

Return to:
City of Falls Church
Office of the City Manager
300 Park Avenue
Ste. 203E
Falls Church, Virginia 22046

RPC: _____

DECLARATION OF AFFORDABILITY COVENANTS WITH USE, REFINANCE, AND RESALE RESTRICTIONS AND PURCHASE OPTION

[FULL NAMES OF HOMEBUYERS], [each] an individual ([together, and] with permitted heirs, successors, and assigns the "**Homeowner**") and the City of Falls Church, Virginia, its successors and assigns of that entity acting by and through the City Manager ("City", or "**Program Manager**"), make this Declaration of Affordability Covenants with Use, Refinance, and Resale Restrictions and Purchase Option (this "**Declaration**") as of [Month Date], 20[Year] (the "**Effective Date**"), for the purpose of encumbering the improved real estate described on attached Exhibit A (the "**Property**"), having an address of [Street Address, City, State, Zip Code].

RECITALS

A. The City is a municipal corporation organized and existing under the laws of the Commonwealth of Virginia and has a public purpose in Virginia promoting the availability of affordable housing, including homeownership opportunities for low-and-moderate income people.

B. The City has received grant funds through the Amazon Reach Program, which funds are being used to create affordable homeownership opportunities through the stewardship of Properties whose owners, at the time of purchase, have agreed to accept title subject to certain covenants, conditions, and restrictions in exchange for a reduced or subsidized purchase price (the "**Program**").

C. The purpose of this Declaration is to include the Property in the Program. Consistent with the Program, the Declaration includes terms that affect the use and resale price of the Property and are designed to ensure that the Property continues to be affordable to low- and moderate-income households over an extended period of time and through a succession of owners and that limit the proceeds the Homeowner may receive from the sale of the Property.

D. The Homeowner wishes to purchase the Property for the reduced or subsidized purchase price as described below, and the reduced or subsidized purchase price is available only if the Homeowner accepts title to the Property subject to this Declaration.

E. The Homeowner and the City wish to limit the future sale price of the Property and the persons to whom the Property may be sold to persons who qualify as first-time homebuyers as defined by the Commonwealth of Virginia.

ARTICLE I.

SUBMISSION OF REAL ESTATE; DEFINED TERMS

Section 1.01 Submission of Real Estate. By signing this Declaration, the Homeowner submits the Property to the covenants, conditions, and restrictions of this Declaration for the benefit of the Program Manager. The Program Manager, together with any agent the City may appoint from time to time, will have the right to enforce this Declaration. The City Manager will have the authority to act as the City's agent at all times pursuant to this declaration.

Section 1.02 Consideration; Value Given and Value Received. The Homeowner recognizes that the Initial Market Value of the Property is \$ _____, but the Homeowner is able to purchase the Property at the lower Base Price of \$ _____, due to the reduction in purchase price or subsidy provided through the Program Manager. The Homeowner may obtain the purchase price reduction or subsidy only if the Homeowner submits the Property to this Declaration, and the Homeowner wishes to submit the Property to the Declaration, and agrees to its terms, in exchange for this benefit.

Section 1.03 Any Excess Proceeds of Transfer Go to Program Manager.

(a) The Homeowner recognizes that it would be contrary to the purposes of this Declaration if the Homeowner could receive more than the Maximum Resale Price, as defined herein, as the result of an eminent domain proceeding, foreclosure, or other transfer of the Property. It would also be contrary to the purposes of this Declaration if the Homeowner could receive financial benefit by violating Section 2.03. Therefore, the Homeowner hereby irrevocably assigns to Program Manager all net proceeds of sale, eminent domain proceeding, foreclosure, lease, refinancing, or other transfer of the Property that would otherwise have been payable to the Homeowner after satisfaction of all Permitted Mortgages, if applicable, and that exceed the amount of proceeds that the Homeowner would have received if the property had been sold only for the Maximum Resale Price, leased only in accordance with Section 8.02, refinanced only in accordance with Article VII, or used only in accordance with Section 2.03 ("**Excess Proceeds**"). The payment of any Excess Proceeds shall be secured by the Program Mortgage. For the avoidance of doubt, the Homeowner authorizes and instructs any party conducting any sale or eminent domain proceeding, foreclosure, refinancing, or other transfer, to pay such Excess Proceeds directly to City. If, for any other reason, Excess Proceeds are paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to City.

(b) In addition to the lien of the Program Mortgage, the Program Manager shall have, and the Homeowner hereby grants and consents to, a lien upon the Property

for any Excess Proceeds. Such lien shall be prior to all other liens and encumbrances on the Property except (i) liens and encumbrances recorded before the recording of this Declaration, (ii) Permitted Mortgages; and (iii) liens for real property taxes and other governmental assessments or charges against the Property. For the avoidance of doubt, Homeowner's assignment to City of Excess Proceeds in Section 1.03(a), and the City's right to enforce collection of Excess Proceeds through foreclosure of its lien under the Program Mortgage and this Section 1.03(b), shall be subordinate in all respects to the lien securing a Permitted Mortgage.

Section 1.04 Term of Declaration is 99 Years.

(a) This Declaration shall remain in effect for 99 years after the Effective Date (the "**Term**"), unless terminated earlier by any of the following methods: (i) recordation of a new Declaration upon transfer of the Property to an Eligible Buyer in accordance with Section 8.04; or (ii) foreclosure of a Permitted Mortgage and expiration of the City's Purchase Option under Section 8.05.

(b) Upon expiration of the full Term, the Homeowner shall have the option either to (i) record an amendment to this Declaration encumbering the Property for a second 99-year term; or (ii) pay to the City the Excess Proceeds that would be received by the Homeowner if the Homeowner, upon expiration of the Term, were to sell the Property unencumbered by this Declaration to a third party in a bona fide arm's length transaction. If the Homeowner does not elect option (i) by recording an amendment before expiration of the Term, the Homeowner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:

A. The City, at its sole cost and expense, will obtain an Appraisal of the Property;

B. The City will calculate the Maximum Resale Price as described in Article VIII;

C. The City will calculate Excess Proceeds by subtracting the Maximum Resale Price from the fair market value of the Property, as determined by the Appraisal; and

(i) If the calculation in subparagraph (C) results in a negative number (in other words, if the Maximum Resale Price is higher than the fair market value), the Homeowner will not owe any Excess Proceeds, and the City shall promptly record a release of this Declaration; or

(ii) If the calculation in subparagraph (C) results in a positive number (in other words, if the Maximum Resale Price is lower than the fair market value), the Homeowner shall pay the Excess Proceeds to the City within 90 days after receiving the City's calculation, and the City shall then promptly record a release of this Declaration.

Section 1.05 Covenants to Run with the Land. The Homeowner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Homeowner and the Homeowner’s successors in title and assigns, (b) are not merely personal covenants of the Homeowner, and (c) shall inure to the benefit of and be enforceable by the City and their successors and assigns, for the Term. Because the Declaration runs with the land, it shall encumber the Property for the Term and be binding upon the Homeowner’s successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

Section 1.06 Defined Terms. Homeowner and Program Manager agree on the following definitions of key terms used in this Declaration.

(a) **“Appraisal”**: A fair market valuation of the Property performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, disregarding all of the restrictions of this Declaration.

(b) **“Area Median Income”** The midpoint of the Washington-Arlington-Alexandria metropolitan area’s income distribution and is calculated on an annual basis by the U.S. Department of Housing and Urban Development.

(c) **“Assets”** Liquid assets such as bank accounts, cash, certificates of deposit, stocks, cryptocurrency, money market, bonds, trust funds, crowdsourcing.

(d) **“Base Price”**: The total price paid for the Property by the Homeowner, as set forth in Section 1.02.

(e) **“Eligible Buyer”**: A person or group of persons (i) that all meets the criteria set at the time by Virginia Housing or its successor entity (the “AMI Eligibility Threshold”), (ii) whose household size is appropriate for the Property, (iii) who is a First-Time Homebuyer, (iv) whose liquid assets do not exceed 50% of the sales price of the Property at time of closing in value; and (v) who has completed a homeownership counseling program to be a First-Time Homebuyer under its program. A household size is “appropriate for the Property” if the household size does not exceed the maximum number of occupants defined by the governing building code.

(f) **“Event of Default”**: Any violation of the terms of this Declaration or the Program Mortgage unless the violation has been corrected (**“cured”**) by the Homeowner or the holder of a Mortgage in the period of time specified in a written Notice of Default that has been given by the City.

(g) **“First-Time Homebuyer”**: A person or group of persons satisfying either (i) HUD’s definition as articulated in 24 CFR § 92.2, as may be amended from time to time, or (ii) both of the following criteria: (A) none has had an ownership interest in his

or her principal residence at any time during the three-year period ending on the date of his or her application to the Program (but including an applicant who has divorced or separated during the three-year period where a formal settlement has been made under which the applicant does not receive an ownership interest in a primary residence which had been jointly owned), and (B) none has any other current ownership interest in residential real property.

(h) “**Ineligible Buyer**”: A person or group of persons, or a person and his or her spouse, not meeting the requirements set forth above to be an Eligible Buyer.

(i) “**Initial Market Value**”: The fair market value of the Property, assuming no affordability or resale restrictions, at the time of Homeowner’s purchase, as set forth in Section 1.02 and documented by an appraiser’s report that is within six months of the Homeowner’s purchase.

(j) “**Intent-to-Sell Notice**”: Homeowner’s notification to the Program Manager that the Homeowner wishes to sell the Property

(k) “**Maximum Resale Price**”: The maximum price for which the Homeowner can sell the Property, as calculated under Article VIII of this Declaration.

(l) “**Permitted Mortgage**”: A loan secured by a lien or security interest in the Property, for which the Homeowner has obtained the written permission of the Program Manager pursuant to Section 7.01 or 7.02, together with any modifications, which may be made from time to time, by agreement between the Homeowner and the Permitted Mortgagee.

(m) “**Permitted Mortgagee**”: The lender shown on the security instrument securing a Permitted Mortgage, its assignees and the owner of such Permitted Mortgage.

(n) “**Purchase Option**”: As described more fully in Article VIII, Program Manager’s option to purchase the Property at the Maximum Resale Price, which is triggered by (i) Program Manager’s receipt of an Intent-to-Sell Notice from Homeowner, (ii) Program Manager’s receipt of notice of a Foreclosure Action under Article VII, (iii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iv) an Event of Default under Article IX (any of the foregoing, an “**Option Trigger Event**”).

(o) “**Program Mortgage**”: The mortgage or deed of trust executed by the Homeowner in favor of the Program Manager, dated and recorded the same date as this Declaration, for purposes of securing the Homeowner’s monetary and non-monetary obligations under this Declaration, including without limitation Excess Proceeds and Unpaid Amounts.

(p) “**Subsidy Value**” means the Initial Market Value of the Property, less the Base Price, less any proceeds received by the City in connection with the sale or refinancing of the Property.

ARTICLE II.

USE OF HOME

Section 2.01 Homeowner Must Use Property as Primary Residence. The Homeowner must at all times use the Property as Homeowner's principal place of residence and must occupy the Property for at least 10 months of each year. The Homeowner may use the Property, and allow others to use the Property, only for residential purposes and any activities related to residential use that are permitted by local zoning law.

Section 2.02 Homeowner Must Use and Maintain the Property Responsibly and in Compliance with the Law and Other Recorded Documents. The Homeowner must use the Property in a way that will not cause harm to others or create any public nuisance, and must maintain all parts of the Property in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Homeowner shall comply, and cause the Property and all occupants to comply, with all declarations, easements, Permitted Mortgages (defined in Article VII (Financing)), and other documentation recorded against the Property in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Homeowner shall comply, and shall cause the Property and all occupants to comply, with the stricter requirement.

Section 2.03 Property may not be Leased, Encumbered, Sold, or Transferred Except as Provided in Articles VII and VIII. No interest in the Property, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with Articles VII and VIII of this Declaration.

ARTICLE III.

ROLE OF PROGRAM MANAGER

Section 3.01 Program Manager Has a Right to Conduct Annual Meetings with the Homeowner. The Program Manager may conduct annual meetings with the Homeowner in the offices of the Program Manager or in the Property or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications, confirming insurance renewals, collecting proof that taxes and assessments have been paid, and addressing any other Program requirements. The Homeowner will cooperate with the Program Manager in scheduling and attending these meetings and will provide Program Manager with any requested information. The Program Manager may opt to request such information from the Homeowner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Homeowner will then promptly (within 10 working days) provide the Program Manager with the requested information using the alternative method.

Section 3.02 Program Manager Has a Right to Inspect the Property. The Program Manager or its agent may inspect any exterior part of the Property on an annual basis at any

reasonable time, after notifying the Homeowner at least 48 hours before the planned inspection. The Program Manager or its agent may inspect any interior part of the Property on an annual basis at any reasonable time, after notifying the Homeowner at least 72 hours before the planned inspection. In addition, if the Program Manager has received an Intent-to-Sell Notice (as described in Article VIII below), then the Program Manager or its agent has the right to inspect the interior and exterior of the Home to determine its condition prior to the sale. Program Manager must notify the Homeowner at least 72 hours before carrying out such inspection. In either case (an annual inspection or an inspection after an Intent-to-Sell Notice), the Homeowner will cooperate with the Program Manager's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the Program Manager or its agent has the right to re-inspect until they are resolved. Such resolution shall be entirely the responsibility of the Homeowner.

Section 3.03 Program Manager May Escrow for Taxes, Assessments, and/or Insurance.

Whenever a Permitted Mortgagee declines to escrow funds from the Homeowner for the payment of taxes and assessments under Article IV and for the payment of insurance under Article VI, the Program Manager may elect to escrow such amounts and the Homeowner shall cooperate with the Program Manager in setting up such an escrow.

Section 3.04 Program Manager Will Review Proposed Capital Improvements.

If the Homeowner wishes to make Capital Improvements to the Property, the Homeowner shall notify the Program Manager, and the Program Manager will work with the Homeowner as provided in Article V.

Section 3.05 Program Manager Will Facilitate Proposed Financings or Transfers.

If the Homeowner wishes to finance or otherwise transfer the Property, the Homeowner shall notify the City, and the Program Manager will work with the Homeowner as provided in Article VII or VIII, in a manner permitted hereunder, as applicable.

Section 3.06 Program Manager's Successors and Assigns.

The Program Manager may from time to time designate a successor or assign its rights and obligations under this Declaration, provided that such successor or assign is a governmental body, governmental agency, or non-profit entity with a charitable purpose consistent with the Program. For clarity, the Program Manager may contract with a for-profit person or entity to assist Program Manager in running the Program, but the Program Manager itself or any successor to all of Program Manager's rights and obligations shall not be a for-profit person or entity.

Section 3.07 The Homeowner understands and agrees that the relationship between

Homeowner and Program Manager is solely that of a homeowner and a loan program administrator, and that the Program Manager has no responsibility or duty to the Homeowner to select, review, inspect, supervise, pass judgment on, or inform the Homeowner of the quality, adequacy, or suitability of the Property or any other matter. The Program Manager does not owe a duty of care to protect the Homeowner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property; instead the Homeowner has made his or her own investigation of these matters and hired home inspectors and other professionals to assist this investigation, to the extent the Homeowner deemed necessary. Homeowner agrees that

neither Homeowner nor Homeowner's heirs, successors or assigns shall ever claim, have, or assert any right or action against the Program Manager for any loss, damage, or other matter arising out of or resulting from any condition of the Property and will hold the Program Manager harmless from any liability, loss, or damage for these things.

ARTICLE IV.

DECLARATION FEES; TAXES AND ASSESSMENTS

Section 4.01 Homeowner Is Responsible for Paying all Taxes and Assessments. Homeowner shall pay directly, when due, all taxes, governmental and homeowner association assessments that relate to the Property, unless such taxes and assessments are to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Permitted Mortgagee.

Section 4.02 If Homeowner Fails to Pay Taxes, Program Manager May Pay Taxes. If the Homeowner or its Permitted Mortgagee fails to pay the taxes or assessments described in Section 4.04 above, the Program Manager shall have the right to pay such taxes or assessments on the Homeowner's behalf from time to time at the sole and absolute discretion of the Program Manager. Homeowner shall reimburse the Program Manager for any amounts paid by the Program Manager to cover such taxes or assessments and any penalties or interest incurred within 10 days after demand by the Program Manager.

Section 4.03 If Payment Is Late, Interest Can Be Charged. If the Program Manager has not received any amounts due under this Declaration on or before the required date (the "**Due Date**"), the Program Manager may require the Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the Program Manager, at a rate not to exceed the maximum amount permitted by law. Such interest shall be deemed additional Program Fee and shall be paid by the Homeowner to the Program Manager upon demand.

Section 4.04 Program Manager Can Collect Unpaid Amounts When Property Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Property is sold, including without limitation amounts due to Program Manager under this Article IV and any enforcement fees under Section 9.04(e), the outstanding amount, including any interest (the "**Unpaid Amounts**"), shall be paid to the Program Manager out of any proceeds from the sale that would otherwise be due to the Homeowner, and the payment of any Unpaid Amounts shall be secured by the Program Mortgage. Any amounts paid pursuant to this Section may be paid to the Program Manager only after amounts owed under the Permitted Mortgage have been disbursed to the Permitted Mortgagee. In addition to the lien of the Program Mortgage, the Program Manager shall have, and the Homeowner hereby grants and consents to, a lien upon the Property for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Property except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Permitted Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Property; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the Program Manager's right to enforce collection of Unpaid Amounts through foreclosure of its lien under the Program Mortgage and this Section 4.04 shall

be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

ARTICLE V.

IMPROVEMENTS TO THE PROPERTY

Section 5.01 Homeowner's right to Improve the Property is Limited. The Homeowner shall not make any Capital Improvements to the Property without the prior written consent of the Program Manager, which consent may be withheld in the Program Manager's sole and absolute discretion. The term "**Capital Improvements**" means any improvements that change the number of bedrooms or the footprint, square-footage, or height of the house, or increase or decrease the number of structures on the Property, or the installation of an in-ground pool, or any other improvement the cost of which would exceed 25% of the Base Price of the Property. The Homeowner may make other improvements to the Property without the consent of the Program Manager as long as such improvements are constructed in a professional manner and comply with Section 5.04 below and all applicable laws and regulations. This Section 5.01 does not apply in the event the Property is damaged or destroyed following a fire or other casualty, as described in Section 6.02

Section 5.02 Requests for Consent from Program Manager. For any proposed Capital Improvements, the Homeowner shall submit a written request to the Program Manager including the following information:

- (a) a written statement of the reasons for making the improvements;
- (b) upon request by the Program Manager, a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- (c) a list of the necessary materials, with quantities needed; and
- (d) a statement of who will do the work.

Prior to granting or withholding consent, the Program Manager may request additional information from the Homeowner within three weeks of receipt of the Homeowner's request. The Program Manager shall inform the Homeowner of its decision to grant or withhold consent to construction of the proposed Capital Improvements within 45 days after receipt of all information from the Homeowner.

Section 5.03 Building Permits; Right to Inspect. Prior to the commencement of construction of any Capital Improvements, the Homeowner shall provide the Program Manager with copies of all necessary building permits, if not previously provided. The Program Manager shall have the right to inspect the Capital Improvements while under construction and after completion to confirm consistency with the information presented in Section 5.02 and with this Article V, and may adjust the Capital Improvements Credit to account for any identified inconsistency. Any inspection and identification of inconsistencies by the Program Manager shall be for the benefit of the Program Manager only; the Homeowner will conduct his or her own inspections to confirm all work performed is satisfactory to the Homeowner.

Section 5.04 Homeowner May Not Allow Statutory Liens to Remain Against Property. The Homeowner shall not permit any statutory or similar lien to be filed against the Property or

to remain more than 30 days after it has been filed. The Homeowner shall take immediate action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If the Homeowner fails to discharge such lien within the 30-day period, then the Homeowner shall immediately notify the Program Manager of such failure. The Program Manager shall have the right to discharge the lien by paying the amount in question. The Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided the Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Property from such lien. Any amounts paid by the Program Manager to discharge such liens shall be reimbursed by the Homeowner upon demand of the Program Manager.

ARTICLE VI.

INSURANCE, DAMAGE OR DESTRUCTION, TAKING FOR PUBLIC USE

Section 6.01 Homeowner Must Insure the Property Against Loss. The Homeowner shall, at the Homeowner's expense, keep the Property continuously insured against accidental direct physical loss with a coverage limit equal to at least the estimated full replacement cost of the Property, that is, the amount necessary to rebuild the improvements as opposed to the Property's market value. The insurance policy must satisfy all requirements of the Program Mortgage and any other Mortgage of record, and certificates of insurance shall be delivered to Program Manager prior to the purchase of the Property and upon request thereafter. Whenever the Permitted Mortgagee has the capability of escrowing funds from the Homeowner for the payment of insurance premiums, the Homeowner shall establish such an escrow.

Section 6.02 What Happens if Property Is Damaged or Destroyed. In the event of fire or other damage to the Property, the Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Property to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the damaged Property does not constitute a danger to persons or property. For clarity, the obligations of the Homeowner to repair and restore the Property are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Homeowner must still repair and restore the Property, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Permitted Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Property), the Homeowner shall provide reasonably acceptable documentation of such circumstance to Program Manager, and in such case shall be excused from improving, repairing and restoring the Property, provided that the Homeowner uses available insurance proceeds to pay off any Permitted Mortgage and any other lien on the Property. In any event, if the terms of a Permitted Mortgage conflict with this Section 6.02, the terms of the Permitted Mortgage shall govern and control.

Section 6.03 What Happens if Some or All of the Property Is Taken for Public Use.

(a) If all of the Property is taken by eminent domain or otherwise for public purposes, or if so much of the Property is taken that the Property is lost or damaged

beyond repair, this Declaration shall terminate as of the date when Homeowner is required to give up possession of the Property, provided, however, that any Excess Proceeds (defined in Article VIII) arising from eminent domain or other public use proceedings shall be paid to Program Manager, and such obligation to make that payment will survive the termination of this Declaration.

(b) In the event of a taking of a portion of the Property that results in damage to the Property that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration shall remain in full force and effect and the damage shall be treated as damage is treated in Section 6.02 above.

ARTICLE VII.

FINANCING

Section 7.01 Homeowner Cannot Mortgage the Property Without Program Manager's Permission.

(a) The Homeowner may only grant a lien or security interest, including a mortgage or deed of trust (either at the time of purchase of the Property or subsequent to the purchase of the Property to refinance an existing Permitted Mortgage or to finance Property repairs or to facilitate a Home Equity Line of Credit ("HELOC") or for any other purpose), on the Property or encumber the Property in any other way after first obtaining the written permission of the Program Manager. Any Permitted Mortgage or other lien, security interest, or other encumbrance shall be subject to the terms of this Declaration, including without limitation this Article VII and Section 7.04 below.

(b) The Program Manager will not permit such a loan, lien or security interest if the loan increases the Homeowner's total mortgage debt to an amount greater than 97% of the then current Maximum Resale Price, calculated in accordance with Article VIII below, or if any Permitted Mortgagee has not provided written consent to the loan, or if the terms of the transaction otherwise adversely affect the interests of either the Homeowner, Permitted Mortgagee, or Program Manager.

(c) The Program Manager may require the Homeowner to submit, in writing, certain information about the proposed terms and conditions of such loan at least 30 days prior to the expected closing of the loan.

Section 7.02 By Signing Declaration, Program Manager Gives Permission for Original Mortgage. By signing this Declaration, the Program Manager gives written permission for the first **[and second]** priority mortgage or deed of trust signed by the Homeowner and financing the Homeowner's purchase of the Property. **[Add specific info regarding Permitted Mortgage]** The Program Manager also hereby gives written permission for any assignee of a Permitted Mortgage to be a Permitted Mortgagee at any time it purchases a Permitted Mortgage.

Section 7.03 Property Assessed Clean Energy. Property Assessed Clean Energy (“**PACE**”) financing in connection with the Property is prohibited.

Section 7.04 Survival of Declaration Upon Exercise of Remedies by Mortgagees.

(a) If the holder of any mortgage, deed of trust, or other encumbrance on the Property (each, a “**Mortgagee**”) conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Homeowner no longer having title to the Property (any such right or remedy, a “**Foreclosure Action**”), this Declaration shall automatically terminate and be of no further force and effect subject to the following:

(b) With respect to any Mortgagee who is also a Permitted Mortgagee, this Declaration shall survive until expiration of the Program Manager’s Purchase Option under Section 8.05 below, specifically the Program Manager shall have thirty 30 days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the Property. If the Program Manager exercises the Purchase Option, completes purchase of the Property, and satisfies the amounts owed under the Permitted Mortgage, this Declaration shall continue in full force and effect. If the Program Manager fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 30-day, or fails to satisfy the amounts owed under the Permitted Mortgage, then this Declaration shall terminate and be of no further force and effect, and the Program Manager shall cooperate with the Permitted Mortgagee or transferee at the Foreclosure Action to record a termination and release.

(c) The Homeowner expressly authorizes any Mortgagee to provide Program Manager with any information requested by Program Manager with respect to the obligations secured by a mortgage, deed of trust, or other security instrument encumbering the Property, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.

- (d) The Homeowner understands and agrees that nothing in this Declaration
- (i) in any way constitutes a promise or guarantee by the Program Manager that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or
 - (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

ARTICLE VIII.

TRANSFER OF THE PROPERTY

Section 8.01 Homeowner May Transfer Property Only in Strict Compliance with Article VIII; Other Transfers Null and Void. Homeowner may transfer the Property only as explicitly permitted by the provisions of this Article VIII (and, in the event of a Foreclosure Action, Section 7.04). Any purported transfer that does not strictly follow the procedures set forth below (or, in the event of a Foreclosure Action, the procedures of Section 7.04), shall be null and void.

Section 8.02 Property May be Transferred to Certain Relatives of Homeowner.

(a) Subject to the requirements of subsection (b) below, and provided the Homeowner has obtained the written permission of any Permitted Mortgagee, the Homeowner may transfer the Property, or an interest in the Property, without monetary consideration, as follows:

- (i) transfer to the spouse of the Homeowner who by virtue of the transfer becomes a co-owner of the Property with the Homeowner provided that, together with such spouse, the household is an Eligible Buyer; or
- (ii) transfer to the child or children of the Homeowner, provided such child or children qualify as Eligible Buyers; or
- (iii) transfer between spouses as part of a marriage dissolution proceeding provided spouse owning property is an Eligible Buyer; or
- (iv) transfer by the Homeowner into an inter vivos trust in which the Homeowner is the beneficiary, provided that Homeowner is an Eligible Buyer at time of transfer.

(b) Before proceeding with a transfer under this Section 8.02, the Homeowner shall give the Program Manager at least 30 days prior written notice, shall promptly provide the Program Manager with related documentation requested by the Program Manager, and shall obtain the Program Manager's written confirmation that the transfer qualifies as a permitted transfer under subsection (a).

(c) Any transferee permitted under this Section 8.02 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the Program Manager may require and/or approve.

Section 8.03 Property May be Transferred to Certain Heirs of Homeowner.

(a) If the Homeowner dies (or if the last surviving co-owner of the Property dies), the executor or personal representative of the Homeowner's estate shall notify the Program Manager within 90 days after the date of the death. Upon receiving such notice, the Program Manager shall consent to a transfer of the Property to one or more of the

possible heirs of Homeowner listed below as (i), (ii), or (iii) provided they are Eligible Buyers:

- (i) the spouse of the Homeowner; or
- (ii) the child or children of the Homeowner; or
- (iii) member(s) of the Homeowner's household who have resided in the Property for at least one year immediately prior to Homeowner's death.

(b) Any other heirs, legatees or devisees of the Homeowner must demonstrate to Program Manager's satisfaction that they are an Eligible Buyer. If they cannot demonstrate that they are an Eligible Buyer, they shall not be entitled to possession of the Property but must transfer the Property in accordance with the provisions of this Article VIII.

(c) Before proceeding with a transfer under this Section 8.03, the executor or personal representative shall give the Program Manager at least 30 days prior written notice, shall promptly provide the Program Manager with related documentation requested by the Program Manager, and shall obtain the Program Manager's written confirmation that the transfer qualifies as a permitted transfer under subsection (a) or (b).

(d) Any transferee permitted under this Section 8.03 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the Program Manager may require and/or approve.

Section 8.04 Property May be Transferred to Certain Buyers. In the event that the Homeowner wishes to sell the Property, the Homeowner shall notify the Program Manager in writing of such wish (the "**Intent-to-Sell Notice**") at least 45 days before the Homeowner would like to begin to market the Home, and the Program Manager and the Homeowner shall proceed as follows:

(a) **Appraisal.** No later than 10 days after the Program Manager's receipt of an Intent-to-Sell Notice, the Program Manager shall commission an Appraisal, with copies to be provided to both Program Manager and Homeowner. Program Manager and Homeowner shall each be responsible for half the cost of such Appraisal. If the Homeowner objects to the results of the Appraisal, the Homeowner (A) must notify the Program Manager of its objections in writing within 10 days after receipt of the results of the Appraisal, and (B) must commission an Appraisal of the Homeowner's choosing, to be completed within 30 days after the Homeowner's receipt of the initial Appraisal at the sole cost of the Homeowner. Copies of the Appraisal commissioned by the Homeowner are to be provided to Program Manager, Homeowner, and a Permitted Mortgagee at no cost upon request. The average of the two Appraisals shall be the binding valuation.

(b) **Intent-to-Sell Notice Triggers Purchase Option in favor of the Program Manager or its Assignee.** As detailed in Section 8.05, Program Manager's receipt of the

Intent-to-Sell Notice triggers a Purchase Option in favor of the Program Manager or its assignee to purchase the Property for the Maximum Resale Price. Please see Section 8.05 for the Purchase Option process to be followed upon issuance of the Intent-to-Sell Notice.

(c) If Purchase Option Expires, Homeowner may Sell on Certain Terms. If the 60-day Purchase Option has expired or if the Program Manager or its assignee has failed to complete the purchase within the 90-day period allowed by Section 8.05, the Homeowner may sell the Property to any Eligible Buyer for not more than the then applicable Maximum Resale Price, as calculated under Section 8.06. Further:

(i) The Program Manager will provide to the Homeowners names of any persons or households on a list of who may be Eligible Buyers of the Property.

(ii) Ability to Sell to Ineligible Buyer in Certain Circumstances. If the Homeowner has made diligent efforts to sell the Property for at least six months after the expiration of the Purchase Option including to sell to persons referred by the Program Manager and to find other Eligible Buyers and the Property still has not been sold, the Homeowner may then sell the Property, for the Maximum Resale Price, to an Ineligible Buyer, but subject to all rights and restrictions contained herein, and further provided that if more than one Ineligible Buyer is ready, willing, and able to purchase the Property, the Homeowner will give preference to any person or groups of persons identified by the Program Manager as an appropriate household size for the Property earning less than 120% of the AMI Eligibility Threshold.

(iii) City Shall Have Power of Attorney to Sell Property as Attorney in Fact for Homeowner in Certain Circumstances. If the Homeowner (a) is not then residing in the Property and (b) has made diligent efforts to sell the Property for at least twelve months after the expiration of the Purchase Option and the Property still has not been sold, the Homeowner does hereby appoint Program Manager as its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Declaration, sell the Property, use the proceeds of sale first to satisfy Permitted Mortgages in order of priority, second to pay the Program Manager's costs of sale and any other sums owed the Program Manager by the Homeowner, and third to pay Homeowner the remaining proceeds of sale, minus amounts owed to any other secured lien holders.

Section 8.05 Program Manager Has an Option to Purchase the Property.

(a) Upon (i) City's receipt of an Intent-to-Sell Notice from Homeowner, (ii) Program Manager's receipt of notice of a Foreclosure Action under Article VII, (iii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iv) an Event of Default under Article IX (any of the foregoing, an "**Option Trigger Event**"), the Program Manager shall have the option to purchase the Property at the Maximum Resale Price, or in the case of a Foreclosure Action where the total obligations secured by

the Permitted Mortgage exceed the Maximum Resale Price, the amount of such total obligations under the Permitted Mortgage (the “**Purchase Option**”). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Permitted Mortgagee shall be calculated as of the date the sale to the Program Manager closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action shall trigger an additional Purchase Option (rather, the Program Manager shall be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Property for succeeding Eligible Buyers while taking fair account of the investment by the Homeowner.

(b) If the Program Manager elects to purchase the Property, the Program Manager shall exercise the Purchase Option by notifying the current Homeowner and any Permitted Mortgagee in writing of such election (the “**Notice of Exercise of Option**”) within 60 days after the Option Trigger Event, or the Option shall expire. Having given such notice, the Program Manager may either proceed to purchase the Property directly or may assign the Purchase Option to an Eligible Buyer.

(c) The purchase (by Program Manager or Program Manager’s assignee) must be completed within 90 days after the Program Manager’s Notice of Exercise of Option, or the Purchase Option shall be of no further force and effect with respect to such Option Trigger Event. Except as provided in Section 7.04 to the contrary and except in the case of a Foreclosure Action, the Purchase Option shall remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the Program Manager or it’s assignee and the Homeowner and, if applicable, the Mortgagee undertaking the Foreclosure Action.

Section 8.06 Calculation of Maximum Resale Price. Except as specifically permitted in a Foreclosure Action under Section 8.05(a) so long as this Declaration remains in effect, in no event may the Property be sold for a price that exceeds the Maximum Resale Price. The “**Maximum Resale Price**” shall be equal to the amount set as the maximum price for a First-Time Homebuyer as determined by Virginia Housing or its successor entity. In the event there is no maximum price set for First-Time Homebuyers by Virginia Housing or its successor, then the Maximum Resale Price shall be the value of the Property as determined by the Appraisal commissioned and conducted as provided in Section 8.04.

Section 8.07 Repairs and Transfer Procedures. The following procedures shall apply to all transfers of the Property pursuant to Sections 8.04 and 8.05:

(a) **Homeowner Required to Make Necessary Repairs at Transfer.** The Homeowner is required to make necessary repairs when he or she transfers the Property as follows:

(i) The Homeowner shall provide in the sales contract with the person purchasing the Property (the “**Buyer**”) that the Buyer shall, prior to purchasing the Property, hire at his or her sole expense a building inspector with a current

Home Inspector license subject to the reasonable approval of the City Manager, to assess the condition of the Property and prepare a written report of the condition (“**Inspection Report**”). The Homeowner shall cooperate fully with the inspection.

(ii) The Homeowner shall provide in the sales contract with the Buyer that the Buyer shall provide a copy of the Inspection Report to Buyer’s lender (if any), the Homeowner, and Program Manager within 10 days after receiving the Inspection Report.

(iii) The Homeowner shall repair specific reported defects or conditions necessary, in the reasonable discretion of the Program Manager, to bring the Property into full compliance with Sections 2.02 and 3.02 above prior to transferring the Property.

(iv) The Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner’s written request, Program Manager may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner’s proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In the event the repairs are postponed until after the transfer, either (A) 150% of the unpaid estimated cost of repairs not yet completed or (B) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner’s proceeds of sale in a Program Manager-approved escrow account, and Program Manager shall pay documented, verified costs of repair from such account and return any remaining funds to Homeowner upon completion and documented, verified full payment of same.

(v) The Homeowner shall allow Program Manager, Buyer, and Buyer’s building inspector and lender’s representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

(vi) Upon sale or other transfer, Homeowner shall either (A) transfer the Property with all originally purchased appliances or replacements in the Property in good working order or (B) provide the Buyer with cash at closing sufficient to purchase a comparable new appliance.

(b) **Deed, Declaration, and Program Mortgage to be Prepared.** The Property shall be conveyed by the Homeowner by a good and sufficient deed commonly used in the jurisdiction for single family residences, approved by the Program Manager and conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) provisions of local building and zoning laws, (iii) all easements, restrictions, covenants and agreements of record; (iv) a Declaration in the form then in use by Program Manager to administer the Program which the Homeowner hereby agrees to secure execution by the transferee, and to record immediately after the deed, and (v) a new Program Mortgage in the form then in use by Program Manager to

administer the Program which the Homeowner hereby agrees to secure execution by the transferee, and to record immediately after the Declaration or, in the event of any Permitted Mortgage approved in writing by Program Manager, immediately after the Permitted Mortgage, **Said deed shall clearly state that it is made subject to the Declaration which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Homeowner to the transferee or the enforceability of the Declaration.

(c) Distribution of Sales Proceeds. The proceeds of any sale conducted in accordance with this Article VIII shall be distributed as follows: First to satisfy Permitted Mortgages in order of priority, second to pay the Program Manager's Unpaid Amounts, third to pay taxes, homeowner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders, fifth, 100% to the City until the City has received an amount equal to its remaining unreturned Subsidy Value (but only in the event that the purchaser is not an Eligible Buyer), and sixth 75% of any remaining amounts shall be paid to the Homeowner, and 25% of the remainder will be paid to the City. Notwithstanding the foregoing, the full amount of any Excess Proceeds shall be paid to Program Manager.

Section 8.08 No Promises Made as to Future Sales. Nothing in this Declaration constitutes a promise, commitment or guarantee by the Program Manager to sell or purchase the Property or that upon resale the Homeowner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

ARTICLE IX. ENFORCEMENT

Section 9.01 What Happens if Homeowner Fails to Make Required Payments to Program Manager. It shall be an event of default if the Homeowner fails to pay any amounts when due under this Declaration or the Program Mortgage and such failure is not cured by the Homeowner or a Permitted Mortgagee within 30 days after notice of such failure is given by Program Manager to Homeowner and Permitted Mortgagee.

Section 9.02 What Happens if Homeowner Violates Other (Nonmonetary) Terms of the Declaration. It shall be an event of default if the Homeowner fails to abide by any other requirement or restriction stated in this Declaration, the Program Mortgage, and/or any other document of record encumbering the Property, and such failure is not cured by the Homeowner or a Permitted Mortgagee within 60 days after notice of such failure is given by the Program Manager to the Homeowner and any Permitted Mortgagee. However, if the Homeowner or a Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably

required to complete the cure but not exceeding a total cure period of 120 days. Notwithstanding the foregoing, the Homeowner shall not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article V, the financing provisions in Article VII, the transfer provisions in Article VIII and/or Section 2.03, or the provisions of Section 9.03 below, and the Program Manager shall be entitled to exercise the rights and remedies under Section 9.04 for any such violation immediately upon notice of such violation being given by the Program Manager to the Homeowner and any Permitted Mortgagee.

Section 9.03 What Happens if Homeowner Defaults as a Result of Judicial Process. It shall be an event of default if the Property is taken on execution or by other process of law, or if any assignment is made of the Property for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Property by a court of competent jurisdiction, or if a petition is filed for the reorganization of Property owner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

Section 9.04 A Default (Uncured Violation) Gives Program Manager the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, the Program Manager shall have, in addition to all other rights and remedies provided at law or in equity, the right, at the Program Manager's option, without further notice or demand of any kind, to take any one or more of the following actions:

(a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Program Manager.

(b) The right to exercise the Purchase Option under Section 8.05 above;

(c) In the case of a default under Section 9.01, 9.02, or 9.03, the right to exercise all rights and remedies under the Program Mortgage, including without limitation the institution of foreclosure by judicial proceeding or private sale;

(d) Without limitation of any other rights or remedies of the Program Manager, or its successors and assigns, in the event of any sale, conveyance, financing, refinancing, or other transfer or occupancy of the Property in violation of the provisions of this Declaration, the following rights and remedies, which shall be cumulative and not mutually exclusive:

(i) specific performance of the provisions of this Declaration;

(ii) money damages for Excess Proceeds and Unpaid Amounts, if applicable;

(iii) if the violation is a sale, violation of Article II use provisions, or other conveyance of the Property to or by an Ineligible Buyer except as permitted herein, the option on permitted use to locate an Eligible Buyer to purchase, or itself purchase, the Property from the Ineligible Buyer on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration; specific performance of the requirement that an Ineligible Buyer shall sell, as herein provided, may be judicially ordered;

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration; and

(v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Buyer.

(e) In addition to the foregoing, the Homeowner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Program Manager in the event successful enforcement action is taken against the Homeowner or Homeowner's successors or assigns.

(f) The Homeowner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Program Manager: the right to take all actions with respect to the Property which the Program Manager may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Homeowner to prevent, remedy or abate any violation of this Declaration.

(g) All rights and remedies set forth in this Section 9.04 are subordinate to the rights of Permitted Mortgagees as set forth in Sections 1.03, 4.01, and 4.04 of this Declaration.

Section 9.05 What Happens if Program Manager Defaults. The Program Manager shall not be in default in the performance of any of its obligations under this Declaration unless and until the Program Manager has failed to perform such obligations for 60 days after notice, or such additional time as is reasonably required to correct any default, after notice by the Homeowner to the Program Manager properly specifying the Program Manager's failure to perform any such obligation.

ARTICLE X. MEDIATION

Section 10.01 Nothing in this Declaration shall be construed as preventing the parties from utilizing any process of mediation in which the parties mutually agree to engage for the purpose of resolving a dispute.

Section 10.02 Unless the Homeowner and Program Manager otherwise agree Homeowner and Program Manager shall each pay one half (50%) of any costs incurred in carrying out mediation in which the parties have agreed to engage.

ARTICLE XI.

NOTICES, RIGHT OF FIRST REFUSAL, AND OTHER PROVISIONS

Section 11.01 Notices. Whenever this Declaration requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to Program Manager:
City of Falls Church
300 Park Avenue
Ste. 102W
Falls Church, Virginia 22046
Attn: Director of Housing

With a copy to:
City of Falls Church
300 Park Avenue
Ste. 203E
Falls Church, Virginia 22046
Attn: City Manager

If to Homeowner:
Homeowner at the Home address

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

Section 11.02 Severability. If any part of this Declaration is unenforceable or invalid, such material shall be read out of this Declaration and shall not affect the validity of any other part of this Declaration or give rise to any cause of action of Homeowner or Program Manager against the other, and the remainder of this Declaration shall be valid and enforced to the fullest extent permitted by law.

Section 11.03 Right of First Refusal in Lieu of Option. If the Program Manager ever has reason to believe that the provisions of the Purchase Option set forth in Article VIII of this Declaration have, for any reason, become unenforceable, the Program Manager shall give notice to the Homeowner and any Permitted Mortgagee of the Program Manager's election to

replace the Purchase Option with this Section 11.03 and the Program Manager shall then have a right of first refusal to purchase the Property at the highest documented bona fide purchase price offer made to Homeowner as follows:

(a) If the Homeowner receives a bona fide third party offer to purchase the Property which the Homeowner is willing to accept, the Homeowner shall give written notice of such offer (the “**Notice of Offer**”) to the Program Manager setting forth (i) the name and address of the prospective purchaser, (ii) the purchase price offered by the prospective purchaser, and (iii) all other terms and conditions of sale. The Program Manager shall have [45] days after receipt of the Notice of Offer (the “**Election Period**”) within which to exercise the right of first refusal by giving the Homeowner a notice of intent to purchase the Property (the “**Notice of Intent to Purchase**”) for the same price and on the same terms and conditions set forth in the Notice Offer, provided, however, that the price to Program Manager shall not exceed the Maximum Resale Price. Such Notice of Intent to Purchase shall be given in writing to the Homeowner within the Election Period.

(b) If the Program Manager exercises the right to purchase the Property, such purchase shall be completed within 60 days after the Notice of Intent to Purchase is given by the Program Manager (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of either the purchase price provided therein or the Maximum Resale Price, whichever is less.

Should the Program Manager fail to exercise the right of first refusal within the Election Period, then the Homeowner shall have the right (subject to any other applicable restrictions in the Declaration, including without limitation Section 8.08) to go forward with the sale described in the Notice of Offer, and to sell the Property within six months following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice of Offer. If the sale is not consummated within such six-month period, the Homeowner’s right so to sell shall end, and all of the provisions of this Section 11.03 shall be applied again to any future offer. If a sale is consummated within such six-month period, the purchaser shall purchase subject to the Program Manager having a renewed right of first refusal in the Property.

(c) Any sale or transfer contrary to this Section 11.03, when applicable, shall be null and void.

Section 11.04 Waiver.

(a) The waiver by Program Manager at any time of any requirement or restriction in this Declaration, or the failure of Program Manager to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration.

Program Manager may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by Program Manager before being effective. Notwithstanding the foregoing, the Program Manager may not waive the provisions of Sections 1.03(b), 7.01, 7.03, and 9.04(g) of this Declaration.

(b) The acceptance by Program Manager of any late payments shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Declaration, other than the failure of the Homeowner to make the particular payment so accepted, regardless of Program Manager's knowledge of such preceding breach at the time of acceptance of such payment.

Section 11.05 Construction. Whenever in this Declaration a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

Section 11.06 Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only, and are not a part of this Declaration and do not in any way limit or amplify the terms or conditions of this Declaration.

Section 11.07 Parties Bound. This Declaration sets forth the entire agreement between Program Manager and Homeowner with respect to the subject matter of this Declaration; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by Program Manager and Homeowner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.

Section 11.08 Governing Law. This Declaration shall be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia, without regard to choice of law principles. The language in all parts of this Declaration shall be, in all cases, construed according to its fair meaning and not strictly for or against Program Manager or Homeowner.

Section 11.09 Program Manager Action: Any action permitted to be taken or done by or on behalf of the Program Manager hereunder, may be taken by any person authorized by the Program Manager to act on behalf of the Program Manager or in its place, at the option of Program Manager. Homeowner consents to cooperate with any entity upon direction of the Program Manager. The City Manager is hereby authorized to act on behalf of the City at any time.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

/INSERT SIGNATURE BLOCKS, NOTARY ACKNOWLEDGMENTS, AND (IF REQUIRED BY STATE LAW, WITNESS BLOCKS)

EXHIBIT A

Legal Description of the Property