

**Right of First Refusal Template B**

Applicants seeking points for a Right of First Refusal must use Virginia Housing’s form Right of First Refusal (ROFR) template:

* **Template A**: may be utilized by all applicants and **must** be used by all applicants unable to certify to Virginia Housing’s form Previous Participation Certification *without striking any standard provisions*.
* **Template B:** may only be utilized by applicants who submit Virginia Housing’s form Previous Participation Certification with their respective Application *without* *striking any standard provisions*.

The Right of First Refusal submitted as part of the application must be accompanied by a blackline showing that no changes have been made to this form beyond those necessary to complete it (e.g. filling in blanks, selecting bracketed language as appropriate).

RECORDING REQUESTED BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEN RECORDED MAIL TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RIGHT OF FIRST REFUSAL AGREEMENT**

([PROJECT NAME] Apartments)

RIGHT OF FIRST REFUSAL AGREEMENT (the “Agreement”) dated as of [Closing Date] by and among [OWNER ENTITY], a Virginia limited liability company (the “Owner” or the “Company”), [GRANTEE ENTITY], a Virginia nonstock nonproﬁt corporation (the “Grantee”), and is consented to by [MANAGING MEMBER ENTITY], a Virginia limited liability company (the “Managing Member”), [INVESTOR ENTITY], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] limited liability company (the “Investor Member”), and [SPECIAL MEMBER ENTITY], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] limited liability company (the “Special Member”). The Managing Member, the Investor Member, and the Special Member are sometimes collectively referred to herein as the “Consenting Members.” The Investor Member and Special Member are sometimes collectively referred to herein as the “Non-Managing Members.” This Agreement shall be fully binding upon and inure to the beneﬁt of the parties and their successors and assigns to the foregoing.

Recitals

A. The Owner, pursuant to its [Amended and Restated] Operating Agreement dated on or about the date hereof by and among the Consenting Members (the “Operating Agreement”), is engaged in the ownership and operation of an [ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ]-unit apartment project for families located in [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Virginia and commonly known as “[Project name] Apartments” (the “Project”). The real property comprising the Project is legally deﬁned in Exhibit A; and

B. The Grantee is a qualified nonprofit organization as defined within Section 42 of the Internal Revenue Code of 1986, as amended, (the “Code”) and is both a member of the Managing Member of the Owner and instrumental to the development and operation of the Project; and

C. The Owner desires to give, grant, bargain, sell, and convey to the Grantee certain rights of ﬁrst refusal to purchase the Project on the terms and conditions set forth herein; and

D. Capitalized terms used herein and not otherwise deﬁned shall have the meanings outlined in the Operating Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and suﬃciency of which the parties hereto acknowledge, the parties hereby agree as follows:

**Section 1. Right of First Refusal**

The Owner hereby grants to the Grantee a right of ﬁrst refusal (the “Refusal Right”) to purchase the real or leasehold estate, ﬁxtures, and personal property comprising the Project or associated with the physical operation thereof and owned by the Company at the time (the “Property”), for the price and subject to the other terms and conditions set forth below. The Property will include any reserves of the Partnership that are required by the Virginia Housing Development Authority (“Virginia Housing” or the “Credit Authority”), or any lender of a loan being assumed in connection with the exercise of the Refusal Right to remain with the Project.

**Section 2. Exercise of Refusal Right; Purchase Price**

A. After the end of the Compliance Period, the Company agrees that it will not sell the Property or any portion thereof without ﬁrst oﬀering the Property to the Grantee (the “Refusal Right”), for the Purchase Price (as deﬁned in Section 3); provided, however, that such Refusal Right shall be conditioned upon the receipt by the Company of a “bona ﬁde oﬀer” (the acceptance or rejection of which shall not require the Consent of the Members). The Company shall give the notice of its receipt of such oﬀer (the “Oﬀer Notice”) and shall deliver a copy of the Oﬀer Notice to the Grantee and to Virginia Housing. Upon receipt of the Oﬀer Notice by the Grantee and by Virginia Housing, the Grantee shall have ninety (90) days to deliver to the Company a written notice of its intent to exercise the Refusal Right (the “Election Notice”). An oﬀer made with the purchase price and basic terms of the proposed sale from a third party shall constitute a “bona ﬁde oﬀer” for purposes of this Agreement. Such oﬀer:

(i) may be solicited by the Grantee or the Managing Member (with such solicitation permitted to begin at any time following the end of the fourteenth (14th) year of the Compliance Period, provided that the Election Notice may not be sent until the end of the Compliance Period); and

(ii) may contain customary due diligence, ﬁnancing, and other contingencies. Notwithstanding anything to the contrary herein, a sale of the Project pursuant to the Refusal Right shall not require the Consent of the Non- Managing Members [or of Virginia Housing].

B. If the Grantee fails to deliver the Election Notice within ninety (90) days of receipt of the Oﬀer Notice, or if such Election Notice is delivered but the Grantee does not consummate the purchase of the Project within 270 days from the date of delivery of the Election Notice (each, individually, a “Terminating Event”), then its Refusal Right shall terminate, and the Company shall be permitted to sell the Property free of the Refusal Right.

**Section 3. Purchase Price; Closing**

A. The purchase price for the Property pursuant to the Refusal Right (the “Purchase Price”) shall equal the sum of (i) the principal amount of all outstanding indebtedness secured by the Project, and any accrued interest on any of such debts and (ii) all federal, State, and local taxes attributable to such sale, including those incurred or to be incurred by the partners or members of the Non-Managing Members. Notwithstanding the foregoing, however, the Purchase Price shall never be less than the amount of the “minimum purchase price” as deﬁned in Section 42(i)(7)(B) of the Code. The Refusal Right granted hereunder is intended to satisfy the requirements of Section 42(i)(7) of the Code and shall be interpreted consistently therewith. In computing such price, it shall be assumed that each of the Non-Managing Members of the Owner (or their constituent partners or members) has an eﬀective combined federal, state and local income tax rate equal to the maximum of such rates in eﬀect on the date of Closing.

B. All costs of the Grantee’s purchase of the Property pursuant to the Refusal Right, including any ﬁling fees, shall be paid by the Grantee.

C. The Purchase Price shall be paid at Closing in either of the following methods:

(i) the payment of all cash or immediately available funds at Closing; or

(ii) the assumption of any assumable Loans if Grantee has obtained the consent of the lenders to the assumption of such Loans, which consent shall be secured at the sole cost and expense of Grantee; provided, however, that any Purchase Price balance remaining after the assumption of the Loans shall be paid by Grantee in immediately available funds.

**Section 4. Conditions Precedent; Termination**

A. Notwithstanding anything in this Agreement to the contrary, the right of the Grantee to exercise the Refusal Right and consummate any purchase pursuant thereto is contingent on each of the following being true and correct at the time of exercise of the Refusal Right and any purchase pursuant thereto:

(i) the Grantee or its assignee shall be a “qualiﬁed nonproﬁt organization” as deﬁned in Section 42(h)(5)(C) of the Code or another qualiﬁed purchaser described in Section 42(i)(7)(A) of the Code (collectively, each, a Qualiﬁed Beneﬁciary”); and

(ii) the Project continues to be a “qualiﬁed low-income housing project” within the meaning of Section 42 of the Code.

B. This Agreement shall automatically terminate upon the occurrence of any of the following events and, if terminated, shall not be reinstated unless such reinstatement is agreed to in writing and signed by the Grantee and each of the Consenting Members:

(i) the transfer of the Property to a lender in total or partial satisfaction of any loan; or

(ii) any transfer or attempted transfer of all or any part of the Refusal Right by the Grantee, whether by operation of law or otherwise, except as otherwise permitted under Section 7 of this Agreement; or

(iii) the Project ceases to be a “qualiﬁed low-income housing project” within the meaning of Section 42 of the Code; or (iv) the Grantee fails to deliver its Election Notice or consummate the purchase of the Property within the timeframes outlined in Section 2 above.

C. If the Investor Member removes the Managing Member from the Company for failure to cure a default under the Operating Agreement after all applicable notice and cure periods, the Investor Member may elect to exercise any rights it has under the Operating Agreement to terminate this Agreement and to exercise any rights it has under the Operating Agreement to release this Agreement as a lien against the Project, upon ﬁrst obtaining the prior written consent of Virginia Housing, which consent may be granted or withheld in Virginia Housing’s sole discretion.

**Section 5. Contract and Closing**

Upon determination of the purchase price, the Owner and the Grantee shall enter into a written contract for the purchase and sale of the Property in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Property is located, providing for a closing (the “Closing”) to occur in the City/County of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], Virginia not later than the timeframes set forth in Section 2. In the absence of any such contract, this Agreement shall be speciﬁcally enforceable upon the exercise of the Refusal Right.

**Section 6. Conveyance and Condition of the Property**

The Owner's right, title, and interest in the Property shall be conveyed by quitclaim deed or an assignment of lease, subject to such liens, encumbrances, and parties in possession as shall exist as of the date of Closing. The Grantee shall accept the Property “AS IS, WHERE IS” and “WITH ALL FAULTS AND DEFECTS,” latent or otherwise, without any warranty or representation as to the condition thereof whatsoever, including without limitation, without any warranty as to ﬁtness for a particular purpose, habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Property will be provided. It is a condition to Closing that all amounts due to the Owner and the Investor Member from the Grantee or its Aﬃliates be paid in full. The Grantee shall pay all closing costs, including, without limitation, the Owner’s attorney’s fees. Upon closing, the Owner shall deliver to the Grantee, along with the deed or assignment of the lease to the property, an ALTA owner’s (leasehold, as applicable) title insurance policy dated as of the close of escrow in the amount of the purchase price, subject to the liens, encumbrances, and other exceptions then aﬀecting the title.

**Section 7. Transfer**

The Refusal Right shall not be transferred without the Consent of the Investor Member, except that the Grantee may assign all or any of its rights under this Agreement to an Aﬃliate of Grantee (a “Permitted Assignee”) at the election and direction of the Grantee or to any assignee that shall be a “qualiﬁed nonproﬁt organization” as deﬁned in Section 42(h)(5)(C) of the Code or another qualiﬁed purchaser described in Section 42 of the Code (collectively, each, a “Qualiﬁed Beneﬁciary”).

In the case of any transfer of the Refusal Right, (i) all rights, conditions, and restrictions applicable to the exercise or transfer of the Refusal Right or to the purchase of the Property pursuant thereto shall also apply to such transferee, and (ii) such transferee shall be disqualiﬁed from the exercise of any rights hereunder at all times during which the transferor would have been ineligible to exercise such rights hereunder had it not eﬀected such transfer.

**Section 8. Rights Subordinate; Priority of Requirements of Section 42 of the Code**

This Agreement is subordinate in all respects to any regulatory agreements and to the terms and conditions of the Mortgage Loans encumbering the Property. In addition, it is the intention of the parties that nothing in this Agreement be construed to aﬀect the Owner’s status as owner of the Property for federal income tax purposes prior to exercise of the Refusal Right granted hereunder. Accordingly, notwithstanding anything to the contrary contained herein, both the grant and the exercise of the Refusal Right shall be subject in all respects to all applicable provisions of Section 42 of the Code, including, in particular, Section 42(i)(7). In the event of a conﬂict between the provisions contained in this Agreement and Section 42 of the Code, the provisions of Section 42 shall control.

**Section 9. Option to Purchase**

A. The parties hereto agree that if either the Code is revised or the Service hereafter issues public authority to permit the owner of a low-income housing tax credit project to grant an “option to purchase” pursuant to Section 42(i)(7) of the Code (or other applicable provision of Section 42) as opposed to a “right of ﬁrst refusal” without adversely aﬀecting the status of such owner as owner of its project for federal income tax purposes, then the parties shall amend this Agreement and the Owner shall grant the Grantee an option to purchase the Property at the Purchase Price provided in Section 3 hereof and that meets the requirements of Code Section 42.

B. The parties hereto agree that if either the Code is revised or the Service hereafter issues public authority to permit the owner of a low-income housing tax credit project to grant a ”right of ﬁrst refusal to purchase partner interests’’ and/or “purchase option to purchase partner interests” pursuant to Section 42(i)(7) of the Code (or other applicable provision) as opposed to a “right of ﬁrst refusal to purchase the Project” without adversely aﬀecting the status of such owner as owner of its project for federal income tax purposes (or the status of the Investor Member as a partner of the Company for federal income tax purposes) then the parties shall amend this Agreement and the Investor Members shall provide a right of ﬁrst refusal and/or purchase option, as the case may be, to acquire their Interests for the Purchase Price provided in Section 3 hereof and that meets the requirements of Code Section 42.

**Section 10. Notice**

Except as otherwise speciﬁcally provided herein, all notices, demands or other communications hereunder shall be in writing by hand delivery (whether personally or by courier or other delivery service) or by certified mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. Any such notice(s) shall be deemed given when received at such address or place or, in the case of certified mail, three (3) days after date of mailing.

(A) If to the Owner, at the principal oﬃce of the Company set forth in Article II of the Operating Agreement;

(B) If to a Consenting Member, at their respective addresses set forth in Schedule A of the Operating Agreement;

(C) If to the Grantee, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_];

(D) [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]; and

(E) If to Virginia Housing:

Virginia Housing Development Authority

c/o Director of Tax Credit Programs

601 S Belvidere Street

Richmond, Virginia 23220

**Section 11. Severability of Provisions**

Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the eﬀectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or aﬀect those provisions of this Agreement that are valid.

**Section 12. Binding Provisions**

The covenants and agreements contained herein shall be binding upon and inure to the beneﬁt of the heirs, legal representatives, successors, and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

**Section 13. Counterparts**

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

**Section 14. Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to principles of conﬂicts of law. Notwithstanding the foregoing, Company, Investor Member, and Grantee do not intend the Refusal Right in this Agreement to be a common law right of ﬁrst refusal but rather intend it to be understood and interpreted as a mechanism authorized by Section 42 of the Code to allow nonproﬁt entities to preserve aﬀordable housing for low-income families in accordance with Grantee’s charitable objectives.

**Section 15. Headings**

All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

**Section 16. Amendments**

This Agreement shall not be amended except by written agreement between Grantee and the Owner with the consent of each of the Consenting Members [and Virginia Housing].

**Section 17. Time**

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

**Section 18. Legal Fees**

Except as otherwise provided herein, in the event that legal proceedings are commenced by the Owner against the Grantee or by the Grantee against the Owner in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney’s fees and expenses.

**Section 19. Subordination**

This Agreement is and shall remain automatically subject and subordinate to any bona ﬁde mortgage to (or assigned to) an institutional or governmental lender with respect to the Project. In the event of a foreclosure of any such mortgage or of the giving of a deed in lieu of foreclosure to any such mortgagee, this Agreement shall become void and shall be of no further force or eﬀect.

**Section 20. Rule Against** **Perpetuities Savings Clause**

The term of this Agreement will be ninety years commencing on the date ﬁrst written above unless sooner terminated pursuant to the provisions hereof. If any provision of this Agreement is construed as violating and applicable “Rule Against Perpetuities” by statute or common law, such provision will be deemed to remain in eﬀect only until the death of the last survivor of the now-living descendants of any member of the 116th Congress of the United States, plus twenty-one (21) years thereafter. This Agreement and the Refusal Right herein granted are covenants running with the land, and the terms and provisions hereof will be binding upon, inure to the beneﬁts of, and be enforceable by the parties hereto and their respective successors and assigns.

**Section 21. Third-Party Beneﬁciary; Virginia Housing Rights and Powers**

Virginia Housing shall be a third-party beneﬁciary to this Agreement, and the beneﬁts of all of the covenants and restrictions hereof shall inure to the beneﬁt of Virginia Housing, including the right, in addition to all other remedies provided by law or in equity, to apply to any court of competent jurisdiction within the Commonwealth of Virginia to enforce speciﬁc performance by the parties or to obtain an injunction against any violations hereof, or to obtain such other relief as may be appropriate. Virginia Housing and its agents shall have those rights and powers with respect to the Project as set forth in the Act and the Virginia Housing Rules and Regulations promulgated thereunder, including, without limitation, those rights and powers set forth in Chapter 1.2 of Title 365 of the Code of Virginia (1950), as amended, and 13VAC10-180-10 et seq., as amended.

[Signatures appear on following pages]

Right of First Refusal Agreement [Project name] Apartments Signature Page 1 of \_\_

IN WITNESS WHEREOF, the parties hereto have caused this Right of First Refusal Agreement to be executed by their duly authorized representatives as of the date ﬁrst stated above.

OWNER:

[OWNER], a [Virginia] limited liability company

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SEAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

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

Right of First Refusal Agreement for [PROJECT NAME] Apartments--Signature Page 2 of \_\_

GRANTEE:

[GRANTEE], a [Virginia] limited liability company

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SEAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

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

Right of First Refusal Agreement for [PROJECT NAME] Apartments--Signature Page 3 of \_\_

MANAGING MEMBER:

[MANAGING MEMBER], a [Virginia] limited liability company

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SEAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

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

Right of First Refusal Agreement for [PROJECT NAME] Apartments--Signature Page 4 of \_\_

INVESTOR MEMBER:

[INVESTOR MEMBER], a [Virginia] limited liability company

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SEAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

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

Right of First Refusal Agreement for [PROJECT NAME] Apartments--Signature Page 5 of \_\_

SPECIAL MEMBER:

[SPECIAL MEMBER], a [Virginia] limited liability company

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

SEAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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

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

**EXHIBIT A**

LEGAL DESCRIPTION

[ insert legal description]