given on the earlier of (i) the date of actual receipt; or (ii) the date of tender of delivery by one of the above prescribed methods.

15. Waiver

Nothing contained in this document shall limit the rights of the City to release or waive, from time to time, in whole or in part, any or all of the rights, restrictions, covenants or agreements contained herein with respect to the Affordable Unit. Any such release or waiver must be made in writing executed by the Mayor.

16. Severability

If any provision of this Affordable Housing Restriction, or its application to any person or circumstance is held to be invalid or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances, other than those as to which it was held invalid or unenforceable, shall not be affected thereby, and every other provision and application shall be valid and enforceable to the fullest extent permitted by law.

17. Successors and Assigns

References to the Grantee and the City shall be deemed to include their successors and assigns, whether specifically so stated or not.

18. Extension of Restriction.

The City, Grantor and/or its successors and assigns voluntarily agree these restrictions shall, insofar as permitted by law, be perpetual, and to that end they may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof.

19. Independent Counsel.

The Owner acknowledges that he, she or they have read this document in its entirety and has had the opportunity to consult legal and financial advisors of his, her or their choosing regarding the execution, delivery and performance of the obligations hereunder.

SIGNATURE PAGE TO FOLLOW

EXECUTED as a sealed instrument this _____ day of _____, 20__.

GRANTOR:

By: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. Passport] [my personal knowledge], to be the person whose name is signed above, and acknowledged the foregoing to be signed by _____ voluntarily.

Notary Public
My Commission Expires:

[Signatures Continue on Following Page]

GRANTEE:

By: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this _____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. Passport] [my personal knowledge], to be the person whose name is signed above, and acknowledged the foregoing to be signed by ____ voluntarily.

Notary Public
My Commission Expires: