

# Small Building Program

## GUIDELINES AND APPLICATION PACKAGE

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## **Overview**

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The Department of Housing and Community Development's (DHCD) Small Building Program (Program) will provide financial assistance for limited systems replacement and other key repairs to eligible property owners of multi-family rental housing located in the District of Columbia (District). Repairs are expected to improve sub-standard housing conditions, including safety and environmental hazards in the District. The Maximum Grant Amount per application is \$25,000 per rental dwelling unit and a maximum of \$200,000 per project.

## **Eligible Activities**

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The Program is designed to support the repairs of unsafe structures and/or unsafe equipment located on a structure that pose a hazard to life, health, property, or safety of the public or occupants of the housing accommodation or structure. A complete list of eligible critical repairs can be found in Attachment A.

The Program will not fund: (1) cosmetic repairs or general upgrade of properties; (2) rehabilitation of properties; (3) imminently dangerous buildings under § 109 of the District of Columbia Property Maintenance Code (that is, tenants are ordered to vacate, building is condemned, 12 DCMR G); (4) projects that will lead to the permanent displacement of residents; or (5) projects that have been previously awarded funds and have an affordability covenant in place through the Program.

## **Program Eligibility**

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Applicants that meet the following criteria should apply:

- Property owners of up to three rental housing properties whose income does not exceed 120% of Median Family Income (MFI) according to DHCD's Inclusionary Zoning Income Rent and Purchase Price Schedule<sup>1</sup>; or
- Board of a Limited Equity Cooperative.

Properties that meet the following criteria should apply:

- Housing Accommodation has between 5 and 20 housing units;
- Housing Accommodation is at least 75 percent occupied;
- At least 50 percent of housing units must be affordable to low- to moderate-income households who earn at or below 80 percent of the Median Family Income (MFI) and
- Housing Accommodation has health hazards or unsafe living conditions that need to be addressed to improve the quality of life of residents that does not exceed \$25,000 per dwelling unit or \$200,000 per project.

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<sup>1</sup> DHCD's Inclusionary Zoning Income Rent and Purchase Price Schedule via this website:  
<https://dhcd.dc.gov/service/rent-and-income-program-limits>.

## TYPES OF ELIGIBLE CRITICAL REPAIRS

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The Small Building Program uses the Department of Housing and Urban Development's Definition of Rehabilitation in Chapter 4460.1 to define eligible critical repairs for the program to include the following:

1. The replacement of one major building component.
  - a. Major refers to the importance and use of the component and the extent of the replacement (not an upgrade). For example, roof structures, wall or floor structures, foundations, plumbing, electrical systems and HVAC.
  - b. If the replacement compromises another major building component, it will be considered an ineligible critical repair.
2. Addressing several minor repairs.
  - a. Minor refers to the repair, not the replacement, of a secondary building component. For example, doors, windows, hardware, health hazards, etc.
3. The program does not address cosmetic repairs or upgrades to buildings.

Type of Critical Repair	List of Approved Critical Repairs
<b>Safety</b>	<ul style="list-style-type: none"><li>• Broken or nonfunctioning windows</li><li>• Deteriorating, chipped or broken concrete walkways that might cause tripping hazards</li><li>• Damaged or non-working security lighting</li><li>• Security doors</li><li>• Damaged or non-working security system</li><li>• Damaged or non-working fire alarm system</li></ul>
<b>Health Hazards</b>	<ul style="list-style-type: none"><li>• Chipped and or deteriorating paint</li><li>• Mold remediation</li><li>• Water Damage</li><li>• Water Proofing</li><li>• Lead Safe</li></ul>
<b>Building Structure and Systems</b>	<ul style="list-style-type: none"><li>• Repair or installation of new roofing (as needed)</li><li>• Down Spouts and Gutters</li><li>• Brick point up</li><li>• Damaged or non-working HVAC systems</li><li>• Building structural defects</li><li>• Damaged or compromised concrete foundations</li><li>• Necessary regrading to stop flooding or excess water to the building</li><li>• Old, leaking or unsupported plumbing</li><li>• Damaged, loose or faulty electrical wiring, fixtures or electrical panels</li><li>• Repairs of stairwell, railings</li><li>• Structurally compromised floor joist or wood framing</li></ul>

## Program Requirements

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The following are all the requirements involved in participating in the Small Building Program.

1. **Pre-application Meeting** – All applicants will be required to meet with DHCD Housing Preservation Unit staff prior to submitting an application. Please contact [SBP.DHCD@dc.gov](mailto:SBP.DHCD@dc.gov) to schedule a time to meet and discuss the Program requirements and the needs of the housing accommodation.
2. **Completed Application** – Applicants must complete all components of the application prior to submitting an application. This includes all required documentation listed in the Application Requirements Checklist in Section VII of the application.
3. **Assessment of Requested Critical Repairs** – Applicants that are determined eligible for the Program will be required to obtain a property assessment from a DHCD approved scope writer in order to complete the scope of work of the critical repairs requested for the property. Property owners need to approve of the scope of work to ensure accurateness and to ensure all requested repairs are included. DHCD will make the final determination of what will be addressed through the application.
4. **Completion of DHCD Property Management Course** - Prior to performing the approved critical repairs, all applicants will be required to attend a DHCD Property Management Course. The course will outline the financial, management and compliance needs related to owning and maintaining a building. The course is a day and a half and has components that must be completed online prior to attending the course. If the property is a LEC, all board members must attend the training prior to the start of construction. (Since an application is not required to be eligible to take this course we encourage you to apply now to start the course – information at <https://dhcd.dc.gov/service/property-management-training>)
5. **Grant Agreement** – A grant agreement must be signed by the property owner and DHCD prior to an award of financial assistance. The grant agreement outlines the terms and conditions of the award to fund the property’s critical repairs which must be executed prior to the start of construction. A sample grant agreement can be found in Attachment A.
6. **Affordability Covenant for 5 years** - Repairs in housing units that are financed through the Program are subject to a five-year minimum affordability covenant that restricts the maximum allowable rent and establishes maximum income eligibility limits both of which vary by unit and household size and income level served. Affordability restrictions are not released if the grant is repaid or the property is sold during the 5-year affordability period. A sample covenant can be found in Attachment B of this application.
7. **Approval by all Lenders** – All property lienholders must provide consent for DHCD to place a 5-year affordability covenant on the property. A template lender consent letter can be found in Attachment C of this application and must be signed prior to the execution of the grant agreement and the affordability covenant.

8. **Completion of Construction** – DHCD will solicit bids from contractors to complete the construction work based on the critical repairs scope of work. **Please note that grant funds will be disbursed and paid directly to the contractor.**
9. **Relocation Plan & Meeting** – For projects that require the temporary relocation of tenants, the applicant must submit a **Relocation Plan** that complies with [D.C. Official Code §42-3505.01\(f\)](#). Applicants will need to meet with DHCD Housing Preservation Unit staff prior to the start of construction to discuss the plan and its execution. If Program repairs will occur while tenants are living in a unit undergoing repairs, the applicant must submit a **Tenant-in-Place Renovation Strategy** describing how tenants will be protected and accommodated during construction.
10. **Program Compliance** - During the affordability period, building owners will be required to submit annual tenant income certifications to DHCD, and the property will be subject to a minimum of two physical inspections during the affordability period depending on satisfactory inspections.
11. **Grant Repayment** - Repayment of grant funds will be required in the following circumstances:
  - a. Property owner does not allow preexisting tenants (tenants residing in a housing unit at the time of grant award) to return to the property after completion of Program repairs;
  - b. Property owner increases the rents for existing tenants above their income certified rent; and/or
  - c. Property incurs additional health hazards or unsafe conditions during the affordability period and fails to remediate the issue within the timeframe requested by the agency.

## **Submitting an Application**

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Applications must be submitted to DHCD via the Quick Base Website. At the completion of the SBP Pre-Application Meeting, applicants will receive an e-mail invitation to Quick Base where you must create a user profile to establish your account; after which you will be able to upload your SBP Application and all supporting documentation. Questions regarding the application should be submitted to: [SBP.DHCD@dc.gov](mailto:SBP.DHCD@dc.gov).

## Application Documentation Checklist

Project Description		Source of Documentation
<input type="checkbox"/>	Completed Program application	
<input type="checkbox"/>	Photographs of necessary repairs	Not Required
<input type="checkbox"/>	Floor Plans	Not Required
<input type="checkbox"/>	Quotes on costs related to the requested critical repairs	Not Required
<input type="checkbox"/>	Relocation Plan	
<input type="checkbox"/>	Tenant-in-Place Renovation Strategy	
<b>Property Legal &amp; Business Documents</b>		
<input type="checkbox"/>	Organizational documents of entity that owns the building (Articles of Incorporation)	
<input type="checkbox"/>	Rental Accommodation Division (RAD) Registration ( <b>Rental Properties Only</b> )	<a href="https://dhcd.dc.gov/publication/form-1-rad-registration-claim-exemption-form">https://dhcd.dc.gov/publication/form-1-rad-registration-claim-exemption-form</a>
<input type="checkbox"/>	Basic Business License	<a href="https://dcra.dc.gov/node/1409221">https://dcra.dc.gov/node/1409221</a>
<input type="checkbox"/>	Certificate of Clean Hands within the last 90 days	<a href="https://otr.cfo.dc.gov/page/certificate-clean-hands">https://otr.cfo.dc.gov/page/certificate-clean-hands</a>
<input type="checkbox"/>	Certificate of Good Standing within the last 90 days	<a href="https://dcra.dc.gov/node/1409221">https://dcra.dc.gov/node/1409221</a>
<input type="checkbox"/>	Property Deed that includes date fee simple ownership vested in property owner	
<input type="checkbox"/>	Evidence of General Liability Insurance	
<input type="checkbox"/>	Certificate of Occupancy	<a href="https://dcra.dc.gov/cofo">https://dcra.dc.gov/cofo</a>
<input type="checkbox"/>	Organizational Chart if building is owned by a business entity	
<input type="checkbox"/>	Title Report within the last 90 days	Obtained through local title companies
<b>Financial Information</b>		
<input type="checkbox"/>	Current rent roll for the property	See page 11
<input type="checkbox"/>	Information on any current operating subsidy (if applicable)	
<input type="checkbox"/>	Past two years of income and expense statements for the property and business entity for all partners and co-owners of the property	<a href="#">Schedule 1</a> , <a href="#">Schedule C</a> , <a href="#">Schedule D</a> , <a href="#">Schedule E</a> , <a href="#">Tax Form 1099</a> , <a href="#">Tax Form 990</a> and any other pertinent tax returns
<input type="checkbox"/>	For all partners and co-owners of the property, past two years of personal and organizational relevant Federal and District tax returns and any unpaid tax liability or real property taxes	<a href="#">Tax Form 1040</a>

**Multi-Family Properties Ownership Information (If Applicable)**

<b>ORGANIZATIONAL ENTITY INFORMATION FOR MULTI-FAMILY PROPERTIES</b>			
<b>Type of Ownership:</b>		<b>Nonprofit:</b> <input type="checkbox"/>	
<b>Organizational Name (if applicable):</b>		<b>Number of partners:</b>	
<b>Date Property was Purchased:</b>		<b>Taxpayer ID:</b>	
<b>OWNER INFORMATION</b>			
<b>Applicant Name:</b>			
<b>Applicant Phone:</b>		<b>Applicant E-mail:</b>	
<b>Applicant's Address:</b>			
<b>Please list all sources of income:</b>			
<b>Applicant Total Income from all sources: \$</b>			
<b>How many properties do you own?</b>		<b>Estimated income from properties:</b> \$	
<b>Please list below the addresses and lender information for each property owned.</b>			
<b>ADDRESS</b>	<b>DATE PURCHASED</b>	<b>LENDER</b>	<b>OWED AMOUNT</b>
<b>List all names - including names of all legal entities, e.g., Limited Liability Corporations, Partnerships, etc. - that you own. Attach additional sheets if necessary.</b>			
<b>CO-OWNER/CO-APPLICANT INFORMATION (please add pages for each additional owner)</b>			
<b>Applicant Name:</b>			
<b>Phone:</b>		<b>E-mail:</b>	
<b>Applicant's Address:</b>			
<b>Please list all sources of income:</b>			
<b>Total income from all sources: \$</b>			
<b>How many properties do you own?</b>		<b>Estimated income from properties:</b> \$	
<b>Please list below the addresses and related information for each property owned.</b>			
<b>ADDRESS</b>	<b>DATE PURCHASED</b>	<b>LENDER</b>	<b>OWED AMOUNT</b>



<b>List all names - including names of all legal entities, e.g., Limited Liability Corporations, Partnerships, etc. - that you own. Attach additional sheets if necessary.</b>			
<b>CO-OWNER/CO-APPLICANT INFORMATION (please add pages for each additional owner)</b>			
<b>Co-Applicant Name:</b>			
<b>Co-Applicant Phone:</b>		<b>Co-Applicant E-mail:</b>	
<b>Co-Applicant's Address:</b>			
<b>Co-Applicant Please list all sources of income:</b>			
<b>Co-Applicant Total income from all sources: \$</b>			
<b>Co-Applicant: Estimated income from properties: \$</b>			
<b>Co-Applicant: Please list below the addresses and related information for each property owned.</b>			
<b>ADDRESS</b>	<b>DATE PURCHASED</b>	<b>LENDER</b>	<b>OWED AMOUNT</b>
<b>List all names - including names of all legal entities, e.g., Limited Liability Corporations, Partnerships, etc. - that you own. Attach additional sheets if necessary.</b>			

**Limited Equity Cooperatives Ownership Information (If Applicable)**

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LIMITED EQUITY COOPERATIVE INFORMATION			
LEC Name:		Check if LEC is a Nonprofit <input type="checkbox"/>	
Date Property was Purchased:		Taxpayer ID:	
Main Contact Name:			
Phone:		E-mail:	
Please list below the name & position of all board members:			
Please list lender information for the property below:			
LENDER NAME	LOAN AMOUNT	OWED AMOUNT	LOAN TERMS

## Property Information

[illegible]

## Rent Roll & Affordability of the Property

**Please reference the Inclusionary Zoning Median Family Income (MFI) Max Rent Schedule (<https://dhcd.dc.gov/service/rent-and-income-program-limits>) to determine the MFI level of your tenants.**

[illegible]

**Total Number of Units:**

**Total Number of Affordable Units:**

<sup>1</sup> Please compare your rents to the rent levels in the “Multi-Family Developments” maximum rent table in the most recent Inclusionary Zoning program limits publication which can be accessed here <https://dhcd.dcgov/service/rent-and-income-program-limits>.

## Reasons for Applying

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**Describe needed critical property repairs (250 word maximum)**

**Describe financial reasons why Program financial assistance is needed and why project has been unable to support preventative capital improvements (250 word maximum).**

## Relocation Plan

**1. Please complete the table below to describe how and where tenants will be relocated, if it is deemed necessary for construction.**

[illegible]

**2. What will be done to ensure tenants can return to the property?**

**3. How will this Relocation and Anti-Displacement Strategy be communicated to the tenants?**

**Tenant- in-Place Renovation Strategy (Optional but you may be required to provide responses to these questions prior to the start of construction)**

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<b>1. Please describe how tenants will be protected and accommodated during construction.</b>
<b>2. How will you communicate with tenants regarding repairs?</b>
<b>3. Please describe how you will work with the contractor and tenants regarding minimizing dust and debris from construction.</b>
<b>4. Please describe how you will work with the contractor regarding minimizing disruptions to building systems (i.e. electricity, water, etc.).</b>
<b>5. Please describe how you will work with the contractor regarding providing security during construction.</b>



## Certifications & Signatures

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CERTIFICATIONS	
I certify that there are no defaulted or delinquent loans that affect the property.	<input type="checkbox"/>
I certify that there are no liens on the property, other than mortgages that are in good standing.	<input type="checkbox"/>
I certify that there is no pending litigation against me/Owner or the property.	<input type="checkbox"/>
I certify that there is no tax liability owed on the property.	<input type="checkbox"/>
I certify that the above statements are true.	<input type="checkbox"/>

Owner's Name			
Owner's Signature		Date	
Co-owner's Name			
Co-owner's Signature		Date	

## Attachment A: Grant Agreement

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### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT SMALL BUILDING PROGRAM GRANT AGREEMENT

This **GRANT AGREEMENT** (“Agreement”), entered into as of the \_\_\_\_ day of \_\_\_\_, 20\_\_, (the “Effective Date”) by and between the District of Columbia (the “District”), acting by and through the Department of Housing and Community Development (“DHCD”, “Department” or “Grantor”), and \_\_\_\_\_ (the “Property Owner” or “Grantee”), owner(s) of Property (“Property”) located at [*Enter Property Address*], Washington , DC 200\_\_\_\_ and legally described in Exhibit A, attached hereto and made a part of this Agreement. Grantor and Grantee shall together be referred to as the “Parties.”

#### RECITALS

1. The Department plans and administers housing and community development activities in accordance with the District of Columbia’s Community Development Program authorized by the District of Columbia Community Development Act of 1975, D.C. Official Code § 6-1001 *et seq.* and the District of Columbia Reorganization Plan No. 3 of 1975.
2. The Department administers the Small Building Program (“SBP” or “Program”) that provides funds for limited critical repairs to owners of eligible multi-family rental housing properties located in the District of Columbia.
3. Eligible properties must have between five and twenty housing units, evidence of health hazards or unsafe living conditions, is at least 75% occupied, and is affordable based on the following criteria:
  - At least 50 percent of housing units must be affordable to low- to moderate-income households who earn at or below 80 percent of the Median Family Income (MFI) as defined by the DHCD Inclusionary Zoning Maximum Income, Rent and Purchase Price Schedule.
4. The Property Owner has applied for financial assistance under the Program, Grantor has determined that the Property meets the Program requirements, and the Property Owner is eligible to receive a SBP Grant.
5. The Parties intend to set forth in this Agreement the terms and conditions for the provision and use of the Grant Funds.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

The above recitals are hereby incorporated by reference and made a part of this Agreement.

## **Exhibits**

The Exhibits listed below and the terms and conditions of the same are incorporated herein and made a part of this Agreement.

- A. Legal Description of the Property
- B. Scope of Work and Project Budget

## **SECTION I. Grant Purpose/Eligible Activities/Grant Term.**

1. DHCD shall make a grant of District funds to Property Owner in an amount not to exceed [ ***Insert grant amount (\$\_\_\_\_\_)***] (the “Grant”).
2. The Grant funds shall be used solely to finance the cost of critical repairs of the Property improvements specified in the Grantor-approved scope of work (such repairs constitute the “Project”) and Budget, attached to this Agreement as Exhibit B.
3. The Grant funds will be disbursed to the Project contractor on a reimbursable basis as provided in Section V. of this Agreement.
4. This Agreement shall begin on the Effective Date and terminate on the date that the SBP program administrator notifies the Property Owner in writing that the Project has been completed, all Project work has been approved as evidenced by a certificate of completion, and all Project payments have been processed and disbursed.
5. This Grant shall be deemed a grant to Grantee and shall not be considered a loan or extension of credit that requires repayment, except as specifically provided in this Agreement.
6. This Grant **shall not** be a lien or encumbrance against the Property. However, as consideration for receipt of the Grant funds, the Property Owner must execute an Affordable Housing Covenant simultaneously with the execution of this Agreement that will be recorded against the Property as covenants running with the land. The Property Owner shall not be responsible for repayment of the Grant funds unless:
  - a. Property owner does not allow preexisting tenants (tenants residing in a housing unit at the time of grant award) to return to the property after completion of Program repairs;
  - b. Property owner increases the rents for existing tenants above their income certified rent; and/or
  - c. Property incurs additional health hazards or unsafe conditions during the affordability period and fails to remediate the issue within the timeframe requested by the agency.

## **SECTION II. Property Owner/Grantee Responsibilities.**

1. The Property Owner shall allow DHCD and its agents and employees, at reasonable times, to inspect the Property, contracts, materials, equipment, services and labor conditions pertinent to the Project activities as deemed necessary by DHCD to ensure quality workmanship and compliance with District laws and regulations.
2. The Property Owner shall furnish in a timely manner to DHCD all information and records relating to any matter covered by this Agreement as deemed necessary.
3. The Property Owner must maintain hazard insurance coverage for the Property throughout the Grant term. Grantee shall maintain the Property assisted with Grant funds in a safe and sanitary condition in compliance with District housing code standards, zoning, fire and building codes.
4. Affordability Covenant. Simultaneously with the execution of this Grant, the Property Owner shall execute an Affordable Housing Covenant for the benefit of the District.
5. Indemnification. The Property Owner agrees to indemnify, save and hold harmless the District and its agents and employees from and against all losses, claims, injuries or damage of any kind, nature or description whatsoever arising under the terms, conditions, requirements, obligations or rights under this Agreement.
6. Conflicts of Interest. The Property Owner agrees to comply with any federal and District laws and regulations that may be applicable to this Grant. Property owner shall not pay or give anything of value to a District employee for the purpose of influencing or obtaining DHCD's approval of this Grant award or payments made under this Agreement.
7. Nonassignability. This Agreement may not be assigned by the Property Owner to any person or other entity unless agreed upon in writing by DHCD. A transfer by devise of contract rights/obligations to Property Owner's estate shall not diminish the enforceability of this Agreement.

## **SECTION III. DHCD/Grantor Responsibilities**

1. Grantor shall fund this Agreement and disburse Grant proceeds upon receipt of a proper invoice as provided in Section V. The disbursement of Grant funds by the Department to the Contractor for the Project work performed constitutes full and complete satisfaction of all DHCD's obligations to the Property Owner.
2. Grantor shall determine eligibility of SBP program participants.
3. Grantor shall conduct environmental and compliance clearance reviews for SBP projects.
4. DHCD shall monitor the Project, contracts, materials, equipment, services and labor conditions pertinent to the Project activities as deemed necessary by DHCD to ensure quality workmanship and compliance with applicable District laws, SBP requirements and the terms and conditions of this Agreement and the Affordable Housing Covenant.

## **SECTION IV.**

### **Conditions Precedent to Grant Closing.**

The following requirements must be satisfied, or waived in writing by Grantor before Grant execution:

1. Evidence that Grantee is current on any obligations outstanding to any agency or entity of the District government, whether or not related to this Grant Agreement;
2. Evidence that Grantee is current on all due federal and District taxes affecting Grantee and any other entity that comprises its management or ownership structure as of the Grant Closing date, to include verifications from the District's Office of Tax and Revenue and Department of Employment Services;
3. Clean Hands Certificate;
4. Evidence of hazard insurance coverage for the Property;
5. Evidence of Contractor's liability insurance in amounts satisfactory to Grantor;
6. Evidence that all licenses and permits required by the District to complete the Project Activities are obtained;
7. Completion of the Project environmental review and approval of DHCD Office of Program Monitoring;
8. Copy of the recorded deed that establishes Grantee's fee ownership of the Property;
9. Written approval or consent to enter into this Agreement and the Affordable Housing Covenant provided by any lender, lienholder or other party that holds a legal interest in the Property;
10. Organizational documents and Certificate of Good Standing issued by the District Department of Consumer and Regulatory Affairs if Property is not owned by an individual;
11. If Grantee is not an individual, Organizational Resolution showing that the Grantee has the authority to enter into the Grant Agreement and the Affordable Housing Covenant and that the person executing the Grant Agreement on behalf of Grantee has the requisite authority to sign and deliver the Grant documents;
12. Execution of a debarment affidavit certifying that neither Grantee, nor its affiliates, nor any of the Project contractors or subcontractors are debarred or suspended or otherwise excluded from or ineligible for participation in District assistance programs;
13. Execution of Small and Certified Business Enterprise Subcontracting Requirements agreement, as determined applicable by the District Department of Small and Local Business Development; and
14. Any other requirement that DHCD deems reasonably necessary to effectuate this Agreement.

**SECTION V. Payment/Disbursement of Grant Funds**

1. No Grant funds shall be disbursed until all conditions precedent to Grant Closing have been satisfied to the satisfaction of the Grantor.
2. Grant funds will be reimbursed for payment of actual eligible expenses provided the expenditures are eligible, necessary, reasonable and directly related to the approved Grant scope of work or activities. All requests for payment must identify a specific Project address.

**SECTION VI. Default.**

1. Subject to any notice requirement, grace period or right to cure specifically set forth herein, the occurrence and continuance of an Event of Default, as defined below, shall entitle the DHCD to terminate or suspend any further payments under the Grant.
2. The following shall constitute an Event of Default under the Grant:
  - i. The Property Owner or any entity acting on behalf of the Property Owner fails to comply with or perform any provision, condition or covenant contained in the Grant Agreement, any applicable federal or District law or regulations, the Small Building Program requirements and procedures as listed in Section IV 10 or the Affordable Housing Covenant;
  - ii. The Property Owner makes a statement, representation or warranty to DHCD or its agents or employees, which is false or erroneous when made and is adverse to the District's interests;
  - iii. The Property Owner fails to commence the Project activities or fails to complete the Project as agreed by the parties.
3. An Event of Default which is not cured within thirty (30) days of the date DHCD provides the Property Owner written notice of an Event of Default shall be deemed a default, and the District shall be entitled to pursue all rights and remedies available to it under the law and equity.
4. Upon the occurrence of a default, the District may, in its discretion, exercise one or more of the following remedies, either concurrently or consecutively:
  - i. Terminate this Agreement;
  - ii. Commence a legal or equitable action to enforce performance of this Agreement or the Affordable Housing Covenant;
  - iii. Withhold or suspend payment of Grant funds;
  - iv. Recapture any Grant funds disbursed on behalf of the Project;
  - v. Take any and all other legal remedies as may be available.

## **SECTION VII.**

### **Grant Administration.**

The Grant Administrator is Danilo Pelletiere, Affordable Housing Preservation Officer, Department of Housing and Community Development, 1800 Martin Luther King Jr. Ave SE, Washington, D.C. 20020. All concerns regarding the technical implementation and interpretation of this Grant Agreement are to be referred to the Grant Administrator or his/her designee.

## **SECTION VIII.      Miscellaneous Provisions.**

### **1. Nondiscrimination**

There will be no discrimination on the basis of race, color, religion, national origin, sex, age, marital status, physical or mental handicap, personal appearance sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, source of income or place of residence or business in any aspect in carrying out activities under this Grant or in the sale, lease, rental, or use of occupancy of the property that is rehabilitated with these grant funds. D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (2012 Repl.). Sexual harassment is a form of discrimination which is prohibited by the Act, and Grantee affirms that it will abide by the District's policy guidance that prohibits workplace sexual harassment. See Mayor's Order 2017-313 (December 18, 2017).

### **2. Freedom of Information Act Notice.**

The District of Columbia Freedom of Information Act of 1976 (DCFOIA), Pub. L. 90-614, D.C. Official Code § 2-532 *et seq.* provides for the disclosure of public information. Specifically, the law provides that "any person has a right to inspect, and at his or her discretion, to copy any public record except as expressly exempt by the Act." Further, a "public record" has been defined by the District of Columbia Public Records Management Act of 1985 as "any document, book, photographic image, electronic data recording paper, sound recording, or other material regardless of form or characteristic, made or received pursuant to law or in connection with the transaction of public business by any officer or employee of the District."

This serves as Grantee's notification that information/documentation submitted to DHCD pursuant to this Grant Agreement, is subject to public disclosure in response to a Freedom of Information Act request. Any information that is not specifically exempt by D.C. Official Code § 2-534(a) of the DCFOIA may be disclosed upon a proper request.

### **3. Anti-Deficiency Considerations**

The terms and conditions of this Agreement or any subsequent agreement entered into in connection with the purposes of this Agreement are subject to and remain subject to, as applicable, the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. § 1341, 1342, 1349m 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code § 47-355.01 - 355.08 (2001 Ed.), and (iii) D.C. Official Code § 47-105 (2001 Ed.), (iv) D.C. Official Code § 1-204.46 (2006 Supp.), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation, hereunder prescribed, has been expressly so conditioned.

4. Modification. The terms and conditions of this Grant Agreement may not be modified, waived, or terminated, in whole or in part, unless agreed upon in writing by the parties. None of the terms and conditions herein shall be considered abrogated or waived by reason of any failure or refusal to enforce the same.
5. Waiver. No delay or omission on the part of DHCD to exercise any right, power or remedy available as a result of a default of this Grant Agreement shall be construed as a forgiveness of the default or as a continuing waiver of such right, power or remedy.
6. Applicable Law. The provisions of this Grant Agreement shall be governed and construed under the laws of the District of Columbia.
7. Severability. If any provision of this Grant Agreement shall be held to be invalid or unenforceable under the law or equity, all remaining provisions of this Grant Agreement shall be valid, binding and enforceable to the fullest extent permitted by law.
8. Notices. All notices required under this Grant Agreement shall be sent by U.S. mail and certified mail, return receipt request, to the following addresses:

As to Property Owner/Grantee:

\_\_\_\_\_

Washington, DC 200\_\_\_\_

As to DHCD:

Department of Housing and  
Community Development

1800 Martin Luther King Jr. Ave, SE

Washington, DC 20020

Attn: Affordable Housing Preservation Officer

9. Time of Essence. Time is of the essence for each and every provision of this Grant Agreement.

**[Signature pages follow]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**WITNESS/ATTEST:**

**GRANTOR:**

**District of Columbia, acting by and through the  
Department of Housing and Community  
Development**

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

(Seal)

**By:**

Drew E. Hubbard, Interim  
Director

\_\_\_\_\_  
Date

**Legal Review:**

\_\_\_\_\_  
Office of the General Counsel  
Department of Housing and  
Community Development

\_\_\_\_\_  
Date

**[Signatures continue on the next page]**

**WITNESS/ATTEST:**

**GRANTEE/PROPERTY OWNER:**

**By:** \_\_\_\_\_  
\_\_\_\_\_ (Seal)

**Name:**

**Title:**

\_\_\_\_\_  
Date

**By:**

**Name:**

**Title:**

\_\_\_\_\_  
Date

**EXHIBIT A**

**Property Legal Description**

**EXHIBIT B**

**Project Scope of Work/Budget**

**Attachment B: Affordability Covenant**

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**DISTRICT OF COLUMBIA.  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
SMALL BUILDING PROGRAM**

**AFFORDABLE HOUSING COVENANT**

THIS SMALL BUILDING PROGRAM COVENANT (this “Covenant”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), by \_\_\_\_\_, a \_\_\_\_\_ and its successors and assigns (the “**Owner**”) having an address of \_\_\_\_\_, for the benefit of the District of Columbia, a municipal corporation, acting by and through the Department of Housing and Community Development (the “**District**”), and acknowledged and agreed to by [Property Owners] and its successors and assigns.

**RECITALS**

R-1. Owner is the fee simple owner of certain real property located in the District of Columbia with an address or street location of \_\_\_\_\_, as further described in **Exhibit A** (the “**Property**” or “**Project**”).

R-2. Simultaneously with the execution of this Covenant, the Owner has entered into a “**Small Building Program Grant Agreement**” with the District for a funding award in the amount of (\$ \_\_\_\_\_) (the “**Grant**”) for the purpose of financing the [Insert SBP eligible activities] of the Project.

R-3. At least 75% of the Property is occupied and 50% of the properties rental units are deemed **affordable** to households who earn at or below 80% of the Median Family Income (MFI);

R-4. Units located within the Property are reserved for Qualified Tenants and must be continuously maintained as “affordable” throughout the duration of the Affordability Period based on the MFI level under which the property was qualified. The affordability requirements must be enforced by placing restrictive deed covenants that run with the land upon such property.

R-5. As consideration for receiving the Grant assistance, Owner has agreed to maintain the Property subject to the obligations and restrictions contained in this Covenant.

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

The aforementioned recitals are incorporated herein by reference and made a part hereof.

## ARTICLE I

### DEFINITIONS

**Affordability Period:** that period of time during which the Owner and its successors and assigns shall maintain and operate the Property in compliance with this Covenant that commences on the date of the execution of the Covenant and continues for a period of five (5) years.

**Affordable Unit:** means each Residential Unit located within the Property that shall be occupied by Low-Income Households or Moderate-Income Households as of the date on which each tenant's lease commences, or for leases in effect prior to the date of this Covenant, as of the date of this Covenant.

**Affordable Unit Index:** is an index of the Affordable Units contained in the Property that identifies: (i) unit number (or similar identifier); (ii) the number of bedrooms of each Affordable Unit; (iv) Head of Households; (v) current rent; and (vi) and Maximum Allowable Rent.

**Affordable Unit Tenant:** means a Qualified Tenant who lease(s) a Rental Affordable Unit in the Property.

**Agency:** means, as of the Effective Date, the D.C. Department of Housing and Community Development, pursuant to its authority under the District of Columbia Community Development Act of 1975 (the "Act") (D.C. Official Code § 6-1001 *et seq.*), the District of Columbia Reorganization Plan No. 3 of 1975, 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 Act.

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

**Certification of Income:** means a certification made by a Certifying Entity that verifies that (a) the Annual Household Income of a Household meets the Maximum Annual Household Income for an applicable Affordable Unit, and (b) the Household meets the requirements of Section 4.5, in such form as the Agency approves.

**Existing Household:** means a Household living in a Property Affordable Unit on the date this Covenant is executed.

**Household:** means all persons who will occupy an Affordable Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

**Household Income:** the combined income of all persons living in a Rental Unit, calculated according to 24 CFR § 5.609.

**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.*).

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

**Low-Income Household:** means a Household with total aggregate income that does not exceed fifty percent (50%) MFI, as of the date on which the Household's initial lease commences or if the Household was a tenant in the Property prior to the date of this Covenant, as of the date of this Covenant.

**Maximum Annual Household Income:** is the maximum Annual Household Income of a Household occupying an Affordable Unit as indicated on the then-current Rent and Income Schedule published by the Agency.

**Maximum Income, Rent and Purchase Price Schedule:** means the Maximum Income, Rent and Purchase 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 Allowable Rent for Affordable Units.

**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.

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

**Over Income Household:** means a household who was a tenant in the Property prior to the date of this Covenant and has now, or upon lease renewal, earns an Annual Household Income greater than the Maximum Annual Household Income for the unit that they occupy.

**Owner:** an individual, corporation, association, joint venture, business entity, government entity, and its respective agents that holds fee simple title to a Property.

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

**Qualified Tenant:** means a Household consisting of a person or persons entitled to possession, occupancy, or the benefits of a Rental Unit in a Property.

**Rent and Income Schedule:** is the document published by the Agency in the D.C. Register pursuant to 14 DCMR Chapter 24, which delineates rent restrictions based on income.

**Residential Unit:** means an individual residential unit located within and constituting a part of the Property.

## ARTICLE II

### AFFORDABILITY REQUIREMENT

2.1 **General:** Owner shall lease and maintain Residential Units as Rental Affordable Units that shall be affordable to and rented exclusively to Qualified Tenants or Over Income Households who had a valid written lease and were in good standing in the Project prior to the date of this Covenant.

2.2 **Affordable Unit Index.** The Owner shall complete the table found in **Exhibit B** to record the Tenants living at the Property at the time of execution of this Covenant.

2.3 **Affordable Unit Rents.** The monthly Housing Cost with respect to any Affordable Unit shall not exceed the Maximum Allowable Rent for Affordable Units under the then-current Maximum Income, Rent and Purchase Price Schedule.

2.4 **Period of Affordability.** All Affordable Units in the Project shall be occupied in accordance with the terms of this Covenant for the “Affordability Period.” The “Affordability Period” for each Affordable Unit shall run for five (5) years from the Effective Date of this Covenant. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

### ARTICLE III

#### USE

3.1 **Use.** The Affordable Units shall be used for residential purposes only.

3.2 **Property Standards.** The Project improvements shall remain suitable for occupancy and meet all applicable federal housing quality standards and District of Columbia housing codes and property standards.

### ARTICLE IV

#### OCCUPANCY/LEASING REQUIREMENTS

4.1 **Lease of Rental Affordable Units.** The Owner shall market and offer for rent the Affordable Units solely to Tenants at the same or lower MFI level as the tenants that occupied the unit when this Covenant was executed.

4.2 **Marketing Units.**

4.2.1 **Housing Locator.** When an Affordable Unit becomes available for occupancy, Owner shall list the Affordable Unit on the Housing Locator Website currently listed as [www.dchousingsearch.org](http://www.dchousingsearch.org) and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

4.3 **Determination of Eligibility.** Each applicant applying to occupy an Affordable Unit shall be certified as a Qualified Tenant by the Owner or its designee prior to leasing such unit. For any Qualified Tenant, the Annual Household Income shall be determined as of the date of the initial lease.

4.4. **Certifying Entities.** Each Owner shall use an approved Certifying Entity to 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 for the subject Affordable Unit.

4.5 **Annual Recertification of Affordable Unit Tenants.** Owner shall annually ask all Tenants of Affordable Units to recertify their household income. They will need to do so at one of the Agency approved community based organizations that conduct income certifications listed in **Exhibit D**.

4.5.1 **Recertification Documentation:** No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of each lease, Owner shall require that a Household leasing an Affordable Unit submit to the Owner the following information:

- (i) The name(s) of each person residing in the Affordable Unit;
- (ii) Certification of income provided by the Certifying Entity.



4.5.2 **Source Documentation.** The Owner shall collect full source documentation to certify Annual Household Income at initial lease-up of vacant units and every year thereafter until such time as the Affordability Period ends.

4.6 **Representations of Owner.** By execution of a lease for an Affordable Unit, the Owner shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) to Owner's knowledge, the Household is a Qualified Tenant or an Over Income Household who was a tenant prior to the date of this Covenant, and (ii) Housing Costs for the Affordable Unit do not exceed the Maximum Allowable Rent.

## ARTICLE V

### SPECIAL COVENANTS

5.1 **Nondiscrimination.** Owner shall not illegally discriminate on the basis of race, religion, creed, color, gender, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability or source of income in the lease or occupancy of an Affordable Unit, nor shall Owner discriminate in the employment of persons for the construction, operation and management of the Project. (42 U.S.C. 3601-19; 24 CFR Part 100; 24 CFR Part 107; 42 U.S.C. 2000(d); 24 CFR Part 1; 42 U.S.C. 6101-6107; 24 CFR Part 146; 29 U.S.C. 794; 24 CFR Part 8; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107; 41 CFR chapter 60; 42 U.S.C. 1201 *et seq.*; 24 CFR part 8; Executive Order 11625, as amended by Executive Order 12007, Executive Order 12432 and Executive Order 12138, as amended by Executive Order 12608; 42 U.S.C. 12181 *et seq.*; D.C. Official Code Section 2-1401 *et seq.*)

5.2 **Inspections.** Owner acknowledges that the Agency is obligated to monitor the Project's compliance with occupancy and affordability restrictions required by the federal and District governments. The Agency or its designee shall have the right, to inspect the Affordable Units, upon reasonable advance notice to the Owner. Upon receiving such notice, the Owner shall, in turn, give reasonable advance written notice of the inspection to the tenant(s) occupying the specific Affordable Unit(s). The Agency 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 Agency or its designee shall have the right, upon reasonable notice and during normal business hours, 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.

5.3 **Reporting Requirements.** The Owner shall comply with the reporting and monitoring requirements set forth in the Grant Agreement, other documents evidencing the Grant and this Covenant throughout the term of the Covenant. This includes the completion of the Affordable Unit Index Annual Report ("Annual Report") attached as Exhibit C. The Owner shall submit these documents annually to the District no later than 30 days of the anniversary of the Covenant.

Notwithstanding anything contained herein to the contrary, in the event that Owner provides a report to an agency within the District government with content substantially similar to the content of the Annual Reports described in this section 5.3, subject to the Agency's prior written

approval, then the reporting requirements under this section shall be satisfied upon Owner's delivery of such report to the Agency. The Agency may request Owner to provide additional information in support of its Annual Report.

5.4 **Confidentiality.** Except as may be required by applicable law, including, without limitation, the District of Columbia Freedom of Information Act of 1976, D.C. Official Code § 2-531 *et seq.* (2001), the Owner or its 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 any information submitted to the Agency.

5.5 **Notice of Transfer.** Owner agrees to notify the District in writing at least thirty (30) days prior to any sale, transfer or exchange of the Property.

5.6 **Notice of Foreclosure.** Owner agrees to provide the District with reasonable notice (in writing) of and an opportunity to cure any impending foreclosure or delivery of any deed in lieu of foreclosure.

## ARTICLE VI

### DEFAULT; NOTICE AND REMEDIES

6.1 **Default Generally.** *Events of Default.* Subject to any applicable notice requirement, grace period and/or right to cure, set forth in this Covenant, the occurrence of any of the following shall constitute, after compliance with any such notice requirement, grace period and/or right to cure, an "Event of Default" under this Covenant.

- (a) Failure of the Owner to comply with or perform any of the conditions or requirements, applicable District law or regulations, or covenants contained in this Covenant.
- (b) The making of any representation or warranty by the Owner to the Agency, which is or was false or materially misleading when made and has an adverse effect on the Agency's interest or the operations of the Project.

6.2 **Notice of Default/Right to Cure Period.** Prior to an Event of Default occurring under section 6.1, the Agency shall provide the Owner written notice setting forth with particularity the alleged violation and shall provide the Owner thirty (30) days to cure (or such other time period permitted under the Grant documents) the alleged violation, prior to exercising its remedies provided, however, that if such alleged violation is reasonably susceptible of cure, but cannot be cured within such thirty (30) day period, then, so long as the Owner promptly commences cure and thereafter diligently pursues such cure to completion, then the cure period provided for herein shall be extended for a reasonable period as approved by the Agency.

6.3 **Remedies.** Upon the occurrence of an Event of Default (and after the expiration of any applicable notice and cure and/or grace period), the Agency shall have the right to exercise one or more of the following remedies, in addition to any and all other remedies available under the Grant documents or at law or in equity:

- (a) Institute and prosecute any proceeding for an injunction or for specific performance of the Owner's obligations under this Covenant.
- (b) Demand immediate repayment of all Grant funds provided by the Agency for the Project.

6.4 **Right to Attorney's Fees.** If the District shall prevail in any final legal action to enforce this Covenant, then the Owner or person against whom the District prevails, shall pay the District all reasonable costs and expenses, including reasonable attorney fees, incurred in connection with the District's efforts to enforce this Covenant. If the District's Office of Attorney General ("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.

6.5 **Effect of Enforcement Delay.** No delay in enforcing the provisions of this Article VI as to any Event of Default shall impair, damage or waive the right of the District to enforce this Covenant.

## **ARTICLE VII**

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

This Covenant shall be recorded and filed in the Land Records. This Covenant is and shall be binding upon the Property, the Project and each Affordable Unit and shall run with the land for the period provided herein. The rights and obligations of the District, the Owner, and their respective successors, heirs and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs and assigns; provided, however that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Owner hereunder shall be retained by the District, or such designee of the District as the District may so determine. This Covenant shall terminate upon transfer of the Property following foreclosure by, or deed in lieu of foreclosure of the Property. The District shall be entitled to enforce this Covenant until such times as this Covenant expires or is terminated.

## ARTICLE VIII

### 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 District, and by a duly authorized representative of the Owner. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

## ARTICLE IX

### TERM OF COVENANT

Unless sooner terminated in accordance with Article VII, the rights, obligations, restrictions, agreements and covenants contained herein shall remain in full force and effect throughout the Affordability Period. The term of Covenant may not be reduced, and the designated income affordability levels may not be changed, without the prior written consent of the District.

## ARTICLE X

### MISCELLANEOUS

10.1 **Notices.** All notices or other communications given under this Covenant shall be in writing and will be sufficiently given and will be deemed given when mailed by certified mail return receipt requested, postage pre-paid, by hand, or by reputable private overnight commercial courier service to the following addresses:

**DISTRICT:**

District of Columbia  
Department of Housing and Community Development  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020  
Attn: Affordable Housing Preservation Officer

With a copy to:

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

**OWNER:**

Owner address  
Attn:

The District and the Owner may, by written notice designate any further or different addresses to which subsequent notices or other communications will be sent.

**10.2 Applicable Law/Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. The Owner and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia (including the Superior Court of the District of Columbia) for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. The Owner and the District irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts of the District of Columbia (including the Superior Court of the District of Columbia), and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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

**10.4 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.

**10.5 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.

**10.6 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 other party.

**10.7 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.

**10.8 District Limitation on Liability.** Any review or approval by the District or the Agency shall not be deemed to be an approval, warranty, or other certification by the District or the Agency as to compliance of such submissions, the Project, any Affordable Unit or Property with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the District that is filed among the Land Records; or otherwise contractually required. The District shall incur no liability in connection with the Agency’s review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District’s interest under this Covenant.

**10.8.1 Owner 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.

**10.9 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.

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

- (a) This Covenant has been duly executed and delivered by the Owner, and constitutes the legal, valid and binding obligation of the Owner, enforceable against the Owner, 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 Owner of any agreement or order which is binding on the Owner; and
- (c) The Owner (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.

**10.11 Federal and District Affordability Restrictions.** In the event the Property is encumbered by other District or federal affordability restrictions (“**Non-Small Building Program Affordable Housing Covenant**”) during the term of the Affordability Period, it is expressly understood and agreed that in the event the requirements in this Covenant conflict with the Non-Small Building Program Affordability Restrictions, then the requirements of the more restrictive covenant shall control to the extent of the conflict.

*[Signatures on Following Pages]*

**IN TESTIMONY WHEREOF**, Owner has caused these presents to be signed,  
acknowledged and delivered in its name by \_\_\_\_\_, its duly authorized  
\_\_\_\_\_, witnessed by \_\_\_\_\_, its  
\_\_\_\_\_

WITNESS

OWNER

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

By: \_\_\_\_\_ [SEAL]  
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 Small Building Program  
Affordable Housing Covenant, personally appeared before me in said District of Columbia, and as  
\_\_\_\_\_, acting on behalf of \_\_\_\_\_, as aforesaid,  
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: \_\_\_\_\_

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

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

## LEGAL REVIEW

By: \_\_\_\_\_

Office of the General Counsel  
Department of Housing and Community Development

Date

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that \_\_\_\_\_, Director of the Department of Housing and Community 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**

### **Property Legal Description**

## EXHIBIT B

**[Note: For privacy purposes, this Exhibit is not to be recorded in its completed form in conjunction with the recording of the Affordable Housing Covenant.]**

Small Building Program Affordable Unit Index						
<b>Date:</b>						
<b>Property Name:</b>			<b>Total Residential Units:</b>			
			<b>Total</b>	<b>Occupied</b>	<b>Vacant</b>	
<b>Property Address:</b>			<b>Market Rate Units:</b>			
<b>Mgmt. Co.:</b>			<b>Affordable Units:</b>		<b>Total</b>	<b>Occupied</b>
<b>OCCUPIED UNITS</b>						
<b>Unit Number</b>	<b># of Bed-rooms</b>	<b>Head of Household Name(s)</b>	<b>Current Rent</b>	<b>MFI Level</b>	<b>Max Rent</b>	
<b>VACANT UNITS (insert additional lines as needed)</b>						
<b>Unit Number</b>	<b># of Bed-rooms</b>		<b>Reason for Vacancy</b>	<b>Plan for Filling Vacancy</b>		

## EXHIBIT C

Small Building Program Affordable Unit Index								
<b>Date:</b>								
<b>Property Name:</b>		<b>Total Residential Units:</b>						
			<b>Total</b>	<b>Occupied</b>	<b>Vacant</b>			
<b>Property Address:</b>		<b>Market Rate Units:</b>						
<b>Mgmt. Co.:</b>		<b>Affordable Units:</b>		<b>Total</b>	<b>Occupied</b>	<b>Vacant</b>		
<b>OCCUPIED UNITS:</b>								
Unit Number	# of Bed-rooms	Move In Date	Head of Household Name(s)	Verified Income at Most Recent Cert.	MFI Level	Date of Most Recent Cert.	Current Rent	Max Rent
<b>VACANT UNITS (insert additional lines as needed)</b>								
Unit Number	# of Bed-rooms		Reason for Vacancy	Plan for Filling Vacancy				

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **Exhibit D**

### **DHCD Approved CBOs for Income Certification for FY19**

Greater Washington Urban League (GWUL) 2901 14th Street NW Washington, DC 20009  
202-265-8200 | [www.gwul.org](http://www.gwul.org)

Housing Counseling Services (HCS) 2410 17th Street NW, Suite 100 Washington, DC 20009  
202-667-7006 | [www.housingetc.org](http://www.housingetc.org)

Latino Economic Development Center (LEDC) 641 S Street NW Washington, DC 20009  
202-588-5102 | [www.ledcmetro.org](http://www.ledcmetro.org)

Lydia's House 4101 Martin Luther King Jr. Avenue SW Washington, DC 20032  
202-373-1050 | [www.lh4us.org](http://www.lh4us.org)

Marshall Heights Community Development Organization (MHCDO) 3939 Benning Road NE  
Washington, DC 20019 | 202-396-1200 | [www.mhcdo.org](http://www.mhcdo.org)

#### **University Legal Services**

(ULS NE) 220 I Street NE, Suite 230, Washington, DC 20002 | 202-547-4747 |  
<https://www.uls-dc.org>

(ULS SE) 1800 Martin Luther King Jr. Avenue SE, Washington, DC 20020 | 202-889-2196 |  
<https://www.uls-dc.org>

## **Attachment C: Lender Consent**

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### **LENDER CONSENT TO SMALL BUILDING PROGRAM GRANT ASSISTANCE AND AFFORDABILITY COVENANT**

The undersigned is an authorized representative of \_\_\_\_\_ (Name of Lending Institution), and does hereby consent to \_\_\_\_\_ (Name of Property Owner) receipt of grant financial assistance from the District of Columbia Department of Housing and Community Development Small Building Program and placement of an Affordability Covenant (“Covenant”) that shall encumber the land, including the improvements thereon and the appurtenances thereto, described as Lot \_\_\_\_\_ in Square \_\_\_\_\_. I understand that the effect of the Covenant is to encumber the Property for a period of five (5) years.

Name of Lending Institution

\_\_\_\_\_  
Authorized Signatory

Title

Date