

DRAFT 1/26/2023

WORKFORCE HOUSING UNIT COVENANT

[Add project name & address]

THIS WORKFORCE HOUSING UNIT COVENANT (the “**Covenant**”) is made as of this ___ day of _____, 20__ (“**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. [recital language to be drafted].
- R-2. [recital language to be drafted].
- R-3. [recital language to be drafted].
- R-4. [recital language to be drafted].
- R-5. [recital language to be drafted]...

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.

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

Affirmative Fair Housing Marketing Plan: means Developer’s plan for marketing the rental or initial sale of the Workforce Housing Units, as approved by the Agency pursuant to Section 2.3.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that twenty (20) of the Residential Units to be contained in the Project are to be designated as Workforce Housing Units and shall be reserved for Households with an Annual Household Income between sixty percent (60%) and one hundred twenty percent (120%) of the MFI (defined below).

Workforce Housing Unit: means each Residential Unit that will function as a workforce apartment unit and used to satisfy the Affordability Requirement herein, all of which shall be identified in the Workforce Housing Unit Index.

Workforce Housing Unit Index: is an index of the Workforce Housing Units contained in the Project that identifies: (i) unit number (or similar identifier) and floor for each Workforce Housing Unit and whether each Workforce Housing Unit is a Rental Workforce Housing Unit or For Sale Workforce Housing Unit; (ii) the Designated Affordability Level of each Workforce Housing Unit; (iii) the approximate square footage and number of bedrooms of each Workforce Housing Unit and a schematic drawing showing the layout of each Workforce Housing 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.

Workforce Housing Unit Owner: means a Qualified Purchaser who own(s) a For Sale Workforce Housing Unit.

Workforce Housing Unit Tenant: means a Qualified Tenant who lease(s) a Rental Workforce Housing Unit.

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

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 set forth by the Agency.

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.

Certification of Income, Affordability and Housing Size: means a certification made by a Certifying Entity that verifies that (a) the Annual Household Income of a Household meets the Designated Affordability Level for an applicable Workforce Housing Unit, and (b) the Household meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Developer that it has performed or caused to be performed an inspection of a Rental Workforce Housing Unit and that, to the best of Developer's knowledge, such Rental Workforce Housing Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

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

Certifying Entity: means an entity or entities approved by the Agency pursuant to Section 2.4.

Conflict: is defined in Section 12.11.

Declaration of Eligibility: means a declaration executed by a Household prior to its purchase, initial rental or subsequent rent renewal, as applicable, of an Workforce Housing Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Entity representing and warranting the following: (a) the Household is a Qualified Purchaser or Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Entity and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Workforce Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Workforce Housing Unit as its principal residence, (e) the Household size meets the Occupancy Standard for the Workforce Housing Unit, (f) neither the Household, nor any person within the Household, has an ownership interest in any other residential real property or residential cooperative or, if they do, they will divest such interest and will provide satisfactory proof of the same to the Agency before closing on the purchase of or signing a lease for the Workforce Housing Unit and (g) any other reasonable and customary representations requested by the Agency.

Designated Affordability Level: means the percentage of MFI assigned to each Workforce Housing Unit and used to determine the Maximum Annual Household Income for prospective Qualified Purchasers or Qualified Tenants, as applicable.

Developer: is identified in the preamble of this Covenant.

Federal Affordability Restrictions: is defined in Section 12.11.

For Sale Workforce Housing Unit: means an Workforce Housing Unit that shall be sold solely to a Qualified Purchaser.

Household(s): means all persons who will occupy the Workforce Housing Unit, including the purchaser's or tenant's, as applicable, spouse or domestic partner, all children under eighteen (18) years of age, and all other persons over eighteen (18) years of age who will be occupying the Workforce Housing Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements as allowable by this Covenant.

Household Selection Plan: means Developer's plan for selecting Qualified Tenants or Qualified Purchasers for the rental or initial sale of the Workforce Housing Units, as approved by the Agency pursuant to Section 2.3.

Housing Cost: means (a) for Rental Workforce Housing Units, the total monthly payments for rent and Utilities, less any rental subsidies paid on behalf of that Household, and (b) for For Sale Workforce Housing Units, the total monthly mortgage payments, property tax, hazard insurance, if applicable, Utilities and condominium or homeowner fees required for purchase and occupancy.

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

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 Workforce Housing Unit.

Maximum Allowable Rent: as defined in Section 4.4.2.

Maximum Annual Household Income: is the maximum Annual Household Income of a Household occupying an Workforce Housing Unit shall be one hundred twenty percent (120%) times the MFI as adjusted for Household Size.

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

Maximum Sales Price: as defined in Section 5.1.1.

Median Family Income or **MFI:** means the median family income for a household of four (4) persons in the “Washington Metropolitan Statistical Area” as periodically published by HUD and adjusted for Household size without regard to any adjustments made by HUD for the purposes of the programs it administers. MFI is also known as Area Median Income or AMI.

Minimum Annual Household Income: is the minimum Annual Household Income of a Household occupying a Rental Workforce Housing Unit as indicated on the then-current Rent and Price Schedule.

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: means that at least one individual in a Household is permitted to occupy any given Workforce Housing Unit, as all twenty (20) Workforce Housing Units shall be one-bedroom units.

Over-Income Tenant: means a tenant of a Rental Workforce Housing Unit who, at the time of execution of the lease qualified as an Workforce Housing Unit Tenant, but, at the time of lease renewal, has an Annual Household Income greater than one hundred eighty percent (180%) of the applicable Maximum Annual Household Income for the applicable Rental Workforce Housing Unit.

Owner: means, in the context of Rental Workforce Housing Units, Developer, and in the context of For Sale Workforce Housing Units, Developer for so long as Developer owns the applicable For Sale Workforce Housing Unit, and then thereafter, the Workforce Housing Unit Owner that owns such For Sale Workforce Housing Unit.

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

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

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) at the time of purchase, has an Annual Household Income, as certified by the Certifying Entity, less than or equal to the Maximum Annual Household Income for the applicable Workforce Housing Unit, (ii) shall occupy the Workforce Housing Unit as its principal residence during its ownership of such Workforce Housing Unit, (iii) shall not permit occupancy of the Workforce Housing Unit by any other Person, except with the prior written consent of the Agency, (iv) shall use, occupy, hold, and sell the Workforce Housing Unit as an Workforce Housing Unit subject to the Affordability Requirement (including the requirement to sell the Workforce Housing Unit to a Qualified Purchaser) and this Covenant, and (v) at the time of purchase, meets the Occupancy Standard for the applicable Workforce Housing Unit.

Qualified Tenant: means a Household that (i) at the time of leasing, has an Annual Household Income, as certified by the Certifying Entity, less than or equal to the Maximum Annual Household Income for the applicable Workforce Housing Unit and at subsequent lease renewals, is not an Over-Income Tenant, (ii) shall occupy the Workforce Housing Unit as its principal residence during its lease of such Workforce Housing Unit, (iii) shall not permit occupancy of the Workforce Housing Unit by any other Person, except with the prior written consent of the Agency, (iv) shall use and occupy the Workforce Housing Unit as an Workforce Housing Unit subject to the Affordability Requirement and this Covenant, and (v) shall occupy the Workforce Housing Unit within the Occupancy Standard.

Rent and Price Schedule: means the Rent and Price Schedule published in the D.C. Register in accordance with the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 et seq.), as amended, which schedule sets forth, among other things, the Maximum Sales Prices and Maximum Rent for inclusionary zoning units.

Rental Workforce Housing Unit: means an Workforce Housing Unit that shall be leased to a Qualified Tenant.

Rental Workforce Housing Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

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

Sale: is defined in Section 5.1.

Transferee: is defined in Section 5.7.

Utilities: means water, sewer, electricity, natural gas, trash, and any other fees required by the Developer, property manager, or condominium or homeowners' association in order to occupy the Workforce Housing Unit, including, but not limited to, mandatory amenity or administrative fees. Costs of any resident paid utilities shall be determined by a utility study performed by a qualified third-party engineer, and are subject to annual adjustments if supported by a more recent qualifying utility study.

ARTICLE II AFFORDABILITY REQUIREMENT

2.1 Requirement of Affordability. Developer shall construct, reserve, and either maintain and lease as Rental Workforce Housing Units, or sell as For Sale Workforce Housing Units that number of Workforce Housing Units that are required by the Affordability Requirement.

2.2 Workforce Housing Unit Standards and Location.

2.2.1 Workforce Housing Unit Index. As of the Effective Date, District has approved the Workforce Housing Unit Index, which is attached hereto as Exhibit C. Developer shall not amend or modify the Workforce Housing 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 as a result of re-designations of Residential Units under Section 4.6.6 shall be recorded in the Land Records as an amendment to this Covenant, at such time as determined by the Agency.

2.2.2 Unit Mix. All Workforce Housing Units shall be one bedroom units, including borrowed-light and exterior window bedrooms.

2.2.3 Size. The Workforce Housing Units shall be of a size substantially similar to the Market-Rate Units, provided that Workforce Housing Units may be the smallest size of each one bedroom, market-rate type and have no luxury-scaled unit counterpart.

2.2.4 Exterior Finishes. Exterior finishes of Workforce Housing Units will be substantially similar to the appearance, finish, and durability of the exterior finishes of the Market-Rate Units.

2.2.5 Interior Finishes. Developer agrees that the interior base finishes, appliances, and equipment in the Workforce Housing Units shall be substantially similar to the Market-Rate Units.

2.2.6 *Workforce Housing Unit Location.* Workforce Housing Units shall be distributed vertically and horizontally throughout the Project, except for the top three floors, and shall not be concentrated on any one floor or within a tier or section of the Project.

2.3 **Marketing Workforce Housing Units.**

2.3.1 *Marketing Plan.* Developer shall submit to Agency an Affirmative Fair Housing Marketing Plan and Household Selection Plan that set forth its plan for marketing the Workforce Housing Units and for selecting Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affirmative Fair Housing Marketing Plan and Household Selection 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 Workforce Housing Units for sale or rent. Developer may contract with the Certifying Entity to implement the Affirmative Fair Housing Marketing Plan and Household Selection Plan.

2.3.2 *Housing Locator.* When an Workforce Housing Unit becomes available for rent or for sale, Owner shall register the Workforce Housing Unit on the Housing Locator Website and indicate the availability of such Workforce Housing Unit and the application process for the Workforce Housing Unit.

2.4 **Certifying Entity.** Each Owner shall select a Certifying Entity, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned, or delayed. Owner may contact the Agency with questions and information about the selection of a Certifying Entity. The Certifying Entity shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable, for the subject Workforce Housing Unit. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Entity shall issue a Certification of Income, Affordability and Housing Size for the subject Household.

ARTICLE III USE

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

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair, and replace interior components (including fixtures, appliances, flooring, and cabinetry) of the Workforce Housing Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Workforce Housing Unit or remove fixtures or appliances installed in an Workforce Housing 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.

ARTICLE IV RENTAL OF WORKFORCE HOUSING UNITS

4.1 **Lease of Rental Workforce Housing Units.** In the event the Project contains Rental Workforce Housing Units, Developer shall reserve, maintain, and lease the Rental Workforce Housing Units to Qualified Tenants (a) in accordance with this Covenant and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 Rental Workforce Housing Unit Lease Requirements.

4.2.1 *Form of Lease.* To lease a Rental Workforce Housing Unit to a Qualified Tenant, Developer shall use a lease agreement to which is attached and incorporated a Rental Workforce Housing Unit Lease Rider. The Rental Workforce Housing Unit Lease Rider shall be executed by Developer and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Workforce Housing Unit. Any occupant of the Rental Workforce Housing Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Workforce Housing Unit Lease Rider.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Workforce Housing Unit shall only be effective if a Rental Workforce Housing Unit Lease Rider, a Certification of Income, Affordability and Housing Size and a Declaration of Eligibility are attached as exhibits to the lease

agreement. Failure to attach the foregoing shall be deemed a default by Developer under this Covenant.

4.2.3 *Developer to Maintain Copies.* Developer shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 **Rental Workforce Housing Unit Admissions Process.**

4.3.1 *Referrals.* Developer may obtain referrals of prospective tenants of Rental Workforce Housing Units from federal and District of Columbia agencies, provided such referrals comply with the requirements of this Covenant. In all events, before a prospective tenant leases a Rental Workforce Housing Unit, a Certifying Entity shall certify the prospective tenant's Annual Household Income, Household size and Housing Costs for the applicable Rental Workforce Housing Unit.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Workforce Housing Units, Developer shall select Qualified Tenants through a lottery system or other system as otherwise approved by the Agency as shall be further provided in the Affirmative Fair Housing Marketing Plan and Household Selection Plan. Following the initial occupancy of the Workforce Housing Units, Developer shall consider each applicant in the order in which received by Developer, whether received pursuant to the Affirmative Fair Housing Marketing Plan, Household Selection Plan or referred pursuant to Section 4.3.1.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Workforce Housing Unit, Developer may reject any applicant if, after diligent review of such applicant's application, Developer determines in good faith that such applicant does not meet Developer's criteria to lease or occupy a Rental Workforce Housing Unit, provided such criteria do not violate applicable District of Columbia and federal laws and is the same criteria used by Developer to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Developer shall provide the Agency with all documents evidencing Developer's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Workforce Housing Unit shall have its Annual Household Income and Household eligibility verified by, and shall obtain a Certification of Income, Affordability and Housing Size from, the Certifying Entity prior to leasing such unit.

4.4 **Initial Rental Workforce Housing Unit Lease Terms.**

4.4.1 *Term.* The term of any Rental Workforce Housing Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent (“**Maximum Allowable Rent**”) for each Rental Workforce Housing Unit shall be determined by multiplying the current MFI, adjusted for Household size and Occupancy Standard, times (x) 30%, times (x) 0.083 (1/12), less any Utilities.

4.5 **Determination of Income and Household Size.** The Annual Household Income for a prospective tenant of a Rental Workforce Housing Unit shall be determined as of the date of the lease and any lease renewals for such Rental Workforce Housing Unit. The Certifying Entity shall verify that (a) the Household’s Annual Household Income is less than the Maximum Annual Household Income for the applicable Rental Workforce Housing Unit; (b) the Household will not expend more than fifty percent (50%) of its monthly Annual Household Income on Housing Cost for the applicable Rental Workforce Housing Unit; and (c) the Household meets the Occupancy Standard for the applicable Rental Workforce Housing Unit.

4.6 **Subsequent Lease Years**

4.6.1 *Establishment of Maximum Allowable Rent.* The Maximum Allowable Rent for lease years after the first lease year shall be determined in accordance with Section 4.4.2 hereinabove.

4.6.2 *Renewal by Workforce Housing Unit Tenant.* For each Workforce Housing Unit Tenant who intends to renew its residential lease, Developer shall obtain the following: (i) a Declaration of Eligibility from each such Workforce Housing Unit Tenant and (ii) a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, each dated no earlier than ninety (90) days prior to the anniversary of the first day of the applicable residential lease. Developer shall not permit a renewal of an Workforce Housing Unit Tenant’s lease unless the Workforce Housing Unit Tenant has provided Developer with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Workforce Housing Unit Tenant fails to provide such documents, Developer shall treat such tenant as an Over-Income Tenant and may charge market-rate rent, and Developer shall designate another Residential Unit as a Rental Workforce Housing Unit in accordance with Section 4.6.6.

4.6.3 *Annual Recertification of Tenants.* Within fifteen (15) days after receipt of an Workforce Housing Unit Tenant’s renewal documents at annual recertification, the Certifying Entity shall determine the Workforce Housing Unit Tenant’s eligibility pursuant to Section 4.5 for the subject Rental Workforce Housing Unit and notify Workforce Housing Unit Tenant of the same. Any Workforce Housing Unit Tenant who meets the income and Household size requirements for the Workforce Housing Unit at recertification will be eligible to remain in the Rental Workforce Housing Unit and to renew his/her lease at the then-current lease rate for the particular Rental Workforce Housing Unit.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Workforce Housing Unit Tenant whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Workforce Housing Unit, may elect either to (i) remain in the Rental Workforce Housing Unit paying rent, as established by the Owner, up to the then-current Maximum Allowable Rent for the subject Rental Workforce Housing Unit or (ii) vacate the Rental Workforce Housing Unit at the end of the tenant’s lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Workforce Housing Unit Tenant is an Over-Income Tenant, then the Over-Income Tenant may elect to remain in the Rental Workforce Housing Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Workforce Housing Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level or if a higher Designated Affordability Level does not exist at the Property, but qualifies for a like-sized Market-Rate Unit, whereupon Developer shall designate a Market-Rate Unit as a Rental Workforce Housing Unit pursuant to Section 4.6.6.

4.6.6 *Changes to Unit Location.* Developer may only change the designation of a Rental Workforce Housing Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Workforce Housing Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Developer shall designate, as expeditiously as possible, the next available Rental Workforce Housing Unit at that same higher Designated Affordability Level or Market-Rate Unit of similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Workforce Housing Unit had been changed in order to bring the Property in conformity with the Affordability Requirement. Developer shall notify the Agency of any such redesignation as expeditiously as possible by providing an updated Unit Index.

4.6.7 *Rent from Subsidies.* Nothing herein shall be construed to prevent Developer from collecting rental operating subsidy or rental-related payments from any federal or District of Columbia agency paid to Developer and/or an Workforce Housing Unit Tenant, or on behalf of an Workforce Housing Unit Tenant, to the extent receipt of such payment, combined with any payment from the Workforce Housing Unit Tenant does not exceed Maximum Allowable Rent for the applicable Workforce Housing Unit.

4.7 **No Subleasing of Rental Workforce Housing Units.** An Workforce Housing Unit Tenant may not sublease any portion of its Rental Workforce Housing Unit or assign its lease to any other Household and Developer shall not knowingly allow such Rental Workforce Housing Unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. This prohibition includes short-term renting to, or permitting occupancy by, Persons who are not included in an Workforce Housing Unit Tenant's Household, of all or a portion of the Workforce Housing Unit, either directly or through services such as AirBnb or other rental agency providers.

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

4.9 **Representations of Developer.** By execution of a lease for a Rental Workforce Housing Unit, Developer shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Entity, and (ii) Developer is not collecting more than the Maximum Allowable Rent.

4.10 **Annual Reporting Requirements.** Beginning with the first occupancy of any Workforce Housing Unit, Developer shall provide an annual report (“**Annual Report**”) to the Agency regarding the Rental Workforce Housing Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of the Rental Workforce Housing Units, including identifying any Rental Workforce Housing Units that had been redesignated during the previous year in accordance with Section 4.6.6, by bedroom count, that are occupied;

(b) the number and identification of the Rental Workforce Housing Units, including identifying any Rental Workforce Housing Units that had been redesignated during the previous year in accordance with Section 4.6.6, by bedroom count, that are vacant;

(c) for each Rental Workforce Housing Unit that is vacant or that was vacant for a portion of the previous year, the manner in which the Rental Workforce Housing Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Workforce Housing Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income, Affordability and Housing Size;

(e) a sworn statement that, to the best of Developer’s information and knowledge, the Household occupying each Rental Workforce Housing Unit meets the eligibility criteria of this Covenant;

(f) a copy of each Certification of Income, Affordability and Housing Size received by Developer during the previous year for each Household renting a Rental Workforce Housing Unit;

(g) a copy of each Declaration of Eligibility received by Developer during the previous year for each Household renting a Rental Workforce Housing Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Workforce Housing Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Workforce Housing Units.

The Annual Reports shall be retained by Developer for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Developer provides a report to an agency within the District government with content substantially similar to the content of the Annual Report described in this section, subject to the Agency's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the Agency. The Agency may request Developer to provide additional information in support of its Annual Report.

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

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

ARTICLE V SALE OF WORKFORCE HOUSING UNITS

5.1 **Sale of For Sale Workforce Housing Units.** In the event the Project contains For Sale Workforce Housing Units, the Owner shall comply with the provisions of this Article V for the sale of such Workforce Housing Units. Owner shall not convey all or any part of its fee interest ("**Sale**"), whether or not for consideration, in a For Sale Workforce Housing Unit to any Person other than a Qualified Purchaser. Developer and each Workforce Housing Unit Owner of such For Sale Workforce Housing Unit shall only sell to a buyer who has obtained a Certification of Income, Affordability and Housing Size from a Certifying Entity and who is a Qualified Purchaser.

5.1.1 *Maximum Sales Price.* The sale price of each For Sale Workforce Housing Unit upon an initial Sale shall not exceed the amount (the "**Maximum Sales Price**") in the then-current Rent and Price Schedule. The Developer shall submit to the Agency the proposed sales price for each For Sale Workforce Housing Unit for approval prior to the marketing and sale of such For Sale Workforce Housing Unit.

5.1.2 *Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated by the Agency in accordance with Schedule 1 attached hereto and incorporated herein. The Agency shall calculate and provide the Maximum Resale Prices for

each For Sale Workforce Housing Unit prior to the marketing and resale of such For Sale Workforce Housing Unit.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Workforce Housing Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Workforce Housing Unit.

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

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined within thirty (30) days of the date of the sales contract for such For Sale Workforce Housing Unit. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income, Affordability and Housing Size from the Certifying Entity prior to entering into the contract. To the extent closing on the sale of a For Sale Workforce Housing Unit will not occur within one hundred twenty (120) days after the date of the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again, so that the Certification of Income, Affordability and Housing Size is dated no more than one hundred twenty (120) days prior to the closing. The Certifying Entity shall determine a Household's eligibility to purchase a For Sale Workforce Housing Unit by verifying that (a) the Household's Annual Household Income is less than the Maximum Annual Household Income for the applicable For Sale Workforce Housing Unit; (b) the Household will not expend more than fifty percent (50%) of its monthly Annual Household Income on Housing Cost for the applicable For Sale Workforce Housing Unit; and (c) the Household meets the Occupancy Standard for the applicable For Sale Workforce Housing Unit.

5.2.2 *Sale.* A Sale of a For Sale Workforce Housing Unit shall only be effective if (a) a Declaration of Eligibility submitted by a Household to Owner and dated no more than one hundred twenty (120) days prior to the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Workforce Housing Unit and (b) a Certification of Income, Affordability and Housing Size is completed by a Certifying Entity within one hundred twenty (120) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Declaration of Eligibility and Certification of Income, Affordability and Housing Size.

5.2.3 *Resale.* Prior to a Sale of a For Sale Workforce Housing Unit by an Workforce Housing Unit Owner, the Workforce Housing Unit Owner intending to sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) refer the prospective purchaser to the Agency to initiate the process of determining their Household's eligibility to purchase the For Sale Workforce Housing Unit.

5.3 Closing Procedures and Form of Deed.

5.3.1 *Owner to Provide Copy of Covenant.* Owner shall provide the Qualified Purchaser with a copy of this Covenant at least thirty (30) days prior to the closing on the Sale of the For Sale Workforce Housing Unit. Qualified Purchasers shall execute an Acknowledgment of Covenant on or before the date of closing on such Sale.

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Workforce Housing Unit must have a fully executed Declaration of 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 Workforce Housing Unit.* A deed for a For Sale Workforce Housing Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such other 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 purchaser of a For Sale Workforce Housing Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed Closing Disclosure, a copy of the deed recorded in the Land Records, the executed Declaration of Eligibility, the executed Certification of Income, Affordability and Housing Size, and the executed Acknowledgment of Covenant.

5.4 **Representations of Owner.** By execution of a deed for a For Sale Workforce Housing Unit, Developer (for initial Sales) and the Workforce Housing 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 Household has been determined to be a Qualified Purchaser of the applicable For Sale Workforce Housing Unit by the Certifying Entity, and (ii) the sale price satisfies the terms of this Covenant.

5.5 **Annual Certification of Residency.** During the Affordability Period, the Workforce Housing Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Workforce Housing Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form and information as may be prescribed by Agency.

5.6 **Leasing For Sale Workforce Housing Units.** An Workforce Housing Unit Owner shall not lease, or permit a sublease of, a For Sale Workforce Housing Unit, or any portion thereof, 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 Workforce Housing Unit, then that Workforce Housing Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and

any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules) and any Mortgage or other loan documents applicable to the Workforce Housing Unit. This prohibition includes short-term renting to, or permitting occupancy by, Persons who are not included in an Workforce Housing Unit Owner's Household, of all or a portion of the Workforce Housing Unit, either directly or through services such as AirBnb or other rental agency providers.

5.7 Transfers.

5.7.1 Except as provided in Article VIII, in the event an Workforce Housing Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Workforce Housing Unit pursuant to operation of law, court order, divorce or death to a transferee, heir, devisee, or other personal representative of such owner of a For Sale Workforce Housing Unit (each a "**Transferee**"), such Transferee shall be automatically bound by all of the terms, obligations, and provisions of this Covenant; and shall either: (i) occupy the For Sale Workforce Housing Unit if he or she is a Qualified Purchaser or (ii) if the Transferee is not a Qualified Purchaser, or does not wish to, or is unable to, occupy the For Sale Workforce Housing Unit, he or she shall promptly sell it in accordance with this Covenant.

5.7.2 In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Workforce Housing Unit for longer than ninety (90) days.

5.8 **Progress Reports.** Until all initial Sales of For Sale Workforce Housing Units are completed, Developer shall provide Agency with annual progress reports on each anniversary of the Effective Date of this Covenant, or more frequently upon request, on the status of its sale of Workforce Housing Units.

ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Owner, Workforce Housing Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the Agency, the District shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or re-leasing of an Workforce Housing Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder plus ten percent (10%) of such excess amount, for defaults under this Covenant.

6.2 **No Waiver.** Any delay by the Agency 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.

6.3 **Right to Attorney's Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then Owner, Workforce Housing Unit Tenant, 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 Workforce Housing Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of District, Developer, Workforce Housing 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 District pertaining to the monitoring and/or enforcement of the obligations of Developer or Workforce Housing 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, except as provided in Article VIII.

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, except as provided in Section 8.3.3.

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

8.3 Default of Mortgage and Foreclosure.

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

8.3.2 Termination Upon Foreclosure and Assignment. In the event title to a For Sale Workforce Housing Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.3 Apportionment of Proceeds. In the event title to a For Sale Workforce Housing Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Workforce Housing Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under

such Mortgages; third, to the For Sale Workforce Housing Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

8.3.4 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Workforce Housing Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.7.

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Workforce Housing Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (a) the District's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit by the For Sale Affordable Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

ARTICLE IX AMENDMENT OF COVENANT

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

ARTICLE X AFFORDABILITY PERIOD

All Workforce Housing Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the "Affordability Period." The "Affordability Period" for each Workforce Housing Unit shall be twenty (20) years from the issuance of the first certificate of occupancy for the Workforce Housing Unit. 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 applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the Agency or the Developer from time to time. All notices to be sent to the Agency shall be sent to the following address:

Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE

Washington, DC 20020

Re: Housing Regulation Administration, Inclusionary Zoning/Affordable Dwelling
Unit Monitoring

All notices to be sent to Developer shall be sent to the address given in the preamble. All notices to be sent to the Workforce Housing Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to any Workforce Housing Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the Agency 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. Owner, Workforce Housing Unit Tenants 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. Owner, Workforce Housing Unit Tenants, 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, each of which shall be an original but all of which shall together constitute one and the same instrument.

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, unless this construction would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

12.7 **Limitation on Liability.** Provided that 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, Owner shall be liable if 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 Workforce Housing Unit, or the Property with any building codes, regulations, standards, laws, or any 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, Developer hereby represents and warrants to District as follows:

(a) This Covenant has been duly executed and delivered by Developer, and constitutes the legal, valid, and binding obligation of Developer, enforceable against 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 Developer; and

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

12.11 **Federal Affordability Restrictions.** In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or

the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance (“**Conflict**”) with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

[Signatures on Following Pages]

DRAFT

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____, witnessed by _____, its _____

WITNESS

DEVELOPER

By: _____

By: _____ [SEAL]

Name: _____

Name: _____

Title: _____

Title: _____

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT _____ who is personally known to be (or proved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Affordable Housing Covenant, personally appeared before me in said jurisdiction and that he/she, in such capacity, being so authorized to do so, executed the foregoing instrument for the purposes therein contained, and acknowledged the same to be his/her free act and deed.

Given under my hand and seal this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

APPROVED AND ACCEPTED THIS _____ DAY OF _____, 20__:

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

By: _____

Name:

Title: Deputy Mayor for Planning and
Economic Development

LEGAL REVIEW

By: _____

Office of the General Counsel

District of Columbia, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that _____, the Deputy Mayor for Planning and Economic Development, on behalf of the District of Columbia, personally appeared before me in said jurisdiction, and, being personally known to me (or satisfactorily proven) to the person whose name is subscribed to the foregoing Affordable Housing Covenant, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and acknowledged the same to be the act and deed of the District of Columbia.

Given under my hand and seal this _____ day of _____, 20__.

Notary Public, D.C.

My commission expires: _____

EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT B

Rental Workforce Housing Unit Lease Rider

This Rental Workforce Housing Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated _____ (“Lease”) between _____ (“Resident” or “You”) and _____, as Management Agent (“Manager”) for _____ (“Owner”) for Workforce Housing Unit number _____ (“Premises”), located at _____, Washington DC _____.

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

WORKFORCE HOUSING UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the District of Columbia dated _____, 20__, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Workforce Housing Unit, which requires the Resident’s household income to be less than or equal to [____] of the median family income (MFI) or area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Workforce Housing Unit, you must be and remain an “Workforce Housing Unit Tenant” as defined in the Affordable Housing Covenant.

INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease, the Manager shall request that the Resident provide the Certifying Entity with the following:

- (i) an executed Declaration of Eligibility that states that Resident is not an Over-Income Tenant and is and will continue to occupy the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and documentation of income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Workforce Housing Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Entity.

Resident shall submit the foregoing listed documentation to the Certifying Entity within fifteen (15) days of Manager’s request. Within fifteen (15) days of Certifying Entity’s receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Entity will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household’s MFI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises at the time of lease renewal and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed one hundred forty percent (140%) of the Maximum Annual Household Income applicable to the Premises, then the Resident shall be deemed an "Over-Income Tenant" as provided in the Affordable Housing Covenant and may either (a) remain in the Premises and pay the rent applicable to an Workforce Housing Unit at a higher Designated Affordability Level for which the Resident's Annual Household Income qualifies, if available at the Property, or (b) if an Workforce Housing Unit at a higher Designated Affordability Level is not available at the Property, remain in the Premises and pay the rent applicable to a market-rate unit of like size and location.

Manager will notify Resident of all options (i.e., an Workforce Housing Unit at a different Designated Affordability Level or a market rate unit) for which Resident is income eligible at least thirty (30) days prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the then-current rental rate if the Resident is not an Over-Income Tenant, (ii) remain in the Premises paying the rental rate applicable to an Workforce Housing Unit at a higher Designated Affordability Level or market rate rent for that unit if the Resident is an Over-Income Tenant, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager may pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a District policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease all or any portion of the Premises or assign its lease to any other person, except with the prior written consent of the D.C. Department of Housing and Community Development, in its sole and absolute discretion. This prohibition includes short-term renting to, or permitting occupancy by, persons who are not members of Resident's household, of all or a portion of the Premises, either directly or through services such as "AirBnb" or other rental agency providers.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, Affordability and Housing Size, and a Declaration of Eligibility are attached as exhibits to the lease agreement.

Resident Signature

Date

Resident Signature

Date

Resident Signature

Date

EXHIBIT C

Workforce Housing 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 Workforce Housing Unit shall be determined through use of the formula $MRP = (P \times F) + V$ (“Formula”), where:

- (a) P = the price Owner paid for the Workforce Housing 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 Median Family Income (“MFI”) from the first year of ownership of the For Sale Workforce Housing Unit to the year of the sale of the For Sale Workforce Housing Unit by the Workforce Housing Unit Owner. This average may be expressed:
 - (1) As the result of the formula $F = (1 + [((MFI \text{ Year } m / MFI \text{ Year } m-10) ^ (1/10) - 1) + \dots + ((MFI \text{ Year } k / MFI \text{ year } k-10) ^ (1/10) - 1) / n]) ^ n$, where m = the year after the Workforce Housing Unit was purchased by Owner, k = the year in which the Workforce Housing Unit is sold by Owner, and n = the number of years the Workforce Housing Unit is owned by 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 Workforce Housing 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 Workforce Housing 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 Workforce Housing Unit or if the improvements make the Workforce Housing 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. Owner shall permit a representative of the Agency to inspect the For Sale Workforce Housing Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.
8. An allowance may be made in the Maximum Resale Price for the payment of legal fees, closing costs (including, but not limited to, title insurance and filing fees) and real estate broker or salesperson fees associated with the sale of the For Sale Workforce Housing Unit if written approval is obtained from the Agency.
9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Workforce Housing Unit shall not be considered part of the sales price of the For Sale Workforce Housing Unit for the purposes of determining whether the sales price of the For Sale Workforce Housing 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 Workforce Housing Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

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

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