

*Prepared by and return to:*  
Charlottesville City Attorney  
P.O. Box 911  
Charlottesville, Virginia 22902

**DRAFT**  
3/23/26

Re: City of Charlottesville Real Estate Parcel Id. No. 290178000

**DECLARATION OF AFFORDABLE HOUSING COVENANTS**  
**(RENTAL)**  
**(501-B Cherry Avenue)**

This **DECLARATION OF AFFORDABLE HOUSING COVENANTS (RENTAL)** (hereinafter, “**Covenant**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2026 (“**Effective Date**”), by **501-B CHERRY, LLC**, a Virginia limited liability company (“**Project Owner**”), and sometimes referred to herein as the “**Landowner**” or the “**Grantee**”), having an address of 682 Berkmar Circle, Charlottesville, Virginia 22901, for the benefit of the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia, 605 East Main Street, City Hall, Charlottesville, Virginia, 22902 (the “**City**” or “**Grantor**”).

**RECITALS**

**R-1.** Landowner is the fee simple owner of certain real property located in the City of Charlottesville, Virginia, as further described in **Exhibit A** (the “**Property**”) attached to this Covenant, which Property will include the development of Rental Affordable Units, as further defined below, with respect to the 501-B Cherry Avenue site (the “**Project**”) within the larger redevelopment known as 501 Cherry Avenue Apartments.

**R-2.** To further the public purpose of increasing the affordable housing stock within the City of Charlottesville, Virginia, and, in particular, on the Property, the City is willing to loan certain public funding to Piedmont Housing Alliance (“**PHA**”), in accordance with the provisions of Virginia Code § 15.2-958.

**R-3.** The City and Project Owner desire to set forth herein the terms, restrictions and conditions upon which Project Owner will construct, maintain, sell, and lease the Rental Affordable Units within the Project.

**R-4.** By Resolution Number R-24-027 approved by the Charlottesville City Council on March 5, 2024, the City agreed to loan public funding pursuant to the provisions of Virginia Code §15.2-958, to subsidize construction of streets, utilities, and other site improvements essential to the Project and to support the production of new units of residential rental property within the Project, to be occupied following construction by Households of Low and Moderate Income. The City’s adoption of the City Ordinance was induced by PHA’s representation that certain residential units within the Project will, at Project buildout, be Affordable Units.

**R-5.** The City and Project Owner mutually acknowledge the value of assistance provided by the City and the value of the considerations rendered by the Project Owner in maintaining the dwelling units at reduced rents for Households of Low and Moderate Income.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby declare, covenant, and agree as follows, with respect to the Property described within Exhibit “A” to this Covenant:

**ARTICLE I**  
**DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as, the singular.

**Affordability Period** is ninety-nine (99) years, calculated as set forth within Article X.

**Affordability Requirement** has the meaning given in Section 2.1

**Affordable Unit** means a residential dwelling unit for occupancy by a household having household income at or below sixty percent (60%) of Area Median Income who are paying no more than thirty percent (30%) of income for Gross Housing Costs, including utilities, which housing will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index. Where the term “Committed Affordable Unit” or “Committed Rental Affordable Unit” is used, said term refers to an Affordable Unit or Rental Affordable Unit committed by means of this Covenant to satisfy the Affordability Requirement throughout the Affordability Period.

**Affordable Unit Marketing Plan** means Project Owners’ plan(s) for marketing the rental or sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

**Affordable Unit Occupant** means a Qualified Tenant who lease(s) a Rental Affordable Unit.

**Agency** means the Office of the City Manager for the City of Charlottesville, Virginia, and any successor Department whose mission includes administration of the City’s Affordable Housing Program.

**Area Median Income (“AMI”)** means median family income limits for the City of Charlottesville, Virginia, established and adjusted by the U.S. Department of Housing and Urban Development (HUD) annually by household size.

**Annual Household Income** means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

**Annual Report** has the meaning given in Section 4.10.

**Business Day** means Monday through Friday, inclusive, other than holidays recognized by the City of Charlottesville, Virginia’s, government.

**CAO** means the Office of the City Attorney for the City of Charlottesville, Virginia.

**Certificate of Tenant Eligibility** means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Project Owner, and the Certifying Authority, representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

**Certification of Income** means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

**Certification of Inspection** means a certification by Project Owner that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Landowner's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

**Certification of Residency** means a certification made by an Affordable Unit tenant that states that the Affordable Unit Occupant occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

**Certifying Authority** means PHA or any other entity or entities approved by the Agency pursuant to Section 2.4.

**City Ordinance** means that certain Resolution Number R-24-027 approved by the Charlottesville City Council on March 5, 2024, pursuant to Virginia Code § 15.2-958, and any amendments made thereto, to approve and establish guidelines for the production of new housing for persons of Low and Moderate Income within the Project and to assure that such housing will be occupied following construction by low and moderate income persons throughout the Affordability Period.

**Code** means the Internal Revenue Code of 1986, as amended.

**Designated Affordability Level ("DAL")** means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Tenant's Annual Household Income must fall.

**Household(s)** means all individuals who will occupy the Affordable Unit, including all individuals over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) individual living alone, two (2) or more families living together, or any other group of related or unrelated individuals who share living arrangements as allowable by this Covenant.

**Household Size Adjustment Factor ("HAF")** means the factor related to the number of individuals in a Household for the purpose of establishing the maximum Annual Household Income of an Affordable

Unit, as set forth in the following table:

| Household Size | Household Adjustment Factor |
|----------------|-----------------------------|
| 1              | 0.7                         |
| 2              | 0.8                         |
| 3              | 0.9                         |
| 4              | 1                           |
| 5              | 1.1                         |
| 6              | 1.2                         |

**Housing Cost** means the total monthly payments for rent and Utilities for Rental Affordable Units.

**HUD** means the United States Department of Housing and Urban Development.

**Land Records** means the real property records for the City of Charlottesville, Virginia, located in the Circuit Court for the City of Charlottesville, Virginia.

**Landowner** is identified in the preamble of this Covenant.

**Levels of Affordability** refers to the Tiers of Affordable Housing defined in terms of AMI. Families earning between one hundred and twenty percent (120%) and eighty percent (80%) AMI are considered “moderate-income”; between eighty percent (80%) and fifty percent (50%) AMI, “low-income”; between fifty percent (50%) and thirty percent (30%) AMI, “very low-income” and below thirty percent (30%) AMI, “extremely low-income.”

**Loan Agreement** means that certain loan agreement by and between PHA and the City to be approved by Ordinance adopted by Charlottesville City Council on \_\_\_\_\_, including the promise to construct the Affordable Units in accordance with this Covenant.

**Market Rate Unit** means each Residential Unit that is not an Affordable Unit.

**Maximum Allowable Rent** as defined in Section 4.4.2.

**MAXI** is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 4 for Rental Affordable Units.

**Maximum Sales Price** as defined in Section 5.1.1, if applicable.

**Mortgage** means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the City of Charlottesville, Virginia.

**Mortgagee** means the holder of a Mortgage.

**Occupancy Standard** means the minimum and maximum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

| <b>Affordable Unit Size<br/>(Number of Bedrooms)</b> | <b>Minimum Number of<br/>Individuals in Affordable<br/>Unit</b> | <b>Maximum Number of<br/>Individuals in Affordable<br/>Unit</b> |
|--|---|---|
| Studio/Efficiency                                    | 1   | 1   |
| 1  | 1   | 2   |
| 2  | 2   | 4   |
| 3  | 4   | 6   |
| 4  | 6   | 8   |
| 5  | 8   | 10  |
| 6  | 10  | 12  |

**Occupancy Standard Factor** means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Allowable Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

| <b>Size of Affordable Unit</b> | <b>Occupancy Pricing<br/>Standard</b> | <b>Occupancy Standard<br/>Factor</b> |
|--------------------------------|---------------------------------------|--------------------------------------|
| Efficiency Studio              | 1                                     | .7                                   |
| 1 Bedroom                      | 2                                     | .8                                   |
| 2 Bedroom                      | 3                                     | .9                                   |
| 3 Bedroom                      | 5                                     | 1.1                                  |

**Over-income Tenant** as defined in Section 4.6.5.

**Person** means any individual, corporation, limited liability company, trust, partnership, limited partnership, or other legal entity.

**Project** means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property, including a minimum of a total of thirty-one (31) Rental Affordable Units referred to within the definition of “**Affordability Requirement**.” The term “**Project**” includes all phases of the proposed redevelopment of the Property, identified by the City Real Estate Parcel Identification Numbers 290178000 (currently assigned the street addresses of 501 Cherry Avenue, Charlottesville, Virginia).

**Project Owner** means any person that has an interest in the Property and all of the Project Owner’s assignees, transferees, sublessees, subtenants, and successors in interest.

**Property** refers to the land described on Exhibit A, incorporated herein by reference, which includes the real estate identified, as of the date of this Covenant, by the City real estate parcel identification numbers 290178000 (currently assigned the street address of 501 Cherry Avenue, Charlottesville, Virginia).

**Qualified Tenant** each means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other

individual(s), (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant, and (v) shall occupy the Affordable Unit within the Occupancy Standard.

**Rental Affordable Unit** means an Affordable Unit that shall be leased to a Qualified Tenant.

**Rental Affordable Unit Lease Rider** is that certain lease rider, which is attached to this Covenant as **Exhibit “B”** and incorporated herein, as the same may be amended from time-to-time with the written approval of the Agency.

**Rental Formula** is defined in Section 4.4.2.

**Residential Unit** means a residential dwelling unit constructed within the Project for residential occupancy by one (1) or more individuals who comprise a household.

**Sale** is defined in Section 5.1, if applicable.

**Utilities** means water, sewer, electricity, and natural gas.

## **ARTICLE II** **AFFORDABILITY REQUIREMENT**

**2.1 Requirement of Affordability.** All of the Affordable Units within the Project shall be constructed and reserved as Rental Affordable Units, subject to the Affordability Requirement. The Project shall include a total minimum of forty (40) Rental Affordable Units. For all purposes of this Covenant, the term “**Affordability Requirement**” means and refers to all of the following:

**2.1.1.** All Rental Affordable Units are subject to the Affordability Period.

**2.1.2.** All Rental Affordable Units are subject to the income limitations under subsection (g)(1) and the rent restrictions under subsection (g)(2) of Section 42 of the Code.

**2.1.3.** Rental Affordable Units shall be subject to the following:

(a) No fewer than forty (40) of the Affordable Units within the Project shall be Rental Affordable Units (“**Required Rental Affordable Units**”). The Required Rental Affordable Units are further subject to all of the following:

(i) no fewer than eleven (11) Required Rental Affordable Units shall be rented to Households with a MAXI of fifty percent (50%) Area Median Gross Income; and

(ii) for so long as the City provides rental assistance, no fewer than ten (10) Required Rental Affordable Units shall be rented to Households with a MAXI of forty percent (40%) Area Median Gross Income; and

(iii) no fewer than four (4) Required Rental Affordable Units shall be rented to

Households with a MAXI of thirty percent (30%) Area Median Gross Income; and (iv) the remaining Required Rental Affordable Units shall be rented to Households with a MAXI of sixty percent (60%) Area Median Gross Income.

(b) Additional Rental Affordable Units may be provided within the Project.

(c) The provisions of 2.1.3(a) and (b), above, are, unless otherwise provided, subject to subsection (g)(1)(C) of Section 42 of the Code and the federal Average Income Test.

## **2.2 Affordable Unit Standards and Location.**

**2.2.1 Exterior Finishes.** Exterior finishes of Affordable Units will be consistent across tiers of affordability.

**2.2.2 Interior Finishes.** Interior base finishes, appliances and equipment in the Affordable Units shall be similar across tiers of affordability.

**2.2.3 Affordable Unit Location.** As allowed within the parameters of LIHTC compliance guidelines or other federal law, Affordable Units of various tiers shall be dispersed throughout the Project and shall not be concentrated on any one floor within a building, or within a section of the Project.

**2.3 Marketing Affordable Units.** Project Owner shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Project Owner may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

**2.4 Certifying Authority.** Project Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned, or delayed. Project Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size to determine whether that Household is a Qualified Tenant. If a Household is determined to be a Qualified Tenant, the Certifying Authority shall issue a Certification of Income for the subject Household.

## **ARTICLE III** **USE**

**3.1 Use.** Except as provided herein, all occupants of Rental Affordable Units shall have the same and equal use of all the amenities of the Property and services provided at the Property (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements, or rules shall be imposed on occupants of Rental Affordable Units at any tier of affordability that are not imposed equally on the tenants of the Rental Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to occupants of the Rental Affordable Units at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to occupants of the Rental Affordable Units at

other tiers of affordability. If there is no cost or fee charged to the occupants of the Rental Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to occupants of Rental Affordable Units at other tiers of affordability.

**3.2 Demolition/Alteration.** Subject to normal wear and tear, Project Owner shall maintain, upkeep, repair, and replace interior components (including fixtures, appliances, flooring, and cabinetry) of each Rental Affordable Unit with interior components of equal or better quality than those interior components being replaced.

## **ARTICLE IV** **RENTAL OF AFFORDABLE UNITS**

**4.1 Lease of Rental Affordable Units.** Project Owner shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rate paid by the Qualified Tenant at or below the Maximum Allowable Rent.

### **4.2 Rental Affordable Unit Lease Requirements.**

**4.2.1 Form of Lease.** To lease a Rental Affordable Unit to a Qualified Tenant, the Project Owner shall use a Lease Agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider, as may be amended from time-to-time. The Rental Affordable Unit Lease Rider shall be executed by the Project Owner and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the Lease Agreement and shall execute the Rental Affordable Unit Lease Rider.

**4.2.2 Effectiveness of Lease.** The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Lease Rider, a Certification of Income, and a Certificate of Tenant Eligibility are attached as exhibits to the Lease Agreement. Failure to attach the foregoing shall render the Lease null and void *ab initio*.

**4.2.3 Requirement to Maintain Copies of Leases of Rental Affordable Units.** Project Owner shall maintain or cause to be maintained copies of all initial and renewed Leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such Lease.

### **4.3 Rental Affordable Unit Admissions Process.**

**4.3.1 Referrals.** Project Owner may obtain referrals of prospective tenants of Rental Affordable Units from federal and City of Charlottesville agencies, provided such referrals comply with the requirements of this Covenant, Fair Housing laws, and the requirement that units be generally available to the public. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

**4.3.2 Consideration of Applicants.** For the initial occupancy of the Rental Affordable Units, Project Owner shall select Qualified Tenants through a first-come, first-served system, or other system approved by the Agency, as shall be further provided in the Affordable Unit Marketing Plan. Following

the initial occupancy of the Affordable Units, Project Owner shall consider each applicant in the order in which received, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1. Tenants of Rental Affordable Units participating in the Project-Based Section 8 Program shall be selected in accordance with requirements of that federal program. Any and all of the foregoing shall be consistent with federal Fair Housing laws and regulations and any units financed under the Code (tax credit or tax-exempt bond financed projects) must be generally available to the public.

**4.3.3 Rejection of Applicants.** In connection with the leasing of a Rental Affordable Unit, Project Owner may reject any applicant if, after diligent review of such applicant's application, Project Owner determines in good faith that such applicant does not meet criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable City and federal laws and is the same criteria used to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Project Owner's rejection of such applicant, the Project Owner shall be solely responsible for ensuring that it's rejection of such applicant is not in violation of federal or local law. Project Owner shall provide the Agency with all documents evidencing Project Owner's review and rejection of an applicant, upon the request of the Agency.

**4.3.4 Determination of Eligibility.** Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit. Housing Choice Vouchers (or vouchers from similar programs) shall be an acceptable source of verifiable household income, for the Rental Affordable Units other than those which are part of the Project-Based Section 8 Program.

#### **4.4 Initial Rental Affordable Unit Lease Terms.**

**4.4.1 Term.** The term of any new Rental Affordable Unit lease agreement shall be for a period of one (1) year.

**4.4.2 Establishment of Maximum Rent—Rental Formula.** Rents on Rental Affordable Units shall be rent restricted. Maximum Allowable Rent paid by the Tenant for the first Lease year shall be based on the number of bedrooms and AMI as established annually by HUD. If a household pays for utilities, the maximum rent must be adjusted by the applicable utility allowance.

**4.5 Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the Lease or Lease Renewals for such Rental Affordable Unit annually. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating the MAXI for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is not more than the applicable MAXI.

**4.5.1 Maximum Annual Household Income.** The MAXI is determined through AMI as established annually by HUD, and as specified in Section 2.1, above.

#### **4.6 Subsequent Lease Years,**

**4.6.1 Use of Rental Formula.** For each Lease year after the first Lease year, Maximum Allowable Rent shall be determined in the same manner specified within Section 4.4.2, above.

**4.6.2 Renewal by Tenants of Affordable Units.** For each tenant of a Rental Affordable Unit who intends to renew its residential Lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential Lease, Project Owner shall obtain the following: (i) a Certification of Residency from each such tenant; and (ii) a Certification of Income completed by the Certifying Authority. Project Owner shall not permit a renewal of a Lease for a Rental Affordable Unit, unless the tenant has provided the documents as required herein and the tenant is determined to be a Qualified Tenant. If the tenant fails to provide such documents, Project Owner shall treat such tenant as an Over-Income Tenant and charge market-rate rent, and Project Owner shall designate another unit as a Rental Affordable Unit in accordance with Section 4.6.6. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low-Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

**4.6.3 Annual Recertification of Tenants.** Upon receipt of renewal documents from the tenant of a Rental Affordable Unit at the time of recertification, Certifying Authority shall determine the tenant's household income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify the tenant of the same within fifteen (15) days prior to the expiration of the then-current Lease term. Any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her Lease at the then-current Lease rate for the particular Rental Affordable Unit. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low-Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

**4.6.4 Annual Recertification of Under Income Tenants.** Upon annual recertification, any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental Affordable Unit may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit, or (ii) vacate the Rental Affordable Unit at the end of the tenant's Lease term.

**4.6.5 Annual Recertification of Over-Income Tenants.** Upon annual recertification, if a tenant's Annual Household Income is determined to exceed the MAXI for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Project Owner shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market-Rate Unit, whereupon Project Owner shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

**4.6.6 Changes to Unit Location.** If applicable, Project Owner may change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit (*i.e.*, to accommodate an existing tenant). Following

any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit of similar size and location in the property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed to bring the Parcel in conformity with the Affordability Requirement.

**4.6.7 Rent from Subsidies.** Nothing herein shall be construed to prevent Project Owner from collecting rental subsidy or rental-related payments from any federal, state, or City agency paid to Project Owner and/or the tenant of a Rental Affordable Unit, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall not be included in determining Maximum Allowable Rent or the income of an otherwise Qualified Tenant, all as provided in the Code.

**4.7 No Subleasing of Rental Affordable Units.** The tenant of a Rental Affordable Unit may not sublease any portion of its Rental Affordable Unit or assign its Lease to any other Household, and Project Owner shall not knowingly allow such Rental Affordable Unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. No Rental Affordable Unit may be offered or used for any short-term rental or other transient occupancy.

**4.8 Representations of Affordable Unit Tenant.** By execution of a Lease, the tenant of a Rental Affordable Unit shall be deemed to represent and warrant to the Agency and Project Owner, each of whom may rely thereon, that the tenant's household meets, and will continue to meet, all eligibility requirements contained in this Covenant for a Qualified Tenant of a Rental Affordable Unit.

**4.9 Representations of Project Owner.** By execution of a Lease for a Rental Affordable Unit, Project Owner shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Project Owner is not collecting more than the Maximum Allowable Rent from the Tenant.

**4.10 Annual Reporting Requirements.** Beginning in the first year that any Rental Affordable Unit is occupied by a tenant, Project Owner shall provide an annual report ("**Annual Report**") to the Agency regarding the Rental Affordable Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of Project Owner's Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of Project Owner's Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g., eviction or voluntary departure), the length of vacancy, and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names, ages, and ethnicity of all persons in the Qualified Tenant's Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Project Owner's information and knowledge, the Household occupying each Affordable Rental Unit meets the eligibility criteria of this Covenant for a Qualified Tenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual reports shall be retained by Project Owner for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency, or its designee. Notwithstanding anything contained herein to the contrary, in the event that Project Owner provides a report to an agency within the City government with content substantially similar to the content of the Annual Reports described in this Section, subject to the Agency's prior written approval, then the reporting requirements under this Section shall be satisfied upon Project Owner's delivery of such report to the Agency. The Agency may request Project Owner to provide additional information in support of its Annual Report, as necessary for the Project Owner to verify compliance with the requirements of this Covenant.

**4.11 Confidentiality.** Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act, Project Owner, the Certifying Authority and the Agency shall not disclose to third parties, other than Project Owner's Investor Member, the personal information of the Households, including the identity of the members of the Households, submitted as a part of the Annual Report.

**4.12 Inspection Rights.** The Agency, or its designee, shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to the Project Owner and during normal business hours as provided in the Leases and each Owner shall include notice of the Agency's right of inspection within all Leases of the Rental Affordable Units. If Project Owner receives such notice, Project Owner shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency, or its designee, shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units comply with applicable statutory and regulatory housing requirements and the provisions of this Covenant. The Agency, or its designee, shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

**4.13 Option to Lease.** Following the expiration of any Extended Use Agreement binding on the Property in connection with the allocation of any Low Income Housing Tax Credits, pursuant to Section

42 of the Code, including any extension period thereof, the City shall have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units for a term of forty (40) years at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.

**ARTICLE V**  
**[RESERVED]**

**ARTICLE VI**  
**DEFAULT; ENFORCEMENT AND REMEDIES**

**6.1 Default; Remedies.** In the event Project Owner defaults under any term of this Covenant, and Project Owner does not cure such default within sixty (60) days following written notice of such default from the Agency, the City shall have the right to seek specific performance, injunctive relief, or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for any default(s). In the event such cure cannot reasonably be affected within the sixty (60)-day period, the Project Owner may request such additional time as may reasonably be necessary to cure such default provided the Project Owner has promptly initiated and diligently pursued such cure. Project Owner shall give notice of any such default to Project Owner’s investment member, and any cure provided by such investor member shall be acceptable to the City as if rendered by Project Owner directly.

If Project Owner is in default under the terms of the Covenant, prior to exercising any remedies thereunder, the City shall provide simultaneous written notice of such default to Project Owner’s investor member (the “**Investor Member**”) if Project Owner or Investor Member has kept the City informed of the name and contact information for the Investor Member. Investor Member shall have the independent right to cure any defaults within the time periods set forth above. City hereby agrees that any cure of any default made or tendered by the Investor Member shall be (i) deemed to be a cure by Project Owner, and (ii) accepted or rejected on the same basis as if made or tendered by Project Owner.

**6.2 Right to Attorney’s Fees.** In any legal action to enforce this Covenant, the non-prevailing party shall pay the prevailing party’s reasonable attorney fees and litigation costs incurred in connection with the prevailing party’s efforts to enforce this Covenant. If the Charlottesville City Attorney’s Office (“CAO”) serves as counsel for the City in such legal action, the reasonable attorney fees for the City shall be calculated based on the then applicable hourly rates prevailing within private practice within the City, and the number of hours that employees of the CAO prepare for or participated in any such action.

**ARTICLE VII**  
**COVENANT BINDING ON SUCCESSORS AND ASSIGNS**

This Covenant is and shall be binding upon the Property and shall run with the land and any interest therein as of the Effective Date through the Affordability Period. The rights and obligations of City and Project Owner shall be binding upon and inure to the benefit of the said parties and their respective heirs, successors, and assigns; provided however that all rights of City pertaining to the monitoring and/or enforcement of the obligations of Project Owner shall be retained by City, or such designee of the City as the City may so determine. No sale, transfer, or foreclosure shall affect the validity of this Covenant, except as otherwise expressly provided within this Covenant.

**ARTICLE VIII**  
**[RESERVED]**

**ARTICLE IX**  
**AMENDMENT OF COVENANT**

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released, unless such amendment, modification, or release is set forth within a written instrument executed by a duly authorized official of the Agency on behalf of the City, and by a duly authorized representative of a Project Owner and recorded in the Land Records. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE X**  
**AFFORDABILITY PERIOD**

**10.1.** All Affordable Units in The Project shall be and remain Affordable in accordance with the terms of this Covenant for a **period of ninety-nine (99) years (the “Affordability Period”)**. The Affordability Period for each Rental Affordable Unit shall commence upon the issuance of a certificate of occupancy by the City’s Building Code Official for that unit and shall continue for a period of ninety-nine (99) years thereafter. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the written approval of the Agency, in its sole and absolute discretion.

**10.2.** Notwithstanding the foregoing, in the event the Project, or the Project Owner’s interest in the Property, is foreclosed upon by an institutional or governmental lender following foreclosure by, or deed in lieu of foreclosure, to a Mortgagee in a superior position, or a Mortgage in a superior position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 10.3.

**10.3.** Notwithstanding the foregoing Section 10.2, if Virginia Housing is first lienholder and senior lender, and Virginia Housing is the successful bidder at foreclosure and becomes the successor in interest, then the income, rent or use restrictions required by this Covenant shall terminate, except: (i) twenty percent (20%) of the units within the Project must remain at sixty percent (60%) of AMI following such a foreclosure, and (ii) Virginia Housing must permit additional units at sixty percent (60%) AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (“DCSR”) of at least 1.25, while subject to such additional set-aside. The City Manager, with the approval of the CAO, shall have authority to renegotiate income, rent, and use restrictions required by this Covenant, and to enter into a binding amendment of this



All notices to be given to the tenant of a Rental Affordable Unit shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable person and any successor to give written notice to the City of its mailing and delivery addresses. The failure of the applicable person to keep the City apprised in writing of its mailing and delivery address(es) shall constitute a default under this Covenant.

**11.3** Notices shall be deemed delivered as follows: (i) if hand-delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (ii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

## **ARTICLE XII** **MISCELLANEOUS**

**12.1 Applicable Law; Venue.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of law's provisions thereof. Each of the parties whose signatures are affixed to this Covenant irrevocably agrees on behalf of itself and each of its heirs, successors in interest, and assigns, to submit to the jurisdiction of the Circuit Court for the City of Charlottesville, Virginia, for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of the parties whose signatures are affixed to this Covenant, on behalf of itself and each of its heirs, successors in interest, and assigns, irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Charlottesville, Virginia, and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

**12.2 Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

**12.3 Time of performance.** All dates for performance (including cure of any default) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or City holiday is automatically extended to the next Business Day.

**12.4 Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**12.5 Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party may request in order to fully carry out the purposes and intent of this Covenant, provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

**12.6 Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions and all other provisions shall be and remain in effect without reference to the unenforceable or illegal provision.

**12.7 Limitation on Liability.** Provided that Project Owner has exercised due diligence in the performance of its obligations and duties herein, Project Owner shall not be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Project Owner shall be liable, if Project Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

**12.8 Agency Limitation on Liability.** Any review or approval by the City or the Agency shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to compliance of such submissions, the Project, any Affordable Unit or the Property with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant, or any other covenant granted in favor of the City that is filed among the Land Records or otherwise contractually required. The City shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

**12.9 No Third-Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third-party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

**12.10 Non-Waiver.** The failure of any party to this Covenant to enforce any rights, reservations, restrictions, easements, or conditions contained in this Covenant, regardless of how long such failure shall continue, shall not constitute a waiver of or bar of such right to enforcement. The remedies granted hereunder are cumulative, and the exercise of any one or more shall not be deemed an election of remedies or waiver of the right to pursue other remedies.

**12.11 Representations of Project Owner.** As of the date hereof, Project Owner hereby represents and warrants to City as follows:

(a) This Covenant has been duly executed and delivered by Project Owner and Landowner, and constitutes the legal, valid, and binding obligation of said persons, enforceable against said persons, and their heirs, successors and assigns; and

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Project Owner of any agreement or order which is binding on Project Owner; and

(c) The Project Owner (i) is duly organized, validly existing, and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Virginia and the City of Charlottesville, Virginia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power and authority to execute and deliver this Covenant.

**12.12 Federal Affordability Restrictions.** In the event the Parcel is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood that, to the extent, if any, that such Federal Affordability restrictions, requirements, and provisions conflict with any provision(s) of this Covenant, then in the event the conflicting provision(s) in this Covenant would cause a default of or

finding of non-compliance with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the conflict. In all other instances, the requirements of this Covenant shall control.

**12.13 Division of the Property.** PHA shall have the right to subdivide the Property as required for the development of the Project.

**IN WITNESS WHEREOF**, the parties hereto have executed this Declaration of Affordable Housing Covenants as of the day and year first above written.

**PROJECT OWNER:**

**501-B CHERRY, LLC,**  
a Virginia limited liability company

By: 501-B Cherry MM, LLC,  
a Virginia limited liability company,  
its managing member

By: Piedmont Housing Alliance,  
a Virginia nonstock corporation,  
its managing member

By: \_\_\_\_\_  
Name: Sunshine Mathon  
Title: Executive Director

COMMONWEALTH OF VIRGINIA )  
CITY/COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2026, before me, the undersigned, a notary public in and for said state, personally appeared Sunshine Mathon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Executive Director of Piedmont Housing Alliance, the managing member of 501-B Cherry MM, LLC, the managing member of 501-B Cherry, LLC and that by his signature on the instrument, the entity, individual, or the person on behalf of which the individual acted, executed the instrument.

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

Commission expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO:**

**CITY OF CHARLOTTESVILLE, VIRGINIA**

**By:** \_\_\_\_\_  
**City Manager**

**Approved as to Form:**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**EXHIBIT "A"**  
**TO DECLARATION OF AFFORDABLE HOUSING COVENANTS**

*(Legal Description of the Property)*

**[FINAL LEGAL DESCRIPTION FOR 501-B CHERRY AVE. SITE TO BE INSERTED]**

**EXHIBIT “B”**  
***(TO THE DECLARATION OF AFFORDABLE HOUSING COVENANTS)***

**Rental Affordable Unit Lease Rider**

This Affordable Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated (“Lease”) between \_\_\_\_\_ (“Resident” or “You”) and \_\_\_\_\_, as Management Agent (“Manager”) for \_\_\_\_\_ (“Owner”) for Apartment \_\_\_\_\_ (“Premises”). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

**AFFORDABLE UNIT:** Resident acknowledges that the Premises is subject to that certain Declaration of Affordable Housing Covenant between Owner and the City of Charlottesville, Virginia (“City”), dated \_\_\_\_\_, 2026, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Affordable Unit, which requires the Resident’s household income to be less than or equal to sixty percent (60%) of the area median income (“AMI”).

**DEFINED TERMS:** Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

**ELIGIBILITY:** In order for you, as resident, to be eligible to rent an Affordable Unit, you must be and remain an “Affordable Unit Tenant” as defined in the Affordable Housing Covenant.

**INCOME CERTIFICATION/INCOME RECERTIFICATION:** No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the Lease (or at the City’s option, every two (2) years after the first day of the Lease) the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Affordable Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager’s request. Within ten (10) days of Certifying Authority’s receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household’s AMI percentage, and (a) if the Resident is no longer income eligible for the Premise,

the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current Lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Parcel, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (*i.e.*, an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's Lease term. Prior to the expiration of the Resident's Lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [ ] AMI or [ ] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the Lease term will be deemed by Manager as Resident's election to vacate the Premises.

If Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the Lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a City policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

**PROHIBITION ON SUBLETS AND ASSIGNMENTS:** Resident may not sublease any portion of the Premises or assign its Lease to any other person, except with the prior written consent of the Agency, in its sole and absolute discretion.

**LEASE EFFECTIVE:** The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for Lease renewals) are attached as exhibits to the Lease Agreement.

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date