

**RESTRICTION ON CONVEYANCE OF PROPERTY
AND GRANT OF LIEN**

THIS RESTRICTION ON CONVEYANCE OF PROPERTY (“Deed Restriction”) is made and entered by and between the CITY OF LOVELAND, COLORADO, whose address is 500 East Third Street, Loveland, Colorado (“City”), and Aspen Homes of Colorado, Inc., whose address is 3037 N. Taft Ave., Loveland, Colorado, 80538 (“Owner”); and

WHEREAS, the Owner is the owner of certain real property legally described

as: LOT , BLOCK , WILSON COMMONS FIRST SUB, LOV (20050091037)

also known by the street address, _____, Loveland, Colorado 80538 (“Property”); and

WHEREAS, in consideration of the Affordable Housing Designation granted and approved on October 25, 2000, and extended by a Development Agreement between the parties on October 10, 2010, pursuant to Resolution #R-65-2010 and extended again by an Agreement to Extend Certain Deadlines Related to the Wilson Commons Addition on March 10, 2021, pursuant to Resolution #R-33-2021, the Owner intends to build a single-family dwelling unit on the Property to be sold to a household that makes no more than seventy percent (70%) of the Area Median Income in the City as determined by the U.S. Department of Housing and Urban Development, as of the date of the sale (“Qualifying Household”) and further intends to restrict ownership of the home to other qualifying Households for a period of twenty (20) years following the initial purchase; and

WHEREAS, provisions of Loveland Municipal Code addressing Affordable Housing are applicable to this property; and

WHEREAS, Loveland Municipal Code (LMC) Title 17, see attached Exhibit B, provides that the City may by offer fee reductions by resolution that grant an exemption in all, or part, of the capital expansion or any other fees imposed upon a construction project, whether for capital or other purposes, upon a finding, based upon a development agreement, that the project for which the fees would otherwise be imposed is a qualified Affordable Housing Development and that the exemption is in the best interests of the public by encouraging activities that provide significant social, economic, or cultural benefits; and

WHEREAS, pursuant to LMC section 17.04.04, the City Council has established guidelines for Affordable Housing Developments which require a deed restriction or encumbrance of “for sale” affordable housing units to Qualifying Households. Qualified units shall be sold only to Qualifying Households for a period of twenty (20) years following the initial purchase. All provisions of the Code are intended to be enforced by this Deed Restriction, including, but not limited to, the prohibition on renting the property and the requirement that it be owner-occupied; and

WHEREAS, pursuant to LMC chapter 17.03, and upon the Owner’s application, the Owner has met all of the applicable criteria, and the City has granted and approved an exemption to the Owner from certain fees upon the express condition that the single-family home constructed on the

Property be sold to a Qualifying Household and that ownership of the home be restricted to other Qualifying Households for a period of twenty (20) years; and

NOW, THEREFORE, in consideration of the City granting to the Owner a use tax credit or reduction in capital expansion and other fees or water requirements pursuant to qualification of the development as an affordable housing project, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Covenant to Sell Only to a Qualifying Household. Pursuant to LMC section 17.04.04, the Owner hereby covenants and agrees that the Owner, its successors, and assigns shall not sell or convey the Property to any person or entity other than a Qualifying Household for a period of twenty (20) years from the initial purchase of the affordable housing unit by the initial Qualifying Household. **Further, the requirements of LMC Title 17 *et al.* (or its successors) are specifically applicable to this property.**

2. Covenant Not to Rent. Pursuant to LMC section 17.04.04, the Owner hereby covenants and agrees that the Owner, its successors, and assigns shall not rent the Property and that the Property will be owner-occupied for a period of twenty (20) years from the date of the initial purchase of the affordable housing unit by the initial Qualifying Household.

3. Expiration/Termination of Deed Restriction. Pursuant to LMC section 17.04.04, this Deed Restriction shall automatically expire: (1) if title to property mortgaged by an institutional lender is transferred to an institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure or (2) twenty (20) years from the date of the initial purchase of the affordable housing unit by the initial Qualifying Household.

4. Deeds Conveying Property. Owner, its successors, and assigns shall incorporate this Deed Restriction into all deeds or documents conveying the Property.

a. Prior to any conveyance of the Property, the Owner and each successor owner shall obtain written acknowledgment from the City that such conveyance is to a Qualifying Household.

b. Upon a sale to a Qualified Household and compliance with Paragraph 4, or payment of the amount due pursuant to Paragraph 5 (as the case may be), the Seller will have no further obligation under this Deed Restriction as to the Property.

c. Prior to any successive conveyance of the Property, each successor owner shall obtain written acknowledgment from the City that such conveyance is to a Qualified Household and that the successor owner has signed a written acknowledgment of this Deed Restriction which has been filed with the accompanying real estate documents.

5. Repayment Obligation. In the event the current owner of the Property ("Seller") conveys the Property to a person or entity which is not a Qualifying Household ("Buyer") within twenty (20) years from the date of the initial purchase of the affordable housing unit by the initial Qualifying Household, the City shall have the right to recover from the Seller and Buyer, jointly and severally, a percentage of the Net Proceeds, as defined below, from the sale of the Property based on the Repayment Schedule attached hereto as Exhibit A and incorporated herein by reference (the

“Repayment Amount”). “Net Proceeds” shall mean the current sale price minus the previous purchase price minus Eligible Closing Costs. “Eligible Closing Costs” shall include title company closing fees charged to the Seller, real estate commissions, and title insurance charges.

6. Grant of Lien. The Owner hereby grants unto the City a lien against the Property securing payment of any amount due under Paragraph 5. The lien herein granted shall remain a lien against the Property so long as this Deed Restriction is in effect. This Deed Restriction shall have priority over any lien on the Property **other than a non-refinanced, first mortgage of an individual/family Qualified Homeowner /Household.**

7. Enforcement of Lien. In the event the Seller violates the covenant set forth in Paragraphs 1 or 2, this lien may be enforced by the City by foreclosure in the manner provided by law for foreclosure of mortgages or any other available remedies under law or equity. In the event of such foreclosure, the City shall be allowed as part of its costs of foreclosure compensation including attorney fees, costs, and alternative dispute resolution fees and costs.

8. Failure of Compliance with Terms of this Deed Restriction. Should any owner of this Property fail to comply with the terms and conditions of this Deed Restriction, the City may pursue any available remedies under law or equity to enforce the terms of this Deed Restriction and shall be entitled to damages and/or punitive damages, attorney fees, the costs enumerated in Paragraphs 5 and 7, and alternative dispute resolution fees and costs.

9. Waiver of Homestead Exemption. The Owner hereby fully and absolutely waives and releases all rights and claims they may have in or to the Property as a Homestead Exemption, or other exemption, under and by virtue of any act of the Colorado General Assembly or as any exemption under and by virtue of any act of the United States Congress, whether now existing or which may hereafter be passed in relation thereto.

10. Warranty of Title. The Owner covenants and agrees to and with the City that at the time of the execution of this Deed Restriction that the Owner is well seized of the Property in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the Property and to grant the lien as provided herein, and that the Property is free and clear of all liens and encumbrances whatever, except those currently of record, and the Owner hereby agrees to warrant and forever defend all of the same.

11. Binding Effect. This Deed Restriction reflects the intent of the Parties that the respective rights and obligations set forth in this Deed Restriction shall constitute covenants, equitable servitudes, and/or liens that shall run with the land and shall benefit and burden any representatives, successors and assigns of the Parties.

12. Recordation and Assignment. This Agreement shall be recorded with the Larimer County Clerk and Recorder’s Office within two business days of its signing. Failure to do so may allow the City to seek compensation, attorney fees, and costs against the Seller/Owner of this property for any and all future litigation, mediation, or dispute resolution, damages and/or punitive damages this failure causes.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction as of the attestation date below.

CITY OF LOVELAND, COLORADO

By: _____
City Manager

Date: _____

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:

Assistant City Attorney

OWNER: _____

By: _____

Title: _____

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Restriction on Conveyance of Property was acknowledged before me this ____ day of _____, 20__ by _____.

Witness my hand and official seal. My commission expires: _____.

Notary Public

EXHIBIT A

Repayment Schedule	
Number of Years from Date of Original Sale ¹	Net Proceeds to be Returned to City
1	95%
2	90%
3	85%
4	80%
5	75%
6	70%
7	65%
8	60%
9	55%
10	50%
11	45%
12	40%
13	35%
14	30%
15	25%
16	20%
17	15%
18	10%
19	5%
20	0%

Table Note: ¹ Use standard rounding techniques to round to the nearest whole year.

TITLE 17 AFFORDABLE HOUSING CODE

PART 3: WAIVER OF DEVELOPMENT FEES FOR AFFORDABLE HOUSING

Contents:

Chapter 17.03 Required Improvements, Dedications, and Fees

Contents:

Division 17.03.01 Purpose, Application, and Waiver

17.03.01.01 Purpose of Chapter

The purpose of this Chapter is to provide a process for waiver or deferment of fees in certain cases.

17.03.01.02 Application of Chapter

- A. **Waivers and Deferrals.** The City may authorize a fee waiver or deferral of development fees pursuant to Section 17.03.01.03, Waiver of Fees, Section 17.03.01.04, Recapture of Waived Fees, and Section 17.03.01.05, Deferment of Fees.
- B. **Development Review Fees.** Division 18.16.02, Development Review Fees, authorizes the City to impose fees to offset the City’s costs of development review.
- C. **Land Dedications and Fees-in-Lieu.** Division 18.16.03, Land Dedications and Fees-in-Lieu, establishes standards for land dedication for certain public purposes, or for the payment of fees-in-lieu of land dedication in cases where the dedication of land is not practical.
- D. **Capital Expansion Fees.** Division 18.16.04, Capital Expansion Fees, establishes fees on new development or expansions of existing development to provide for the expansion of the City’s capital facilities.
- E. **Affordable Housing.** Chapter 17.04, Affordable Housing, establishes standards for the designation of a residential development as an affordable housing development, authorizes reductions in fees and taxes for affordable housing development, and provides for design flexibility to improve the affordability of housing.
- F. **Public Improvements.** Division 18.16.06, Public Improvements, sets out the requirements for the installation of public improvements and for the provision of the associated warranties and financial guarantees, and provides a process for inspection and acceptance of public improvements.

17.03.01.03 Waiver of Fees

- A. **Generally.** City Council may, by resolution, grant an exemption from all or part of the requirements of the UDC related to the payment of fees imposed by the City upon new development, whether for capital or other purposes, upon a finding that such waiver is in the best interests of the public by encouraging activities that provide significant social, economic, or cultural benefits.

B. Specific Requirements.

Table 17.03.01.03 Affordable Housing Fee Waivers	
Percentage of area median income to be served	Percentage of fees waived for affordable housing unit
30%	100%
40%	90%
50%	80%
60%	70%

1. *Not-for-Profit Facilities.* City Council may waive fees for not-for-profit facilities upon a finding, set forth in a development agreement, that:
 - a. The project for which the fees would otherwise be imposed will provide not-for-profit facilities open to City residents that might otherwise be provided by the City at taxpayer expense;
 - b. Such facilities relieve the pressures of growth on City-provided facilities; and
 - c. Such facilities do not promote additional growth or growth impacts.
2. *Affordable Housing.* City Council may waive fees for affordable housing developments (including rental housing) as set forth in subsection B.2.a. or subsection B.2.b., below. City Council may waive fees for affordable housing developments including for-sale housing as set forth in subsection B.2.c. or subsection B.2.d., below.
 - a. Rental Housing - Option 1. If granted for rental housing that is designated as an affordable housing development pursuant to [Division 17.04, Affordable Housing](#), the waiver may be up to 100 percent, provided that the development meets the following criteria:
 1. The development does not include market-rate for-rent housing;
 2. 100 percent of the dwelling units will be available for rent by persons earning 60 percent of the areawide median income or lower; and
 3. At least 50 percent of the units will be available for rent by persons earning 50 percent of the areawide median income or lower.
 - b. Rental Housing - Option 2. If granted for rental housing that is designated as an affordable housing development pursuant to [Division 17.04, Affordable Housing](#), the exemption shall be as set out in Table 17.03.01.03, Affordable Housing Fee Waivers, provided that any such exemption shall not be applied to market housing:
 - c. For-Sale Housing - Option 1. If granted for for-sale housing made available for-sale to persons earning 60 percent of the areawide median family income or lower, the exemption up to 100 percent may be granted if the development meets the following criteria:

1. The affordable housing units shall be available for-sale to only persons earning 60 percent of the areawide median income or lower; and
 2. Such waiver shall not apply to market-rate for-sale housing units.
- d. For-Sale Housing - Option 2. If granted for for-sale housing made available for-sale to persons earning 61 percent to 100 percent of the areawide median family income, an exemption may be granted, depending upon the unique circumstances of the project and only following specific review and approval of the project by the Director and the City Council. A waiver of fees or charges, or other economic or infrastructure incentives, may be granted, in the sole discretion of the City Council, for projects that meet the characteristics and requirements as follows:
1. The project furthers the goal of increasing the supply of affordable housing to the residents of the City;
 2. The project is designated by Council as an affordable housing development;
 3. The terms of the waiver of fees or charges, or other incentives, are detailed in a development agreement;
 4. The City finds that a *pro forma* financial analysis for the development justifies the waiver; and
 5. Preference is given for selling affordable housing units to families or individuals that have lived or worked in Loveland for at least the past year.
- C. **Increased and Decreased Waivers.** Notwithstanding the provisions of subsection B.2., above, the City Council may increase the percentage of fees waived upon making a finding at its discretion that additional fee waivers will serve a public purpose, which public purpose shall be specified in the resolution. The City Council may also decrease the percentage of fees waived based upon the unique circumstances of a proposed development, the availability of funds, or any other reason.
- D. **Duration.** Exemptions granted pursuant to this section shall be effective for one year from the date on which the exemption is granted unless extended by the City Council for good cause shown. Any such extension shall be set forth in an amendment to the development agreement approved by resolution of the City Council.
- E. **Policy on Capital-Related Fees.** When a capital-related fee is waived or reduced, it is the general policy of the City Council to direct that the waived fee be paid by the general fund or another appropriate fund, except in the case of waivers pursuant to subsection B.1., B.2.a., and B.2.c., which are generally only reimbursed if the waived fee involves a utility fund or the Loveland Fire & Rescue Authority Fund. However, such general policy is not binding upon the City Council, is subject to appropriation, and shall not be construed to create a multi-year fiscal obligation.
- F. **Alternative Fee Waiver Mechanism.** In a resolution approving a waiver of fees for a designated affordable housing development, the City Council may approve an alternative fee waiver mechanism in which an affiliated entity pays the fees waived under this section

and the City pays those funds to the developer of an affordable housing development in order to increase the tax credit basis of the development, provided:

1. The City Council appropriates the funds necessary to implement the alternative fee waiver mechanism; and
2. The alternative fee waiver mechanism does not create a new financial burden for the City; and
3. The developer executes a development agreement with the City containing a description of the terms of the alternative fee waiver mechanism in a form acceptable to the City Attorney.

(Ord. 6550 § 05/17/2022)

17.03.01.04 Recapture of Waived Fees

- A. **Generally.** No certificate of occupancy shall be issued for any building for which a fee waiver is granted pursuant to Section 17.03.01.03, **Waiver of Fees**, unless a deed restriction or encumbrance according to the standards of this Section and in a form approved by the City Attorney, is executed and recorded.
- B. **Required Provisions.** The deed restriction or encumbrance shall:
 1. Prohibit the sale of the property to any person or entity at a price or for use or management in a manner that is inconsistent with the purposes of the fee waiver (*e.g.*, sale price, land use, rental rate, etc.) for a period of 20 years from the date of the certificate of occupancy;
 2. Include a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties; and
 3. Include a provision indicating that the restriction automatically expires:
 - a. If title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or
 - b. 20 years after the date on which the certificate of occupancy was issued, provided there is no existing default under the deed restriction or encumbrance.

17.03.01.05 Deferral of Fees

- A. **Generally.** City Council may allow for the deferral of fees imposed on new development in the City in the manner set out in this Section.
- B. **Deferral Agreements.**
 1. Council may authorize deferral of fee payments by approving by resolution a written deferral agreement entered into with the person or entity from which the fees are payable, which agreement shall contain such terms and conditions as the City Council determines are in the best interests of the City, and provided that the City Council also determines and finds in the resolution that allowing the deferral of capital expansion fees or any other fees imposed on new development will serve a public purpose.

2. For the purposes of this subsection B., a public purpose may include, without limitation, providing the public with significant social, economic or cultural benefits.
3. Deferral agreements may be stand-alone agreements or components of other agreements between the applicant and the City with respect to the development of the subject property.

C. Enforcement Provisions.

1. All deferral agreements shall include the following enforcement provisions:
 - a. In the event that any amounts owed under the deferral agreement are not paid when due, and except as otherwise provided in the deferral agreement, such unpaid amounts shall be a perpetual lien upon the real property for which the deferred fees are owed from the date the fees are due under the agreement until paid. Such lien shall have priority over all other liens except those for real property taxes.
 - b. If any deferred fee is not paid when due, the City may pursue all remedies available to it under the law to collect such fee, including, without limitation, by judicially foreclosing the lien. The City Clerk may also certify any delinquent fees and other amounts owed under the deferral agreement to the treasurer of Larimer County and such fees and amounts shall then be collected in the same manner as though they were real property taxes.
2. A deferral agreement may also provide that the City has the right to withhold or revoke any building permits, certificates of occupancy, and other City approval relating to the development of the real property for which deferred fees are delinquent in payment.

PART 4: AFFORDABLE HOUSING

Contents:

Chapter 17.04 Affordable Housing

Contents:

Division 17.04.01 Community Housing Development Fund Established

Division 17.04.02 Revenue Sources for Community Housing Development Fund

Division 17.04.03 Designation of Affordable Housing Developments

Division 17.04.04 Deed Restriction for Affordable Housing Units Required

Division 17.04.05 Development Fees for Affordable Housing

Division 17.04.06 Sales of Deed-Restricted Affordable Housing Units

Division 17.04.07 Use Tax Credit for Qualified Affordable Housing Units

Division 17.04.08 Annual Review of Affordable Housing Ownership

17.04.01 Community Housing Development Fund Established

There is created a special fund to be known as the “Community Housing Development Fund” for the purpose of receiving all revenues related to affordable housing programs and services and other appropriations from the general fund or other funds as approved or established by the City Council. The fund and any interest earned in the fund shall be for the specific use of those affordable housing programs and services or other professional services necessary to support the Community Partnership Department as determined by the City Council.

(Ord. 6308 §3, 07/16/2019)

17.04.02 Revenue Sources for Community Housing Development Fund

The Community Housing Development Fund shall be funded through revenues derived from payments to the City as set forth in Section [17.04.09 Sales of Deed-Restricted Affordable Housing Units](#), from gifts or grants, and from appropriations from the general fund or other funds, as the City Council may from time-to-time establish or approve.

17.04.03 Designation of Affordable Housing Developments

- A. **Generally.** Before a design flexibility may be approved or an incentive granted pursuant to this Division, a proposed development must be designated as an affordable housing development by the City Council.
- B. **Process.**
 - 1. All applications for designation of a housing development as affordable shall be submitted to the Affordable Housing Commission for review and recommendation to the City Council.
 - 2. The City Council shall review such applications and make the final determination to approve, approve with conditions, or deny such applications by resolution.
- C. **Limitations.**
 - 1. An application for designation of a housing development as affordable may not be combined with or include a request for exemption from a capital expansion fee or other fees.
 - 2. A designation of a housing development as affordable does not guarantee a reduction or exemption of capital expansion fees or other fees by the City Council.

17.04.04 Deed Restriction for Affordable Housing Units Required

- A. **“For Sale” Units.** No certificate of occupancy shall be issued for any “for-sale” affordable dwelling unit or building containing at least one affordable dwelling unit, unless all of the following conditions are met:
 - 1. The applicant provides documentation satisfactory to the Director that the building for which the certificate of occupancy is requested contains the required number of affordable housing units identified on the final plat or site development plan.

2. For a single-family detached dwelling only, the contract household-buyer of such unit has been income-qualified for the purchase of such unit by the Community Partnership Administrator.
3. A deed restriction or encumbrance, in a form approved by the City Attorney, is recorded against the subject property, that includes all of the following conditions:
 - a. The sale of the affordable housing unit(s) to any person or entity other than a qualifying household is prohibited.
 - b. The unit must be owner-occupied, and the rental of the property is prohibited.
4. The required deed restriction also includes provisions stating:
 - a. It is the intent of the parties that the restriction shall constitute covenants, equitable servitudes, and/or liens that run with the land, and shall benefit and burden any personal representatives, successors, and assigns of the parties.
 - b. The deed restriction automatically expires:
 1. If title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or
 2. 20 years after the date of the initial purchase of the affordable housing unit by the initial qualifying household, provided there is no existing default under the deed restriction or encumbrance.

B. "For Rent" Units. No certificate of occupancy shall be issued for any "rental" multiplex, multifamily, townhome, or duplex building containing an affordable housing unit(s), unless all of the following conditions are met:

1. The applicant provides documentation satisfactory to the Director that the building for which the certificate of occupancy is requested contains the required number of affordable housing units identified on the final plat or site development plan.
2. A deed restriction or encumbrance, in a form approved by the City Attorney, is recorded against the property, that includes all of the following conditions:
 - a. The rental of the affordable housing units to any person(s) other than a qualifying household is prohibited; and
 - b. The conversion of the affordable housing units from "rental" units to "for-sale" units without the prior written approval of the City is prohibited.
3. The required deed restriction also includes provisions stating:
 - a. It is the intent of the parties that the restriction shall constitute covenants, equitable servitudes, and / or liens that run with the land, and shall benefit and burden any personal representatives, successors, and assigns of the parties.
 - b. The deed restriction automatically expires:

1. If title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or
2. 5 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver less than \$15,000, provided there is no existing default under the deed restriction or encumbrance; or
3. 10 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$15,000 or greater and less than \$40,000, provided there is no existing default under the deed restriction or encumbrance; or
4. 15 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$40,000 or greater and less than \$100,000, provided there is no existing default under the deed restriction or encumbrance; or
5. 20 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$100,000 or greater and less than \$500,000, provided there is no existing default under the deed restriction or encumbrance; or
6. 50 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$500,000 or greater, provided there is no existing default under the deed restriction or encumbrance.

C. **"Not-For-Profit Facilities."** No certificate of occupancy shall be issued for a not-for-profit or public facility building that meets the requirements of Section 17.03.01.03, Waiver of Fees, and that obtains a fee waiver pursuant to this Section unless a deed restriction or encumbrance has been placed on the property in a form approved by the city attorney, prohibiting the sale of the not-for-profit or public facility to any person or entity for a use that does not meet the requirements of Section 17.03.01.03, Waiver of Fees, for a period of 25 years from the date on which a certificate of occupancy was first issued for the property.

1. The deed restriction or encumbrance shall contain:

a. A provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties.

b. A provision indicating that it automatically expires:

1. If title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or
2. 5 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver less than

\$15,000, provided there is no existing default under the deed restriction or encumbrance; or

3. 10 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$15,000 or greater and less than \$40,000, provided there is no existing default under the deed restriction or encumbrance; or
4. 15 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$40,000 or greater and less than \$100,000, provided there is no existing default under the deed restriction or encumbrance; or
5. 20 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$100,000 or greater and less than \$500,000, provided there is no existing default under the deed restriction or encumbrance; or
6. 50 years after the date on which a certificate of occupancy was first issued for the property for a fee waiver \$500,000 or greater, provided there is no existing default under the deed restriction or encumbrance.

D. **“Community Development Block Grant Recipients.”** No certificate of completion shall issue for any Community Development Block Grant bricks/mortar recipients, unless all of the following conditions are met:

1. A deed restriction or encumbrance, in a form approved by the City Attorney, is recorded against the property that includes all of the following conditions:
 - a. The restriction shall constitute covenants, equitable servitudes, and/or lien that run with the land, and shall benefit and burden any personal representatives, successors, and assigns of the parties.
 - b. The deed restriction automatically expires:
 1. If title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or
 2. 5 years from the date on which the CDBG Recipient signs the City Contract accepting funds less than \$15,000; or
 3. 10 years from the date on which the CDBG Recipient signs the City Contract accepting funds of \$15,000 or greater and less than \$40,000; or
 4. 15 years from the date on which the CDBG Recipient signs the City Contract accepting funds of \$40,000 or greater and less than \$100,000; or
 5. 20 years from the date on which the CDBG Recipient signs the City Contract accepting funds of \$100,000 or greater.

(Ord. 6343 §1, 10/01/2019; Ord. 6404 §1, 07/21/2020; Ord. 6536 § 02/01/2022)

17.04.05 Development Fees for Affordable Housing

- A. **Generally.** Capital expansion fees, water rights requirements and fees, and any other fees imposed by the city upon an affordable housing development, whether for capital or other purposes (collectively, “development fees”), shall be calculated as of the date on which the City Council adopts a resolution designating the housing development as affordable (the “designation date”). The development fees calculated under this Section shall be valid for five years thereafter. At the end of the five-year period, the development fees shall be calculated each year thereafter on the basis of those development fees in effect five years prior. This adjustment shall continue each year until the last affordable housing unit within the affordable housing development receives a building permit, or the housing development loses its affordable designation in accordance with Subsection B. below.
- B. **Development Agreements.** The development agreement for an affordable housing development shall specify the required affordable housing ratio of affordable housing units to market-rate units to be maintained during construction of each phase of the development.
- C. **Lapse of Designation.** Ten years after the designation date, the housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy, in which case the development fees shall continue to be calculated as set forth in Subsection A., above. Notwithstanding the foregoing, any developer that has not obtained a certificate of occupancy at the end of the ten-year period may request that the Affordable Housing Commission consider and make a recommendation to the City Council to extend the development’s affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the City Council.
- D. **Relationship to Standard Fees.** Notwithstanding anything herein to the contrary, the developer shall be entitled to pay the lower of the development fee in effect as of the designation date and the standard development fee in effect at the time such fees are paid.
- E. **Waivers of Fees.** City Council may, by resolution, grant an exemption from all or part of the requirements of this UDC related to the payment of fees imposed by the City in accordance with Section 17.03.01.03, Waiver of Fees.

17.04.06 Sales of Deed-Restricted Affordable Housing Units

- A. **Generally.** Every household-buyer of a deed-restricted affordable housing unit must be income-qualified by the Community Partnership Administrator.
- B. **Fees Recapture.** Within the deed-restriction period of a particular affordable housing unit, the owner of a deed-restricted affordable housing unit may only sell or transfer the unit to another income qualified household unless the City Council approves a hardship waiver of the requirements of this Section. The requirements of this Section shall not apply to the owner of an affordable housing unit with a deed restriction recorded prior to July 1, 2017, or to those deed restrictions that are related to or the subject of a development agreement executed between the City and a developer prior to July 1, 2017.
- C. **Deed Restriction Hardship Waiver and Payment Required.** The City Council may waive the requirement provided in subsection B., above, to allow the owner of a “for-sale” affordable housing unit to sell such unit to a household that does not meet the definition of a qualified household. Any requests for such deed restriction hardship waiver must be approved first by the Affordable Housing Commission. The Affordable Housing Commission’s denial of a waiver may be appealed to the City Council. A deed restriction hardship waiver granted by the City Council shall require the owner to pay the City the

amounts set forth by applying the calculations in Table 17.04.06, Early Terminations Fee Recapture, below, except that in no instance shall the payment required exceed the owner’s amount of net proceeds from the sale of the affordable housing unit.

Ord. 6536 § 02/01/2022

Table 17.04.06 Early Termination Fee Recapture	
Number of Years from Date of Original Sale¹	Net Proceeds to be Returned to City
1	95%
2	90%
3	85%
4	80%
5	75%
6	70%
7	65%
8	60%
9	55%
10	50%
11	45%
12	40%
13	35%
14	30%
15	25%
16	20%
17	15%
18	10%
19	5%
20	0%

Table Note:
¹ Use standard rounding techniques to round to the nearest whole year.

17.04.07 Use Tax Credit for Qualified Affordable Housing Units

- A. **Incentives Allowed.** An applicant who meets all of the applicable criteria set forth in this Section may receive, as a credit against any fees assessed by the City in connection with the construction of new qualified affordable housing units within the City, or in connection with the reconstruction or remodel of an existing affordable housing unit within the City, a sum equal to the building materials use tax paid to the City in connection with the construction of such units.
- B. **Criteria to Receive Credit.** The credit shall be issued at the time a certificate of occupancy is issued for the building containing an affordable housing unit. In order to receive the use tax credit set forth in Subsection A., the applicant shall meet one of the following criteria:
 - 1. For “for-sale” dwelling units, the applicant shall provide documentation satisfactory to the Director that the building for which the certificate of occupancy is requested contains the required number of affordable housing units identified on the final plat or site development plan.

2. For “rental” dwelling units, the applicant shall provide documentation satisfactory to the Director and the City Attorney that the building containing affordable housing rental unit(s) is located in an affordable housing development and will provide affordable housing units to qualifying households for not less than fifty years.
- C. **Application.** Any person or entity that wishes to receive the incentive credit provided for in Subsection A., above, shall submit a completed use tax credit application to the Community Partnership Administrator. The application shall be accompanied by documentation in support of the criteria set forth in this Section. An application that fails to contain complete information and sufficient documentation to support the criteria set forth above shall not be considered. The completed application for the incentive credit shall be submitted and approved prior to issuance of a use tax credit and prior to issuance of a certificate of occupancy.

17.04.08 Annual Review of Affordable Housing Ownership

Once each year, the Community Partnership Administrator shall obtain an ownership report concerning each “for-sale” affordable housing unit for which the City has issued a certificate of occupancy. In the event an affordable housing unit is owned or occupied by a person other than the initial qualifying household, the current owner of the affordable housing unit shall submit documentation to the Community Partnership Administrator verifying that the affordable housing unit is owned by a qualifying household and has not been rented. In the event the current owner fails to provide such information in a timely manner, or the information provided fails to support continuing compliance with the requirements set forth in this Division, the Community Partnership Administrator shall advise the current owner in writing that the payment set forth in Section 17.04.06 Sales of Deed-Restricted Affordable Housing Units, shall be paid to the City. If the current owner fails to pay the City within 30 days of the date any decision is made by the Community Partnership Administrator pursuant to this section, the City may institute appropriate legal proceedings to recover the amount owed. Any such funds recovered shall be placed in the affordable housing fund.

