**---------------------------- [Space Above This Line For Recording Data] -----------------------------**

SPONSOR-INITIATED Affordability AGREEMENT

This SPONSOR-INITIATED AFFORDABILITY AGREEMENT (this “**Agreement**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, is executed by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

RECITALS:

1. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage Loan**”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Lender in the amount of the MortgageLoan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).
2. In addition to the Loan Agreement, the MortgageLoan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”), which encumbers the property described in the Security Instrument as the “**Mortgaged Property**” as more particularly described on Exhibit A attached hereto.
3. It is a condition to the making of the Mortgage Loan that Borrower maintain and operate the Mortgaged Property in accordance with this Agreement for the period specified in this Agreement.

AGREEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower and Lender agree as follows:

# Recitals.

The recitals set forth above are incorporated herein by reference.

# Defined Terms.

Capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement. In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Administering Agent**” means a third-party compliance monitoring company meeting the requirements set forth in Section 10 of this Agreement, or such other third-party compliance monitoring company approved in writing by Lender.

“**AMI**” means the median income level issued annually by the Federal Housing Finance Agency for each property census tract as provided in the Multifamily Affordability Estimator.

“**Annual Recertification**” has the meaning set forth in Section 5.

“**Compliance Confirmation Report**” means a required annual report completed by Administering Agent confirming compliance with this Agreement.

“**Eligible Tenant**” means a Tenant whose aggregate Gross Income:

* 1. at the time of initial occupancy does not exceed the Income Restriction; and
  2. at the time of any Annual Recertification or lease renewal (whichever is later), is not greater than one hundred forty percent (140%) of the higher of (i) the Income Restriction in effect as of the initial occupancy and (ii) the Income Restriction then in effect at the time of the Annual Recertification or lease renewal.

“**Gross Income**” means the gross income of all occupants of a unit as calculated in the manner prescribed in the United States Department of Housing and Urban Development (“**HUD**”) Handbook 4350.3, pursuant to Section 8 of the United States Housing Act of 1937, as amended.

“**In-Place Tenant**” means a Tenant who occupies a Unit pursuant to a lease dated prior to the Effective Date.

“**Income Restricted Unit**” means a unit designated for occupancy by an Eligible Tenant, excluding any residential apartment for occupancy by the Mortgaged Property’s superintendent and any commercial space located at the Mortgaged Property.

“**Income Restriction**” means [**DRAFTING NOTE: INSERT AMI INCOME RESTRICTION; MAXIMUM 80% AMI REQUIRED**] [\_\_\_\_] percent ([\_\_]%) of AMI as adjusted for family size using the factors provided in HUD Notice PDR-99-02, as amended or superseded.

“**Multifamily Affordability Estimator**” means the Fannie Mae Multifamily Affordability Estimator or any successor tool provided or used by Fannie Mae to estimate the affordability profile of a property.

“**Non-Qualification Notice**” means the written notice delivered by Borrower in accordance with Section 6 of this Agreement.

“**Rent**” means regular payments made for rent plus a standard utility allowance (if utilities are not otherwise included in the rent) as prescribed by the Multifamily Affordability Estimator.

“**Rent Restriction**” means the maximum allowable monthly Rent pursuant to Section 4 of this Agreement.

“**Restriction Period**” means the time period from the date of this Agreement to the date that the Mortgaged Property is no longer encumbered by the Security Instrument.

“**Schedule of Income Restricted Units**” means that certain Schedule 1 (Schedule of Income Restricted Units) attached to this Agreement.

“**Set-Aside Requirement**” means the requirement that Borrower maintain a minimum of [**DRAFTING NOTE: INSERT THE MINIMUM SET-ASIDE; MINIMUM 20% SET-ASIDE REQUIRED**] \_\_\_\_\_ percent ([\_\_]%) of the units as Income Restricted Units.

“**Tenant**” means, individually and collectively, each occupant eighteen (18) years or older, or prospective occupant, of a unit pursuant to a lease.

“**Tenant Income Certification**” means a written certification by Borrower that a Tenant of an Income Restricted Unit is an Eligible Tenant in accordance with the terms of this Agreement and in a form acceptable to Lender.

“**Tenant Income Certification Questionnaire**” means a questionnaire submitted by a Tenant of an Income Restricted Unit certifying Tenant’s income, in accordance with the terms of this Agreement and in a form acceptable to Lender.

# Set-Aside Requirement; Leasing of Income Restricted Units.

* 1. Borrower will satisfy the Set-Aside Requirement on or before the first anniversary of the date of this Agreement, and the Income Restricted Units will be evenly distributed throughout each building comprising the Mortgaged Property and throughout all bedroom sizes.
  2. During the term of this Agreement, Borrower shall lease each Income Restricted Unit to an Eligible Tenant.
  3. Borrower will not charge Rent for an Income Restricted Unit in excess of the Rent Restriction. Although Borrower may receive funds from a federal or state rental assistance program in excess of the Rent Restriction, the portion of Rent payable by an Eligible Tenant shall not exceed the Rent Restriction.
  4. Borrower agrees, as a condition to renting an Income Restricted Unit and prior to accepting such lease and permitting such Tenant to take occupancy, the Tenant shall complete, sign and date a Tenant Income Certification Questionnaire prior to executing a lease for such unit and Borrower, or its authorized representative, shall complete, sign and date a Tenant Income Certification certifying the eligibility of such Tenant as an Eligible Tenant.

# Rent Restriction.

The monthly Rent paid by the Tenant for an Income Restricted Unit may not exceed the applicable maximum area rent for that bedroom unit size provided by the Multifamily Affordability Estimator. Notwithstanding the foregoing, in the event AMI decreases after the date of occupancy, in no event will Tenant be required to pay increased rent based on such decrease, or will Borrower be required to charge a lower Total Rent than that of the corresponding highest AMI level determined effective within the Loan Term.

# Annual Recertification; Recordkeeping Requirement.

# At least annually, each adult member of the household comprising each Eligible Tenant must submit an updated Tenant Income Certification Questionnaire and Borrower must complete an updated Tenant Income Certification that such Eligible Tenant’s Gross Income is not greater than one hundred forty percent (140%) of the Income Restriction for such Income Restricted Unit (collectively, items (1) and (2) are the “Annual Recertification”). If any portion of the Annual Recertification is not completed timely with respect to an Income Restricted Unit, then the Tenant for such unit will no longer be considered an Eligible Tenant and such unit will no longer be considered an Income Restricted Unit as of the end of the lease term then in effect.

# Copies of each Annual Recertification and income verifications supporting the Tenant Income Certification for each Eligible Tenant must be retained in the Tenant’s file for at least seven (7) years after the end of the tenancy.

# Rents and Rights of Former Eligible Tenant.

The Rent Restriction for an Eligible Tenant set forth in Section 4 of this Agreement applies to each Tenant of an Income Restricted Unit for so long as the Tenant remains an Eligible Tenant. If any Tenant of an Income Restricted Unit no longer qualifies as an Eligible Tenant, Borrower shall deliver a Non-Qualification Notice that notifies the Tenant of the following: the Tenant of the Income Restricted Unit is no longer an Eligible Tenant; and the Tenant is entitled to remain in occupancy, however the Tenant’s Rent could increase at the end of the lease term to an amount determined by Borrower.

# Replacement Income Restricted Units.

If  Borrower is unable to satisfy the Set-Aside Requirement on or before the first anniversary date of this Agreement as required by Section 3(a) because an In-Place Tenant refuses to provide Borrower with a Tenant Income Certification Questionnaire or because an In-Place Tenant’s income is greater than one hundred forty percent (140%) of the Income Restriction, or  Borrower sends the Tenant of an Income Restricted Unit a Non-Qualification Notice and such Tenant decides to remain in occupancy after the end of the current lease term, then, in either (a) or (b), Borrower shall rent the next available non-Income Restricted Unit of comparable size at the Mortgaged Property to another Tenant that meets the Income Restriction, which unit shall become an Income Restricted Unit.

# Eligible Tenant Leases.

Each Eligible Tenant lease must include the following terms and provisions: the lease will be terminated and the Tenant may be evicted for failure to qualify pursuant to the income standards for that unit if the Tenant has falsely certified household income or household composition; false certification by the Tenant constitutes material noncompliance under the lease; the Tenant must provide annual income certifications and any additional recertifications of income as Administering Agent and/or Borrower require; if the Tenant no longer qualifies as an Eligible Tenant, the Tenant shall be entitled to remain in occupancy at the end of the lease term, however, the Rent for its unit could be increased at that time to an amount determined by Borrower; and the Tenant has the right to challenge the Rent charged or the determination that the Tenant is no longer an Eligible Tenant, pursuant to Section 9 of this Agreement.

# Enforcement of Certain Provisions by the Tenant.

An Eligible Tenant, or former Eligible Tenant, as applicable, who has reason to believe Borrower is not complying with its obligations in Section 3(b), Section 4, or Section 5(a) of this Agreement, may bring legal action seeking specific performance and remittance of Rent paid in excess of the Rent permitted to be charged.

# Administering Agent.

# Within thirty (30) days of the date of this Agreement, Borrower will contract with Administering Agent, at Borrower’s expense, to administer the compliance monitoring for this Agreement. Administering Agent shall not have a relationship with Borrower other than as “Administering Agent” under the terms of this Agreement and shall not have received an adverse “Fair Housing” finding or settlement, an adverse civil rights settlement, or adverse federal or state government proceeding settlement. In addition, Administering Agent shall have:

* + 1. a minimum of five (5) years of experience with federal affordable housing programs (such as Low-Income Housing Tax Credit (LIHTC) support or monitoring);
    2. a minimum of five (5) years of experience monitoring, for or on behalf of, a federal, state or local government agency; and
    3. been responsible for the support or monitoring of at least 10,000 units in connection with (1) and (2) above.

# Lender has the right to require Borrower to replace Administering Agent with another qualified Administering Agent if Lender determines that Administering Agent is not satisfactorily administering the compliance monitoring.

# Compliance Documentation.

# On an annual basis, Administering Agent shall determine whether Borrower is in compliance with Section 4 of this Agreement. In order to allow Administering Agent to make such determination, on or before the first anniversary of the date of this Agreement and on an annual basis thereafter, Borrower shall deliver to Administering Agent a completed Schedule of Income Restricted Units, substantially in the form attached hereto, and any other information reasonably requested by Administering Agent to determine compliance with this Agreement.

# On an annual basis, on such date and time as Borrower and Administering Agent agree, Administering Agent must submit a Compliance Confirmation Report to Lender and to Borrower. Borrower agrees to provide Administering Agent with a copy of each Tenant Income Certification Questionnaire, Tenant Income Certification and verifications supporting the Tenant Income Certification, and such additional documentation as Administering Agent reasonably requires in order to be able to complete the Compliance Confirmation Report. Copies of each Compliance Confirmation Report must be retained by Borrower and Lender for the duration of the Restriction Period.

# Events of Default.

It shall be an “**Event of Default**” under this Agreement if Borrower, at any time during the Restriction Period, defaults in its obligation to manage and operate the Mortgaged Property in accordance with the requirements of this Agreement, fails to obtain and provide, or cause Administering Agent to obtain and provide, compliance information as required pursuant to Section 11 of this Agreement, or otherwise fails to comply with the terms of this Agreement, and such default continues for a period of thirty (30) days after notice to Borrower from Lender. Borrower acknowledges and agrees that an Event of Default under this Agreement will also constitute an “Event of Default” under the Loan Agreement, and if an Event of Default has occurred and is continuing under this Agreement, Lender shall have the right to exercise all rights and remedies pursuant to the terms of the Loan Agreement.

# Indemnification and Survival.

Borrower hereby agrees to fully and unconditionally indemnify, defend and hold harmless Lender from and against any judgments, losses, repayment, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorney’s fees, expert witness fees, and any other professional fees and litigation expenses or other obligations incurred by Lender that may arise in any manner out of actions or omissions which result from Borrower’s performance or failure to perform pursuant to the terms of this Agreement. The indemnification obligations of Borrower set forth in this Agreement survive the expiration of the term of this Agreement and are personal to Borrower.

# Notices.

* 1. **Process of Serving Notice.**

All notices under this Agreement must be:

* + 1. in writing and must be:
       1. delivered, in person;
       2. mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
       3. sent by overnight courier; or
       4. sent by electronic mail with originals to follow by overnight courier;
    2. addressed to the intended recipient at the address(es) below the signature block, as applicable; and
    3. deemed given on the earlier to occur of:
       1. the date when the notice is received by the addressee; or
       2. if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.
  1. **Change of Address.**

Any party to this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

* 1. **Receipt of Notices.**

Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

# Conflicts.

If this Agreement conflicts with any other applicable agreement, law, regulation or permit, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive will control.

# Term.

This Agreement is to remain in effect throughout the Restriction Period. At the end of the Restriction Period, Lender agrees, at Borrower’s written request and expense, to provide Borrower with a termination of this Agreement in recordable form.

# Covenants Run with the Mortgaged Property.

The restrictions, terms, covenants, provisions and conditions set forth in this Agreement are covenants running with the Mortgaged Property, binding on Borrower, its successors and assigns, and any future owner of the Mortgaged Property during the Restriction Period.

# Successors and Assigns.

The rights and obligations of Borrower and Lender under this Agreement will inure to the benefit of and will be binding upon, Borrower and Lender, and their respective successors and assigns.

# Severability.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, will not be affected thereby and will be enforced to the greatest extent permitted by law.

# Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts will together constitute one and the same instrument.

# Modification, Waiver and Termination.

This Agreement and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge, except that this Agreement will automatically terminate and be of no further force or effect at the expiration of the term of this Agreement, except for those provisions hereof which expressly survive the expiration of the term.

# Governing Law; Choice of Law.

This Agreement will be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Lender and Borrower agree that any controversy arising under or in relation to this Agreement will be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale will have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

# Construction.

* 1. The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.
  2. Any reference in this Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” will, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Agreement or to a Section or Article of this Agreement.
  3. Any reference in this Agreement to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
  4. Use of the singular in this Agreement includes the plural and use of the plural includes the singular.
  5. As used in this Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
  6. Whenever Borrower’s knowledge is implicated in this Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Agreement, Borrower’s knowledge or such phrase(s) will be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.
  7. Unless otherwise provided in this Agreement, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision will be made in Lender’s sole and absolute discretion.
  8. All references in this Agreement to a separate instrument or agreement will include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
  9. “Lender may” means at Lender’s discretion, but is not an obligation.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower and Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, Borrower and Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

By: (SEAL)

Name:

Title:

Address:

**LENDER:**

By: (SEAL)

Name:

Title:

Address:

[INCLUDE APPROPRIATE ACKNOWLEDGMENTS]

**EXHIBIT A**

**[DESCRIPTION OF THE LAND]**

SCHEDULE 1

**FORM OF SCHEDULE OF INCOME RESTRICTED UNITS**

**[TO BE COMPLETED BY BORROWER AND DELIVERED TO LENDER ON OR BEFORE THE SPONSOR-INITIATED AFFORDABILITY COMMENCEMENT DATE AND ON AN ANNUAL BASIS THEREAFTER.]**

Total number of units:

|  |  |  |  |
| --- | --- | --- | --- |
| **Unit Number** | **Unit Size/# Bedrooms** | **Maximum Area Rent** | **Actual Rent** |
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