

**ARTICLE 11**  
**INSURANCE OBLIGATIONS; INDEMNIFICATION**

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer shall carry and maintain in full force and effect the following insurance policies:

- (a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars (\$3,000,000.00) per occurrence, of which at least one million dollars (\$1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement.
- (b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain or cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.
- (c) Professional Liability Insurance - During development of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars (\$1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible reasonably acceptable to District.
- (d) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants,

contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this Section 11.1 shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies of Developer and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

## 11.2 INDEMNIFICATION

Developer shall indemnify, defend (with counsel reasonably satisfactory to District), and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and caused by acts or omissions of Developer, its Members, agents, employees, or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, expenses, liens, judgments and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence, fraud or willful misconduct of District and Developer shall have no liability for discovery of any existing fact pertaining to the Property that results in claims against the District. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

## ARTICLE 12 NOTICES

### 12.1 TO DISTRICT

Any notices given under this Agreement 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 District at the following addresses:

District of Columbia  
Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, N.W., Suite 317  
Washington, D.C. 20001  
Attention: Deputy Mayor of Planning and Economic Development



With a copy to:

The Office of the Attorney General for the District of Columbia  
1100 15<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005  
Attn: Deputy Attorney General, Commercial Division

## 12.2 TO DEVELOPER

Any notices given under this Agreement 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 Developer at the following addresses:

Blue Skye Development LLC  
1539 7th Street NW  
Washington, DC 20001  
Attention: Bryan Scottie Irving

With a copy to:

Reed Smith LLP  
1301 K Street NW  
Suite 1100 East Tower  
Washington, DC 20005  
Attention: A. Scott Bolden, Esq.

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

## **ARTICLE 13 MISCELLANEOUS**

### 13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or



whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

### 13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expeditor reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Scheduled Closing Date and shall not apply to any obligation to pay money.

### 13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, member, or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

### 13.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to and shall merge with the Deed transferring title to the Property from District to Developer.

### 13.5 TITLES OF ARTICLES AND SECTIONS

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

### 13.6 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

### 13.7 LAW APPLICABLE; FORUM FOR DISPUTES

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby. District and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the courts of the District of Columbia and (b) the United States District Court for 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.

### 13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. The Recitals of this Agreement are incorporated herein by this reference and are made a substantive part of the agreements between the Parties. All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control.

### 13.9 COUNTERPARTS

This Agreement 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. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

### 13.10 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next Business Day.

### 13.11 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of, the successors and assigns of District and Developer, and where the term "Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns.

13.12 THIRD PARTY BENEFICIARY

No Person shall be a third party beneficiary of this Agreement.

13.13 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 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 Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Though no financial obligations on the part of District are anticipated, Developer acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void.

13.17 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a

part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.19 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

13.20 EACH PARTY TO BEAR ITS OWN COSTS

Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.



**IN WITNESS WHEREOF**, District and Developer have each caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

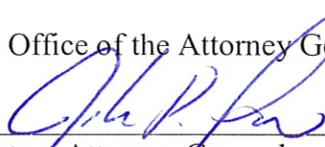
DISTRICT OF COLUMBIA, by and through the  
Office of the Deputy Mayor for Planning and  
Economic Development

By:   
Name: Neil O. Albert  
Title: Deputy Mayor for Planning and Economic  
Development

OK  
1/29/09

*Approved as to legal sufficiency:*

D.C. Office of the Attorney General

By:   
Assistant Attorney General  
Date: 1/29/09

BLUE SKYE DEVELOPMENT, LLC, a District of  
Columbia limited liability company

By:   
Name: BRYAN IRVING  
Title: CEO/President

**Exhibits:**

Exhibit A – Legal Description of Property

Exhibit B – Deed

Exhibit C –Affordability Covenant

Exhibit D – Construction and Use Covenant

Exhibit E – Form Letter of Credit

Exhibit F – Development and Completion Guaranty

Exhibit G – Schedule of Performance

Exhibit H – Project Funding Plan

Exhibit I – Project Budget

Exhibit J – Developer Parcel Covenant

Exhibit K- Affordable Housing Plan

**Exhibit A**  
**Legal Description of Property**

Lot numbered One Hundred Eighty-four (184) in Square numbered Twenty-seven Hundred Eighty-six (2786) in the subdivision made by Shapiro, Inc., as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 125 at folio 118.

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**Exhibit B**  
**Deed**

## SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“**Deed**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2009, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation (“**GRANTOR**”), pursuant to the authority contained in D.C. Official Code § \_\_\_\_\_ and **BLUE SKYE DEVELOPMENT, LLC**, a District of Columbia limited liability company (the “**GRANTEE**”).

WITNESSETH, that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee and its successors and assigns, in fee simple, all of the right, title and interest of Grantor in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, and together with any right, title and interest of Grantor in and to adjacent streets, alleys, rights-of-way, strips or gores, situate, lying and being in the District of Columbia, described as follows, to wit:

Lot numbered One Hundred Eighty-four (184) in Square numbered Twenty-seven Hundred Eighty-six (2786) in the subdivision made by Shapiro, Inc., as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 125 at folio 118 (collectively, the “**Land**”)

**Note: At the date hereof, the-above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 0184 in Square 2786.**

TO HAVE AND TO HOLD the same unto and for the use of the Grantee, its successors and assigns, in fee simple, forever;

SUBJECT to the provisions of the Construction and Use Covenant by and between Grantor and Grantee dated of even date herewith and recorded immediately following this Deed and the Grantor’s Right of Re-Entry contained in Schedule A, which is attached hereto and incorporated herein;

AND Grantor covenants that it has the right to convey said Land to Grantee, that it will warrant specially said Land, and that it will execute such further assurances of said Land as may be requisite.

*[Signature page follow(s)]*

# Certified True Copy

## SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed") is made as of the 1<sup>st</sup> day of May, 2009, by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation ("**GRANTOR**"), pursuant to the authority contained in D.C. Official Code § 42-3171.03 and **BLUE SKYE DEVELOPMENT, LLC**, a District of Columbia limited liability company (the "**GRANTEE**").

WITNESSETH, that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee and its successors and assigns, in fee simple, all of the right, title and interest of Grantor in, to and under that lot or parcel of land, together with the improvements thereon, and all rights, and privileges, and appurtenances to the same belonging, and together with any right, title and interest of Grantor in and to adjacent streets, alleys, rights-of-way, strips or gores, situate, lying and being in the District of Columbia, described as follows, to wit:

Lot numbered One Hundred Eighty-four (184) in Square numbered Twenty-seven Hundred Eighty-six (2786) in the subdivision made by Shapiro, Inc., as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 125 at folio 118 (collectively, the "**Land**")

**Note: At the date hereof, the-above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 0184 in Square 2786.**

TO HAVE AND TO HOLD the same unto and for the use of the Grantee, its successors and assigns, in fee simple, forever;

SUBJECT to the provisions of the Construction and Use Covenant by and between Grantor and Grantee dated of even date herewith and recorded immediately following this Deed and the Grantor's Right of Re-Entry contained in Schedule A, which is attached hereto and incorporated herein;

AND Grantor covenants that it has the right to convey said Land to Grantee, that it will warrant specially said Land, and that it will execute such further assurances of said Land as may be requisite.

*[Signature page follow(s)]*

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the date first set forth above.

GRANTOR:

WITNESS:

DISTRICT OF COLUMBIA, by and through the Deputy Mayor for Planning and Economic Development pursuant to the delegation of authority contained in Mayor's Order \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Neil O. Albert  
Deputy Mayor for Planning and Economic Development

DISTRICT OF COLUMBIA )  
  )      ss:

I, \_\_\_\_\_, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Neil O. Albert, the Deputy Mayor for Planning and Economic Development, who is personally well known to me or satisfactorily proven to me to be the person who executed the foregoing and annexed Special Warranty Deed bearing date as of the \_\_ of \_\_\_\_\_, 2009, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

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

**After recording, please return to:**  
Blue Skye Development LLC  
1539 7th Street NW  
Washington, DC 20001  
Attention: Bryan Scottie Irving



**SCHEDULE A**  
**RIGHT OF RE-ENTRY**

Any capitalized terms not defined herein shall have the meaning ascribed in the Construction and Use Covenant. In the event that prior to the issuance of a Certificate of Final Completion, an Event of Default occurs under Article II or Article XII of the Construction and Use Covenant, Grantor shall have the exclusive right to declare a termination in favor of Grantor of the title and of all the rights and interests in and to the Land, any all improvements constructed thereon, and all appurtenances thereto, (collectively, the “**Property**”), or any portion thereof, and to re-enter the Property (“**Right of Re-Entry**”), at Grantor’s option, upon the following terms and conditions:

- (A) Following an Event of Default, Grantor may exercise its Right of Re-Entry by notice to Grantee that Grantor has elected to exercise its Right of Re-Entry (“**Exercise Notice**”). Re-Entry shall take place on a date designated by Grantor (the “**Re-Entry Date**”), which date shall be at least thirty (30) but no later than one hundred twenty (120) days after the date of the Exercise Notice, unless extended in accordance with subpart (E) below.
- (B) On the Re-Entry Date, Grantor shall have the absolute right to execute and record among the land records of the District of Columbia a written declaration of the termination of the right, title and interest of Grantee, its successors in interest and assigns in the Property (“**Termination Declaration**”), and to re-enter and take possession of the Property and terminate, and re-vest in Grantor, the Property. Grantee shall deliver such documents as Grantor’s title insurance company reasonably shall require to evidence such termination, and the affidavits, indemnities and other agreements reasonably required by Grantor’s title insurance company in connection with insuring title to the Property, subject only to those exceptions reasonably acceptable to Grantor, upon such re-entry. Real property taxes, owner’s association dues and assessments, and water and sewer charges shall be adjusted and apportioned as of the Re-Entry Date. Grantee shall be obligated to satisfy and release any liens or other encumbrances of record, which may be satisfied upon the payment of a liquidated sum (other than Debt Financing, which is to be paid by District). Grantee shall pay the deed transfer tax, the cost of preparation of the Termination Declaration, all recording taxes and charges, and title examination, survey and title insurance fees. Grantor shall be entitled to draw on the Letters of Credit for paying the sums due from Grantee hereunder.
- (C) The exercise of the Right of Re-Entry and the re-entry thereunder shall terminate all obligations and/or covenants of Developer in the Construction and Use Covenant, except those that expressly survive termination.



- (D) Grantor's re-entry shall be effective upon recordation of the Termination Declaration among the land records.
- (E) Grantor will not re-enter the Property or record the Termination Declaration unless and until the Debt Financing is paid in full. Grantor shall have the right to extend the Re-Entry Date for any reasonable amount of time necessary to obtain all necessary approvals from any governmental authorities, including the Council of the District of Columbia, for payment in full of the Debt Financing.



**Exhibit C**  
**Affordability Covenant**

## AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (the “**Covenant**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2009 (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) BLUE SKYE DEVELOPMENT, LLC, a District of Columbia limited liability company (the “**Developer**”).

### RECITALS

R-1. District owns the improved real property located at 6425 14<sup>th</sup> Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0184 in Square 2786 (the “**Property**”).

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia by ensuring that at least 51% of the residential units developed within the Project must be Affordable Units.

R-3. District and Developer entered into a Land Disposition Agreement, effective \_\_\_\_\_, 2009 (the “**Agreement**”), pursuant to which District agreed to sell the Property to Developer subject to certain terms and conditions that survive the sale, some of which are set forth herein as covenants that will run with the land.

R-4. Contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer, who agrees to accept fee simple title to the Property from District subject to this Covenant, as set forth in the Agreement.

R-5. Consistent with the Agreement, District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will develop and sell the Affordable Units in the Project.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby declare, covenant and agree 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:

**Affordability Requirement:** The requirement that at least 51% of the Residential Units to be contained in the Project be Affordable Units, and each Affordable

# Certified True Copy

## AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (the "Covenant") is made as of the 1 day of May, 2009 ("Effective Date"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "District") and (ii) BLUE SKYE DEVELOPMENT, LLC, a District of Columbia limited liability company (the "Developer").

### RECITALS

R-1. District owns the improved real property located at 6425 14<sup>th</sup> Street, N.W., in Washington, D.C., known for tax and assessment purposes as Lot 0184 in Square 2786 (the "Property").

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia by ensuring that at least 51% of the residential units developed within the Project must be Affordable Units.

R-3. District and Developer entered into a Land Disposition Agreement, effective January 29, 2009 (the "Agreement"), pursuant to which District agreed to sell the Property to Developer subject to certain terms and conditions that survive the sale, some of which are set forth herein as covenants that will run with the land.

R-4. Contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer, who agrees to accept fee simple title to the Property from District subject to this Covenant, as set forth in the Agreement.

R-5. Consistent with the Agreement, District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will develop and sell the Affordable Units in the Project.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby declare, covenant and agree 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:

**Affordability Requirement:** The requirement that at least 51% of the Residential Units to be contained in the Project be Affordable Units, and each Affordable

Unit shall be sold at a price not greater than the Maximum Sales Price to and occupied exclusively by a Qualified Purchaser whose income is less than or equal to the following AMI categories for the Term of affordability. This requirement mandates that the Affordable Units shall be allocated as follows: (i) Four (4) of the Affordable Units, or no less than 15% of the total number of Residential Units in the Project, shall be reserved for Qualified Purchasers whose income is at or below 30% AMI, (ii) Four (4) of the Affordable Units, or no less than 15% of the total number of Residential Units in the Project, shall be reserved for Qualified Purchasers whose income is at or below 60% AMI and (iii) Six (6) of the Affordable Units, or no less than 21% of the total number of Residential Units in the Project, shall be reserved for Qualified Purchasers whose income is at or below 80% AMI.

**Affordable Owner:** a Qualified Purchaser who owns an Affordable Unit during the Term of affordability for such Affordable Unit.

**Affordable Unit:** each Residential Unit to be developed, used and/or sold that will be used to satisfy the Affordability Requirement pursuant to Article II, subject to Article IX.

**Affordable Unit Index:** as defined in Section 2.4.

**Agency:** as defined in Section 4.2(a).

**Annual Household Income:** means the aggregate annual income of a Household as determined using the standards set forth by the District of Columbia Department of Housing and Community Development or as determined by using the standards developed by the Agency, as applicable.

**Agreement:** as defined in Recital R-3.

**AMI:** means the then most current area median household income as established periodically for the disbursement of funds under the Community Development Block Grant Programs (or in the event such programs no longer exist, such successor programs) by HUD for the Washington DC-Maryland-Virginia metropolitan statistical area.

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

**Certificate of Eligibility of a Qualified Purchaser:** mean a certification by a Qualified Purchaser, in a form approved by the Agency, that shall be given to the District and the Developer representing and warranting the following: (a) the Qualified Purchaser has disclosed all of its Annual Household Income to the Developer and/or the Certifying Authority, (b) the Qualified Purchaser's Annual Household Income falls within the Designated Affordability Level for the applicable Affordable Unit, (c) the Qualified Purchaser has been informed of its rights and obligations under this Covenant, (d) the Qualified Purchaser intends to occupy the Affordable Unit as its principal residence and (e) other representations requested by the Agency.

**Certifying Authority:** as defined in Section 4.3(a).

**Construction Covenant:** that certain covenant recorded among the Land Records immediately prior to the conveyance of the Property to Developer from District that sets forth the Project and governs its development.

**CPI:** means Consumer Price Index for All Urban Consumers (Washington-Baltimore).

**Designated Affordability Level:** as defined in Section 2.4.

**Effective Date:** means the date of full execution and delivery of this Covenant, which date shall be inserted on the first page hereof.

**Foreclosure Notice:** as defined in Section 7.1.

**Household:** means all persons who will occupy the Affordable Unit, including the Qualified Purchaser's spouse or domestic partner and children under eighteen (18) years of age, whether or not such persons will occupy the Affordable Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated person who share living arrangements.

**HUD:** means the United States Department of Housing and Urban Development, or its successor.

**Improvements:** means the structures, landscaping, hardscape and/or site improvements to be constructed in or placed on the Property by Developer in accordance with the Agreement and Construction Covenant.

**IZIA Act:** as defined in Section 4.2.

**Land Records:** means the real property records for the District of Columbia located in the Office of the Recorder of Deeds.

**Maximum Sales Price:** as defined in Section 2.7.

**Mortgagee:** as defined in Section 7.1.

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

**Par Value:** as defined in D.C. Official Code § 42-1901.02 (24) (2001 Ed.).

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

**Project:** means the Property and the Improvements, and the development and construction thereof in accordance with the Agreement, Construction Covenant, and this Covenant.

**Property**: as defined in Recital R-1 and as more particularly described in Exhibit A attached hereto.

**Purchase Price Adjustment**: as defined in Section 2.7.

**Qualified Purchaser**: means a Household whose income does not exceed the Annual Household Income requirement for the particular Affordable Unit that it seeks to purchase and which (i) will occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (ii) shall not permit exclusive occupancy of the Affordable Unit by any other person, (iii) shall use, occupy, hold and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (and subject to the particular income requirement associated with such Affordable Unit) and this Covenant and (iv) shall not permit the occupancy of the Affordable Unit by more than three (3) people for a 1-bedroom unit and five (5) people for a 2-bedroom unit.

**Regulations**: as defined in Section 4.2.

**Residential Unit**: any unit constructed as part of the Project to be developed, used and/or sold for residential purposes, including all Affordable Units.

**Sale**: as defined in Section 2.7.

**Transferee**: as defined in Section 4.4.

## **ARTICLE II AFFORDABILITY REQUIREMENT**

2.1 The Developer shall construct, reserve, and sell as Affordable Units that number of units that is required by the Affordability Requirement. For any Qualified Purchaser, the date of determination of Annual Household Income shall be the date of the sales contract for such Affordable Unit (or, in the event there is no sales contract, then the date of the deed conveying ownership). Neither Developer nor any Affordable Owner shall sell any Affordable Unit to any Person other than a Qualified Purchaser.

2.2 Except as otherwise expressly provided in this Covenant for each Affordable Unit, (i) the unit type and size, (ii) all interior and exterior finishes, and (iii) the appliances and equipment therein shall be substantially similar to those of the Residential Units that are not Affordable Units. Subject to Article III below, the Affordable Units shall not be concentrated in one location within any part of the Project. Attached hereto as Exhibit B is the schedule of base finishes, appliances and equipment to be included in the Affordable Units and Developer shall construct the Affordable Units in accordance with such schedule. Condominium fees allocated to the Affordable Units in the Project shall be determined in accordance with Par Value.

2.3 As set forth in the Affordable Unit Index, the Affordable Units shall be distributed across the unit mix of 1-bedroom and 2-bedroom units.

2.4 Attached hereto as Exhibit C is a listing (the “**Affordable Unit Index**”) of the Affordable Units that enumerates: (i) unit number (or similar identifier), floor and location for each Affordable Unit, (ii) the maximum AMI for any prospective purchaser of each Affordable Unit (the “**Designated Affordability Level**”), (iii) the Par Value allocated to each of the Affordable Units, and (iv) the approximate square footage of each such Affordable Unit and a schematic drawing showing the layout of each Affordable Unit (by unit type). The Affordable Unit Index shall not be modified without the prior written approval by the District, which approval shall not be unreasonably withheld, conditioned or delayed, provided that any such modification is consistent with the terms of this Covenant and the Construction Covenant. Notwithstanding the foregoing, the Affordable Unit Index shall not be modified so as to amend the Affordability Requirements without the prior written approval of the District, which approval shall only be given in the District’s sole and absolute discretion. Upon request, prior to the conveyance of an ownership interest in such Affordable Unit by the Developer, the District shall have the right to inspect the Affordable Units to ensure that all fixtures and finishes are of the type and quality required hereunder. The Developer shall incorporate the approved Affordable Unit Index (which shall also conspicuously reference this Covenant and its applicability) into its condominium declaration and other instruments necessary to establish a condominium regime or regimes on the Property. Failure to incorporate the approved Affordable Unit Index into the condominium declaration shall render the declaration null and void. Developer shall deliver a copy of the condominium declaration incorporating the approved Affordable Unit Index and other instruments necessary to establish the condominium regime or regimes on the Property to the District no less than ten (10) Business Days prior to recordation of any such documents among the Land Records.

2.5 Developer shall be responsible for compliance with the terms of this Covenant until the initial sale of each Affordable Unit. After the initial sale of an Affordable Unit, the Affordable Owner shall be responsible for compliance with the terms of this Covenant only during the period of such Affordable Owner’s ownership of the applicable Affordable Unit.

2.6 Each Affordable Owner must use the Affordable Unit solely as his, her or their primary residence and shall not permit exclusive occupancy of the Affordable Unit by any other Person or lease any or all of the Affordable Unit to any Person (any such lease shall be null and void).

2.7 During the Term of this Covenant, neither the Developer nor an Affordable Owner may convey all or any part of his, her or their fee interest (“**Sale**”), whether or not for consideration, in an Affordable Unit to any Person other than a Qualified Purchaser. Except as provided in Section 4.5, the Developer and each Affordable Owner of such Affordable Unit shall sell to a Qualified Purchaser within the Designated Affordability Level applicable to such Affordable Unit. The sale price of each Affordable Unit upon Sale shall not exceed (the “**Maximum Sales Price**”) the greater of (i) an amount determined using the following assumptions: (a) a 5% down payment with an additional 5% equity payment at closing, and (b) a monthly housing payment of principal, interest, taxes, insurance and condominium fees not exceeding

40% of the maximum allowable monthly gross income (i.e., at the allowable Designated Affordability Level) of a prospective Qualified Purchaser, assuming ninety percent (90%) loan-to-value, thirty (30) years fully amortizing mortgage, with a minimum ten (10) year term, at a then market rate of interest (which must be consistent with the applicable Designated Affordability Level) or (ii) the purchase price paid for the Affordable Unit by the Affordable Owner, plus the "Purchase Price Adjustment," if any. Such calculation shall be performed by the Affordable Owner and the applicable Certifying Authority.

For the second and all subsequent sales of an Affordable Unit, the "**Purchase Price Adjustment**" shall equal the costs of all permanent improvements made by such Affordable Owner to the Affordable Unit and replacement of interior components permitted by this Covenant, multiplied by a fraction, the numerator of which is the Consumer Price Index on the date the Purchase Price Adjustment is calculated, and the denominator of which is the Consumer Price Index on the date on which that Affordable Owner purchased the Affordable Unit (For example, \$10,000 x 105% increase in CPI = \$10,500 Price Adjustment).

2.8 Each deed used to convey an Affordable Unit priced at or below 30% AMI or at or below 60% AMI shall expressly state in 12 point type and in all caps on the front page thereof:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO ALL MATTERS OF RECORD RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA TO THE EXTENT LAWFULLY AFFECTING THE REAL PROPERTY WHICH IS THE SUBJECT OF THIS DEED, INCLUDING ALL OF THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_\_\_\_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_, 20\_\_\_\_.

2.9 Any sale of an Affordable Unit in violation of this Covenant shall be null and void.

### **ARTICLE III USE**

3.1 The Affordable Owners shall have the same and equal use and enjoyment of the general common elements of the condominium as owners of Residential Units that are not Affordable Units and services provided by or through the condominium association and any restrictions, requirements or rules shall be imposed on the owners of the Affordable Units and other Residential Units equally.

3.2 The Affordable Owner shall not demolish or otherwise structurally alter the Affordable Unit or remove fixtures or appliances installed in the Affordable Unit as

of the initial sale of Affordable Unit by the Developer without the prior written approval of the District, which approval shall be given or denied in its sole discretion, except for maintenance, upkeep, repairs of interior components and replacement of interior components (including fixtures and appliances) of the Affordable Unit of equal or better quality than those interior components being replaced.

3.3 By acceptance of a deed for the Affordable Unit, each Qualified Purchaser shall be deemed to represent and warrant to, and agree with, District, Developer and the Certifying Authority, as applicable, each of whom may rely on the following: that (i) he or she is a Qualified Purchaser, (ii) the sales price satisfies the terms of this Covenant, (iii) he or she is purchasing the Affordable Unit as his or her full time residence and has no ownership interest in any other housing, (iv) he or she will not rent any or all of the Affordable Unit to any person or party, (v) he or she will not allow any other party to reside at the Affordable Unit with the Qualified Purchaser except in strict compliance with all applicable laws and this Covenant, (vi) no more than the number of persons, including the Qualified Purchaser, shall reside at the Affordable Unit greater than that which is permitted under applicable law and this Covenant, (vii) he or she will comply with the provisions of Article IV hereof and sell the Affordable Unit only to a Qualified Purchaser, and (viii) such Qualified Purchaser is the beneficiary of District's public policy of increasing the affordable housing stock in the District of Columbia, and desires through his or her ownership, use, and sale of the Affordable Unit to further such public policy.

3.4 Following the initial sale to the Affordable Owner, the Affordable Unit shall be the Affordable Owner's primary residence at all times. The Affordable Unit shall not be rented at any time.

#### **ARTICLE IV QUALIFICATION PROCESS**

4.1 Any conveyance of the Affordable Units shall be subject to the procedures contained in this Article IV.

4.2 If District shall promulgate municipal rules and regulations effectuating the Inclusionary Zoning Implementation Amendment Act of 2006 (the "**IZIA Act**") in order to establish, *inter alia*, an administrative body to administer the Inclusionary Zoning Program, as defined in the IZIA Act (the "**Regulations**"), and (a) such Regulations identify an office, agency or agencies of the District to administer the IZIA Act ("**Agency**"), and (b) such Agency (i) adopts rules for the certification and/or re-certification of Qualified Purchasers, (ii) issues certificates or other evidence of purchaser eligibility of Persons upon which Developer (as to the initial sale of an Affordable Unit), Affordable Owners, and owners of residential for-sale housing that are subject to the IZIA Act may lawfully rely, (iii) adopts a waiting list of Qualified Purchasers and (iv) adopts a procedure pursuant to which Developer (as to the initial sale of an Affordable Unit) and Affordable Owners, as applicable, may identify Qualified Purchasers for Affordable Units, then Developer and Affordable Owners, as applicable, shall abide by and be bound by such portions of the Regulations that relate solely to the qualification,

certification and selection of prospective Qualified Purchasers to acquire Affordable Units it being understood, and in the interest of clarity, stated, that neither Developer (as to the initial sale of an Affordable Unit) nor any Affordable Owner, as applicable, otherwise shall be bound to or be obligated to comply with the IZIA Act or Regulations by virtue solely of this Covenant. Upon request from the Developer or Affordable Owner, as applicable, the Agency shall provide multiple names of Qualified Purchasers for consideration by Developer or such Affordable Owner. Such names may be retained on a list of Qualified Purchasers maintained by Developer or any Affordable Owner, subject to re-qualification if such Qualified Purchaser does not close on the purchase of an Affordable Unit within six (6) months of the Agency's delivery of its list identifying such Qualified Purchaser.

4.3 The following procedures shall apply to (i) Developer with respect to the initial sale of an Affordable Unit, and (ii) an Affordable Owner of an Affordable Unit desiring to sell his or her Affordable Unit if, in either case, (1) all of the conditions set forth in the first sentence of Section 4.2 above are not satisfied or (2) within thirty (30) days after written request from Developer or an Affordable Owner, the Agency fails to identify at least one Qualified Purchaser acceptable to such Developer or Affordable Owner for each Affordable Unit being sold by such Developer or Affordable Owner.

(a) Developer, with respect to the initial sale of an Affordable Unit, and an Affordable Owner of an Affordable Unit desiring to sell his or her Affordable Unit shall notify in writing the entity or entities (the "**Certifying Authority**") selected by the Developer and approved by the District as the party authorized to review and certify the eligibility of a person as a Qualified Purchaser. The Certifying Authority shall be one or more of the following: District or the District's designated agent or representative, a community development organization or other non-profit organization authorized by the District to make such determinations, or a financial institution or mortgage company with an established affordable housing finance program or department experienced in making eligibility determinations.

(b) At any time there is no Certifying Authority approved by District or if the Certifying Authority approved by the District fails to identify a Qualified Purchaser reasonably acceptable (as further described in Section 4.6) to an Affordable Owner desiring to sell his or her Affordable Unit within thirty (30) days after written request therefor, such Affordable Owner may, upon fifteen (15) days written notice to District, select a Certifying Authority to qualify a prospective purchaser as a Qualified Purchaser, who shall execute a "**Certificate of Eligibility of a Qualified Purchaser**" in accordance with the terms hereof with respect to such sale and the determination of such Certifying Authority shall be effective for all purposes hereof.

(c) The Certifying Authority shall determine eligibility using the standards for "Qualified Purchaser" set forth above.

(d) A conveyance of an Affordable Unit shall only be effective if (i) a Certificate of Eligibility of a Qualified Purchaser duly executed by the Certifying Authority and dated within six (6) months of the closing of such sale is recorded prior to

or contemporaneous with the deed conveying the Affordable Unit. The Affordable Owner, Developer (for the initial sale of an Affordable Unit), Mortgagee, District and any title insurer shall each be a third party beneficiary of each such Certificate of Eligibility. Failure to record such Certificate of Eligibility of Qualified Purchaser shall render the conveyance of title null and void ab initio. The Certificate of Eligibility of Qualified Purchaser shall certify that such Certifying Authority has informed the appropriate Person(s) of the rights and obligations of such Person(s) under Article II and Article III of this Covenant.

(e) The determination of whether a proposed purchaser meets the requirements of a Qualified Purchaser shall be made exclusively by the Certifying Authority based on the criteria set forth in this Covenant.

(f) Each Affordable Owner of an Affordable Unit shall submit to the Certifying Authority the form of deed, which must include the language set forth in Section 2.7 above, to be used to convey the Affordable Unit to a Qualified Purchaser for the Certifying Authority's prior written approval, together with a copy of this Covenant.

4.4 In the event an Affordable Owner, voluntarily or involuntarily transfers the Affordable Unit pursuant to operation of law, court order, divorce, death or other similar transfer of legal or beneficial title to all or any part of the Affordable Unit to a Transferee, heir, devisee or other personal representative of such Affordable Owner (each "**Transferee**"), such Transferee, shall be automatically bound by all of the terms, obligations and provisions of this Covenant; provided that, and in furtherance of the District's public policy, such Transferee, either (i) shall obtain a Certificate of Eligibility of a Qualified Purchaser for himself or herself within the later of (1) sixty (60) days of the transfer by the applicable Qualified Purchaser, or (2) sixty (60) days after receiving the interest in the Affordable Unit following probate, and record same in the Land Records, together with a warranty deed in the form prescribed by this Covenant or (ii) shall promptly sell the Affordable Unit in accordance with this Covenant.

4.5 In connection with the sale of an Affordable Unit, the Developer or an Affordable Owner, as applicable, may reject any applicant seeking to acquire an Affordable Unit who has obtained a Certificate of Eligibility of a Qualified Purchaser or other evidence of eligibility adopted by District or the Agency, whether or not pursuant to the IZIA Act or Regulations, only if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the Affordable Unit), Developer or Affordable Owner, as applicable, shall in good faith and reasonably determine such applicant is unacceptable to purchase or inhabit an Affordable Unit.

4.6 In no event shall a Transferee reside in an Affordable Unit unless he or she is a Qualified Purchaser.

4.7 Until all initial sales of Residential Units are completed, Developer shall provide District with progress reports on the status of its leasing and sale of the Residential Units during the term of this Covenant.

## **ARTICLE V ENFORCEMENT AND REMEDIES**

5.1 Developer and each successor in title of an Affordable Unit for itself and its successors, heirs and assigns understand and shall by its declaration of a condominium unit or acceptance of a deed to an Affordable Unit, as the case may be, be deemed to agree that the District and its designees shall have the right to institute such actions or proceedings as it may deem necessary, desirable or appropriate for effectuating the purposes of this Covenant and enforcing the obligations set forth herein, including without limitation the right to seek specific performance, injunctive relief and other equitable remedies including without limitation the remedy of rescission with respect to the conveyance of an Affordable Unit not in compliance with this Covenant, and damages against an owner of an Affordable Unit or his or her estate for breach of its obligations hereunder. If District shall prevail in any such legal action to enforce this Covenant, then the Person against whom District shall prevail, shall pay District all of its costs and expenses, including reasonable attorneys' fees, incurred in connection with District efforts to enforce this Covenant. In the event the District is represented by OAG, reasonable attorneys' fees shall be calculated based on an equivalent amount that a private firm of comparable size to OAG in the Washington, D.C. area would have charged for such representation based on the number of hours OAG employees prepared for and participated in any such litigation.

5.2 Except as provided in Section 7.3 hereof, all proceeds of a Sale in excess of the Maximum Sales Price shall be paid to the District of Columbia for deposit into the Housing Preservation Trust Fund or such other fund established by applicable law.

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

This Covenant is and shall be binding upon the Property and each Affordable Unit and shall run with the land for the period provided in Article IX. The rights and obligations of the District, the Developer, the Affordable Owners, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided however that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Developer and the Affordable Owners hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such designee of the District as the District may so determine.

**ARTICLE VII  
MORTGAGEES**

7.1 In the event any Affordable Owner's mortgagee under a mortgage or beneficiary under a deed of trust recorded against an Affordable Unit ("**Mortgagee**") intends to initiate a foreclosure proceeding under its mortgage or deed of trust, such Mortgagee shall first notify District of its intent to do the same in writing, at least thirty (30) calendar days prior to the initiation of any proceeding relating to the Affordable Unit, and shall include in its notice the amount of the Affordable Owner's outstanding financial obligations to such Mortgagee as of the date of the notice (the "**Foreclosure Notice**").

7.2 All such mortgages or deeds of trust placed against an Affordable Unit shall be subject and subordinate to this Covenant.

7.3 All proceeds of a foreclosure sale in excess of the greater of (i) all amounts due the Mortgagee and (ii) the Maximum Sales Price shall be paid to the District of Columbia for deposit into the Housing Preservation Trust Fund or such other fund established by applicable law.

**ARTICLE VIII  
AMENDMENT OF COVENANT**

Neither this Covenant, nor any part hereof, can be amended, modified or released other than by an instrument in writing executed by a duly authorized official of the District of Columbia on behalf of the District and if prior to the initial conveyance by Developer of all Affordable Units, by a duly authorized representative of the Developer. 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 IX  
TERM OF COVENANTS**

The Term of this Covenant shall be ten (10) years for each Affordable Unit priced at or below 30% AMI or at or below 60% of AMI, such Term beginning on the date of the initial sale to the Affordable Owner of such Affordable Unit. This Covenant shall not apply to any sale of an Affordable Unit priced at or below 80% AMI except for the initial sale of such an Affordable Unit from Developer to an Affordable Owner.

**ARTICLE X  
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 District at the following addresses:

DISTRICT:

District of Columbia  
Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, Suite 317  
Washington, D.C. 20004  
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General for the District of Columbia  
1100 15<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20005  
Attn: Deputy Attorney General, Commercial Division

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 Developer at the following addresses, or to such other persons or locations as the Developer may designate in writing to the District from time to time:

DEVELOPER:

Blue Skye Development LLC  
1539 7th Street NW  
Washington, DC 20001  
Attention: Bryan Scottie Irving

With a copy to:

Reed Smith LLP  
1301 K Street NW  
Suite 1100 East Tower  
Washington, DC 20005  
Attention: A. Scott Bolden, Esq.

Notices which shall be delivered to Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail (return receipt requested, postage pre-paid), on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.