

## **AFFORDABLE HOUSING COVENANT**

THIS AFFORDABLE HOUSING COVENANT (the “**Covenant**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by and for the benefit of the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the District of Columbia Department of Housing and Community Development (hereinafter referred to as “**Declarant**”).

### **RECITALS**

WHEREAS, Declarant is the current owner of certain real property located in Washington, D.C. and set forth and described on **Exhibit A** attached hereto and made a part hereof (the “**Site**”), which Site is the subject of this Covenant;

WHEREAS, Declarant plans to convey the Site to \_\_\_\_\_, a District of Columbia \_\_\_\_\_ (the “**Developer**”), pursuant to the terms and conditions of that certain Property Disposition Agreement between the Declarant and the Developer (the “**Property Disposition Agreement**”) relating to the Site;

WHEREAS, in the interest of furthering its public policy of increasing the affordable housing stock in the District of Columbia (the “**District**”), the Declarant is recording this Covenant to require the Developer and any successor owner to: (i) assume and perform certain obligations for the development, construction or rehabilitation, marketing, ownership, and sale of the Affordable Units (as defined below) on the Site (the Affordable Units and the Site are collectively, the “**Property**”), (ii) sell Affordable Units only to Eligible Purchasers (as defined below), and (iii) provide for the continued ownership and occupancy of the Affordable Units by an Affordable Owner (as defined below) for a **period of fifteen (15) years** following the date of first occupancy by such Affordable Owner; and

WHEREAS, as a condition precedent to the transfer of title of the Site from the Declarant to the Developer, the Developer has agreed that the Site shall be conveyed subject to this Covenant.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed, subject to the following covenants, conditions, and restrictions:

### ARTICLE I

#### Defined Terms

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:

“**Affordable Owner**”: means an Eligible Purchaser who has purchased an Affordable Unit.

**“Affordable Unit”**: means each of the properties listed as an Affordable Unit on **Exhibit B**.

**“AMI”**: means the area median income for a household in the “Washington Metropolitan Statistical Area” as set forth in the most current periodic calculation provided by HUD, adjusted for family size without regard to any adjustments made by HUD for the purposes of the programs it administers. Adjustments of AMI for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)).

**“Annual Income”**: means the annual income of a Household as defined in 24 CFR §5.609 as of the date of this Covenant.

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

**“Capital Improvement Claim”** means a request and any supporting documentation submitted by an Affordable Owner to DHCD documenting a capital improvement made by the Affordable Owner to an Affordable Unit after such unit was purchased by the Affordable Owner.

**“Certificate of Eligibility”**: means a certification from an Eligible Purchaser in a form approved by the District Agency that shall be given to the District, the Developer (or if applicable, the Affordable Owner), and the title insurance company insuring title to the Property representing and warranting the following: (i) he or she has disclosed all of the Household’s Annual Income to the Developer, Affordable Owner, and/or Certifying Entity; (ii) he or she has been informed of his or her rights and obligations under this Covenant; (iii) that the Eligible Purchaser intends to occupy the Affordable Unit as their principal residence, and (iv) the Eligible Purchaser does not have an interest in any other real property. The Certificate of Eligibility shall be signed and notarized by the Eligible Purchaser and shall be attached to the deed conveying the Affordable Unit.

**“Certifying Entity”**: has the meaning given in Article IV.

**“Deed”**: means the Special Warranty Deed from the Declarant to the Developer.

**“Designated Affordability Level”**: has the meaning given in Article III. B.

**“Designated Housing Provider”**: has the meaning given in Article III.A.1.

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

**“District Agency”**: means the agency of the government of the District of Columbia that is responsible for implementing the Inclusionary Zoning Implementation Amendment Act of 2006, as codified in D.C. Official Code §§ 6-1041.01 *et seq.*

**“Eligible Capital Improvement”**: means 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 may be given 100% credit as determined by DHCD.

**“Eligible Purchaser”** has the meaning given in Article III B.

**“Eligible Replacement and Repair Cost”**: means 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 may be given 50% credit for repairs as determined by DHCD.

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

**“Ineligible Cost”**: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by DHCD. 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.

**“Initial Sale Price”** shall have the meaning shown on Exhibit B.

**“IZIA Act”**: means the Inclusionary Zoning Implementation Amendment Act of 2006, as codified in D.C. Official Code §§ 6-1041.01 *et seq.*

**“IZ Regulations”**: means the IZIA Act regulations published in Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, as may be amended from time to time.

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

**“Marketing Period”** shall be the period beginning on the date that the Developer first offers the redeveloped Property for sale to Eligible Purchasers until the date the Developer transfers title to the Property to an Eligible Purchaser.

**“Maximum Resale Price”**: has the meaning given in Article V.E.1.

**“Mortgagee”**: has the meaning given in Article XIV.

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

**“Occupancy Period”**: shall be a continuous and consecutive period beginning on the date that an Affordable Owner first acquires an Affordable Unit and ending fifteen (15) years thereafter.

“**PADD**”: means the Property Acquisition and Disposition Division of the Department of Housing and Community Development.

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

“**Property**”: has the meaning given in the Recitals.

“**Redevelopment Period**” shall be the period beginning on the date that the Declarant transfers the Site to the Developer and ending on the date of Final Completion of the Project as stated in the Schedule of Performance attached to the Property Disposition Agreement.

“**Release**”: is defined in Article IX.

“**Sale**”: has the meaning given in Article III.A.1.

“**Site**”: has the meaning given in the Recitals.

“**Transferee**”: has the meaning given in Article IV.

## ARTICLE II

### Redevelopment Period

A. Following the sale and conveyance of the Property from the Declarant to the Developer, Developer shall not sell, transfer, convey, hypothecate or assign fee simple title to the Property, or any lesser interest therein, to any party other than an Eligible Purchaser, as defined below, unless otherwise permitted in writing by the Declarant.

## ARTICLE III

### Marketing of Affordable Units; Eligible Purchaser

#### A. **Marketing and Sale To An Eligible Purchaser.**

1. The Developer shall market and offer for Sale the Affordable Units solely to Eligible Purchasers (as defined below) or with the approval of Declarant to a “**Designated Housing Provider**” (as defined below). A “**Designated Housing Provider**” is any of the following: (i) Workforce Housing Land Trust (The Workforce Housing Production Program Approval Act of 2006, effective 27 March 14, 2007), (D.C. Law 16-278; D.C. Official Code §6-1061.01 et seq.(2008 Supp.)); (ii) District of Columbia Housing Authority; or (iii) any non-profit organization authorized by DHCD.

2. When an Affordable Unit becomes available for sale to an Eligible Purchaser, the Developer or Affordable Owner shall provide PADD with written notice within ten (10) Business Days of its availability. Developer or Affordable Owner shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, (enacted on May 2, 2008), 55 D.C. Reg. 5313. Developer or Affordable Owner shall provide proof to PADD that the Affordable Unit has been registered, prior to PADD approving any Sale.

B. “**Eligible Purchaser**” shall mean: (i) a household consisting of one (1) or more

individuals that is interested in purchasing an Affordable Unit as their principal residence and the adult member(s) of which shall certify that he, she, or they shall use the Property as his, her, or their principal residence; and the adult members have in the aggregate an Annual Income, which does not exceed the percentage of AMI for such Affordable Unit as designated on **Exhibit B** (the “**Designated Affordability Level**”).

**C. Initial Sale Price.**

1. Upon completion of the Affordable Unit, the Developer shall not sell the Affordable Unit for a price greater than the Initial Sale Price as shown on **Exhibit B**. Developer may not increase the Initial Sale Price for an Affordable Unit without the prior written approval of the Declarant and Declarant may withhold or condition its written approval, if any, in its sole and absolute discretion.

2. If Declarant approves in writing an increase to the Initial Sale Price for an Affordable Unit and that increase amounts to a Sales Price, as defined below, that is at least five percent (5%) or more above the Initial Sale Price (such excess, the “**Excess Sales Price**”), then fifty percent (50%) of the amount of the Excess Sales Price shall be recaptured by and distributed to the Declarant from the Developer. For purposes of this Covenant, the term “**Sales Price**” shall mean the sales price identified in the contract for sale or agreed upon between the Developer, as seller, and an Eligible Purchaser, as buyer, for the Affordable Unit, but shall exclude any amounts approved by PADD to be used to assist an Eligible Purchaser with closing costs, down payment assistance, or other costs in connection with purchasing the Affordable Unit. Declarant reserves the right to approve or disapprove for any reason any Sales Price above the Initial Sale Price proposed by Developer.

ARTICLE IV

Initial Sale; Re-Sale Restrictions

A. Any conveyance of an Affordable Unit shall be subject to the procedures contained in this Article IV.

**B. Review by Certifying Entity.**

1. The determination of whether a proposed purchaser meets the requirements of an Eligible Purchaser shall be made exclusively by the Certifying Entity based on the criteria set forth in this Covenant. The Certifying Entity shall determine eligibility using the standards for “Eligible Purchaser” set forth above.

2. 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 selected by PADD or DHCD as the party authorized to review and certify the eligibility of a person as an Eligible Purchaser (the “**Certifying Entity**”). The Developer may be selected as the Certifying Entity with the written approval of PADD.

3. After the initial sale of the Affordable Unit, if at any time there is no Certifying Entity approved by DHCD or if the Certifying Entity approved by DHCD fails to identify a Eligible Purchaser reasonably acceptable 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 after giving written notice to DHCD, select a Certifying Entity to qualify a prospective purchaser as an Eligible Purchaser.

4. A conveyance of an Affordable Unit shall only be effective if a Certificate of Eligibility duly executed by the Eligible Purchaser and signed and confirmed by the Certifying Entity is recorded prior to or contemporaneously with the deed conveying the Affordable Unit. The Certificate of Eligibility must be dated within twelve (12) months of the closing of such sale. The Affordable Owner, Developer (for the initial sale of an Affordable Unit), Mortgagee, DHCD and any title insurer shall each be a third party beneficiary of such Certificate of Eligibility. Failure to record such Certificate of Eligibility, within ten (10) days after notice from the Certifying Authority or DHCD, shall be a default under this Covenant. The Certificate of Eligibility shall certify that such Certifying Entity has informed the appropriate Person(s) of his/her rights and obligations under Article IV and Article V of this Covenant.

5. The Developer and each Affordable Owner shall use a form of special warranty deed, which includes the language below in 12 point type and in all caps on the front page thereof:

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: (1) IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY, AND (2) REQUIRES THE GRANTEE TO GET APPROVAL FROM GRANTOR BEFORE SELLING, LEASING OR REFINANCING THE PROPERTY.

C. 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, shall do one of the following: (i) obtain and execute a Certificate of Eligibility for himself or herself within the later of: (A) sixty (60) days of the date the Transferee took title, or (B) sixty (60) days after receiving the interest in the Affordable Unit following probate, and recordation of the same in the Land Records, and record it along with a special warranty deed in the form prescribed by this Covenant in Article IV; or (ii) if the Transferee does not meet the requirements of an Eligible Purchaser or otherwise can not make the certifications in the Certificate of Eligibility, the Transferee shall promptly use its diligent and best efforts (as such term is defined below) to sell the Affordable Unit in accordance with this Covenant.

D. For purposes of this Article IV, "**Best Efforts**" shall mean that (i) an Affordable Owner or Transferee, as applicable, has provided the notice to DHCD, and DHCD has not

identified an Eligible Purchaser acceptable to the Affordable Owner or Transferee within 30 days of written request therefore; and (ii) an Affordable Owner or Transferee, as applicable, subsequently has selected a Certifying Entity pursuant to this Article IV herein, and such Certifying Entity has not identified an Eligible Purchaser acceptable as to such Affordable Owner or Transferee within ninety (90) days after receipt of such notice.

E. In no event shall a Transferee reside in an Affordable Unit except in accordance with Article IV. C.

## ARTICLE V Occupancy Period

A. During the Occupancy Period, an Affordable Owner: (i) may not sell, lease, assign, release, hypothecate, or otherwise transfer any interest in an Affordable Unit to any person or entity, other than another Eligible Purchaser and in accordance with this Covenant, and (ii) shall continuously occupy the Affordable Unit as their principal residence for the entire Occupancy Period, except as permitted by the Declarant under this Covenant. Prior to the execution of any purchase contract with an Eligible Purchaser, the Developer or Affordable Owner shall provide notice to the Declarant of their intent to enter into the contract in accordance with Article III and Article IV. Such Developer or Affordable Owner shall not execute the contract until Declarant shall have had ten (10) Business Days to review the same. Any instrument transferring an interest in an Affordable Unit during the Occupancy Period shall conspicuously reference these Covenants and the Eligible Purchaser's requirements discussed herein, and these Covenants shall be referenced in the Deed, and in each subsequent deed to any Eligible Purchaser or Transferee during the Occupancy Period.

B. Developer and Affordable Owner shall only be responsible for compliance with the terms of this Covenant to the extent of their interest in the Property and/or an Affordable Unit and only during the period of their ownership of the Property and/or an Affordable Unit.

C. An Affordable Owner may lease an Affordable Unit provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a five (5) year period of ownership; and (iii) the Affordable Owner first provides DHCD with notice that the Affordable Unit is available for lease in accordance with Article III and a certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, DHCD may grant a temporary waiver to the Affordable Owner not to exceed 24 months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the economic hardship must be submitted in writing for the DHCD to review. DHCD will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period, which shall include the allowable rent that the Affordable Owner may charge during the waiver period.

D. Determining Sale Price of Affordable Unit During the Occupancy Period

1. The re-sale price of each Affordable Unit for each subsequent Sale and the amount of any refinancing of any existing deed of trust or new lien from the Affordable Owner shall not exceed the Maximum Resale Price (“**Maximum Resale Price**” or “**MRP**”) which shall be determined through use of the formula  $MRP = (P \times F) + V$  (“Resale Formula”), where:

P = the price the Affordable Owner paid for the Affordable Unit;

F = the sum of the Ten Year Compound Annual Growth Rates of the AMI from the year of purchase to the year of sale. This function can be described by the following equation:

$$F = (1 + [((AMI Year m / AMI Year m-10) ^ (1/10) - 1) + \dots + ((AMI Year k / AMI year k-10) ^ (1/10) - 1) / n]) ^ n$$

*Where: m = year in which property is purchased*

*k = year in which property is sold*

*n = number of years the property is owned*

*or as published by DHCD.*

V = the sum of the value of approved Eligible Capital Improvements and approved Eligible Replacement and Repair Costs.

2. Affordable Owner may add actual and reasonable closing costs customarily paid by a seller of real estate in the District of Columbia in the Resale Formula; provided such costs shall not exceed 2% of MRP.

**E. Capital Improvements.** An Affordable Owner may submit Capital Improvement Claims to DHCD to obtain credit for capital improvements made to an Affordable Unit owned by the Affordable Owner. The Affordable Owner shall permit a representative of DHCD to inspect the Affordable Unit upon request to verify the existence and value of any capital improvements claimed under a Capital Improvement Claim. DHCD in its sole discretion shall determine whether a Capital Improvement Claim shall be treated as either an: (i) Eligible Capital Improvement, (ii) Eligible Replacement and Repair Cost, or (iii) Ineligible Cost. For the purposes of determining the value of “V” in the Resale Formula, the following improvements made to an 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 Affordable Unit:

1. Eligible Capital Improvements, which may be valued at 100% of reasonable cost, as determined by DHCD; and
2. Eligible Replacement and Repair Costs, which may be valued at 50% of reasonable cost, as determined by DHCD.

Ineligible Costs shall not be included in determining the value of “V” in the Resale Formula.



F. **Refinancing; Additional Liens.** The Affordable Owner shall not refinance any existing deed of trust, or place a new lien against the Affordable Unit, unless: (i) District has had at least ten (10) Business Days to review all loan documentation prior to the selected date of closing, (ii) they have obtained the prior written approval and confirmation of the Maximum Resale Price by the District, and (iii) the amount being secured individually or in the aggregate with all other existing debts secured by the Affordable Unit does not exceed the Maximum Resale Price.

G. Any sale or refinancing of an Affordable Unit above the Maximum Resale Price shall be a violation of this Covenant and the Declarant shall have the right to declare such violation a default hereunder.

## ARTICLE VI

### Evidence of Compliance

The Developer and any Eligible Purchaser and any other party bound, directly or indirectly, by the obligations hereunder, shall provide to the Declarant and/or the Certifying Entity, written verification or such other written documentation as may be required by the Declarant and/or the Certifying Entity, to evidence and substantiate the qualification of any and all persons claiming to be an Eligible Purchaser, prior to the execution of a sales agreement for an Affordable Unit. All such evidence shall be satisfactory to the Declarant and/or the Certifying Entity in its sole and absolute discretion.

## ARTICLE VII

### Default; Remedies

In the event of any sale, assignment, lease or use of an interest in an Affordable Unit in violation of this Covenant, Declarant 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: (i) the right to seek specific performance, (ii) disgorgement of proceeds from the Developer or Affordable Owner of a sale or lease of the Property in violation of this Covenant injunctive relief and other equitable remedies, (iii) the right to seek specific performance, and (iv) 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. Any exercise of the remedy of rescission shall be subject to the interest of any mortgage or deed of trust lien upon the Affordable Unit. If Declarant shall prevail in any such legal action to enforce this Covenant, then the Person against whom Declarant shall prevail, shall pay Declarant all of its costs and expenses, including reasonable attorney fees, incurred in connection with Declarant 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.

## ARTICLE VIII

### Covenants Binding on Successors and Assigns

These Covenants are and shall be binding upon the Property and shall run with the land for the period of time stated herein and until all obligations required to be performed under these Covenants are fulfilled. The rights and obligations of the Declarant, the Developer, the Eligible Purchaser 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 Declarant pertaining to the monitoring and/or enforcement of the obligations of the Developer or Eligible Purchaser hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by the District of Columbia, or such other transferee as the Declarant may so determine.

## ARTICLE IX

### Amendment of Covenants

These Covenants may be amended, modified or released by an instrument in writing executed by the Declarant. Any such amendment, modification or release shall relate back to the date of recordation of these Covenants. Any amendment by the Declarant to these Covenants that amends, modifies, or releases the terms of these Covenants shall be recorded among the Land Records before it shall be deemed effective.

## ARTICLE X

### Settlement

The Developer shall deliver to the Declarant, any written documentation requested pursuant to this Covenant (the “Documents”), at least thirty (30) calendar days prior to the settlement date for the sale of the Property from the Developer to an Eligible Purchaser (the “**Settlement**”). The Documents shall include the name and contact information of the escrow agent designated by the parties (“**Escrow Agent**”) for the sale of the Property to the Eligible Purchaser. The Declarant shall have eleven (11) business days from receipt of the Documents to review the same and notify the Developer of any material deficiencies or errors in the Documents. Provided that Developer or Eligible Purchaser cure such deficiencies or errors to Declarant’s reasonable satisfaction, Declarant shall provide written approval of Settlement (the “**Settlement Approval**”) and deliver the Settlement Approval and such other documents necessary to conduct the Settlement, including a partial release of these Covenants with respect to the Developer and its Redevelopment obligations, to the Escrow Agent a reasonable period of

time prior to the Settlement on the Property, for Escrow Agent to hold in escrow pending such Settlement.

## ARTICLE XI

### Termination and Release of Covenants

This Covenant shall terminate **fifteen (15) years** after the Developer first transfers the Affordable Unit to an Eligible Purchaser. Notwithstanding the foregoing, this Covenant may be amended, terminated and/ or released in whole or in part by Declarant in writing at any time, without notice to the Developer, any Affordable Owner, or Transferee.

## ARTICLE XII

### 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 Declarant at the following addresses:

**DECLARANT:**

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

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 Declarant from time to time:

**DEVELOPER:**

Notices which shall be delivered to Developer or Declarant 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.

### ARTICLE XIII

#### Insolvency or Bankruptcy of Developer

The Developer shall be in default of these Covenants if the Developer shall commit any affirmative act of insolvency, or shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against the Developer or there shall be appointed any receiver or trustee to take possession of any property of the Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

### ARTICLE XIV

#### Mortgages, Mortgagees, and Foreclosure

A. An Eligible Purchaser may obtain purchase money financing necessary to purchase the Property from Developer. In the event any Mortgagee under a mortgage or deed of trust placed against the Property by an Affordable Owner (“**Mortgagee**”) intends to initiate a foreclosure proceeding under a mortgage or deed of trust recorded against the Property, the Mortgagee shall first notify Declarant of its intent to do the same in writing, at least sixty (60) calendar days prior to the initiation of any proceeding relating to the Property, and shall include in its notice the amount of the Affordable Owner’s outstanding obligations to such Mortgagee (the “**Foreclosure Notice**”). Recordation of a Notice of Foreclosure does not constitute a Foreclosure Notice under these Covenants.

Upon receipt of such notice, Declarant or its assignee may elect to purchase such Affordable Unit, in which case upon such election the Affordable Owner and Mortgagee shall have the obligation to sell the Affordable Unit for an amount equal to the Maximum Resale Price as of the date of the Foreclosure Notice (the “**Option to Purchase**”), with no obligation upon Declarant to exercise the same. Declarant shall have forty-five (45) calendar days (the “**Option to Purchase Period**”) from the date of the Foreclosure Notice to exercise its Option to Purchase.

B. If Declarant has not exercised its Option to Purchase on or before the end of the Option to Purchase Period, then the Option to Purchase Period shall terminate and the Mortgagee (or any successor or acquirer of the estate) may exercise any and all rights it has under its mortgage or deed of trust, subject to Applicable Law.

C. 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. 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 XV

### Miscellaneous

#### A. LAW APPLICABLE; 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. Each of Owner and the District irrevocably submits to the jurisdiction of (i) the courts of the District of Columbia and (ii) the United States District Court for the District of Columbia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of the District and Owner irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant 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 waives and agrees 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.

#### B. COUNTERPARTS

This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

#### C. 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.

#### D. 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.

#### E. 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 Owner.

F. 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.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed, acknowledged and delivered by the Director of the Department of Housing and Community Development, its duly authorized representative, for the purposes therein contained.

**DECLARANT**

Approved for Legal Sufficiency:

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

By: \_\_\_\_\_  
Name: Lauren J. Buckner  
Title: Assistant Attorney General

By: \_\_\_\_\_  
Name: Leila Finucane Edmonds  
Title: Director, Department of Housing  
and Community Development

DISTRICT OF COLUMBIA )ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2009 by Leila Finucane Edmonds, Director of Department of Housing and Community Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia's Department of Housing and Community Development, has executed the foregoing and annexed document as her free act and deed.

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

[Notarial Seal]

ACKNOWLEDGED AND AGREED:

WITNESS:

**DEVELOPER:**

\_\_\_\_\_  
Print Name:

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

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ 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: \_\_\_\_\_



**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Schedule of Affordable Units**

<b><u>Affordable Unit</u></b>	<b><u>Designated Affordability Level</u></b>	<b><u>Initial Sale Price</u></b>