

## **AFFORDABLE HOUSING COVENANT**

THIS AFFORDABLE HOUSING COVENANT (this "**Covenant**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_ , (the "**Effective Date**") by \_\_\_\_\_, a \_\_\_\_\_ and its successors and assigns (the "**Developer**") having an address of \_\_\_\_\_, for the benefit of the District of Columbia, a municipal corporation, acting by and through the \_\_\_\_\_ (the "**District**").

### **RECITALS**

R-1 WHEREAS, District is the fee simple owner of certain real property located in District of Columbia and set forth and described on **Exhibit A** attached hereto and incorporated herein (the "**Property**"), which Property is the subject of this Covenant;

R-2. District and Developer entered into that certain Property Disposition Agreement dated \_\_\_\_\_, 20\_\_, ("**PDA**") whereby District and Developer agreed upon the terms under which District agreed to convey the fee simple interest in the Property to Developer and for Developer to develop and construct the Project (defined below) and to sell the Affordable Units to be constructed in the Project.

R-3. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-4. In accordance with the PDA and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

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

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer 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 Period:** is defined in Article X.

**Affordability Requirement:** is defined in Section 2.1.

**Affordable Unit Marketing Plan:** means Developer's plan for marketing the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

**Affordable Unit:** means each Residential Unit means listed as an affordable unit on **Exhibit B**, attached hereto and incorporated herein.

**Affordable Unit Index:** is an index of the Affordable Units contained in the Project, that enumerates: (i) unit number (or similar identifier), floor, and location for each Affordable Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage and number of bedrooms of each Affordable Unit and a schematic drawing showing the layout of the unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Residential Units; (v) 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 the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

**Affordable Unit Owner:** means a Qualified Purchaser that own(s) a For Sale Affordable 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 requirements of the District of Columbia government.

**AMI:** means the most current "area median income" (also known as "median family income" or "MFI") for a household of four persons in the "Washington Metropolitan Statistical Area" as periodically published by HUD, without regard to any adjustments made by HUD for the purposes of the programs it administers.

**Annual Household Income:** means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise required by the applicable funding source.

**Annual Report:** has the meaning given in Section 4.10.

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

**Certificate of Purchaser Eligibility:** means a certification executed by a Household prior to its purchase of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income to the Certifying Authority and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income falls within the Designated Affordability Level for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, and (e) any other reasonable and customary representations requested by the Agency.

**Certificate of Final Completion**: means that certain certificate issued to Developer from District which confirms Developer's final completion of the Project.

**Certification of Income**: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Purchaser, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit, in such form as the Agency approves.

**Certification of Residency**: means a certification made by an Affordable Unit Owner that states that the Affordable Unit Owner occupies the Affordable Unit as its primary residence, in such form as the Agency approves.

**Certifying Authority**: means the entity or entities approved by the Agency to review and certify the eligibility of a Household as a Qualified Purchaser, as applicable, including to review appropriate documentation to support a Certificate of Purchaser Eligibility.

**Designated Affordability Level** or **DAL**: means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's, as applicable, income must fall.

**Developer**: is identified in the preamble of this Covenant.

**For Sale Affordable Unit**: means an Affordable Unit that shall be sold to a Qualified Purchaser.

**Foreclosure Notice**: is defined in Section 8.4.

**Household(s)**: means all persons who will occupy the Affordable Unit, including the purchaser's, spouse or domestic partner and children under eighteen (18) years of age. 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 persons who share living arrangements as allowable by this Covenant.

**Housing Cost**: means the total monthly mortgage payments, property tax, hazard insurance and condominium or homeowner fees for For Sale Affordable Units.

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

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

**Market-Rate Unit**: is each Residential Unit that is not an Affordable Unit.

**Maximum Allowable Rent**: as defined in Section 4.4.

**Maximum Annual Household Income** or **MAXI**: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 5.2 for For Sale Affordable Units.

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

**Maximum Sales Price:** as defined in Section 5.1.

**Minimum Annual Household Income** or **MINI:** is the minimum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant Section 5.2 for For Sale Affordable Units.

**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.

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

**Occupancy Standard Factor** or **OSF:** means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Sales Price or Maximum Household Income, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

**Owner:** means the Developer and any Affordable Unit Owner, as applicable.

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

**Project:** means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property pursuant to the PDA.

**Property:** is defined in the Recitals.

**Qualified Purchaser:** means a Household that (i) has an Annual Household Income, as certified by the Developer, for initial sales, or the Certifying Authority, for subsequent sales, less than or equal to the Designated Affordability Level for the applicable Affordable Unit, (ii) shall occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, (iv) shall use, occupy, hold and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Unit to a Qualified Purchaser) and this Covenant, and (v) shall occupy the Affordable Unit within the Occupancy Standard.

**Residential Unit**: means an individual residential unit constructed as part of the Project.

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

**Transferee**: is defined in Section 5.9.

**Utilities**: means water, sewer, electricity, and natural gas.

## ARTICLE II AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability (“Affordability Requirement”)**. Developer shall construct, reserve, and either maintain and sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within ninety (90) days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again no later than ninety (90) days prior to settlement. Any transfer to a Person who is not a Qualified Purchaser shall be null and void.

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

2.2.1 *Affordable Unit Index.* As of the date of this Covenant, District has approved the Affordable Unit Index, which is attached hereto as **Exhibit B**. Developer shall not amend or modify the Affordable Unit Index, except to the extent permitted under Section 4.6.6, without the Agency’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Any such approved amendment or modification shall be recorded in the Land Records as an amendment to this Covenant.

2.2.2 *Unit Mix.* The distribution of Affordable Units shall be proportional to that of the Market Rate Units (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 *Size.* The Affordable Units shall be of a size equal to the Market-Rate Units, provided that Affordable Units may be the smallest size of each market rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be comparable in appearance, finish and durability to the exterior finishes of Market-Rate Units.

2.2.5 *Interior Finishes.* Developer agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be functionally equivalent to the Market-Rate Units.

2.2.6 *Affordable Unit Location.* Affordable Units shall be disbursed throughout the Property and not be concentrated on any one floor or within a tier or section of the Project.

2.3 **Affordable Unit Marketing Plan.** Developer shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Purchasers, as applicable. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. The Developer may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan. The Affordable Unit Marketing Plan shall require that when a For Sale Affordable Unit, as applicable, becomes available, the Owner shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008, and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

2.4 **Certifying Authority.** Developer (for initial Sales) or Affordable Unit Owner (for subsequent Sales) shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Developer (for initial sales) or Affordable Unit Owner (for subsequent sales) may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review and approve or deny a proposed Household's Certification of Income for Affordable Units.

### **ARTICLE III USE**

3.1 **Use.** Except as provided herein, all Affordable Unit Owners shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit are not imposed equally on the owners 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 the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners of comparable Affordable Units at the same 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 Unit Owners of comparable Affordable Units.

3.2 **Demolition/Alteration.** The Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of the Affordable Unit with interior components of equal or better quality than those interior components being replaced. The Owner shall not demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance and repair without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency.

3.3 **Warranty.** Following issuance of the Certificate of Final Completion, Developer warrants that:

- a) All appliances shall be under manufacturer's warranty from the date of transfer of the Property from Developer to a purchaser; and
- b) all structural (including roofing), electrical, mechanical, heating and air conditioning systems shall be under warranty for a minimum of ten (10) years from the date of transfer of the Property.

3.4 **Casualty.** In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, Developer shall promptly cause the Property to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, conditioned or delayed).

#### **ARTICLE IV RENTAL OF AFFORDABLE UNITS**

4.1 **Lease of Rental Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate laws (e.g. condominium, cooperative or home owner's association).

#### **ARTICLE V SALE OF AFFORDABLE UNITS**

5.1 **Sale of For Sale Affordable Units.** Neither Developer nor an Affordable Unit Owner may convey all or any part of his, her or their fee interest ("**Sale**"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. The Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall sell to a buyer within the Designated Affordability Level, [adjusted by household size], applicable to such For Sale Affordable Unit and who is a Qualified Purchaser.

5.1.1 *Maximum Sales Price.* The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed (the "**Maximum Sales Price**") an amount that is affordable to a Household with an income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable. The Agency shall approve the

Maximum Sales Prices for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2 *Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit. The Owner may refinance the Property for a loan amount not to exceed the Maximum Resale Price and shall provide notice within ten (10) business days to the District prior to closing on such loan.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sale Price of a For Sale Affordable Unit shall be determined as described in 5.1 and 5.1.1, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding in the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales.** The following procedures shall apply to (i) Developer with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility.* A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the For Sale Affordable Unit and the Minimum Annual Household Income for a Household occupying the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * OSF)$ . The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance.

5.2.2 *Sale.* A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility approved by the Developer and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit. Developer (for the initial Sale of an Affordable Unit), Affordable Unit Owner (for subsequent sales of the For Sale Affordable Unit), Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

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

5.3.1 *Owner to Provide Copy of Covenant.* At the initial closing and all subsequent closings for a For Sale Affordable Unit, the Owner shall provide the Qualified Purchaser with a copy of this Covenant.

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, 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 AFFORDABLE HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit.* A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations.* The purchasing Affordable Unit Owner shall submit to the Agency within seventeen (17) days after the closing on the Sale of any For Sale Affordable Unit a final executed HUD settlement statement and a copy of the deed recorded in the Land Records, including the Certificate of Purchaser Eligibility, and its Certification of Income.

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has obtained a Certificate of Purchaser Eligibility or other evidence of eligibility adopted by the Agency, 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 For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable District of Columbia and federal laws and is the same criteria as Market Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, the Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

5.5 **Representations of Owner.** By execution of a deed for a For Sale Affordable Unit, the Developer (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the purchaser is a Qualified Purchaser at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 **Annual Certification of Residency.** The Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a certification that it continues to occupy the For Sale Affordable Unit as its principal residence

(“**Certification of Residency**”). The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.7 **Transfers.** In the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable 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 Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.8 **Prohibition on Occupancy.** In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.9 **Progress Reports.** Until all initial sales or rentals of Affordable Units are completed, Developer shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale or rental of Affordable Units during the term of this Covenant.

## **ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES**

6.1 **Default; Remedies.** The District shall have the right to seek: (i) specific performance, (ii) the right to have a receiver appointed by a court of competent jurisdiction to take possession and control of the Property and any improvement; (iii) the right to re-enter the Property and take possession of and re-acquire title to the Property; or (iv) injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the sale prices permitted hereunder, for defaults under this Covenant. In the event the District elects to re-enter the Property, Developer shall fully satisfy all liens, encumbrances, mortgages, and any document which encumbers the Property as a result of Developer’s ownership and interest in the Property.

6.2 **Right to Cure Period.** If a default occurs under this Covenant, the Agency shall provide the Owner with written notice setting forth with particularity the alleged violation and shall provide at least thirty (30) days to cure the alleged violation, prior to exercising its remedies. The Agency may extend the cure period in its sole discretion. Failure to send such timely notice shall not be a waiver of any of the District’s rights.

6.3 **Right to Attorney’s Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then the Owner, Affordable Unit Owner, 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 the 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 VII  
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 as of the Effective Date through the Affordability Period. The rights and obligations of the District, the Developer, Affordable Unit Owner, 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; provided however that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Developer or Affordable Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant.

**ARTICLE VIII  
MORTGAGES**

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant. Any Mortgage secured by the Property shall be subject to the District's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed.

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

8.3 **Notice of Default.** All financing documents for a Mortgage shall provide that a Mortgagee shall provide to the Agency written notice of any uncured delinquency or other uncured default under the Mortgage and that the Agency shall have the right to designate an agency or a third Person to cure such delinquency or other event of default within a period of forty-five (45) days immediately after receipt by the Agency of such notice.

8.4 **Foreclosure.**

8.4.1 In the event any Mortgagee intends to initiate a foreclosure proceeding against an Affordable Unit, the Mortgagee shall first notify the Agency in writing of its intent to do the same, at least forty-five (45) days prior to the initiation of any proceeding relating to the Affordable Unit, and shall include in its notice the amount of the Owner's outstanding financial obligations to such Mortgagee as of the date of the notice (the "**Foreclosure Notice**"). A Mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by

a Mortgage on an Affordable Unit shall notify the Agency in writing not later than forty-five (45) days prior to the date of the foreclosure sale.

8.4.2 The Agency or a District designee shall have the right to purchase any and all For Sale Affordable Units in the event of a foreclosure for the amount of the debt secured by the Mortgage against the subject For Sale Affordable Unit(s) not to exceed the Maximum Resale Price for such For Sale Affordable Unit(s).

8.4.3 In no event shall the For Sale Affordable Unit be sold at foreclosure for an amount that exceeds the Maximum Resale Price. All proceeds of a foreclosure sale of a For Sale Affordable Unit shall be distributed as follows: (1) to the Mortgagee in an amount not to exceed the aggregate of all amounts due under the Mortgage; and (2) to the Affordable Unit Owner in an amount not to exceed the Maximum Resale Price.

8.4.4 All Mortgagees securing and/or recording their interest in the Property after these Covenants acknowledges the terms and conditions of these Covenants and that any mortgage or deed of trust placed against the Property is subordinate to these Covenants. In the event of foreclosure, this Covenant shall not be released, and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.8. Notwithstanding the foregoing, if the Mortgagee holds a HUD insured mortgage, this Covenant shall terminate upon foreclosure, deed-in-lieu of foreclosure or assignment of the insured mortgage to HUD.

## **ARTICLE IX AMENDMENT OF COVENANT**

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. 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 X AFFORDABILITY PERIOD**

All Affordable Units in the Project shall be sold in accordance with the terms of this Covenant for the "Affordability Period." The "Affordability Period" for each For Sale Affordable Unit shall begin on the date of the sale to the initial Affordable Owner and continue for a period of fifteen (15) years. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

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

**DISTRICT:**

D.C. Department of Housing and Community Development  
Property Acquisition and Disposition Division  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020  
Attn: Director

With a copy to:

D.C. Department of Housing and Community Development  
Office of the General Counsel  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020  
Attn: General Counsel

And to:

District of Columbia Department of Housing and Community Development  
Housing Regulation Administration  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020  
Re: Affordable Unit Monitoring

All notices to be sent to the Developer shall be sent to the address given in the preamble. All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. 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. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the District with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

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 XII MISCELLANEOUS**

12.1 **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 (including the Superior Court 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 the 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 (including the Superior Court 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.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts with the same effect as if the signatures on each counterpart were upon a single instrument. All counterparts, taken together, shall constitute the Covenant. Signatures delivered by facsimile, Portable Document Format (“PDF”), Tagged Image File Format (“TIF”) or other similar image file format shall be sufficient to bind the applicable party.

12.3 **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 District holiday is automatically extended to the next Business Day.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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 knowledge, or should have knowledge, that a Household

submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

**12.8 Agency Limitation on Liability.** Any review or approval by the District or the Agency shall not be deemed to be an approval, warranty, or other certification by the District or the Agency as to compliance of such submissions, the Project, any Affordable Unit or 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. The District shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District's interest under this Covenant.

**12.9 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 of or to enforce the provisions of this Covenant.

**12.10 Representations of Developer.** As of the date hereof, the Developer hereby represents and warrants to District as follows:

(a) This Covenant has been duly executed and delivered by the Developer, and constitutes the legal, valid and binding obligation of the Developer, enforceable against the Developer, and its successors and assigns, in accordance with its terms;

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

(c) The Developer (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction 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.

**[Remainder of Page Intentionally Blank. Signature Page to Follow.]**

**IN WITNESS WHEREOF**, the Developer has caused these presents to be executed, acknowledged and delivered for the purposes herein contained.

**DEVELOPER:**

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

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and the Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

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

[Notarial Seal]

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

**APPROVED AND ACCEPTED:**

Approved for Legal Sufficiency:  
D.C. Office of the Attorney General

DISTRICT OF COLUMBIA,  
acting by and through Department of Housing and  
Community Development

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General

By: \_\_\_\_\_  
Name: Robert L. Trent  
Title: Interim Director, Department of Housing  
and Community Development

**EXHIBIT A**  
**Legal Description of Property**

**[See attached]**

**EXHIBIT B**

**Affordable Unit Index**

## SCHEDULE 1

### Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price (“MRP”) for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula  $MRP = P \times (F) + V$  (“Formula”), where:

- (a) P = the price the Owner paid for the Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:
  - (1) As the result of the formula  $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10)^{(1/10) - 1} + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10)^{(1/10) - 1}) / n])^n$ , where m = the year after the Affordable Unit was purchased by the Owner, k = the year in which the Affordable Unit is sold by the Owner, and n = the number of years the Affordable Unit is owned by the Owner; or
  - (2) As published by the Agency.

2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (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. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. 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 Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level .

6. 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.

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

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

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

10. 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 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 an Affordable 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; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) 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.