

## **INCLUSIONARY DEVELOPMENT COVENANT**

THIS INCLUSIONARY DEVELOPMENT COVENANT (this “**Covenant**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ and its successors and assigns (the “**Inclusionary Development 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**”).

### **RECITALS**

R-1. Inclusionary Development Owner is the fee owner of certain real property located in the District of Columbia as further described in **Exhibit A** (the “**Site**”). The Site is located in a zoning district subject to the Inclusionary Zoning Program (as defined below). The Inclusionary Development Owner intends to construct an Inclusionary Development (as defined below) on the Site.

R-2. District has determined, in accordance with the Inclusionary Zoning Program and its public policy of increasing the affordable housing stock in the District of Columbia, that the Site and the Inclusionary Development (collectively, the “**Property**”) shall be subject to this Covenant which requires among other things that the Inclusionary Development contain a certain number of Inclusionary Units (as defined below).

R-3. The Inclusionary Development Owner is hereby entering into this Covenant to set forth the terms, restrictions, and conditions upon which Owner (as defined below) will construct, maintain, rent, and sell the Inclusionary Units.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Inclusionary Development Owner hereby covenants 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.

**AMI**: has the meaning given to the term “Area Median Income” in the IZ Implementation Regulations.

**Annual Income**: has the meaning given in the IZ Implementation Regulations.

**Annual Report**: has the meaning given in Section 4.7.

**Applicable Law**: means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, environmental laws, laws relating to historic preservation, and laws relating to accessibility for persons with disabilities.

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

**Capital Improvement Claim:** means a request and any supporting documentation submitted by an Inclusionary Unit Owner to the District Agency documenting a capital improvement made by the Inclusionary Unit Owner to a For Sale Inclusionary Unit after such unit was purchased by the Inclusionary Unit Owner pursuant to the IZ Implementation Regulations.

**Certificate of Inclusionary Zoning Compliance:** means the certificate issued by DCRA in accordance with the IZ Implementation Regulations, attached hereto as **Exhibit B**.

**Certification of Income, Affordability, and Housing Size:** has the meaning given in the IZ Implementation Regulations.

**Certifying Entity:** has the meaning given in the IZ Implementation Regulations.

**DCMR:** means the District of Columbia Municipal Regulations, as may be amended from time to time.

**DCRA:** means the District of Columbia Department of Consumer and Regulatory Affairs.

**Declaration of Eligibility:** has the meaning given in the IZ Implementation Regulations.

**Designated Affordability Level:** means the maximum percentage of the AMI for a Qualified Purchaser or Qualified Tenant of each Inclusionary Unit as listed in the Certificate of Inclusionary Zoning Compliance and mandated by the IZ Laws.

**District Agency:** means the agency of the government of the District of Columbia with authority to act under the IZ Laws, whether by Mayor's Order or pursuant to the IZ Laws.

**District Lottery:** means the lottery procedures described in the IZ Implementation Regulations.

**For Sale Inclusionary Development:** means the portion of an Inclusionary Development that includes Inclusionary Units that will be sold to Qualified Purchasers.

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

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

**Household(s):** has the meaning given in the IZ Implementation Regulations.

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

**Inclusionary Development:** has the meaning given in the IZ Implementation

Regulations.

**Inclusionary Development Owner:** is identified in the preamble of this Covenant.

**Inclusionary Units:** are the units indicated in the Certificate of Inclusionary Zoning Compliance.

**Inclusionary Unit Owner:** a member or members of a Qualified Purchaser that own(s) a For Sale Inclusionary Unit.

**Inclusionary Unit Tenant:** a member or members of a Qualified Tenant that lease(s) a Rental Inclusionary Unit.

**Inclusionary Zoning Program:** has the meaning given in D.C. Official Code § 6-1041.01(4) (2008 Supp.), as amended.

**IZ Implementation Regulations:** means the Inclusionary Zoning Implementation regulations published in Chapter 22 of Title 14 of DCMR, as amended.

**IZ Laws:** means, collectively, the (a) Inclusionary Zoning Implementation Amendment Act of 2006, as codified in the D.C. Official Code §§ 6-1041.01 *et seq.* (2008 Supp.), as amended (b) IZ Implementation Regulations and (c) zoning regulations published in Chapter 10 Subtitle C of ZR16, as amended.

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

**Market-Rate Unit:** has the meaning given in the IZ Implementation Regulations.

**Maximum Allowable Rent:** is the maximum rental rate of a Rental Inclusionary Unit as determined pursuant to the IZ Implementation Regulations.

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

**Maximum Sales Price:** is the maximum price of a For Sale Inclusionary Unit as determined pursuant to the IZ Implementation Regulations.

**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.

**Notice of Availability:** has the meaning given in the IZ Implementation Regulations.

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

**Owner:** means the Inclusionary Development Owner and any Inclusionary Unit Owner.

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

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

**Qualified Purchaser**: means a Household that satisfies the requirements contained in the IZ Implementation Regulations for a For Sale Inclusionary Unit.

**Qualified Tenant**: means a Household that satisfies the requirements contained in the IZ Implementation Regulations for a Rental Inclusionary Unit.

**Rent and Price Schedule**: has the meaning given in the IZ Implementation Regulations.

**Rental Inclusionary Development**: has the meaning given in the IZ Implementation Regulations.

**Rental Inclusionary Unit**: means an Inclusionary Unit that shall be leased to a Qualified Tenant.

**Rental Inclusionary Unit Lease Rider**: is the lease rider required under the IZ Implementation Regulations in the form approved by the District Agency that shall be attached to a lease agreement for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each member of the Inclusionary Unit Tenant who is over the age of eighteen (18) years old.

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

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

**Transferee**: is defined in Section 5.6.

**Waiver**: the District's written waiver, if any, of certain provisions contained in the IZ Implementation Regulations not required by the Inclusionary Zoning Act (D.C. Official Code § 6-1041, et seq.) or the zoning regulations published in Chapter 26 of Title 11 of DCMR, as amended. In the event the District has issued a Waiver as of the date of this Covenant, the Waiver shall be attached hereto as **Exhibit C**.

## **ARTICLE II CONSTRUCTION OF INCLUSIONARY DEVELOPMENT**

The Inclusionary Development Owner hereby covenants and agrees to construct the Inclusionary Development in accordance with (a) the building permit(s) issued for the Inclusionary Development, (b) the Certificate of Inclusionary Zoning Compliance, and (c) the IZ Laws.

## **ARTICLE III USE**

3.1 **Use.** Except as provided herein, all Inclusionary Unit Owners and Inclusionary Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Inclusionary Development as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Inclusionary Unit Owners or Inclusionary 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 Inclusionary Unit Owners and Inclusionary Unit Tenants of comparable Inclusionary Units at the same upfront and/or recurring cost or fee. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Inclusionary Unit Owners or Inclusionary Unit Tenants of comparable Inclusionary Units.

3.2 **Demolition/Alteration.** Except for maintenance, upkeep, repairs of interior components and replacement of interior components (including fixtures and appliances) of the Inclusionary Unit with interior components of equal or better quality than those interior components being replaced, an Owner shall not demolish or otherwise structurally alter an Inclusionary Unit or remove fixtures or appliances installed in an Inclusionary Unit without the prior written approval of the District Agency, which approval shall be in the sole discretion of the District Agency; provided, that in the event the changes are comparable to changes made to the Market-Rate Units, no District Agency approval shall be required.

## **ARTICLE IV RENTAL OF INCLUSIONARY UNITS**

4.1 **Lease of Rental Inclusionary Units.** In the event the Inclusionary Zoning Development contains Rental Inclusionary Units, the provisions of this Article IV shall apply. The Inclusionary Development Owner shall reserve, maintain and lease the Rental Inclusionary Units to Qualified Tenants (a) in accordance with the IZ Law, subject to the Waiver, if any, and the Certificate of Inclusionary Zoning Compliance, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Inclusionary Unit Lease Requirements.** The Inclusionary Development Owner hereby covenants that it shall utilize a lease agreement which incorporates and attaches the Rental Inclusionary Unit Lease Rider.

4.3 **Rental Inclusionary Unit Lease Terms.**

4.3.1 Except as authorized by the IZ Implementation Regulations or waived pursuant to the Waiver, if any, the lease term for a Rental Inclusionary Unit shall be for a period of only one (1) year, unless extended by the District Agency in accordance with

the IZ Implementation Regulations. The lease term shall not automatically renew and shall only be renewed in accordance with the IZ Implementation Regulations.

4.3.2 The Maximum Allowable Rent for each Rental Inclusionary Unit shall be determined by the Rent and Price Schedule in accordance with the IZ Implementation Regulations.

4.3.3 An Inclusionary Unit Tenant shall not have its lease renewed unless the Inclusionary Unit Tenant complies with the requirements contained in Section 2216.1 of the IZ Implementation Regulations.

4.4 **No Subleasing of Rental Inclusionary Units.** An Inclusionary Unit Tenant may not sublease any Rental Inclusionary Unit or assign its lease to any Rental Inclusionary Unit.

4.5 **Representations of Inclusionary Unit Tenant.** By execution of a lease for a Rental Inclusionary Unit, each Inclusionary Unit Tenant shall be deemed to represent and warrant to the District Agency, Inclusionary Development Owner and the Certifying Entity, as applicable, each of whom may rely thereon, that the Inclusionary Unit Tenant meets, and will continue to meet, all eligibility requirements contained in the IZ Laws for the rental of a Rental Inclusionary Unit.

4.6 **Representations of Inclusionary Development Owner.** By execution of a lease for a Rental Inclusionary Unit, the Inclusionary Development Owner shall be deemed to represent and warrant to the District Agency, which may rely on the following, that: (i) the Household is a Qualified Tenant pursuant to the executed Certification of Income, Affordability, and Housing Size and Declaration of Eligibility received by the Inclusionary Development Owner, and (ii) the Inclusionary Development Owner is not charging the Inclusionary Unit Tenant more than the Maximum Allowable Rent.

4.7 **Annual Reporting Requirements.** The Inclusionary Development Owner shall provide an annual report (“**Annual Report**”) to the District Agency regarding the Rental Inclusionary Units, which shall be prepared and submitted in accordance with the IZ Implementation Regulations.

4.8 **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.* (2001), the Inclusionary Development Owner and the District 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.

4.9 **Inspection Rights.** The District Agency or its designee shall have the right to inspect the Rental Inclusionary Units, upon reasonable advance notice to the Inclusionary Development Owner. The District Agency or its designee shall have the right to inspect a random sampling of the Rental Inclusionary Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements. The District Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Inclusionary Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

## **ARTICLE V SALE OF INCLUSIONARY UNITS**

**5.1 Sale of For Sale Inclusionary Units.** In the event the Inclusionary Zoning Development contains For Sale Inclusionary Units, the provisions of this Article V shall apply. The Inclusionary Development Owner, as to initial Sales, and the Inclusionary Unit Owner, for all subsequent Sales, shall reserve and sell the For Sale Inclusionary Units to Qualified Purchasers in accordance with the IZ Laws and the Certificate of Inclusionary Zoning Compliance. For the initial Sale, the For Sale Inclusionary Unit shall be sold to Qualified Purchasers at a purchase price at or below the Maximum Sales Price. For all subsequent Sales, the For Sale Inclusionary Unit shall be sold to Qualified Purchasers at a purchase price at or below the Maximum Resale Price.

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

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

*5.2.2 Form of Deed.* All deeds used to convey a For Sale Inclusionary Unit must have a fully executed Declaration of Eligibility and Certification of Income, Affordability, and Housing Size 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 INCLUSIONARY DEVELOPMENT 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.

*5.2.3 Post-Closing Obligations.* The purchasing Inclusionary Unit Owner shall submit to the District Agency within seventeen (17) days after the closing on the Sale of any For Sale Inclusionary Unit a final executed HUD settlement statement and a copy of the deed recorded in the Land Records, including the Declaration of Eligibility and Certification of Income, Affordability, and Housing Size.

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

**5.4 Annual Certification of Residency.** In accordance with the IZ Implementation Regulations, the Inclusionary Unit Owner shall submit to the District Agency annually on the

anniversary of the closing date for a For Sale Inclusionary Unit, a certification that it continues to occupy the For Sale Inclusionary Unit as its principal residence. The certification shall be submitted on or with such form as may be prescribed by District Agency.

**5.5 Leasing For Sale Inclusionary Units.** An Inclusionary Unit Owner may lease a For Sale Inclusionary Unit in accordance with the requirements contained in the IZ Implementation Regulations.

**5.6 Transfers.** Except as provided in Article VIII, in the event an Inclusionary Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Inclusionary Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Inclusionary 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 Inclusionary Unit, or (ii) if the Transferee does not wish or is unable to occupy the For Sale Inclusionary Unit, he or she shall provide the District Agency with a Notice of Availability in accordance with the IZ Implementation Regulations, and sell it in accordance with this Covenant and the IZ Laws, except as otherwise provided in the IZ Implementation Regulations.

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

**6.1 Default.** The Inclusionary Unit Owner shall be deemed to be in default of this Covenant, if the Inclusionary Unit Owner violates or fails to comply with any provision of the: (i) Inclusionary Zoning Act, (ii) Covenant, and/ or (iii) Certificate of Inclusionary Zoning Compliance, and such violation continues beyond any cure period provided in Section 6.3. Upon an event of default, the District shall have remedies provided in Section 6.2.

### **6.2 Remedies.**

**6.2.1** The District or District Agency shall have the right to demand that any person found to have sold a For Sale Inclusionary Unit at a price greater than that permitted hereunder shall pay a fine equal to the amount by which the purchase price exceeded the price allowed plus 10%.

**6.2.2** The District or District Agency shall have the further right to demand that any person found to have rented an Inclusionary Unit at a rent greater than the Maximum Allowable Rent shall pay a fine equal to the amount by which the rent paid exceeded the Maximum Allowable Rent plus 10%. The fine amount shall continue to be paid until the owner provides proof satisfactory to the District Agency that the rental payment has been reduced to the Maximum Allowable Rent.

**6.2.3** Notwithstanding the foregoing, an event of default under this Covenant shall also be a civil infraction for the purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code Sec. 2-1801.01 *et seq.*) and may be grounds for revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.



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

6.4 **Right to Attorney Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then the Owner, Inclusionary Unit Owner, Person or Household against whom the District prevails, shall pay District all of its costs and expenses, including reasonable attorney fees, incurred in connection with District efforts to enforce this Covenant. If OAG is counsel for the District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of OAG prepared for or participated in any such action.

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

This Covenant is and shall be binding upon the Property and each Inclusionary Unit and shall run with the land for the period provided herein. The rights and obligations of the District, the Inclusionary Development Owner, Inclusionary 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. Such covenants are not binding upon any party who no longer holds a property interest in the Property, except that a party shall be liable for actions that occurred during the period such party held an interest in the Property. All rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Inclusionary Development Owner or Inclusionary Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale or transfer 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 Inclusionary Unit 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 Inclusionary Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Inclusionary 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 on the For Sale Inclusionary 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 *Right of Purchase by the District.* The Agency shall have the right to purchase a For Sale Inclusionary Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Inclusionary Unit(s), including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Inclusionary Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Inclusionary Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Inclusionary Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Inclusionary Unit.

8.3.3 *Termination upon Foreclosure and Assignment.* In the event title to a For Sale Inclusionary 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 be automatically terminated subject to Sections 8.3.4 and 8.4.

8.3.4 *Apportionment of Proceeds.* To the extent allowed by law, in the event title to a For Sale Inclusionary 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 Inclusionary 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 Inclusionary 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.

8.3.5 *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, and the Mortgagee or any Person who takes title to an Inclusionary Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.6.

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Inclusionary 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 be automatically terminated pursuant to Section 8.3, except that upon sale of such unit by the For Sale Inclusionary 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 District Agency on behalf of the District, and by a duly authorized representative of the Owner. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

## **ARTICLE X TERM OF COVENANTS**

All Inclusionary Units in the Inclusionary Development shall be sold or leased in accordance with the terms of this Covenant for so long as the Inclusionary Development and any Inclusionary Unit therein exists. Notwithstanding the foregoing, this Covenant (a) shall be released and extinguished upon the satisfaction of the requirements contained in Section 8.4 in the event of foreclosure or a deed in lieu thereof or (b) may be released upon the reasonable approval of the District Agency.

## **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 identified in this Article, or to such other persons or locations as may be designated by the District Agency or Owner from time to time. All notices to be sent to the District Agency shall be sent to the following address:

DISTRICT AGENCY:

Department of Housing and Community Development  
1909 Martin Luther King, Jr. Ave., SE  
Washington, DC 20020  
Attention: Director  
Re: Inclusionary Zoning Program

All notices to be sent to the Inclusionary Development Owner shall be sent to the address given in the preamble. All notices to be sent to the Inclusionary 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 Inclusionary Unit Tenant shall be sent to the unit number referenced in its lease. Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery

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

## **ARTICLE XII MISCELLANEOUS**

**12.1 Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. The Owner and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia 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, 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.

**12.7 Limitation on Liability.** Provided that the Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, the Owner shall be liable if the Owner has knowledge that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

**12.8 District Agency Limitation on Liability.** Any review or approval by the District or the District Agency shall not be deemed to be an approval, warranty, or other certification by the District or the District Agency as to compliance of such submissions, the Inclusionary Development, any Inclusionary 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 District 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 Interpretation.** Except as otherwise provided herein, this Covenant shall be subject to the terms of the IZ Laws, as such requirements may have been waived by the Waiver, if any. If there is conflict between any term of this Covenant and the IZ Laws, the IZ Laws shall control except for the provisions relating to the calculation of the Maximum Resale Price contained in **Schedule 1**.

**12.11 Representations of Inclusionary Development Owner.** The Inclusionary Development Owner hereby represents and warrants to District as follows:

- (a) The Inclusionary Development Owner is the fee owner of the Site;
- (b) This Covenant has been duly executed and delivered by the Inclusionary Development Owner, and constitutes the legal, valid and binding obligation of the Inclusionary Development Owner, enforceable against the Inclusionary Development Owner, and its successors and assigns, in accordance with its terms;
- (c) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Inclusionary Development Owner of any agreement or order which is binding on the Inclusionary Development Owner; and
- (d) To the extent the Inclusionary Development Owner is an entity, the Inclusionary Development Owner (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under this Covenant and (iii) has all necessary power to execute and deliver this Covenant.

*[Signatures on Following Pages]*

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

WITNESS

INCLUSIONARY DEVELOPMENT OWNER

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

By: \_\_\_\_\_[SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
ss.  
\_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the \_\_\_\_\_, DO HEREBY CERTIFY THAT \_\_\_\_\_ who is personally known to be (or proved by oaths of credible witnesses to be) the person named as \_\_\_\_\_ for the Inclusionary Development Owner in the foregoing and annexed Inclusionary Development Covenant, bearing the date of the \_\_\_\_\_ personally appeared before me in said \_\_\_\_\_, and as \_\_\_\_\_, acting on behalf of Inclusionary Development Owner, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_

**THIS INCLUSIONARY DEVELOPMENT COVENANT FOR THE DEVELOPMENT AT \_\_\_\_\_ IS APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_:**

WITNESS

DISTRICT OF COLUMBIA

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

By: \_\_\_\_\_  
Name: Colleen Green  
Title: Director, Department of Housing and  
Community Development

Approved as to Legal Sufficiency:

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
By: Office of General Counsel

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that Colleen Green, the Director of the D.C. 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 Inclusionary Development Covenant, and that 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 Site**

**[See attached]**



**EXHIBIT B**  
**Certificate of Inclusionary Zoning Compliance**

**[See attached]**

## **Schedule 1**

### **Provisions Governing Calculation of Maximum Resale Price**

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

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

2. For the purposes of determining the value of “ $V$ ” in the Formula, the following improvements made to a For Sale Inclusionary 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 District Agency; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the District 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 District Agency based upon documentation provided by the Inclusionary Unit Owner or, if not provided, upon a standard value established by the District Agency.

5. The District Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the District Agency finds that the improvement diminished or did not increase the fair market value of the For Sale Inclusionary Unit.

6. The District Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

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

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

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

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

**EXHIBIT C**  
**Waiver**

**[See attached, if any]**