

AFFORDABLE HOUSING RESTRICTIVE COVENANT  
AND AGREEMENT

This Affordable Housing Restrictive Covenant and Agreement (the "Covenant") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008, is entered into between The TOWN OF ORANGETOWN, a municipal corporation, having offices at 26 Orangeburg Road, Orangeburg, New York 10962 (the "Town") and \_\_\_\_\_ (the "Owner") of the property known as \_\_\_\_\_. This Covenant applies to the property at tax map \_\_\_\_\_ and known as \_\_\_\_\_ (the "Home"), more particularly described on Exhibit A and attached hereto.

WHEREAS, \_\_\_\_\_ (the "Developer"), will be constructing or has constructed housing units in the subdivision named \_\_\_\_\_ according to the final subdivision plan dated \_\_\_\_\_ and recorded in the Rockland County Clerk's Office at (the "Development");

WHEREAS, as a condition of the Town of Orangetown approving the Development under its Planned Adult Community ("PAC Zone") Floating Zone, § 4.6 of the Orangetown Code, the Town has required that a certain number of the homes within the Development be maintained as affordable housing;

WHEREAS, this Covenant is designed to satisfy the conditions of the Town by requiring that the Home be maintained as affordable housing for a term of ninety nine (99) years;

WHEREAS, this Covenant shall apply to and be enforceable against all current and future owners of the Home, and shall restrict the sale and resale of the Home for a term of ninety-nine (99) years from the date of this covenant;

WHEREAS the Owner recognizes the special nature of the terms and conditions of this Covenant and, with the independent and informed advice of legal counsel, freely accepts the terms and conditions of this Covenant, including, without limitation, the terms and conditions that affect the marketability and the resale price of the Home; and

WHEREAS, the Town, or an agent designated by the Town Board (the "Monitoring Agent"), shall have responsibility for monitoring and enforcing this Covenant in compliance with the regulations and procedures adopted by the Town ("Planned Active Adult Affordable Housing Program Regulations and Procedures") regarding the requirements for affordability, including but not limited to any income and asset limitations.

THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## 1 DEFINITIONS

The following terms shall have the following meanings for purposes of this Covenant:

- 1.1 "**Maximum household income for affordable units**" shall be 80% of the median income for Rockland County families, as established annually by the U.S. Department of Housing and Urban Development, and as more specifically defined by the Town in (the "Planned Active Adult Affordable Housing Program Regulations and Procedures"), as may be amended from time to time.
- 1.2 "**Town**" has the meaning set forth in the above recitals.
- 1.3 "**Compliance Certificate**" means the certificate issued by the Monitoring Agent verifying the facts in accordance with **Section 2**.

- 1.4 **"Developer"** has the meaning set forth in the above recitals.
- 1.5 **"Development"** has the meaning set forth in the above recitals.
- 1.6 **"Eligible Buyer"** means a natural person, who is certified by the Town or its designated Monitoring Agent, to be qualified to buy a Home in accordance with the qualifications, standards, and procedures in effect under relevant provisions of the "Planned Active Adult Affordable Housing Program Regulations and Procedures."
- 1.7 **"Home"** has the same meaning set forth in the above recitals.
- 1.8 **"Maximum Resale Price"** means the maximum allowed price for the resale of an affordable housing unit as calculated by the Monitoring Agent in accordance with the "Planned Active Adult Affordable Housing Program Rules and Regulations." The resale price formula is equal to 3.3 times 80% of the median family income for Rockland County, as established annually by the U.S. Department of Housing and urban Development. In no event shall the Maximum Resale Price be equal to an amount less than that paid by the seller.

The Maximum Resale Price may include an upward adjustment to reflect capital improvements made by the Owner during the period of his/her ownership. The adjustment is equal to the actual cost of any allowable capital improvement reduced at a rate of 10% per year measured from the date of such improvement, but in no event shall any actual increase in price attributable to such improvement(s), on resale, be greater than a total of \$25,000. The Owner shall retain receipts for all work performed at, or equipment purchased for, the Home. "Capital improvements" are intended to be those improvements that would be recognized as such the IRS.

- 1.9 **"Monitoring Agent"** has the same meaning set forth in the above recitals.
- 1.10 **"Owner"** has the same meaning set forth in the above recitals and also means the record title owner of a Home.
- 1.11 **"Transfer"** means any sale, assignment or transfer, voluntary or involuntary, by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any ownership interest in a Home, including but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or leasehold interest, or mortgage or lien.

## 2 RESALE AND TRANSFER RESTRICTIONS

- 2.1 **Maximum Resale Price/Eligible Buyer.** A Home shall not be Transferred, and no attempted Transfer will be valid unless:
  - A. The Monitoring Agent issues a Compliance Certificate stating that the Purchase Price is equal to or less than the Maximum Resale Price, the buyer is an Eligible Buyer and the proposed terms of the Transfer are in compliance with the "Planned Active Adult Affordable Housing Program Rules and Regulations."
  - B. The Monitoring Agent executes a new Covenant in the same form as this Covenant and the new Covenant is recorded at the Rockland County Clerk's Office.
  - C. Any good faith buyer of a Home, an Institutional Lender or other any other third party may rely upon a Compliance Certificate as conclusive evidence of the matters stated in the Certificate and may record the Certificate in connection with the Transfer of the Home.

- 2.2 **Administrative Fee.** The Owner shall pay the Monitoring Agent a fee, in an amount to be approved by the Town Board, as an administrative fee to process a request for a Compliance Certificate at the time the Certificate is requested.
- 2.3 **NO GUARANTEE.** Nothing in this Covenant shall be construed or give rise to any implied representation, warranty or guarantee, and the Town and the Developer expressly disclaim that an owner will be able to resell the home for the Maximum Re-sale Price or recover the Owner's initial purchase price.

**3 COVENANT TO RUN WITH THE HOME**

- 3.1 **Duration.** It is intended and agreed that all of the rights, restrictions, covenants and agreements in this Covenant shall be deemed to be covenants running with the Home and shall be binding upon and enforceable against the Owner, the Owner's successors and assigns and any party holding title to the Home, for the benefit of and enforceable by the Town of Orangetown for ninety-nine (99) years from the date of this Covenant.
- 3.2 **Covenant to Run with the Home.** The Owner intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Covenant and the rights and restrictions contained in the Covenant shall be covenants running with the land, encumbering the Home *for the term of this Covenant*, and are binding upon the Owner's successors in title, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner, its successors and assigns and enure to the benefit of the Town of Orangetown for the term of this Covenant.
- 3.3 **Enforcement.** Without limitation on any other rights or remedies of the Town of Orangetown, any sale or other transfer or conveyance of the Home in violation of the provisions of this Covenant shall, to the maximum extent permitted by law, be voidable by the Town of Orangetown. The Owner shall be liable for all court costs and reasonable attorneys' fees incurred by the Town of Orangetown in connection with any enforcement action brought by the Town.

**4 MISCELLANEOUS**

- 4.1 **Notices.** Whenever this Covenant 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 the Town:**

**If to Owner:**

Town of Orangetown  
 26 Orangeburg Rd.  
 Orangeburg, N.Y. 10962

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.

- 4.2 **Severability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid or unenforceable; the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired thereby; and the court may, but shall not be required to, fashion a substitute for the provision held to be invalid or unenforceable.
- 4.3 **Headings.** The headings of the sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

Executed as of the date first written above.

\_\_\_\_\_  
Owner

Town of Orangetown:

\_\_\_\_\_  
By:

Developer:

By: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF NEW YORK  
COUNTY OF ROCKLAND

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, a notary public in and for the State of New York, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK  
COUNTY OF ROCKLAND

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, a notary public in and for the State of New York, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Please record and return to:

Town of Orangetown  
26 Orangeburg Road  
Orangeburg, New York 10962