

Timber Court Condominiums
3316-3334 N. Old Arlington Heights Road

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Doc#: 0611034004 Fee: \$52.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 04/20/2006 09:01 AM Pg: 1 of 15

**A RESOLUTION AUTHORIZING THE APPROVAL OF AN
AFFORDABLE HOUSING AGREEMENT BETWEEN
THE VILLAGE OF ARLINGTON HEIGHTS AND
TIMBER COURT, L.L.C.**

BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE
VILLAGE OF ARLINGTON HEIGHTS:

SECTION ONE: That an Affordable Housing Agreement between Timber Court,
L.L.C., developer of the property known as Timber Court Condominiums, located at 3316-3334 N.
Old Arlington Heights Road, Arlington Heights, Illinois, and the Village of Arlington Heights, a true
and correct copy of which is attached hereto, be and the same is hereby approved.

SECTION TWO: The Village President and Village Clerk are hereby authorized and
directed to execute said agreement on behalf of the Village of Arlington Heights.

SECTION THREE: This resolution shall be in full force and effect from and after its
passage and approval in the manner provided by law and the agreement shall be recorded by the
Village Clerk in the Office of the Recorder of Cook County.

AYES: JENSEN, FARWELL, STENGREN, ROSENBERG, TOLJANIC, MULDER

NAYS: BREYER, KUCERA

PASSED AND APPROVED this 20th day of March, 2006 .

ATTEST:

Edward Corso
Village Clerk

AGGRES: Timber Ridge Condos Affordable Housing

Eugene Moore
Village President

**RETURN TO:
BOX 111**

LEGAL DEPARTMENT
VILLAGE OF ARLINGTON HEIGHTS
33 South Arlington Heights Rd.
Arlington Heights, IL 60005

RO6-014/A06-006

RO6-014

Seal 3 3/20/06

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005
Attn: Department of Planning & Community Development

(Space above for Recorder's Use)

ARLINGTON HEIGHTS AFFORDABLE HOUSING AGREEMENT

TIMBER COURT CONDOMINIUMS

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of this 20th day of March, 2006, by and between the VILLAGE OF ARLINGTON HEIGHTS, municipal corporation in the State of Illinois (the "Village"), and Timber Court, LLC, (the "Developer"), with reference to the following facts:

- A. The Village of Arlington Heights seeks to expand the availability of housing opportunities for very low income, low income and moderate-income households in the Village.
- B. Developer is the owner of certain real property in the Village of Arlington Heights described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- C. For the purposes of this Agreement, Developer currently intends to construct a total of 108 residential units known as Timber Court Condominiums (hereinafter referred to as the "Master Development") on the Property, and has applied for a preliminary and final Planned Unit Development (PUD), a rezoning to R-6, and an amendment to the Village's Comprehensive Plan for the Property (Ordinance Numbers: 04-046, 04-047, and 05-048).
- D. Developer intends to address the Village's affordable housing goals by constructing, or causing to be constructed, multi-family, ownership for-sale housing units and by selling them to moderate income households at affordable purchase prices.
- E. This Agreement shall be executed and recorded against the Property prior to the recordation of the final plat in the case of subdivision of the Property, or final planned unit development, or prior to issuance of building permits for the Property in the case of all other land use permits, whichever is earliest.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

A06-006/R06-014

A06-006

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Section 1. Definitions. In addition to those terms defined in the Recitals to this Agreement, the following terms have the following meanings in this Agreement:

- a) "Affordable Unit Property" means the legal parcel(s) of land on which the Affordable Units will be constructed, together with any Affordable Units and appurtenant improvements constructed on such land.
- b) "Approval" means any planned unit development or planned community development approval, subdivision approval, use permit, building permit or combined development permit for a residential development.
- c) "Eligible Buyer" means Moderate Income Household who has been determined by the Village of Arlington Heights to be income and asset eligible to purchase an Affordable Unit.
- d) "Maximum Initial Sales Price" means the \$129,250 for a one-bedroom unit and \$140,000 for a 2-bedroom unit for units contracted for sale and closed during the effective period of the 2005 HUD Income Limits and prior to the release by HUD of its 2006 Income Limits. Upon the release of the 2006 HUD Income Limits, the sale prices will be increased by the annual percentage increase in the median household income for a 2-person household with respect to the one-bedroom units and a 3-person household with respect to the two-bedroom units. For units contracted but not closed prior to HUD's issuance of the 2006 Income Limits, the sale price may increase by the amount of the percentage increase in the HUD income limits (for the applicable household size) or a maximum of 3.5%, whichever is lower. The sale prices shall be adjusted each year thereafter on the same basis. Should the developer be unable to sell the units within 90 days of the Village's issuance of Certificates of Occupancy for the units, the developer shall reduce the maximum sale prices.
- e) "Median Income" means the median household income as determined periodically by HUD or replacement federal agency for the Chicago, IL PMSA and updated on an annual basis.
- f) "Moderate Income Household" means a household with an annual income, which does not exceed HUD's annual determination for moderate-income households with incomes of approximately eighty percent (80%) of the Median Income, adjusted for household size, and with household assets which do not exceed the maximum asset limitation for purchasers of affordable units.
- g) "Moderate Income Affordable Unit" means an affordable unit reserved for occupancy by Moderate Income Households at an Affordable sales price.
- h) "Resale Restriction" means a Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase, in the form approved by the Village, to be executed by each buyer of an Affordable Unit and recorded against the Affordable Unit at the time of purchase by the buyer.

Section 2. Satisfaction of Affordable Housing Obligation and Conditions of Approval. The Affordable Housing conditions of the Village Board Approval shall be satisfied with respect

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to the Property if the following conditions are met: (a) Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Sections 3 through 5 below, in compliance with the schedule set forth in Section 6 below and the Affordable Units are sold to homebuyers in compliance with Sections 7 through 9 below.

Section 3. Number of Affordable Units. As a condition to the satisfaction of Developer's affordable housing requirements for the Planned Unit Development (PUD), Developer shall construct, or cause to be constructed, 21 Affordable Units, of which all 21 shall be Moderate Income Affordable Units.

Section 4. Location of Affordable Units. The Affordable Units shall be constructed on the Property in the location(s) shown or described in the attached Exhibit B. The Affordable Units shall be scattered on the Property, intermingled with the Market Rate Units. The legal parcel(s) of land on which the Affordable Units will be constructed, together with any Affordable Units and appurtenant improvements constructed on such land, is referred to herein as the "Affordable Unit Property."

Section 5. Appearance, Size and Bedroom Count. The Affordable Units shall be 12 one-bedroom and 9 two bedroom condominium homes. The Affordable Units shall be of the same general design and appearance as the Market Rate Units. The Affordable Units shall be assigned outdoor parking spaces. The Affordable Units shall include one and two bedroom units in the numbers and with the square footage indicated in Exhibit C to this Agreement.

Section 6. Schedule for Developing Affordable Units. Developer shall construct the Affordable Units simultaneously with all other units in each building. The Developer shall commence construction by June 1, 2006 and complete construction by October 31, 2009.

(a) Prior to recordation of the final planned unit development or final plan or prior to issuance of building permits for the Property in the case of all other land use permits, whichever occurs earliest, this Agreement shall be duly executed by the Village and the Developer and recorded against the Property.

(b) Upon satisfying the applicable conditions stated in Section 6(a) building permits may be released by the Village.

Section 7. Sale by Developer to Eligible Buyers. The Developer shall sell all 21 Affordable Units to Moderate Income Households, at affordable purchase prices as described in Section 8 below. The Developer shall follow a marketing procedure approved by the Village for the purpose of identifying potential buyers that shall receive preference in purchasing the units. The Village will collect applications and issue preliminary certificates of eligibility for the potential buyers found eligible to purchase the Affordable Units and will prioritize the list giving highest priority to current Village residents, those employed in the Village, and parents and adult children of current Village residents. The developer will offer contracts to the persons on the list in the priority order. All contracts must stipulate that the buyers of the Affordable Units must be income-eligible to purchase the units on the date of the closing. Buyers must be recertified by the Village as eligible to purchase the Affordable Units no more than 60 days prior to the closing.

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Section 8. Affordable Purchase Prices. The Affordable Units shall be sold to Eligible Buyers at prices that do not exceed Maximum Initial Sales Prices.

Section 9. Homebuyer Documents and Security Instruments. Prior to the sale of each Affordable Unit, Developer shall ensure that the Eligible Buyer and the Village execute a Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase. The Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase shall be recorded against the Affordable Unit Property at close of escrow on the Sale to the Eligible Buyer. The Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase shall be recorded junior only to the Eligible Buyer's first mortgage loan, unless otherwise approved in writing by the Village.

Section 10. Village Approval of Documents. The following documents, to be approved in writing by the Village, shall be used in connection with the development sale of the Affordable Units. Approval of the following documents by the Village shall be required prior to the issuance of building permits for the Affordable Units.

- (a) A marketing plan consistent with the terms of this Agreement and Village marketing requirements.
- (b) Form of Purchase and Sale Agreements for sale of the Affordable Units.
- (c) Form of the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase.
- (d) Condominium documents. The condominium documents will stipulate that the percentage of ownership for each condominium unit will be based on the initial sale price not on the square footage of the unit or other bases.

Section 11. Compliance Reports, Inspections, Monitoring. Following completion of construction of any of the Affordable Units, a Compliance Report verifying compliance by Developer with the terms of this Agreement, and certified as correct by the Developer under penalty of perjury, shall be submitted monthly to the Department on the first (1st) calendar day of each month, commencing 30 days following the date of issuance of a final certificate of occupancy for the first Affordable Unit to be completed and continuing until all Affordable Units have been sold to Eligible Buyers. Developer shall retain all records related to compliance with obligations under this Agreement for a period not less than five years from the date of sale of all units in the Master Development, and make them available to Village employees or others designated by the Village for inspection and copying on five business days' written notice. Developer shall permit Village employees or others designated by the Village to inspect the Property to monitor compliance with this Agreement following two business days' written notice to Developer.

Section 12. Default and Remedies. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within 30 days after the delivery of a notice of default from the Village will constitute a default under this Agreement and a failure to

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satisfy the conditions of Approval with respect to the Property and the requirements of the Ordinance and, in addition to remedies for breach of this Agreement, the Village may exercise any and all remedies available to it with respect to the Developer's failure to satisfy the conditions of Approval, including but not limited to:

- (a) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Master Development, including without limitation final inspections for occupancy and/or certificates of occupancy;
- (b) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;
- (c) where one or more persons have received financial benefit as a result of violation of this Agreement, the Village may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;
- (d) prosecuting a misdemeanor against any person who has sold a residential unit at a price exceeding the maximum allowed under this Agreement or to a household not qualified under this Agreement, or who has otherwise violated any other agreement with respect to the development; or
- (e) any other means authorized under the Village Municipal Code or by applicable law.

Section 13. Remedies Cumulative. No right, power, or remedy given to the Village by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Village by the terms of any such document or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the Village to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Village of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 14. Attorneys Fees and Costs. The Village shall be entitled to receive from the Developer or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including without limitation reasonable attorneys' fees and the costs of Village staff time.

Section 15. Appointment of Other Agencies. At its sole discretion, the Village may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the Village's obligations under this Agreement.

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Section 16. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) Village and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the gross negligence or willful misconduct of the Village. The provisions of this section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this section shall remain in full force and effect.

Section 17. Insurance Requirements. Until the sale of Affordable Units to Eligible Buyers in compliance with this Agreement, Developer and its successors and assigns acquiring title to the Affordable Unit Property shall obtain, at their expense, comprehensive general liability insurance for development of the Affordable Units, naming Indemnitees as additional named insureds with aggregate limits of not less than Two Million Dollars (\$2,000,000), for bodily injury and death and property damage, including coverages for contractual liability and products and completed operations, purchased by Developer or its successors or assigns from an insurance company duly licensed to engage in the business of issuing such insurance in the State, with a current Best's Key Rating of not less than A-V, such insurance to be evidenced by an endorsement which so provides and delivered to the Department prior to the issuance of any building permit for the Affordable Units.

Section 18. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addressed set forth below:

TO THE VILLAGE:

Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005
Attn: Department of Planning & Community Development

TO THE DEVELOPER:

Timber Court, LLC
3047 North Lincoln Avenue, Suite 400
Chicago, IL 60657
Attn: Mr. David Zazove

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

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Section 19. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

Section 20. Duration and Amendment of Agreement. This Agreement shall remain in effect for so long as the Property is subject to affordable housing obligations. This Agreement, and any section, subsection, or covenant contained herein, may be amended by the Village Board.

Section 21. No Claims. Nothing contained in this Agreement shall create or justify any claim against the Village by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Master Development.

Section 22. Applicable Law. This Agreement shall be governed by Illinois law.

Section 23. Waivers. Any waiver by the Village of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Village to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Village to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Village's written consent to future waivers.

Section 24. Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 25. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 26. Recording of Agreement. The Developer shall cause this Agreement to be recorded against the Property and the Affordable Unit Property, in the Official Records of the Village of Arlington Heights.

Section 27. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect.

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Section 28. Exhibits. The following exhibits are attached to this Agreement:

- Exhibit A Legal Description of the Property
- Exhibit B Location of Affordable Units
- Exhibit C Income Level, Size and Bedroom Count of Affordable Units
- Exhibit D Maximum Initial Sales Prices for Affordable Units and Maximum Income and Asset Levels of Homebuyer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER:

TIMBER COURT, LLC, an Illinois
LLC

By: [Signature]

Its: PRESIDENT

VILLAGE:

Village of Arlington Heights, a municipal corporation in the State of Illinois

By: [Signature]

Its: President of Village Board

APPROVED AS TO FORM:

By: [Signature]
Village Counsel

Cook County Clerk's Office

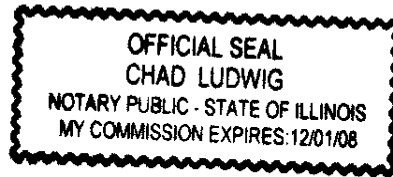
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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On February 22, 2006, before me, David Zazove personally appeared and, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Chad Ludwig
Notary Public in and for said State



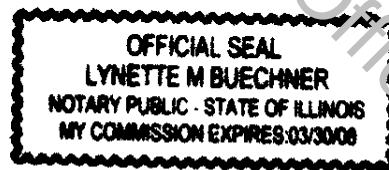
(SEAL)

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On March 20, 2006, before me, Arlene T. Mulder personally appeared and, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Lynette M Buechner
Notary Public in and for said State



(SEAL)

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 10 in Freedom Small Farms being a subdivision in the north west quarter of the north west quarter of the north half of the south west quarter of the north west quarter of Section 8, Township 42 North, Range 11, east of the Third Principal Meridian, in Cook County, Illinois.

PIN: 03-08-100-013

Also

Lots 11, 12, 13, and 14 in the Freedom Small Farms, a subdivision of the north 485.6 feet (except the east 307.95 feet thereof) together with the east 433.5 feet (except the north 485.6 feet thereof), of the northwest quarter of Section 8, township 42 North, Range 11 east of third principal meridian, according to the plat thereof recorded June 17, 1941, as document Number 12703394.

PIN: 03-08-100-013, 014, 015, 016, and 017

Property of Cook County Clerk's Office

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EXHIBIT B

LOCATION OF AFFORDABLE UNITS

Building One

Units 205, 207, 305, 307, 405, 407, and 505

Building Two

Units 205, 207, 305, 307, 405, 407, and 505

Building Three

Units 205, 207, 305, 307, 405, 407, and 505

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT C****INCOME LEVEL, UNIT NUMBER, SIZE AND BEDROOM COUNT
OF AFFORDABLE UNITS**

(same for each of the 3 buildings)

INCOME LEVEL OF	TYPE OF UNIT (townhouse/cond o or detached)	UNIT NUMBER	NUMBER OF BEDROOMS	SQUARE FOOTAGE
Moderate income or below	Condominium	205	1	784
Moderate income or below	Condominium	207	2	1105
Moderate income or below	Condominium	305	1	784
Moderate income or below	Condominium	307	2	1105
Moderate income or below	Condominium	405	1	784
Moderate income or below	Condominium	407	2	1105
Moderate income or below	Condominium	505	1	784

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EXHIBIT D

MAXIMUM INITIAL SALES PRICES FOR AFFORDABLE UNITS AND MAXIMUM INCOME AND ASSET LEVELS OF HOMEBUYER

(adjusted pursuant to paragraph E, Section 1 d) of this Agreement)

A. Maximum Initial Sales Price.

Moderate Income Units

One Bedroom: \$129,250

Two Bedroom: \$140,000

B. Maximum Income of Homebuyers

Moderate Income - 80% of AMI, adjusted for household size, as determined annually by HUD

2005 Moderate Income Limits

1 person \$40,600

2 persons \$46,400

3 persons \$52,200

4 persons \$58,000

5 persons \$62,650

6 persons \$67,300

C. Maximum Assets of Homeowners

In order to qualify as an eligible purchaser, the purchaser's household assets shall not exceed \$50,000, including equity in any real estate but excluding retirement savings and pension funds for which a financial penalty would be assessed for early withdrawal or which cannot be withdrawn. Households with assets totaling \$250,000 and over, including equity in real estate, retirement savings, and pension funds are automatically be disqualified.

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National City Mortgage

9101 N. Greenwood
Niles, IL 60714

December 29, 2005

To: Nora Boyer
City of Arlington Heights

From: Dan Gjeldum

Re: Timber Court condominium project

Per your request, this memo is to serve as notification that National City Mortgage will provide mortgages to your Affordable Housing Applicants in accordance with the covenants placed on the Timber Court project by the City.

We have no issue with the covenants as they currently stand. If there are any changes to the covenants please make sure to notify me so I can advise my underwriting team.

Feel free to contact me with any questions.

Sincerely,

Dan Gjeldum

Dan Gjeldum
Vice President

Office: 847-795-2233
Cell: 312-543-9692

*Please accept this digital signature as original. Advise if you would like a hard copy for your records and one will be mailed.