

**CITY OF PEABODY
AFFORDABLE HOUSING PARTICIPATION AGREEMENT**

This Agreement, made and entered into this _ day of _____ [month] _____, 2021 by and between the City of Peabody, hereinafter called "CITY" and [Developer] and its successors and assigns, hereinafter called "DEVELOPER").

RECITALS

- A) Developer is the developer of the project commonly known as [123 Street}, which is comprised of up to [#] market rate residential apartment units to be located on land lying at [123 Street] being generally identified at Lot X on Peabody Assessor's Map [#] (the "PROPERTY");
- B) Developer proposes to develop up to [number of] [X] market rate apartment units (hereinafter called "PROJECT") on the PROPERTY;
- C) The PROJECT is subject to the City of Peabody Zoning Ordinance, Section 6.11 "Inclusionary Zoning Requirements" (the "ORDINANCE");
- D) It is the intention of the parties to set forth covenant, conditions and restrictions applicable to DEVELOPER'S participation in the City's affordable housing program under the ORDINANCE.

Now, therefore, in consideration of the foregoing, and of the mutual terms and covenants hereinafter set forth, the parties agree that the provisions of the ORDINANCE apply to the PROJECT subject to the terms and conditions of this Participation Agreement;

- 1.) Satisfaction of Conditions. The City herby agrees that execution, recordation and performance of this Agreement constitutes compliance with the terms and provisions of the ORDINANCE. Additionally, an AFFORDABLE HOUSING DEED RESTRICTION will be filed at the Southern Essex County Registry of Deeds to secure the units as affordable.
- 2.) Rental of Units. Developer herby agrees that it shall offer units for rent in accordance with the ORDINANCE to households qualified by the City or it assignee permanently. Developer further agrees to specifically reference any Deed of other conveyance of any of said units all the terms, conditions and restrictions referred to in this Agreement, including Exhibit "A" incorporated herein. The PROJECT shall consist of [number of] [X] units. Of the [number of] [X] units, [number of] [X] shall be set aside for income eligible households under section 6.11 of the Zoning Ordinance ("Affordable Units"). The [number of] [X] will be comprised of [number of] [X] bedroom units and [number of] [X] bedroom units located within the property. The [number of] [X] bedroom units will have an average rents of not greater than \$X,XXX, including utilities and [number of] [X] bedroom units will have an average rents of not greater than \$X,XXX, including utilities. The outward appearance and general level of finish in the units shall be

consistent with the requirements and general level of finish in the units shall be consistent with the requirements and general level of finish in the units shall be consistent with the requirements set forth in the Ordinance. The City and Developer agree that all of the [number of] [X] units will be within the PROJECT.

- 3.) Recordation. DEVELOPER shall execute this agreement, cause the same to be acknowledged and deliver said executed and acknowledged document to the CITY in such form as to permit recordation in the Registry of Deeds of the County of Essex. The CITY shall not be obligated to issue building permits prior to delivery of this Agreement.
- 4.) Limited Construction. Nothing contained herein shall be deemed compliance with or waiver of any other provision of law or condition of approval, except as is expressly stated herein with respect to conditions relating to affordable housing units.
- 5.) Agreement Binding. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the heirs, successors, executors, administrators, assigns, purchasers, contractors, and grantees of both parties and shall be covenants running with the land. In the event that Section 6.11 of the Peabody Zoning Ordinance is amended after the date of this Agreement, the agreement as it exists on the date of t this Agreement. Any amendment or repeal of section 6.11 shall have no effect on the required terms of the Agreement unless by Agreement with the City Council and unless said section 6.11 is determined to be void or in violation of State, Federal or local law by a court of competent jurisdiction.
- 6.) Sales. The Developer and the City agree that the Developer shall have a right to sell all or portions of the property described in Recital A subject to the terms of this Agreement and subject to the Affordable Housing Restrictions and the City shall have recourse against such third-party purchase under 6.11 of the ordinance.
- 7.) Waivers. No waivers by a party of any provision of this Agreement, or of any term, covenant or conditions of this Agreement, or of any ordinance or law, shall be deemed to be a waiver of any other provision or any subsequent breach of any provision of this Agreement, or of any term, covenant or condition of this Agreement, or of any ordinance of law.

IN WITNESS WHEREOF, the CITY and DEVELOPER have executed this Agreement the day and year first written above.

CITY OF PEABODY

DEVELOPER X

BY: _____
Edward A. Bettencourt, Jr., its Mayor

BY: _____
Developer X

APPROVED AS TO FORM

(City Solicitor)

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this _____ day of _____, 2021, before me, the undersigned notary, public, personally appeared Edward A. Bettencourt, Jr., as Mayor of the City of Peabody, proved to me through satisfactory evidence, which was _____ to be the person whose name is signed on the preceding document, and acknowledged the foregoing instrument to be the free act and deed of the person that signed it voluntarily for its stated purpose, before me.

Notary Public:

My Commission Expires: _____

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____ as _____, proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding document, and acknowledged the foregoing instrument to be the free act and deed of the person that signed it voluntarily for its stated purpose, before me.

Notary Public:

My Commission Expires: _____