

EXHIBIT 1

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (this “Covenant”) is made as of the 8th day of December, 2022 (“Effective Date”), by Solid Brick Ventures, LLC, 93 Hawaii Ventures LLC and 98 Webster Ventures LLC, and their successors and assigns (collectively, the “Owners”), for the benefit of the District of Columbia, a municipal corporation, acting by and through the Office of the Attorney General for the District of Columbia (the “District”).

RECITALS

R-1. The Owners are the fee simple owners of certain real property located in the District of Columbia as further described in Exhibit A (the “Property”).

R-2. The Owners were subject to litigation commenced by the District in the Superior Court of the District of Columbia (the “Court”), case styled *District of Columbia v. Solid Brick Ventures, LLC, et al.*, 2022 CA 000446 B (the “litigation”).

R-3. The Owners and the District settled all claims involved in the litigation through a Consent Order and Judgment submitted to the Court on December 8, 2022 (the “Consent Order”).

R-4. In furtherance of the District’s public policy of increasing affordable housing stock in the District of Columbia, the Consent Order requires the Owners to execute a written covenant preserving affordable housing at the Property.

R-5. The District and the Owners desire to set forth herein the terms, restrictions, and conditions upon which the Owners will construct, maintain, and/or lease the Affordable Units at the Property.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Owners hereby declare, covenant, and agree as follows:

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 Paragraph 20.

Affordable Unit means each residential unit at the Property in which the rent charged is the applicable Base Rent as further defined below, including all requirements in D.C. Code § 42-3502.09 governing any rent charged for a unit upon the termination or expiration of an exemption claimed pursuant to § 42-3502.05(a)(1)(3) or (5).

Base Rent means that rent legally charged or chargeable for such unit under the District of Columbia Rent Stabilization Program on the Effective Date.

Capital Improvement is defined in D.C. Code § 42-3501.03(6).

Elderly Tenant means a tenant who is 62 years of age or older, unless a different age is established by any future amendment to D.C. Code § 42-3501.03(13).

Hardship refers to the cause for any rent adjustment sought through a petition made pursuant to D.C. Code § 42-3502.12.

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.

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

Person means any individual, corporation, limited liability company, trust partnership, association, or other legal entity, and their respective successors and assigns.

Property is defined in the Recitals.

Rent means the entire amount of money, money's worth, bonus, or gratuity demanded, received, or charged by the Owners as a condition of occupancy or use of a residential unit and its related services and facilities.

Rent Charged means the entire amount of money, money's worth, bonus, or gratuity a tenant must actually pay to the Owners as a condition of occupancy or use of a residential unit and its related services and facilities, pursuant to the Rent Stabilization Program.

Rent Stabilization Program means the program and related requirements established by Subchapter II of Chapter 35 of Title 42 of the Code of the District of Columbia and implementing regulations.

Rent Surcharge means a charge added to the rent charged for a residential unit in relation to any petition by the Owners for capital improvements, hardship, or substantial rehabilitation, and not included as part of the rent charged.

Residential Unit means an individual dwelling unit, whether occupied or vacant, constituting a part of the Property.

Substantial Rehabilitation is defined in D.C. Code § 42-3501.03(34).

Tenant includes a tenant, subtenant, lessee, sublessee, or other Person entitled to the possession, occupancy, or the benefits of any residential unit owned by the Owners.

Tenant with a Disability means any tenant included in the definition provided in D.C. Code § 42-3501.03(36A).

AFFORDABILITY REQUIREMENT

1. Affordability Requirement. The Owners shall maintain and lease all residential units at the Property as Affordable Units through the Affordability Period. If, during the Affordability Period, the Owners pursue or accept any form of financing that would customarily exempt the entire Property from the Rent Stabilization Program (e.g., Low-Income House Tax Credit or Housing Production Trust Fund financing), the Owners must maintain all residential

units at the Property as Affordable Units notwithstanding any exemption such financing would otherwise provide the Owners to the Rent Stabilization Program. Notwithstanding the foregoing, this Covenant shall not prevent the Owners from pursuing and accepting any local or Federal tenant-based rental subsidy that would exempt individual units from the Rent Stabilization Program, in which case the rent charged for such individual unit may be in accordance with the subsidy program. It is expressly understood and agreed that should any individual unit be occupied by a tenant using a tenant-based subsidy, then the requirements of the subsidy program shall control to the extent of any conflict with the terms of this Covenant. Upon termination of a tenant-based rental subsidy in any Affordable Unit, including after a tenant who is participating in the applicable subsidy program moves from such unit, any exemption from the Rent Stabilization Program related to such tenant-based subsidy will also terminate and such Affordable Unit will remain in the Rent Stabilization Program throughout the Affordability Period, subject to all restrictions in D.C. Code § 42-3502.09 for the sum of rent that may be charged following any such termination.

2. No Rent Increases Other Than Annual and Vacancy Adjustments. The Owners shall also refrain from seeking, petitioning for, or otherwise increasing the rent charged for units at the Property other than as permitted under the District of Columbia Rent Stabilization Program's provisions for (i) annual adjustments of general applicability pursuant to D.C. Code § 42-3502.06, subject to limitations on such increases for elderly tenants and tenants with disabilities under D.C. Code § 42-3502.24 or (ii) for a vacant accommodation pursuant to D.C. Code § 42-3502.13.

3. No Rent Surcharges. The Owners shall specifically forgo imposing any Rent Surcharge on any Affordable Unit at the Property and shall not file or pursue any petition under the Rent Stabilization Program based on capital improvements, hardship, or substantial rehabilitation.

4. Additional Affordable Units. If the Owners sell the portions of the Property located at 89 and 97 Hawaii Avenue NE, Washington, D.C. 20011 and the two vacant buildings thereon, such sale shall be to a purchaser who will covenant, as a part of the sale, to add four (4) additional Affordable Units to each building. Any additional Affordable Units at the Property must be maintained in compliance with the D.C. Housing Code (Sections 1 through 16 of Title 14 of the District of Columbia Municipal Regulations and Titles 12A-12L of the District of Columbia Municipal Regulations), Property Maintenance Code (12 DCMR § PM-101G, *et seq.*) and Air Quality Amendment Act (D.C. Code §§ 8-241.01-241.09).

5. Marketing Affordable Units Using Housing Locator. When an Affordable Unit becomes available for rent at the Property, the Owners 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 availability of such Affordable Unit and the application process for the Affordable Unit. As of the Effective Date, no Affordable Units are available for rent at the Property. However, it is anticipated that two (2) Affordable Units will become available for rent at the Property once renovations are completed for current tenants.

Within thirty (30) days of the completion of said renovations, the Owners shall register all such available Affordable Units at the Property on the Housing Locator referenced above.

QUALITY OF AFFORDABLE UNITS

6. Quality of Components. Owner shall maintain, upkeep, repair, and replace interior components (including fixtures, appliances, flooring, and cabinetry) of the Affordable Units with interior components of equal or better quality than those interior components being replaced. 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, repair, or replacement with equal or better quality without the prior written approval of the District, which approval shall be in the sole discretion of the District.

AFFORDABLE RENTAL TERM

7. Maintenance of Lease Records. The Property shall maintain or cause to be maintained copies of all initial and renewal leases executed with the tenants at the Property for a period of no less than five (5) years from the expiration or termination of such lease.

8. Fair Housing Practices. In connection with the leasing of an Affordable Unit at the Property, the Owners must comply with all applicable District of Columbia and federal laws governing fair and nondiscriminatory housing practices, including the D.C. Human Rights Act, D.C. Official Code § 2-1400, *et seq.* Upon request, the Owners shall provide the District with all documents evidencing the Owners' review and rejection of an applicant to an Affordable Unit at the Property.

9. Rent from Subsidies. Nothing herein shall be construed to prevent the Owners from collecting rental subsidy or rental-related payments from any federal or District of Columbia agency paid to the Owners and/or a tenant in an Affordable Unit, or on behalf of a tenant in an Affordable Unit, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant.

10. Representation of the Owners. By execution of a lease for an Affordable Unit at the Property, the Owners shall be deemed to represent and warrant to the District, upon which the District will rely, that the Owners are not collecting rents in excess of the rent that may be charged for such Affordable Unit under this Covenant.

11. Annual Reporting Requirements. Beginning on the 15th day of the first month following the Effective Date of this Covenant, the Owners shall provide an annual report ("Annual Report") to the District regarding the Affordable Units, which shall be submitted thereafter on each anniversary of the Effective Date of this Covenant. The Annual Report shall include the following:

- a. the number and identification of the Affordable Units that are occupied;
- b. the number and identification of Affordable Units that are vacant;
- c. for each Affordable Unit that is vacant, or that was vacant for a portion of the report period, the manner in which the Affordable Unit became vacant (e.g., eviction or voluntary departure) and the progress in re-leasing that unit; and
- d. a copy of all forms, policies, procedures, and other documents reasonably requested by the District related to the Affordable Units.

Except as may be required by applicable law, including without limitation to, the District of Columbia Freedom of Information Act of 1967, D.C. Code § 2-531, *et seq.*, Owners and the District shall not disclose to third parties the personal information of the tenants, including the identity of the tenants, submitted as part of the Annual Report.

The Annual Reports shall be retained by the Owners for a minimum of five (5) years after submissions and shall be available, upon reasonable notice, for inspection by the District or its designee. The District may request the Owners to provide additional information in support of its Annual Report.

12. Inspection Rights. The District or its designee shall have the right to inspect the Affordable Units, upon reasonable advance notice to the Owners. If the Owners receive such notice, the Owners shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Affordable Unit(s). The District or its designee shall have the right to inspect a random sampling of the Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The District shall have the right to conduct audits of a random sampling of the Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

DEFAULT; ENFORCEMENT AND REMEDIES

13. Default; Remedies. In the event the Owners default under any term of this Covenant and do not cure such default within thirty (30) days following written notice of such default from the District, the District shall have the right to seek specific performance, injunctive relief, and/or other equitable remedies, including compelling the re-leasing of an Affordable Unit and the disgorgement of rents collected in excess of the rental rates permitted hereunder, for default of this Covenant.

14. No Waiver. Any delay by the District in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

15. Right to Attorney's Fees. If the District shall prevail in any such legal action to enforce this Covenant, then the Person(s) against whom the District prevails, shall pay the District

all of its costs and expenses, including reasonable attorney fees, incurred in connection with the District's efforts to enforce this Covenant. If OAG is counsel for the District in such legal actions, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Fitzpatrick Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of employees of OAG that prepared for or participated in any such action.

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

16. This Covenant 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 Owners, and their respective successors, heirs and assigns shall be binding upon and insure 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 Owners hereunder shall be retained by the District, or such designee of the District as the District may determine. No sale, redevelopment, rehabilitation, transfer, or foreclosure shall affect the validity of this Covenant.

17. The Owners, or their successors, heirs and assigns, shall forward to the District copies of any notices provided to tenants at the Property pursuant to the Tenant Opportunity to Purchase Act, D.C. Code § 42-3404.02, within seven (7) days of such notices being provided to tenants.

MORTGAGES

18. All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant.

AMENDMENT OF COVENANT

19. Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified, or released other than as provided herein by an instrument in writing executed by a duly authorized official acting on behalf of the District and by a duly authorized representative of the Owners. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it is deemed effective.

AFFORDABILITY PERIOD

20. All Affordable Unit at the Property shall be leased in accordance with the terms of this Covenant for the "Affordability Period." The Affordability Period for all Affordable Units shall begin on the Effective Date of this Covenant and continue for a period of twenty-five (25) years, which date shall be memorialized in an acknowledgement executed by the District and the Owners and recorded in the Land Records. Notwithstanding the foregoing, this Covenant may be

released and extinguished upon the approval of the Attorney General for the District of Columbia, in their sole and absolute discretion.

NOTICES

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

Christopher S. Peña
Social Justice Section
District of Columbia Office of the Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
(202) 705-1798
Christopher.Penal@dc.gov

All notices sent to the Owners shall be sent to the following address:

Richard W. Luchs [Bar No. 243931]
Gwynne L. Booth [Bar No. 996112]
Spencer B. Ritchie [Bar No. 1673542]
Natasha N. Mishra [Bar No. 1616440]
Alexandria J. Smith [Bar No. 1781067]
Greenstein DeLorme & Luchs, P.C.
801 17th Street, NW, Suite 1000
Washington DC 20006
(202) 452-1400
rw1@gdllaw.com
glb@gdllaw.com
sbr@gdllaw.com
nnm@gdllaw.com
ajs@gdllaw.com _

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 deliver or refusal thereof; (ii) if by overnight courier services, then on the next business day after

deposit with the overnight courier services; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

MISCELLANEOUS

22. 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 Owners 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 Owners 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.

23. 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.

24. 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 while falls on a Saturday, Sunday, or District holiday is automatically extended to the next business day.

25. 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.

26. 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.

27. District Limitation on Liability. Any review or approval by the District shall not be deemed to be an approval, warranty, or other certification by the District as to compliance of such submissions, any Affordable Unit, or the Property with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or otherwise contractually required. The District shall incur no liability in connection with the District'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.

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

29. Representations of the Owners. As of the Effective Date of this Covenant, the Owners hereby represent and warrant to the District as follows:

- a. This Covenant has been duly executed and delivered by the Owners, and constitutes the legal, valid and binding obligation of the Owners, enforceable against the Owners, 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 the Owners of any agreement or order which is binding on the Owners; and
- c. The Owners (i) are duly organized, validly existing and in good standing under the laws of its state of incorporation and are qualified to do business and are in good standing in the District of Columbia; (ii) are authorized to perform under this Covenant; and (iii) have all necessary power to execute and deliver this Covenant.

[Signatures on Following Pages]

IN TESTIMONY WHEREOF, the Owners have caused these presents to be signed, acknowledged and delivered in its name by Mark Mlakar, the duly authorized principal and sole member of each of the Owners, witnessed by [____], its [____].

By: Matasha Midun
Date: 12/8/2022
[____]
Witness

By: [Signature]
Date: 12/8/2022
Mark Mlakar
On behalf of the Owners

CITY OF WASHINGTON

SS.

DISTRICT OF COLUMBIA

I, April Crook, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT, Mark Mlakar, who is personally known to be (or proved by oaths of credible witnesses to be) the person named as the duly authorized representative for the Owners in the foregoing and annexed Affordable Housing Covenant, bearing the date of 12/8, 2022, personally appeared before me in said District of Columbia, and that _____, acting on behalf of the Owners, as aforesaid witness, acknowledged the same to be his free act and deed.

Given under my hand and seal this 8 day of December

April Sultzer
Notary Public

My Commission Expires: 7/31/2027

APRIL C. SULTZER
A Notary Public of District of Columbia
My Commission Expires July 31, 2027



APPROVED AND ACCEPTED THIS 8TH DAY OF DECEMBER, 2022:

KARL A. RACINE
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division

/s/

JENNIFER L. BERGER
Chief, Social Justice Section

/s/

CHRISTOPHER PEÑA
LILY BULLITT
Assistant Attorneys General
400 6th Street NW 10th Floor
Washington, D.C. 20001
(202) 705-1798
Email: christopher.penal@dc.gov

EXHIBIT A
Legal Description of Property
[See attached]

"EXHIBIT A"

All that certain land located in the District of Columbia and being more particularly described as follows:

Property 1:

Lot Numbered Nineteen (19), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in the subdivision made by Howard Homes, Inc., as per plat recorded in Liber 116 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

66 Webster Street, NE

Lot 19, Square 3674

Property 2:

Lot Numbered Eleven (11) in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

98 Webster Street NE

Lot 11, Square 3674

Property 3:

Lot Numbered Two (2), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

65 Hawaii Avenue, NE

Lot 2, Square 3674

Property 4:

Lot Numbered Three (3), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

69 Hawaii Avenue, NE

Lot 3, Square 3674

Property 5:

Lot Numbered Four (4), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

73 Hawaii Avenue, NE

Lot 4, Square 3674

Property 6:

Lot Numbered Five (5), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
77 Hawaii Avenue, NE
Lot 5, Square 3674

Property 7:
Lot Numbered Six (6), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
81 Hawaii Avenue, NE
Lot 6, Square 3674

Property 8:
Lot Numbered Seven (7), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
85 Hawaii Avenue, NE
Lot 7, Square 3674

Property 9:
Lot Numbered Eight (8), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
89 Hawaii Avenue, NE
Lot 8, Square 3674

Property 10:
Lot Numbered 9 in Square Numbered 3674 in a subdivision made by Howard Homes, Inc. as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
93 Hawaii Avenue, NE
Lot 9, Square 3674

Property 11:
Lot Numbered Ten (10), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
97 Hawaii Avenue, NE
Lot 10, Square 3674