

**Development Name:** \_\_\_\_\_

**Development Address:** \_\_\_\_\_

## **HOUSING COVENANT**

[Housing in Downtown Tax Abatement Program]

[Ground Lease]

THIS HOUSING COVENANT [Housing in Downtown Tax Abatement Program] (this "**Covenant**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("**Effective Date**"), by \_\_\_\_\_, a \_\_\_\_\_ and its successors and assigns (the "**Development Owner**") having an address of \_\_\_\_\_, for the benefit of the District of Columbia, a municipal corporation, acting by and through the Department of Housing and Community Development, (the "**District**").

### **RECITALS**

R-1. As of Effective Date, Development Owner is the ground lessee of certain parcel(s) of land located in the District of Columbia as further described in **Exhibit A** (the "**Parcel**") and fee simple owner of the improvements located thereon .

R-2. Development Owner, or its designee or assignee, submitted an application to DMPED (as hereinafter defined) for a tax abatement under the Housing in Downtown tax abatement program, pursuant to D.C. Official Code §§ 47-860.01–.04 and the regulations promulgated in Title 10, Chapter 66-B of the DCMR.

R-3. DMPED issued an eligibility and reservation letter for the Real Property (as hereinafter defined) based on the Development (as hereinafter defined).

R-4. As a condition of DMPED's issuing a Tax Abatement Certification (as hereinafter defined) for the Real Property, Development Owner is required to execute this Covenant and record it in the Land Records against the Parcel.

R-5. The Development Owner is hereby entering into this Covenant to set forth the terms, restrictions, and conditions upon which Development Owner (1) will maintain, rent, and sell the Development, including the Affordable Housing Units (as hereinafter defined) and (2) will inform tenants of the Housing Units (as hereinafter defined) of the TOPA (as hereinafter defined) exemption.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Development Owner hereby covenants as follows:

### **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.

**Acknowledgment of Covenant:** is that certain Acknowledgment of Covenant executed by a Qualified Purchaser, in such form as the Agency requires.

**Affordability Requirement:** is the requirement that certain Housing Units in the Development are to be Affordable Housing Units and reserved for Eligible Households in accordance with the DOB Compliance Certification.

**Affordable Housing Unit:** means each Housing Unit in the Development identified as a “HID Unit” in the DOB Compliance Certification.

**Affordable Housing Unit Index:** is an index of the Affordable Housing Units in the Development that identifies: (a) unit number (or similar identifier) and floor for each Affordable Housing Unit and whether each Affordable Housing Unit is a Rental Affordable Housing Unit or For Sale Affordable Housing Unit; (b) the Designated Affordability Level of each Affordable Housing Unit; (c) the approximate square footage and number of Bedrooms of each Affordable Housing Unit and a schematic drawing showing the layout of each Affordable Housing Unit; (d) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Affordable Housing Units and Market-Rate Units; (e) a listing or schedule of the amenities, services, upgrades, parking, and other facilities that will be offered as an option at an additional upfront or recurring cost or fee to all Affordable Housing Units and Market-Rate Units; and (f) residential floor plans showing the location of each Affordable Housing Unit and each Market-Rate Unit.

**Affordable Housing Unit Owner:** a member or members of a Qualified Purchaser that own(s) a For Sale Affordable Housing Unit.

**Affordable Housing Unit Tenant:** a member or members of a Qualified Tenant that lease(s) a Rental Affordable Housing Unit.

**Agency:** means, as of the Effective Date, the D.C. Department of Housing and Community Development, pursuant to Mayor’s Order 2009-112 (effective June 18, 2009), or such other agency of the District of Columbia government that may subsequently be delegated the authority of the Mayor to monitor, enforce, or otherwise administer the Affordable Housing Unit requirements of the HID Laws.

**Annual Income:** has the meaning given in the IZ Implementation Regulations.

**Annual Report:** has the meaning given in Section 4.11.

**Applicable Law:** means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, environmental laws, laws relating to historic preservation, and laws relating to accessibility for persons with disabilities.

**Bedroom:** has the meaning given in the HID Regulations.

**Business Day**: means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

**Certificate of Inclusionary Zoning Compliance**: means the certificate issued by DOB in accordance with the IZ Implementation Regulations.

**Certification of Income, Affordability, and Housing Size**: means the certification signed by a Certifying Entity that satisfies the requirements of the IZ Implementation Regulations.

**Certifying Entity**: has the meaning given in the IZ Implementation Regulations.

**Covenant Term**: is defined in Section 12.1.

**DCMR**: means the District of Columbia Municipal Regulations, as may be amended from time to time.

**Declaration of Eligibility**: has the meaning given in the IZ Implementation Regulations.

**Designated Affordability Level**: means the maximum percentage of the MFI for a Qualified Purchaser or Qualified Tenant of each Affordable Housing Unit as listed in the DOB Compliance Certification and mandated by the HID Laws.

**Development**: means the buildings or improvements constructed or redeveloped that include Housing Units on the Parcel.

**Development Owner**: is defined in the Preamble.

**Development Sale**: means a sale as defined in section 402 of the Tenant Opportunity to Purchase Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3404.02).

**DHCD**: means the District of Columbia Department of Housing and Community Development.

**District Lottery**: means the lottery procedures described in the IZ Implementation Regulations.

**DMPED**: means the District of Columbia Office of the Deputy Mayor for Planning and Economic Development.

**DOB**: means the District of Columbia Department of Buildings.

**DOB Compliance Certification**: means the certification issued by DOB in accordance with the HID Regulations, attached hereto as **Exhibit B** and incorporated by reference.

**Effective Date**: is defined in the preamble.

**Eligible Household**: means, as applicable, either a Qualified Purchaser or Qualified

Tenant.

**For Sale Affordable Housing Unit:** means an Affordable Housing Unit that has, or will be, sold to a Qualified Purchaser.

**Ground Lessor:** is \_\_\_\_\_, a \_\_\_\_\_, which is the ground lessor and fee simple owner of the Parcel.

**HID Laws:** means, collectively, D.C. Official Code §§ 47-860.01–.04 and the HID Regulations.

**HID Regulations:** means the regulations promulgated in Title 10, Chapter 66-B of the DCMR.

**Household:** has the meaning given in the HID Regulations.

**Housing Locator Website:** means a website established or designated by the Agency pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code § 42-2131, *et seq.*).

**Housing Unit:** has the meaning given in the HID Regulations.

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

**Inclusionary Zoning Program:** has the meaning given in the HID Regulations.

**IZ Implementation Regulations:** means the Inclusionary Zoning Implementation regulations published in Chapter 22 of Title 14 of DCMR, as amended.

**Land Records:** has the meaning given in the HID Regulations.

**Leasing Report:** is defined in Section 7.3.

**Market-Rate Unit:** is each Housing Unit in the Development that is not an Affordable Housing Unit.

**Maximum Allowable Rent:** is the maximum rental rate of a Rental Affordable Housing Unit as determined by the then-current Rent and Price Schedule.

**Maximum Resale Price:** is the maximum resale price of a For Sale Affordable Housing Unit as determined pursuant to the procedures contained in **Schedule 1** attached hereto.

**Maximum Sales Price:** is the maximum price of a For Sale Affordable Housing Unit as determined by the then-current Rent and Price Schedule.

**Median Family Income** or **MFI:** has the meaning given in the HID Regulations.

**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 District of Columbia.

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

**Notice of Availability**: has the meaning given in the IZ Implementation Regulations.

**OAG**: means the Office of the Attorney General for the District of Columbia.

**Owner**: means, in the context of a Development with Rental Affordable Housing Units, the Development Owner, and in the context of a Development with For Sale Affordable Housing Units, the Development Owner for so long as such party owns the applicable For Sale Housing Affordable Unit, and then thereafter, the Affordable Housing Unit Owner that owns such For Sale Affordable Housing Unit.

**Parcel**: is defined in the recitals.

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

**Qualified Purchaser**: means a Household that satisfies the requirements contained in the IZ Implementation Regulations to purchase an Affordable Housing Unit.

**Qualified Tenant**: means a Household that satisfies the requirements contained in the IZ Implementation Regulations to rent an Affordable Housing Unit.

**Real Property**: means the Parcel and the improvements comprising the Development.

**Rent and Price Schedule**: has the meaning given in the IZ Implementation Regulations.

**Rental Affordable Housing Unit**: means an Affordable Housing Unit that will be or has been leased to a Qualified Tenant.

**Rental Affordable Housing Unit Lease Rider**: is the lease rider in the form approved by the Agency that shall be attached to a lease agreement for a Rental Affordable Housing Unit and shall be executed by the Owner and each member of the Affordable Housing Unit Tenant who is over the age of eighteen (18) years old.

**Residential Use**: has the meaning given in the HID Regulations.

**Tax Abatement Certification**: is that certification issued by DMPED for the Development pursuant to the HID Laws.

**TOPA**: means the Tenant Opportunity to Purchase Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3404.02).

**TOPA Exemption Period**: is defined in Section 7.1.2.

**Transferee**: is defined in Section 5.6.

**Unit Sale**: is a conveyance of all of the fee simple interest in a For Sale Affordable Housing Unit.

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

2.1 **Development.** The Development Owner hereby covenants and represents to District that it constructed the Development in accordance with (i) the building permit(s) issued for the Development, (ii) the DOB Compliance Certification, and (iii) Applicable Law, including the HID Laws.

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

2.2.1 *Affordable Housing Unit Index.* As of the Effective Date, the Agency has approved the Affordable Housing Unit Index, which is attached hereto as **Exhibit C** and incorporated herein by reference. Owner shall not amend or modify the Affordable Housing Unit Index, except to the extent permitted under Section 4.10, without the Agency’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Any such approved amendment or modification as a result of re-designations of Affordable Housing Units under Section 4.10 shall be recorded in the Land Records as an amendment to this Covenant, at such time as determined by the Agency.

2.2.2 *Affordable Unit Mix.* The percentage of Affordable Housing Units that are studios shall not exceed the percentage of all Market-Rate Units that are studios, and the percentage of Affordable Housing Units that have only one-bedroom shall not exceed the percentage of all Market-Rate Units that have only one-bedroom.

2.2.3 *Exterior Finishes.* All Affordable Housing Units shall be comparable in exterior design, materials, and finishes to the Market-Rate Units.

2.2.4 *Interior Amenities.* The interior amenities of Affordable Housing Units, such as finishes and appliances, shall be comparable to the Market-Rate Units but may consist of less expensive materials and equipment, provided the interior amenities are durable, of good quality, and consistent with contemporary standards for new housing.

2.2.5 *Location.* Affordable Housing Units shall not be overly concentrated by tenure, dwelling type, or on any floor of Development. Affordable Housing Units in “apartment houses” (as defined in 11-C DCMR §100.2) shall not be located in “cellar space” (as defined in 11-C DCMR §100.2).

## ARTICLE III USE COVENANTS

3.1 **Use of Development.** Owner acknowledges and agrees that, as a condition of the Real Property receiving a tax abatement in accordance with the HID Laws, Development Owner constructed the Development to be used for Residential Use and committed to setting aside certain Housing Units as Affordable Housing Units in accordance with this Covenant and the HID Laws. Subject to such temporary closures or use cessations necessary for an Owner to make restorations to the improvements for casualty or condemnation, alterations, or repairs, Owner will continuously use and operate the Development for Residential Use during the Covenant Term. If an Owner intends to temporarily close or cease using any portion of the improvements owned by such Owner to make a restoration, alteration, or repair, the Owner shall provide written notice to DMPED and DHCD prior to undertaking such restoration, alteration, or repair. An Owner shall not use any portion of the Development it owns for any use other than Residential Use.

3.2 **Use of Housing Units.** Except as provided herein, all Affordable Housing Unit Owners and Affordable Housing Unit Tenants shall have the same and equal use and enjoyment of all of the amenities and services provided at the Development as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements, or rules shall be imposed on Affordable Housing Unit Owners or Affordable Housing Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and/or recurring cost or fee to owners or tenants of the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Housing Unit Owners and Affordable Housing Unit Tenants of comparable Affordable Housing Units at the same or lower upfront and/or recurring cost or fee. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Housing Unit Owners or Affordable Housing Unit Tenants of comparable Affordable Housing Units.

3.3 **Property Management.** If the Owner shall enter into a management contract for the management of the Development, it shall be with a licensed professional management company, in good standing with the District of Columbia and experienced in managing properties of a similar type and size as the Development. The Owner shall provide a copy of this Covenant to any and all management companies. The Owner shall also notify the Agency and provide the Agency with the relevant contact information of the management company prior to the effective date of the management.

3.3.1 *Management Change.* Owner shall notify the Agency at least sixty (60) days in advance of any change in management and shall provide the Agency with the name and relevant contact information of the proposed management company prior to the effective date of any change. The proposed successor manager shall be a licensed professional management company, in good standing with the District of Columbia, and experienced in managing properties of a similar type and size as the Development.

3.3.2 *Records Required.* Owner shall be responsible for maintaining or obtaining copies of all relevant documents for the Development from any previous management company to ensure ongoing compliance with the terms of this Covenant and Applicable Law, including the HID Laws, and the ability to document such compliance.

3.4 **Demolition/Alteration of Affordable Housing Units.** Except for maintenance, upkeep, and repairs and replacement of interior components (including fixtures and appliances) of the Affordable Housing Unit with interior components of equal or better quality than those interior components being replaced, an Owner shall not demolish or otherwise structurally alter an Affordable Housing Unit or remove fixtures or appliances installed in an Affordable Housing Unit without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency; provided, that, in the event the changes are comparable to changes made to the Market-Rate Units, no Agency approval shall be required.

#### **ARTICLE IV PROCEDURES FOR RENTAL OF AFFORDABLE HOUSING UNITS**

4.1 **Rental of Rental Affordable Housing Units.** In the event the Development contains Rental Affordable Housing Units, the provisions of this Article IV shall apply. Owner shall reserve, maintain, and lease the Rental Affordable Housing Units to Qualified Tenants (i) in accordance with this Covenant and the DOB Compliance Certification, and (ii) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Notice of Availability.** Owner shall notify the Agency that a Rental Affordable Housing Unit is available by filing a written Notice of Availability with the Agency prior to marketing any Housing Unit for rent.

4.3 **Housing Locator Website.** Within seven (7) days after receipt from the Agency of the Maximum Allowable Rent for each Rental Affordable Housing Unit listed in the Notice of Availability, Owner shall register the Rental Affordable Housing Unit for which the Notice of Availability was filed with the Housing Locator Website.

4.4 **Method of Selection of Households.** Owner shall select Households for Rental Affordable Housing Units in accordance with the IZ Implementation Regulations.

4.5 **Rental Affordable Housing Unit Lease Requirements.** Owner hereby covenants that it shall utilize a lease agreement for Rental Affordable Housing Units that incorporates and attaches the Rental Affordable Housing Unit Lease Rider.

4.6 **Rental Affordable Housing Unit Lease Terms.**

4.6.1 *Lease Period.* The lease term for a Rental Affordable Housing Unit shall be for a period of one (1) year. The lease term shall not automatically renew and shall only be renewed in accordance with the requirements of the IZ Implementation Regulations.

4.6.2 *Maximum Allowable Rent.* The Maximum Allowable Rent for each Rental Affordable Housing Unit shall be determined by the Rent and Price Schedule in effect at the time of lease execution.



4.6.3 *Lease Renewal.* An Affordable Housing Unit Tenant shall not have its lease renewed unless the Affordable Housing Unit Tenant complies with the requirements contained in Section 2217.1 of the IZ Implementation Regulations.

4.6.4 *Signatures Required.* All members of the Household who are eighteen (18) years of age or older shall sign the lease and the Rental Affordable Housing Unit Lease Rider.

4.6.5 *Copies to the Agency.* Within thirty (30) days after the signing of each lease, Owner shall provide the Agency with a fully signed copy of each lease, including a copy of the Rental Affordable Housing Unit Lease Rider and the Declaration(s) of Eligibility.

4.7 **No Subleasing of Rental Affordable Housing Units.** An Affordable Housing Unit Tenant may not sublease any Rental Affordable Housing Unit or assign its lease to any Rental Affordable Housing Unit. This prohibition includes short-term renting to, or permitting occupancy by, Persons who are not included in an Affordable Housing Unit Tenant's Household, of all or a portion of the Affordable Housing Unit, either directly or through services such as AirBnb or other rental agency providers.

4.8 **Representations of Affordable Housing Unit Tenant.** By execution of a lease for a Rental Affordable Housing Unit, each Affordable Housing Unit Tenant shall be deemed to represent and warrant to the District, Owner and the Certifying Entity, as applicable, each of whom may rely thereon, that the Affordable Housing Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Housing Unit.

4.9 **Representations of Owner.** By execution of a lease for a Rental Affordable Housing Unit, Owner shall be deemed to represent and warrant to the District, which may rely on the following, that: (i) the Household is a Qualified Tenant pursuant to the executed Certification of Income, Affordability, and Housing Size and Declaration of Eligibility received by Owner, and (ii) Owner is not charging the Affordable Housing Unit Tenant more than the Maximum Allowable Rent.

4.10 **Unit Re-designation.** If a Household is no longer income eligible for the original MFI level for the Rental Affordable Housing Unit, and the Development has Rental Affordable Housing Units with higher MFI levels, and if the Household qualifies for such higher MFI level Rental Affordable Housing Unit, the existing Rental Affordable Housing Unit may be re-designated as a higher MFI level Rental Affordable Housing Unit. If a Household is no longer income eligible for the original MFI of the Rental Affordable Housing, and the Development does not have Rental Affordable Housing Units with higher MFI levels for which the Household qualifies, the Household may remain in the Rental Affordable Housing Unit if the Household agrees to pay market rate rent.

4.10.1 *Unit Mix Restored.* When re-designating units, the original mix of MFI levels must be restored within the Development as soon as possible, so the property manager should re-designate a new Rental Affordable Housing Unit with the same number of Bedrooms to replace the lower MFI Rental Affordable Housing Unit that was re-designated when one becomes available.

4.10.2 *Notification Required.* Owner or the property manager must notify the Agency in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated.

4.11 **Annual Reporting Requirements.** Owner shall submit an annual report (“**Annual Report**”) to the Agency regarding the Rental Affordable Housing Units, which shall be prepared and submitted in accordance with the requirements of the IZ Implementation Regulations. The Annual Reports shall be retained by 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 Owner provides a report to an agency within the District 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 Owner’s delivery of such report to the Agency. The Agency may request Owner to provide additional information in support of its Annual Report.

4.12 **Confidentiality.** Except as may be required by Applicable Law, including, without limitation to, the *District of Columbia Freedom of Information Act of 1976*, D.C. Official Code § 2-531, *et seq.*, Owner and the Agency shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.13 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Housing Units, upon reasonable advance notice to Owner. The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Housing Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Housing Units and associated files and documentation to confirm compliance with the requirements of this Covenant and the HID Laws.

## ARTICLE V PROCEDURES FOR SALE OF AFFORDABLE HOUSING UNITS

5.1 **Sale of For Sale Affordable Housing Units.** In the event the Development contains For Sale Affordable Housing Units, the provisions of this Article V shall apply. An Owner shall reserve and sell a For Sale Affordable Housing Unit to a Qualified Purchaser in accordance with this Covenant and the DOB Compliance Certification. For the initial Unit Sale, each For Sale Affordable Housing Unit shall be sold to a Qualified Purchaser at a purchase price at or below the Maximum Sales Price. For all subsequent Unit Sales, the For Sale Affordable Housing Unit shall be sold to a Qualified Purchaser at a purchase price at or below the Maximum Resale Price.

5.1.1 *Notice of Availability.* An Owner shall notify the Agency that a For Sale Affordable Housing Unit is available by filing a written Notice of Availability with the Agency prior to marketing any Housing Unit for sale.

5.1.2 *Marketing of Affordable Housing Units.* An Owner shall market a For Sale Affordable Housing Unit to each of the Households selected under the District Lottery, including

showings and providing other marketing information, in accordance with the requirements of the IZ Implementation Regulations.

5.1.3 *Housing Locator Website.* Within seven (7) days after receipt from the Agency of the Maximum Sales Price or Maximum Resale Price for each For Sale Affordable Housing Unit listed in the Notice of Availability, Owner shall register the For Sale Affordable Housing Unit for which the Notice of Availability was filed with the Housing Locator Website.

5.1.4 *Method of Selection of Households.* Owner shall select Households for a For Sale Affordable Housing Unit in accordance with the IZ Implementation Regulations.

## 5.2 **Rental of a For Sale Affordable Housing Unit.**

5.2.1 *Temporary Rentals.* An Affordable Housing Unit Owner may temporarily lease a For Sale Affordable Housing Unit only under the limited circumstances described in Section 2220 of the IZ Implementation Regulations, and only if: (i) such lease is not otherwise prohibited by applicable cooperative, condominium, or homeowner association rules and (ii) the Affordable Housing Unit Owner has an intent to return to the unit.

5.2.2 *Waiver of Principal Occupancy Required.* Upon written submission of a request for a waiver of the principal occupancy requirement for a temporary absence from a For Sale Affordable Housing Unit and supporting documentation, the Agency, may, in its sole discretion, permit an Affordable Housing Unit Owner to temporarily lease a For Sale Affordable Housing Unit for a period not to exceed twelve (12) months per request.

## 5.3 **Closing Procedures and Form of Deed.**

5.3.1 *Declaration(s) of Eligibility.* Prior to closing, Owner shall attach the Declaration(s) of Eligibility (or any such portions of the document as designated by the Agency) provided to the Owner by the Eligible Household as an exhibit to the deed.

5.3.2 *Owner to Provide Copy of Covenant.* At least thirty (30) days prior to the initial closing and all subsequent closings for a For Sale Affordable Housing Unit, the Owner shall provide the Qualified Purchaser with a copy of this Covenant. A Qualified Purchaser shall execute an Acknowledgment(s) of Covenant on or before the date of closing on such Unit Sale.

5.3.3 *Form of Deed.* All deeds used to convey a For Sale Affordable Housing Unit must have a fully executed Declaration of Eligibility (or any such portions of the document as designated by the Agency) attached for each Household member eighteen (18) years old or older, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_\_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS DOCUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_, WHICH AMONG OTHER THINGS IMPOSES

RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.4 *Post-Closing Obligations.* The purchasing Affordable Housing Unit Owner shall submit to the Agency within seventeen (17) days after the closing on the Unit Sale a final executed settlement statement and a copy of the deed recorded in the Land Records, including the Declaration(s) of Eligibility, Acknowledgement(s) of Covenant, and Certification of Income, Affordability, and Housing Size.

5.4 **Representations of Owner.** By execution of a deed for the For Sale Affordable Housing Unit, Owner shall be deemed to represent and warrant to, and agree with, the District and, if applicable, the title company, each of whom may rely on the following: that (i) the purchaser is a Qualified Purchaser pursuant to the executed Certification of Income, Affordability, and Household Size and Declaration(s) of Eligibility received by Owner, and (ii) the sale price satisfies the requirements of this Covenant.

5.5 **Annual Certification of Residency.** The Affordable Housing Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Housing Unit, a certification that it continues to occupy the For Sale Affordable Housing Unit as its principal residence. The certification shall be submitted on or with such form as the Agency requires.

5.6 **Transfers.** Except as provided in Article X, in the event an Affordable Housing Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Housing Unit pursuant to operation of law, court order, divorce, or death to a transferee, heir, devisee, or other personal representative of such owner of a For Sale Affordable Housing Unit (each a “**Transferee**”), such Transferee shall be automatically bound by all of the terms, obligations, and provisions of this Covenant and shall either: (i) occupy the For Sale Affordable Housing Unit, or (ii) if the Transferee does not wish or is unable to occupy the For Sale Affordable Housing Unit, they shall file a Notice of Availability with the Agency prior to marketing the For Sale Affordable Housing Unit for sale, and sell it in accordance with this Covenant.

**ARTICLE VI  
MARKETING OF DEVELOPMENTS**

All marketing and advertising of Developments containing Affordable Housing Units shall contain the following statement: “Pursuant to the District of Columbia Housing in Downtown program, income restricted units are available at this development. Please contact the Department of Housing and Community Development at [www.dhcd.dc.gov](http://www.dhcd.dc.gov) regarding the availability of such units.”

**ARTICLE VII  
TOPA EXEMPTION REQUIREMENTS**

**7.1 TOPA Exemption Generally.**

7.1.1 *TOPA Exemption.* During the TOPA Exemption Period, the Development shall be exempt from the requirements of TOPA.

7.1.2 *TOPA Exemption Period Defined.* For purposes of this Covenant, the term “**TOPA Exemption Period**” shall mean that period beginning on the date the tax abatement begins for the Development and ending on the tenth (10<sup>th</sup>) anniversary of the issuance of the “Certificate of Occupancy” (as defined in Section 6699 of the HID Regulations); except that, if a Development Sale occurs prior to the aforementioned tenth (10<sup>th</sup>) anniversary, then the TOPA Exemption Period shall expire on the date the Development Sale is consummated upon Owner’s written notice to the Agency of the occurrence of such Development Sale.

7.2 **Notice to Tenants of the Development.** During the TOPA Exemption Period, Owner shall provide written notice to a tenant prior to tenant’s execution of a lease for a Housing Unit that the Development is exempt from the TOPA requirements for the TOPA Exemption Period.

7.3 **Reporting Requirements.** During the TOPA Exemption Period, Owner shall deliver to the Agency reports that include information on each Housing Unit for which Owner signed a lease with a tenant during each reporting period (such reports, the “**Leasing Report**”). The Leasing Reports shall include the following information and documents regarding each Housing Unit included in the report:

- (a) the number and identification of the Housing Units;
- (b) the name(s) of the tenant(s), as well as any other occupants, of the Housing Units; and
- (c) a copy of the notice required to be given pursuant to Section 7.2.

Owner shall submit to the Agency a Leasing Report starting on the date that is three (3) months following the Effective Date and every three (3) months thereafter until Owner has signed leases for all Housing Units to initial tenants. Once all Housing Units are leased to initial tenants, Owner shall submit to the Agency a Leasing Report annually on the anniversary of the Effective Date.

**ARTICLE VIII  
DEFAULT; ENFORCEMENT AND REMEDIES**

8.1 **Default.** An “**Event of Default**” shall occur under this Covenant if an Owner violates or fails to comply with, or, with respect to Rental Affordable Housing Units, fails to cause its tenants to comply with, any provision of (i) this Covenant or (ii) the DOB Compliance Certification, and such violation continues beyond any cure period provided in Section 8.3. Upon an Event of Default, the District shall have remedies provided in Section 8.2.

8.2 **Remedies.** If an Event of Default occurs under this Covenant, District may, at its sole option, (i) pursue any and all remedies available at law and/or in equity and (ii) deem the Real Property ineligible for a tax abatement in accordance with the HID Laws.

8.3 **Right to Cure Period.** If a violation occurs under this Covenant or the HID Laws, District shall provide the Owner with written notice (“**Default Notice**”) setting forth with particularity the alleged violation and shall provide at least thirty (30) days to cure the alleged violation, prior to District declaring an Event of Default and exercising its remedies. District may extend the cure period in its sole discretion. Failure to send timely notice regarding a default or any delay by District in enforcing the terms of this Covenant or the HID Laws shall not be a waiver of any of District’s rights.

8.4 **Notice of Default to Lender; Right to Cure.** If Development Owner has provided District notice of a Mortgage placed against the Real Property, for so long as such Mortgage is outstanding, District agrees to send a copy of a Default Notice provided to Development Owner pursuant to Section 8.3 to the Mortgagee at the address provided in Development Owner’s notice. District agrees to accept cure of a default from the Mortgagee in the same manner as it accepts cure of a default from Development Owner.

8.5 **Right to Attorney Fees.** If District shall prevail in a legal action to enforce this Covenant, then the Owner or any Person or Household against whom the District prevails, shall pay District all of its costs and expenses, including reasonable attorney fees, incurred in connection with District efforts to enforce this Covenant. If OAG is counsel for District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney’s Office for the District of Columbia and the number of hours employees of OAG prepared for or participated in any such action.

## **ARTICLE IX COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

This Covenant is and shall be binding upon the Real Property and each Housing Unit and shall run with the land for the Covenant Term. The rights and obligations of District, Owner, and Mortgagees, and their respective successors, heirs, and assigns, shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns. Such covenants are not binding upon any party who no longer holds a property interest in the Real Property, except that a party shall be liable for actions that occurred during the period such party held an interest in the Real Property. All rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Owner hereunder shall be retained by District, or such designee of District as District may so determine. No Unit Sale, Development Sale, or other transfer shall affect the validity of this Covenant, except as provided in Article X, and, with respect to Development Sales, Article VII. Ground Lessor hereby acknowledges, consents, and agrees that the Parcel shall be subject to the terms of this Covenant for the Covenant Term, and any termination of any ground lease of the Parcel shall not extinguish or invalidate the terms hereof or the rights, benefits, duties, and burdens of the parties thereto.

## **ARTICLE X MORTGAGES**

10.1 **Subordination of Mortgages.** All Mortgages placed against the Ground Lessor's fee simple interest in the Parcel and Development Owner's leasehold interest in the Parcel and fee simple interest in the Improvements, or any portion of the foregoing, shall be subject and subordinate to this Covenant, except as provided in Section 10.3.3.

10.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Housing Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Housing Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Housing Unit.

### 10.3 **Default of Mortgage and Foreclosure.**

10.3.1 *Notice of Default.* The Mortgagee shall provide the Agency and DMPED written notice of any notice of default and notice of intent to foreclose on the For Sale Affordable Housing Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

10.3.2 *Right of Purchase by District.* District shall have the right to purchase a For Sale Affordable Housing Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Housing Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Housing Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. District shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Housing Unit. District's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Housing Unit by foreclosure or deed in lieu thereof. District may designate another District of Columbia agency or third party to take title to the For Sale Affordable Housing Unit.

10.3.3 *Termination upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Housing Unit is transferred following foreclosure by, or deed in lieu of foreclosure to, a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall be automatically terminated subject to Sections 10.3.4 and 10.4. Upon such termination, the For Sale Affordable Housing Unit shall be deemed ineligible for a tax abatement in accordance with the HID Laws.

10.3.4 *Apportionment of Proceeds.* To the extent allowed by law, in the event title to a For Sale Affordable Housing Unit is transferred according to the provisions of Section 10.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Housing Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Affordable Housing Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

10.3.5 *Effect of Foreclosure on this Covenant.* Except as provided in Section 10.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released, and the Mortgagee or any Person who takes title to a For Sale Affordable Housing Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.6.

10.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Housing Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (i) District's right to purchase, whether or not such right has been triggered, shall automatically expire and (ii) the terms of this Covenant applicable to such unit shall be automatically terminated pursuant to Section 10.3.3, except that upon sale of such unit by the Affordable Housing Unit Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 10.3.4.

## **ARTICLE XI AMENDMENT OF COVENANT**

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified, or released other than as provided herein by an instrument in writing executed by a duly authorized official of the Agency on behalf of the District, and by a duly authorized representative of the Owner of such Affordable Housing Unit(s) affected by such amendment. 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 XII TERM OF COVENANTS**

12.1 **Covenant Term.** The Development, including all Housing Units, shall be operated, sold, or leased in accordance with the terms of this Covenant for the period beginning on the Effective Date and ending on the date on which the tax abatement for the Real Property expires as noted on the Tax Abatement Certification, unless earlier terminated pursuant to the terms of this Covenant and the HID Laws (the "**Covenant Term**").

12.2 **Release.** This Covenant shall automatically terminate without the need for the recording of a release upon expiration of the Covenant Term. Notwithstanding the foregoing, the execution and recordation of this Covenant in the Land Records by the Development Owner is a precondition to DMPED's issuance of a Tax Abatement Certification. If DMPED denies the Development Owner's request for a Tax Abatement Certification in accordance with the HID



Regulations, Development Owner shall be entitled to request the Agency to release this Covenant. In addition, if the Real Property, or any portion thereof, is deemed to be ineligible for the tax abatement pursuant to the terms of this Covenant and the HID Laws, the Owner shall be entitled to request the Agency to release this Covenant with respect to, as applicable, the Real Property, or portion subject to such termination, after the date the termination became effective.

### **ARTICLE XIII NOTICES**

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses identified in this Article, or to such other persons or locations as may be designated by District or Owner from time to time. All notices and reports to be sent to District shall be sent to the following address:

**AGENCY:**

(for Leasing Reports and any correspondence related thereto)  
Department of Housing and Community Development  
1909 Martin Luther King, Jr. Ave., SE  
Washington, DC 20020  
Attention: Rental Conversion and Sale Division

(for all other notices and reports)  
Department of Housing and Community Development  
1909 Martin Luther King, Jr. Ave., SE  
Washington, DC 20020  
Attention: Director  
Re: Inclusionary Zoning Program  
With a copy sent by email to [iz.adu@dc.gov](mailto:iz.adu@dc.gov)

**DMPED:**

Office of the Deputy Mayor for Planning and  
Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attention: Deputy Mayor  
Re: Housing in Downtown Program

All notices to be sent to the Development Owner shall be sent to the address given in the preamble. All notices to be sent to an Affordable Housing Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to an Affordable Housing Unit Tenant shall be sent to the unit number referenced in its lease. 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 (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

#### **ARTICLE XIV MISCELLANEOUS**

**14.1 Applicable Law; Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. The Owner and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. The Owner and District irrevocably and unconditionally waive 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 courts of the District of Columbia, and hereby further waive 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.

**14.3 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.

**14.4 Time of Performance.** All dates for performance (including cure) 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 holiday recognized by the District of Columbia government is automatically extended to the next Business Day.

**14.5 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.

**14.6 Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably 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.

**14.7 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. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

**14.8 Limitation on Liability.** Provided that the Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall 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, the Owner shall be liable if the Owner has or reasonably should have knowledge that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

14.9 **District Limitation on Liability.** Any review or approval by District shall not be deemed to be an approval, warranty, or other certification by District as to compliance of such submissions, the Development, any Housing Unit or the Real 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 District that is filed among the Land Records or otherwise contractually required. District shall incur no liability in connection with District's or the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting District's interest under this Covenant.

14.10 **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 District shall have standing to bring an action for breach, or to enforce the provisions, of this Covenant.

14.11 **Interpretation.**

14.11.1 *HID Laws.* This Covenant shall be subject to the terms of the HID Laws. If there is conflict between any term of this Covenant and the HID Laws, the HID Laws shall control.

14.11.2 *Inclusionary Zoning Program.* Pursuant to the HID Laws, the Affordable Housing Units are required to be designed and administered in accordance with the Inclusionary Zoning Program for the Covenant Term. Accordingly, the requirements of the Inclusionary Zoning Program are hereby incorporated by reference and shall apply in the same manner as to the Affordable Housing Units as if such units were "Inclusionary Units" (as defined in Section 2299.1 of the IZ Implementation Regulations). Notwithstanding the foregoing, in the event of a conflict between any requirement of the Inclusionary Zoning Program and the HID Laws, the HID Laws shall control.

14.11.3 *Inclusionary Zoning Development.* In the event the Development is an "Inclusionary Development" (as defined in Section 2299.1 of the IZ Implementation Regulations), the terms of this Covenant, including, without limitation, the MFI levels of the Affordable Housing Units, shall control during the Covenant Term. Following expiration of the Covenant Term, the terms of the Inclusionary Zoning Covenant shall control for the term thereunder.

14.12 **Representations of Development Owner.** The Development Owner hereby represents and warrants to District as follows:

(a) As of the Effective Date, the Development Owner is the ground lessee of the Parcel pursuant to a lease with Ground Lessor, the fee owner of the Parcel, which lease is dated \_\_\_\_\_ and recorded (or memorandum thereof recorded) among the Land Records as instrument number \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_;

(b) This Covenant has been duly executed and delivered by the Development Owner and Ground Lessor, and constitutes the legal, valid and binding obligation of each party, enforceable against such party, and its respective successors and assigns, in accordance with its terms;

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

(d) To the extent the Development Owner is an entity, the Development Owner (i) is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

*[Signatures on Following Pages]*

**IN TESTIMONY WHEREOF**, the Development Owner has caused these presents to be signed, acknowledged, and delivered in its name by \_\_\_\_\_, its duly authorized \_\_\_\_\_, witnessed by \_\_\_\_\_, its \_\_\_\_\_.

WITNESS

DEVELOPMENT OWNER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_

\_\_\_\_\_

ss.

\_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the jurisdiction listed above, DO HEREBY CERTIFY THAT \_\_\_\_\_ who is personally known to be (or proved by oaths of credible witnesses to be) the person named as the authorized signatory for the Development Owner in the foregoing and annexed Housing Covenant, personally appeared before me acknowledged the same to be the act and deed of the Development Owner.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Commission Expires: \_\_\_\_\_

**THIS HOUSING COVENANT FOR THE DEVELOPMENT AT**  
**\_\_\_\_\_ IS APPROVED AND ACCEPTED THIS \_\_\_\_\_**  
**DAY OF \_\_\_\_\_, 20\_\_:**

DISTRICT OF COLUMBIA

By: \_\_\_\_\_  
Name: Colleen Green  
Title: Director, Department of Housing and  
Community Development

Approved as to Legal Sufficiency:

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
By: Office of the General Counsel

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that Colleen Green, the Director of the D.C. Department of Housing and Community Development, on behalf of the District of Columbia, personally appeared before me in said jurisdiction, and, being personally known to me (or satisfactorily proven) to the person whose name is subscribed to the foregoing Housing Covenant, and that she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and acknowledged the same to be the act and deed of the District of Columbia.

Given under my hand and seal this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public, D.C.

My commission expires: \_\_\_\_\_

**Consent and Acknowledgement of Ground Lessor**

The undersigned, being the fee simple owner of the Parcel, hereby agrees as of the Effective Date that the Real Property shall be subject to the terms of this Covenant for the Covenant Term, and any termination of any ground lease for the Parcel shall not extinguish or invalidate the terms hereof or the rights, benefits, duties, and burdens of the parties thereto.

Neither the undersigned, not any direct or indirect partner, member, beneficiary, trustee, or shareholder of the undersigned (or any trustee, officer, director, agent, member, manager, personal representative, or employee of any such direct or indirect partner, member, beneficiary, trustee, or shareholder) shall be liable for the performance of the obligations of, or in respect of any claims against, the Owner arising under this Covenant. No judgment shall be sought or obtained against any of the foregoing in connection with this Covenant. The District's acceptance of this Covenant shall constitute its confirmation of the foregoing understandings. Notwithstanding the foregoing, at such time (if any) as the undersigned shall succeed to the interest of the Owner, the undersigned (but not any direct or indirect partner, member, beneficiary, trustee, or shareholder of the undersigned (or any trustee, officer, director, agent, member, manager, personal representative, or employee of any such direct or indirect partner, member, beneficiary, trustee, or shareholder)) shall become liable for the obligations of the Owner that arise or pertain to the period from and after the date of succession.

GROUND LESSOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing Consent and Acknowledgement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

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

My commission expires: \_\_\_\_\_

**EXHIBIT A  
Legal Description of the Parcel**

**[See attached]**



**EXHIBIT B**  
**DOB Compliance Certification**

[See attached]

**EXHIBIT C**  
**Affordable Housing Unit Index**

**[See attached]**

## Schedule 1

### Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price (“MRP”) shall be equal to the greater of:
  - (a) The original purchase price during the first year of ownership, or (for all subsequent years) the Maximum Resale Price of the previous year, multiplied by the annual rate of change in the MFI over a ten year period starting with the first MFI published by HUD after the purchase of the Affordable Housing Unit by the Affordable Housing Unit Owner. The resulting formula for the new Maximum Resale Price in any given year “n” is therefore  $MRP_n = MRP_{n-1} + (MRP_{n-1} \times F_n)$  (“Formula”), where:
    - (1) n = is the current MFI year starting from the most recent publication of the MFI by HUD; and
    - (2)  $F_n$  = the rate of appreciation of the current MFI of any given year “n.”  $F_n$  is calculated by determining the ten year compounded annual growth rate of the MFI; or
  - (b) The maximum purchase price for the same unit type from the current published Rent and Price Schedule as of the date of the Notice of Availability.
2. Upon the submission of a Notice of Availability by an Affordable Housing Unit Owner to the Agency, the Maximum Resale Price may be adjusted for the value of all the Eligible Capital Improvements and Eligible Replacement and Repair Costs made to the property during that Affordable Housing Unit Owner’s ownership of the For Sale Affordable Housing Unit to the extent they are permanent in nature and add to the market value of the property at the percentage of cost indicated:
  - (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and
  - (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.
3. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Housing Unit Owner or, if not provided, upon a standard value established by the Agency.
4. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Housing Unit.
5. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

6. The Affordable Housing Unit Owner shall permit a representative of the Agency to inspect the For Sale Affordable Housing Unit upon request to verify the existence and value of any capital improvements that are claimed by the Affordable Housing Unit Owner.

7. An allowance may be made in the Maximum Resale Price for the payment of legal fees, closing costs (including, but not limited to, title insurance and filing fees), and real estate broker or salesperson fees associated with the sale of the Affordable Housing Unit if written approval is obtained from the Agency.

8. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Housing Unit shall not be considered part of the sales price of the For Sale Affordable Housing Unit for the purposes of determining whether the sales price of the For Sale Housing Unit exceeds the Maximum Resale Price.

9. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

**Eligible Capital Improvement:** major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Housing Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

**Eligible Replacement and Repair Cost:** in-kind replacement of existing amenities and repairs and general maintenance that keep a For Sale Affordable Housing Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

**Ineligible Costs:** means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave,

stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.