

# Reference Documents for Neighborhood Stabilization Program (NSP)

**D.C. Department of Housing and Community Development**

**August 2011**

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Note: All DHCD legal documents must be reviewed for legal sufficiency before the forms are finalized and used for an actual project in DHCD's NSP program.



NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.

*\* Based on the applicable HUD program regulations, if “reasonable terms and conditions,” are defined, one of the following statements or other language may also be required in this Notice:*

- a. *Under HOME at 24 CFR 92.353(c)(2)(C)(1): “Your new lease will be for a term of not less than one year at a monthly rent that will remain the same or, if increased, your new monthly rent and estimated average utility costs will not exceed: 1) if you are low income, the total tenant payment as defined by HUD (under 24 CFR 5.628), or (2) 30% of the monthly gross household income, if you are not low income.”*
- b. *Under CDBG at 24 CFR 570.606(b)(2)(D)(1): “Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the household’s average monthly gross income.”*
- c. *Under Section 221 Mortgage Insurance Programs at 24 CFR 221.795(i): “Your monthly rent and estimated average utility costs will not exceed the amount approved by HUD.”*

GUIDEFORM GENERAL INFORMATION NOTICE  
RESIDENTIAL TENANT WHO MAY BE DISPLACED (NSP)

Grantee or Agency Letterhead

(date)

Dear \_\_\_\_\_:

\_\_\_\_\_ (City, County, State, Public Housing Authority (PHA), other) \_\_\_\_\_, is interested in (acquiring, rehabilitating, demolishing) \_\_\_\_\_ the property you currently occupy at (address) \_\_\_\_\_ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP).

The purpose of this notice is to inform you that you may be displaced as a result of the proposed project. This notice also serves to inform you of your potential rights as a displaced person under federal laws known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and section 104(d) of the Housing and Community Development Act of 1974, as amended. You may be eligible for relocation assistance and payments under either the URA or section 104(d), if the proposed project receives HUD funding and if you are displaced as a result of acquisition, rehabilitation, demolition or conversion for the project.

- **This is not a notice to vacate the premises.**
- **This is not a notice of relocation eligibility.**

If you are determined to be eligible for relocation assistance in the future, you may be eligible for: 1) Relocation advisory services including help to find another place to live; 2) At least 90 days advance written notice of the date you will be required to move; 3) Payment for your moving expenses; and 4) Replacement housing payments to enable you to rent or purchase a comparable replacement home. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered. The enclosed HUD brochures, "Relocation Assistance To Tenants Displaced From Their Homes" and "Relocation Assistance to Persons Displaced from Their Homes (section 104(d))" provide an explanation of this assistance and other helpful information.

**(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance under the URA, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)**

Please be advised that you should continue to pay your rent and meet any other obligations as specified in your lease agreement. Failure to do so may be cause for eviction. If you choose to move for reasons unrelated to the proposed project or if you are evicted for cause prior to receiving a formal notice of relocation eligibility, you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

**Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time.** If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the proposed project does not proceed or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions about this notice or the proposed project, please contact  
(name) \_\_\_\_\_, (title) \_\_\_\_\_,  
(address) \_\_\_\_\_, (phone) \_\_\_\_\_.

Enclosures

=====NOTES  
**to NSP Guideform General Information Notice**

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378)
2. This is a guideform. It should be revised to reflect the circumstances.

**Notice of Voluntary Acquisition**

**[BUYER LETTERHEAD]**

(date)

Dear \_\_\_\_\_:

\_\_\_\_\_ is interested in acquiring property you own at (address) \_\_\_\_\_ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP).

Please be advised that \_\_\_\_\_ does not have authority to acquire your property by eminent domain. In the event we cannot reach an amicable agreement for the purchase of your property, we will not pursue this proposed acquisition.

The subject property is listed for purchase at \$\_\_\_\_\_. We currently believe \$\_\_\_\_\_ to be the price we will pay for the property.

Under the NSP, we are required to purchase foreclosed property at a discount from its current market appraised value. Depending on the results of our appraisal, our purchase offer may differ from the amounts noted above.

Please contact us at your convenience if you are interested in selling your property. Please note that we are interested only in acquiring vacant properties, because we do not wish to displace tenants nor take on responsibilities for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). URA can apply to our acquisitions because we intend to use federal NSP funds.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. However, a tenant-occupant who moves as a result of a voluntary acquisition for a federally-assisted project may be eligible for relocation assistance. Such displaced persons may include not only current lawful occupants, but also former tenants required to move for any reason other than an eviction for cause in accordance with applicable federal, state, and local law. If your property is currently tenant-occupied, we need to know immediately, because we have no interest in purchasing occupied properties. Further, you should not order current occupant(s) to move, or fail to renew a lease, in order to sell the property to us as vacant.

If you have any questions about this notice or the proposed project, please contact: (name) \_\_\_\_\_, (title) \_\_\_\_\_, \_\_\_\_\_, (address) \_\_\_\_\_, (phone) \_\_\_\_\_.

Sincerely yours,

*[title of buyer representative]*

## **NSP Purchase Agreement Addendum**

Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until:

1. The D.C. Department of Housing and Community Development has provided Purchaser and/or Seller with a written determination, on the basis of a federally required environmental review and an approved request for release of federal funds, that purchase of the property by Purchaser may proceed, subject to any other Contingencies in this Contract, or may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property. Purchaser shall use its best efforts to conclude the environmental review of the property expeditiously; and
2. For a foreclosed property, Purchaser has obtained an appraisal that meets the requirements of the federal Neighborhood Stabilization Program and indicates that the contract price is at least 1% below the market value of the property.

## DHCD Environmental Review Checklist

### *ENVIRONMENTAL DUE DILIGENCE CHECKLIST*

Project: \_\_\_\_\_

Date: \_\_\_\_\_

Investigator: \_\_\_\_\_

Percentage of Living Units Reviewed: \_\_\_\_\_%

Percentage of Site Actually Walked And Observed: \_\_\_\_\_%

<b>Environmental Risks</b>	<b>Observed</b>	<b>Possible</b>	<b>Not Observed</b>
Asbestos			
Asbestos Containing Materials			
Lead Paint			
Underground Storage Tanks, Lines and Vents			
Above Ground Chemical Storage or Products			
Visible Soil Discoloration			
Buried Waste			
PCB Transformers or Light Ballast			
Surface Water Discharge			
Sensitive Adjacent Properties			
Potential Contaminated Adjacent Properties			
Air Emissions			
Wetland Areas			
Sanitary Sewer Failure			
On-lot Septic			
Private Water Supply			
Surface Impoundment			
Excessive Noise			
Foul Odors			
French Drain or Disposal Pit			
Unsafe Material Management Practices			
Pipe Leaks			

***ENVIRONMENTAL DUE DILIGENCE CHECKLIST (Cont'd.)***

<b>Geologic Features</b>		<b>Observed</b>	<b>Not Observed</b>
Streams			
Ponds			
Sink Holes			
Rock Outcroppings			
Springs			
Steep Slopes			
Poor Drainage			

**DHCD Approval of Developer Offer to Purchase**

[Provided to Developer who has a Developer Agreement now pursuing a particular purchase]

[Date]

Developer name & address

The District of Columbia Department of Housing and Community Development (DHCD) has reviewed your property information package for the property located at \_\_\_\_\_, submitted pursuant to the NSP Developer Agreement dated \_\_\_\_\_ between \_\_\_\_\_ (Developer) and DHCD.

Based on the eligible location, renovation plans, project budget, sale price, appraisal, and purchase contract submitted for the property at this address, DHCD hereby APPROVES the selection of this property for NSP funding and authorizes the Developer to proceed to execute the purchase contract if not already executed. DHCD's review and approval of the property information package shall not constitute a warranty or representation by DHCD or its employees, agents or representatives.

DHCD will proceed to complete the Environmental Review and Clearance for the property. Developer should NOT close on the purchase of this property until DHCD notifies you that the Environmental Review and Clearance has been completed. DHCD shall not fund any expenses incurred prior to the environmental review being completed, other than an appraisal if DHCD agrees at its sole discretion to fund it. Notwithstanding any other provision to the contrary, DHCD's obligation to fund this property are and shall remain subject to the limitations of the Antideficiency Act.

If you have any questions, please contact the DHCD Project Manager, \_\_\_\_\_, at \_\_\_\_\_.

Sincerely,

[Authorized DHCD official]

**CERTIFICATE OF FINAL COMPLETION**

**THIS CERTIFICATE OF FINAL COMPLETION** ("**Certificate**") is given as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by the **DISTRICT OF COLUMBIA**, a municipal corporation, through the District of Columbia Department of Housing and Community Development ("**District**") in favor of \_\_\_\_\_ ("**Developer**").

**WHEREAS**, the District and Developer entered into an NSP Developer Agreement dated \_\_\_\_\_, (the "**Agreement**") concerning the redevelopment of certain real property, and the District further approved NSP funding for a property located at \_\_\_\_\_, in Washington, D.C., (the "**Property**") with an understanding that this Property's redevelopment would be completed within \_\_\_\_\_ months;

**NOW, THEREFORE**, in consideration of the forgoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, District does hereby certify that:

1. Developer has completed construction of the Project in accordance with the Project Drawings and all applicable laws.
  
2. This Certificate constitutes a conclusive and incontestable determination that all of the terms, covenants, agreements, conditions and provisions of the Agreement relating solely to the obligations of Developer with respect to construction of the Property, including the times for Commencement and Completion of Construction, have been fully satisfied, and Developer and its successors and assigns shall have no further obligations under the Agreement with respect to the construction of the Project.

**IN WITNESS WHEREOF**, District has, on the date first above written, caused this Certificate to be executed and delivered, for the purposes herein contained

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

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

**SCHEDULE OF AFFORDABLE SALES PRICES, BY AMI**

Document Text not yet approved

## Sample Single-Family Marketing Plan and Budget

### Major Goals

1. Sell \_\_\_ homes that will be completed between \_\_\_\_\_, 2011 and \_\_\_\_\_, 2012
2. Ensure honest representations and good service to an estimated \_\_\_\_\_ prospective buyers
3. Comply with all NSP requirements and lending laws

[Examples are given within this form. To prepare your marketing plan and budget, delete these entries and insert your own descriptions and budget amounts.]

Tasks	Responsible Party	Timeframe	Budget
Update /reprint organizational brochure	Marketing Mgr. Director and Ajax Design	By 12/1/11	\$2,000 -Not NSP eligible
Update general portion of website	Marketing Mgr. & WebMagic	By 12/1/11	\$1,000 – Not NSP eligible
Add NSP home listing section to website	NSP Program Mgr. and WebMagic	1/1/12	\$1,500 – project budget line item
Maintain listings on website – estimated 40 hours total	Program Assistant		Est. \$10,000 effort to be recouped in developer fee
Engage real estate broker for listings and sales	TBD	RFP by 2/1/12- work 4/1/12 to 7/31/12	\$8,000 per home flat commission in project budget
Fabricate 8 yard signs for homes under construction - contractors required to erect on sites	TBD	Bids by 2/1/12; done by 3/15/12	\$1,600 – project budget line item
Furnishings and signage for model home (assuming multiple new homes in one area)	Program Manager	By 4/1/11	\$2,000 – furnishings not NSP-eligible
Place newspaper and radio ads in addition to broker's advertising	Marketing Mgr. and NSP Program Mgr.		\$8,000 – project budget line item
Prepare forms of disclosures, promissory note and mortgage deed for NSP financial assistance	Corporate attorney	By 2/15/12	\$1000 – project budget line item

<b>Tasks</b>	<b>Responsible Party</b>	<b>Timeframe</b>	<b>Budget</b>
Conduct community outreach – 200 hours total	Outreach Specialist	3/1/12 to 6/31/12	Est. \$50,000 effort recouped in developer fee
Draft, negotiate and sign MOU with HUD agency for prequalifying, counseling and training buyers	Program Manager	RFP by 2/1/12 – work	\$85,000
Set sales goals to ensure the completion of sales process by the end of NSP grant period	Program Manger	2/1/12	
Track sales, market days per unit, and marketing outreach such as demographics of sales contacts, mode of marketing mentioned by contact	Program Manager	3/1/12 to 7/1/12	
Continue to evaluate progress and make changes to marketing, outreach, unit prices as needed to match potential market	Program Manager	7/1/11 to 10/1/11	

# Guide to Completing NSP Income Certifications

From HUD NSPHelp website toolkit

## Introduction

Both the Neighborhood Stabilization Program (NSP) 1 and 2 establish annual income limits for clients receiving assistance in the program. Before approving clients' applications for NSP-funded housing assistance, whether for rental or homeownership assistance, NSP grantees, sub-recipients and developers must determine whether applicant annual gross income calculations are at or below the income limits. This document outlines one effective approach to determining household income and establishing income eligibility for NSP assistance.

This guide is intended to be used by all staff that manage and monitor NSP activities, staff responsible for certifying income, real estate developers or property managers that qualify clients for housing assistance, and pre-purchase counseling agencies that may be responsible for income certifications. If NSP grantees do not have proper income documentation for homebuyers or tenants participating in NSP, the project is noncompliant and HUD may require repayment of NSP funds and/or other corrective action. Furthermore, for grantees using NSP for home purchase programs, having correct information about household income is essential to underwriting both NSP mortgage assistance and prequalifying NSP clients for mortgage loans.

While there are a range of acceptable methods for collecting and certifying income data, this guide focuses on the methods used in HUD's HOME Investment Partnership Program. While these are often more stringent than the CDBG regulations that underlie NSP, they reflect effective practices in many affordable homebuyer assistance programs. By using this guide, NSP grantees should be better able to document compliance with income eligibility requirements, and applicants will have clear rules governing income eligibility. In addition, the HOME program method is already used by many NSP grantees and there is substantial guidance available in the Technical Guide for Determining Income and Allowances under the HOME Program.

Recognizing that some NSP grantees are more accustomed to using CDBG guidelines, the following table highlights some key differences between HOME and CDBG in regard to income determination.

**Figure 1: Key Differences in Determining Income between HOME and CDBG**

HOME	CDBG
HOME does not allow a self-certification of income for an assisted household	CDBG allows a <u>verifiable</u> self-certification of income (Caution: this puts the NSP grantee at possible risk if the household is later audited and determined to be over income)
HOME only allows income information to be	CDBG allows income information to be up to

up to 6 months old	12 months old
HOME will not allow an actual IRS tax form itself as the sole source documentation of income for an assisted household	CDBG allows the IRS 1040 long or short EZ form itself as the sole source documentation of income only if the household composition and income sources will not change in the following 12 months
HOME requires that, if the sole source documentation for a household is the 1040 form, the IRS 1040 tax form must be certified through the use of the 4506 form	CDBG does not require that the IRS 1040 form be certified through the use of a 4506 form

### **Step 1: Determination of Household Income**

The [Part 5 annual income](#) (Section 8) method to determine annual gross income is the only method described in detail in this guide. This is one of three approaches for determining income. Two other allowed methods for NSP programs are:

1. Verifiable self-certification by applicants of their annual income as reported under the [Census Long Form](#) for the most recent decennial census, and
2. Applicants providing their annual income data per the most recent IRS 1040 adjusted gross income definition, as verified by receiving a copy of the household members' most recent tax form(s).

NSP grantees must choose one approach and use it consistently within each NSP program activity. However, different methods can be used for different activities. . State NSP grantees and their units of general local government are allowed to use an alternate method for determining income outside of these three approaches.

#### ***The Process of Determining Income***

- a. Assist the client in completing an application form that includes the proper privacy notices and required releases.
- b. Collect and analyze appropriate income documentation for household members either through third party verification or source documentation. Some agencies speed up this process by requiring clients to bring pay stubs, bank account records and other required documents to an interview in which the application form is completed.
- c. Ask questions about raises or other anticipated income changes (from employer, applicant). NSP grantees should assume that current circumstances will continue for next 12 months unless there is documentation that current circumstances will change within next 12 months - e.g., pay raises, overtime, family size or composition.

d. Calculate applicant's projected household income based upon documentation provided. Use the NSP Income Calculation Worksheet (see Attachment 1).

For the Part 5 definition, include in the income calculation all adults (18 and older) who will be part of the household during the time NSP assistance will be received, and also unearned income of minor children (e.g., TANF). A very detailed list of income and asset sources that are included or and excluded can be found on HUD's website at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/definitions/part5.cfm>.

If an NSP program is underwriting mortgage assistance for a client or prequalifying the client for a home purchase loan, data on liabilities should be collected. This includes credit card debts, car payments, payday loan payments and other debts. Typically, the program obtains a credit report during or shortly after the intake interview, after the client has signed a release.

Obtaining information on debts and monthly payments is not required for income certification, but the processes of obtaining the data should be meshed to maximize efficiency and to streamline the process for clients. It should be noted that the income data used to pre-qualify applicants for first mortgage financing may be different from the total household income used for NSP income certification. Mortgage lenders generally count only the incomes of the proposed borrower and co-borrower.

The CDBG and NSP programs use "household" income rather than "family" income to qualify recipients in housing activities. Family income is used in other CDBG activities unrelated to housing. In general, though, the Part 5 income definition includes and excludes the following household members:

***Includes***

- Both related and unrelated household members
- Shared custody children should be counted if at least 50% of time is with the household seeking NSP assistance.
- Temporarily absent household members who will return to the household, for example:
  - Members who are temporarily absent for school or work;
  - Those who are incarcerated for a short time and will return to household;
  - Active military members who will return to household

***May Include***

- Unborn children (up to the NSP grantee)
- Permanently absent members (it is up to the head of household to decide who is permanently absent). For example: \*
  - An elderly member who has gone to live in a nursing home.
  - Adult student living away from home.

\*Note, if the applicant includes these persons as household members, the income associated with these household members must also be included.

***Excludes***

- Foster children and legal kinship guardians or foster adults, live-in aides and children of live-in aides.

Program application forms are the appropriate tools for collecting data on household composition, income and asset sources. It is a good practice for the application form to include, above the signature line, a statement stating that all of the information is complete and accurate. The application should be signed and the statement sworn to by the applicant, co-applicant or both. In NSP programs, the signers will typically be the proposed owner(s) of an NSP-assisted home or the individual(s) whose name will be on the lease for an NSP-assisted rental unit—such as a head of household and the spouse. All household members should be indicated on the NSP program application, including their dates of birth. Also, it is a good practice to include a question on the application form pertaining to potential changes in household composition in the next 12 months. This question should help the administrator to anticipate additional household members through birth, relationship, and other familial changes.

***Dealing with Wage Rates and Variations in Pay***

- a. Tips for calculating wage rates:
  - If paid for every week of the year: Pay rate times 2080 hours (40 hours times 52 weeks).
  - If not paid for every week: Pay rate times number of hours per week times number of weeks worked per year, OR multiply total quarterly pay times 4.
- b. Variations in pay:
  - If seasonal income, add months of pay + unemployment to project 12 months forward. Example: 6 months of pay + 6 months unemployment
- c. Other Common Sources of Income
  - Unemployment:
    - If a household member is currently receiving unemployment payments, verify amount received.
    - If a client is not currently receiving payments, but has signed up for unemployment payments or expects to soon, use the prior year tax return or last two years to obtain an average payment amount.
  - Self Employed: document current information if available. If current information is not available, use prior year tax return or last two years to obtain average income.

- Construction and/or seasonal: ensure all employers are included, use verification letters and forms for all if possible.
- Cash: Review for periodic payments in checking and/or savings account statements.
- Zero income for one or more household members.
  - First, ask the client questions about household members' ability to pay rent, utilities, car payment, etc. to determine if zero income is correct. Verify cash and other income identified. If the entire household has little or no income, this of course calls into question whether the household could afford to rent or buy a home.
  - Second, review tax return from prior year. Use third party verification with prior employers, benefits, etc. as indicated on the household's tax return.
  - Finally, if desired, use IRS form 4506 to obtain a certified tax return. If income is indicated on the tax return, then talk to the client to determine if any of the sources of income are still being received.

## **Step 2: Verification of Income**

Applicants often over- or under-estimate their income and assets on program application forms. In rare instances, clients provide false information in order to qualify for benefits. The major benefit of using the Part 5 certification method is that it includes processes for verifying the data.

Using the Part 5 method, once the total household income is determined, the next step is to verify that the income is correct as reported. This step is important for establishing eligibility for NSP assistance, but is also critical for underwriting the amount of monthly rent or mortgage applicants can afford to pay. Some administrators choose to pull credit reports for the household as part of the income verification process, even though it is not an income eligibility requirement. This is particularly helpful in homebuyer programs.

Third-party verification is the most reliable method. This involves sending the appropriate forms to employers and agencies listed as a source of income on the NSP program application or as indicated by household members during the application intake process (see Attachment 2 for a list and links to sample forms). Steps to verifying income and/or assets include:

- Execute a signed release form with the household to verify income via third party sources and to pull credit reports (if applicable).
- Send verification forms to the employer or agency. Be prepared to follow up if the agency is unresponsive and document verification efforts in the applicant's file.
- Public housing authorities and certain HUD multi-family developers may use the Enterprise Income Verification (EIV) system; in general, though most NSP grantees or subgrantees will not be eligible to use this system. EIV provides electronic information

found on HUD-50058 form and more information can be found at:  
<http://www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm>.

- The Work Number is an additional resource that is commonly used by large employers (e.g., Cabelas, Walmart, etc.). The Work Number charges a fee unless information is being requested by a nonprofit. More information can be found:  
<http://www.theworknumber.com>.

IMPORTANT NOTE: It is considered a best practice in a homebuyer program to compare income reported to the NSP grantee or sub-grantee with income reported to the lender on the mortgage application. They may not match exactly, but if they are significantly different the variance should be explained in writing.

### **Step 3: Calculation of Income**

After income and asset sources have been collected either through source documentation and/or third party verification, calculate income using the NSP Income Calculation Worksheet in Attachment 1. The form provides sections for the following information:

- Assets (top section of worksheet):
  - Include all assets for the household as determined in the Part 5 approach. First, include cash value of all assets and if the asset earns income, include both the cash value and the actual income derived from that asset over the next 12 month period. Second, if cash value is greater than \$5,000, conduct an imputed asset calculation (typically 2% of the asset, or other percentage as set by the local HUD Field Office). Finally, compare actual income from assets to the imputed asset calculation and take the greater number and add to income in the bottom section.
- Income (bottom section of worksheet):
  - Include all income sources for the household as determined in the Part 5 approach. Add the assets and complete the worksheet.

### **Step 4: Comparing Income to NSP Limits**

Compare household size and the NSP Income Calculation Worksheet to the appropriate HUD income limits to determine eligibility. Applicants are eligible for NSP assistance if their incomes are at or below either 50% or 120% of the area median income and meet other eligibility requirements established by the grantee.

Income limits are updated annually by HUD. The current 50% AMI and 120% AMI income limits for NSP, adjusted for household size and geographical areas, can be found at this link:  
<http://www.huduser.org/portal/datasets/NSP.html>

Include both the income limit used and the date in applicants' files to document actions taken at the time their income eligibility is determined.

## Recertification Requirements

### *Rental*

Annual recertification of existing tenants' incomes is not required under NSP unless the NSP grantee decides to do something more restrictive. However, at a minimum, new tenants must complete the income certification process to verify their eligibility at time of move-in.

### *Homebuyer*

NSP grantees have typically adopted the HOME Program guidelines for resale and recapture as a "safe harbor" to protect the NSP investment over the period of affordability they have adopted. Resale, in general terms, is used to ensure the unit is resold to another buyer during the period of affordability who is at or below either 50% or 120% of area median income (AMI) – depending upon how the program was designed. Recapture is used to ensure that NSP funds provided as soft second mortgages, downpayment assistance and/or closing costs are repaid during the period of affordability.

NSP grantees or subgrantees using the resale provision for a single family unit must execute a written agreement and a deed restriction. If the funds had originally assisted a homebuyer earning below 50% of median then they should be re-used for that purpose, and the new buyer would need to complete the same income eligibility determination process.

NSP grantees or subgrantees using the recapture provision should also execute a written agreement with borrowers—typically a promissory note and mortgage deed (or deed of trust). In most cases, any repayments from a previous NSP loan must be treated as program income and used for NSP eligible activities, which may or may not be a homebuyer activity. If the loan or other recapture mechanism is payable to an NSP developer working under a developer agreement (not a sub-recipient agreement), HUD has recently provided guidance that these funds are not strictly considered program income. However, it is incumbent for grantees to assure that developer agreements define what repayments can and can't be used for.

## NSP Additional Resources

NSP Resource Exchange, the website HUD established to provide information and assistance for NSP grantees: [www.hudnsphelp.info](http://www.hudnsphelp.info)

The "*Technical Guide on Determining Income and Allowances under the HOME Program*". Published in January 2005, this is a very thorough and detailed guide. However, it has not been updated to include changes in the HOME program since 2005 or updated for Part 5, IRS, or Census income approaches.

<http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm>.

HUD has an on-line income calculator that can be used to help determine a household's annual gross income for establishing eligibility for assistance. The result can be printed off and stored in a file for documentation, but cannot be saved electronically. See

[www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm](http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm)

# Attachment 1: NSP Income Calculation Worksheet

(Note: Click on document to open in Excel format)

Sample Format for Calculating Part 5 Annual Income					
1. Name:			2. Identification:		
ASSETS					
Household Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets		
3. Net Cash Value of Assets.....		\$0			
4. Total Actual Income from Assets.....					\$0
5. If line 3 is greater than \$5,000, enter Passbook Rate %; otherwise, leave blank			Passbook Rate:	0.00%	\$0
ANTICIPATED ANNUAL INCOME					
Household Member	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
6. Totals					\$0
7. Total of items from 6a. through 6e is <i>Annual Income</i> .....					\$0

X \_\_\_\_\_  
*Applicant Signature*

\_\_\_\_\_  
*Date*

-----  
 For Office Use Only

Household Income: \_\_\_\_\_  
 Income Level \_\_\_\_\_

\_\_\_\_\_  
*Signature of Certifying Staff*

## **Attachment 2: Links to Third Party Verification Forms**

### **Verification of Alimony and Separation - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify alimony and separation payments made to all members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

### **Verification of Assets on Deposit - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify assets on deposit for all members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

### **Verification of Child Support Payments - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify child support payments made to all members of the household applying for participation in the HOME Program on all or none. For more information about the use of this form, click here to learn about verifying income.

### **Verification of Employment - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify employment income of all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

### **Verification of Income from Military - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify military service income of all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about verifying income.

### **Verification of Income from Business - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify business income of all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

### **Verification of Pensions and Annuities - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify pension and annuity income of all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about verifying income.

### **Verification of Public Assistance Program - [PDF](#) - [Word](#)**

This form gives authorization for the HOME PJ to verify public assistance income for all

the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

**Verification of Recurring Cash Contributions** - [PDF](#) - [Word](#)

This form gives authorization for the HOME PJ to verify recurring cash contributions made to all members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about verifying income.

**Verification of Social Security Benefits** - [PDF](#) - [Word](#)

This form gives authorization for the HOME PJ to verify Social Security benefit income for all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

**Verification of Unemployment Benefits** - [PDF](#) - [Word](#)

This form gives authorization for the HOME PJ to verify information about unemployment benefits income for all members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about verifying income.

**Verification of Veterans Administrative Benefits** - [PDF](#) - [Word](#)

This form gives authorization for the HOME PJ to verify Veterans Administrative Benefits income for all the members of the household applying for participation in the HOME Program. For more information about the use of this form, click here to learn about [verifying income](#).

Sample Disclosure Notice to Buyer of a Home  
funded by the Neighborhood Stabilization Program (NSP)

Property Address: \_\_\_\_\_

**Disclosure Statement ----- Please Read Carefully**

You have applied to purchase a home from \_\_\_\_\_(developer) that is to be sold under an affordable housing agreement with the District of Columbia. The development of this home and its affordable price are based on funding from the Neighborhood Stabilization Program; NSP program rules require certain requirements and restrictions for any purchaser.

Buyers will be considered eligible if they have a stable work or income history; are able to obtain a first mortgage for the purchase using a conventional 30-year loan; and complete 8 hours of pre-purchase counseling. Buyers must have household incomes below designated levels required by NSP, and your income will be verified prior to approval and contract execution.

Other restrictions that **must be strictly followed by all purchasers**, should you be approved:

1. **There will be an Affordability Covenant restricting who you can re-sell to in the future.** The affordability restrictions start when you purchase your home and run for Fifteen (15) years. They may not be waived.
- If you sell your home within the first 15 years, the home may only be sold to another eligible purchaser who qualifies as a “low income” household with an income below \_\_\_\_% of the DC area median at the time. To enforce this, **the DC Department of Housing and Community Development must approve all transfers of the affordable property within the 15-year “affordability period.”** This will be required as part of the settlement process if you re-sell during this period.

**As an Owner, you may expect limited appreciation of your home value during these 15 years, and you might not be able to sell or refinance the property at full market value.**

The future re-sale price will be determined by what that future low income household can afford to pay, not by the market value.

- This Restriction carries over to whoever buys your home (up to the original 15 year period), and also applies if your home passes to your heirs during the first 15 years.
- If during the 15-year affordability period you desire to sell but are unable to locate an income-eligible purchaser, you should contact the DC Department of Housing and Community Development for assistance in identifying a qualified and eligible purchaser.

- After 15 years, this Covenant is eliminated and you are free to sell the home at full market price.
- 2. During this 15-year period, the home must be occupied by you, the purchaser, as your principal residence. You may not rent this home or any portion of it to anyone except a member of your household during the first 15 years.

*I have read and understand the provisions described above, and acknowledge that the resale value of my home will be restricted during the first 15 years of my ownership.*

---

Purchaser

Date

## Sample Addendum to Purchase Contract for NSP-Funded property Or Closing Acknowledgement for NSP-Funded property

The undersigned, as the buyer(s) (“Eligible Purchaser”) as defined below of the property commonly identified as: \_\_\_\_\_ (Address)

Located at Lot \_\_\_\_\_ in Square \_\_\_\_\_ (the “Property”), agrees and acknowledges that:

1. The Property is being sold subject to a Declaration of Covenants (“Affordability Covenant”), attached hereto as **Attachment A**. The Affordability Covenant is intended to preserve affordability of the Property and requires re-sale **restrictions transfer of the Property Unit** for a **continuous period of Fifteen (15) years from the date of closing (“Affordability Period”)**.
2. As purchaser(s), I/we do qualify as an eligible purchaser (“Eligible Purchaser”) whose household gross income is at or below \_\_\_% of the area median income for the Washington, DC area, as defined and published by the U.S. Department of Housing and Urban Development and the District of Columbia Department of Housing and Community Development (“DC DHCD”). Our eligibility is determined as of the date the contract for sale is executed (“Determination Date”). The income limits are shown in attachment \_\_\_\_\_.

I/we have submitted documentation of household income. This may include: employer wage statements, social security payments, pension payments or other source documentation that verifies income.

3. Eligible Purchaser must occupy the Property Unit as a primary residence for the duration of the Affordability Period.
4. If the Eligible Purchaser sells the Property Unit before the expiration of the Affordability Period, the Property Unit may **only be sold or transferred to another eligible purchaser who meets the \_\_\_% Area Median Income Limits** existing as of the date the new purchaser executes a purchase contract for the Property Unit.
5. **DHCD Notice of Resale.**
  - a. The Eligible Purchaser must give prior notice of a proposed resale or transfer of the Property to the DC DHCD prior to transferring the Property.
  - b. Prior to executing a purchase contract to sell or transfer the Property, the Eligible Purchaser must contact DHCD, who will certify whether the new purchaser meets the Income requirements. Notice of the proposed sale/transfer must be sent to:

Department of Housing and Community Development  
Development Finance Division  
1800 Martin Luther King Jr. Avenue, SE  
Washington, DC 20020  
Attention:

6. The Eligible Purchaser has read and understands the Affordability Covenant and agrees that as an owner of the Property, I am/we are bound by all of the requirements set forth in the Affordability Covenant and the terms set forth in this Buyer's Acknowledgement.

**ACKNOWLEDGED AND AGREED TO ON THIS \_\_\_\_\_ DAY OF**

\_\_\_\_\_:

**WITNESS:**

**PURCHASER(S):**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

**Form of Applicant Denial for NSP Home**

NSP Program Denial Letter from Developer

Date:  
Applicant name:  
Address:  
City/State/Zip

Dear \_\_\_\_\_:

Upon full review of your application to the Neighborhood Stabilization Program (NSP) homeownership program, \_\_\_\_\_(developer) has determined that your household is not eligible for assistance to purchase the home you applied for. The reason for the denial of your application is:

- \_\_\_\_\_ Your household income was determined to exceed the NSP limits
- \_\_\_\_\_ Certain required documents were never submitted with your application
- \_\_\_\_\_ You were unable to qualify for a first trust loan
- \_\_\_\_\_ You required assistance above the maximum amount for this program
- \_\_\_\_\_ Other:

We appreciate your time and interest in the NSP program and regret that you do not qualify for NSP assistance to purchase a home at this time.

Sincerely,

\_\_\_\_\_

**Properties purchased from PADD**

**AFFORDABLE HOUSING COVENANT**

THIS AFFORDABLE HOUSING COVENANT (this “**Covenant**”) is made as of the \_\_\_ day of \_\_\_\_\_, 20\_ , (the “**Effective Date**”) by \_\_\_\_\_, a \_\_\_\_\_ and its successors and assigns (the “**Developer**”) having an address of \_\_\_\_\_, for the benefit of the District of Columbia, a municipal corporation, acting by and through the \_\_\_\_\_ (the “**District**”).

**RECITALS**

R-1 WHEREAS, District is the fee simple owner of certain real property located in District of Columbia and set forth and described on **Exhibit A** attached hereto and incorporated herein (the “**Property**”), which Property is the subject of this Covenant;

R-2. District and Developer entered into that certain Property Disposition Agreement dated \_\_\_\_\_, 20\_\_, (“**PDA**”) whereby District and Developer agreed upon the terms under which District agreed to convey the fee simple interest in the Property to Developer and for Developer to develop and construct the Project (defined below) and to sell and/or manage and lease the Affordable Units to be constructed in the Project.

R-3. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-4. In accordance with the PDA and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

R-5. District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will construct, maintain, sell and/or lease the Affordable Units in the Project.

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

**ARTICLE I  
DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

**Affordability Period:** is defined in Article X.

**Affordability Requirement:** is defined in Section 2.1.

**Affordable Unit Marketing Plan:** means Developer's plan for marketing the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

**Affordable Unit:** means each Residential Unit means listed as an affordable unit on Exhibit B, attached hereto and incorporated herein.

**Affordable Unit Index:** is attached hereto as Exhibit B and is an index of the Affordable Units contained in the Project, that enumerates: (i) unit number (or similar identifier), floor, and location for each Affordable Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage and number of bedrooms of each Affordable Unit and a schematic drawing showing the layout of the unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Residential Units; (v) a listing or schedule of the amenities, services, upgrades, parking, and other facilities that will be offered as an option at an additional upfront or recurring cost or fee to the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

**Affordable Unit Owner:** means a Qualified Purchaser that own(s) a For Sale Affordable Unit.

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

**AMI:** means the most current "area median income" (also known as "median family income" or "MFI") for a household of four persons in the "Washington Metropolitan Statistical Area" as periodically published by HUD, as adjusted for Household Size, without regard to any adjustments made by HUD for the purposes of the programs it administers.

**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.

**Annual Report:** has the meaning given in Section 4.10.

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

**Certificate of Purchaser Eligibility:** means a certification executed by a Household prior to its purchase of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Authority representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income to the Certifying Authority and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income falls within the Designated Affordability Level for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, and (e) any other reasonable and customary representations requested by the Agency.

**Certificate of Final Completion:** means that certain certificate issued to Developer from District which confirms Developer's final completion of the Project.

**Certification of Income:** means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Purchaser, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit, in such form as the Agency approves.

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

**Certifying Authority:** means the entity or entities approved by the Agency to review and certify the eligibility of a Household as a Qualified Purchaser.

**Designated Affordability Level or DAL:** means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's, as applicable, Annual Household Income must fall.

**Developer:** is identified in the preamble of this Covenant.

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

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

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

**Household Size Adjustment Factor (HAF):** means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of an Affordable Unit, as set forth in the following table:

<b>Household Size</b>	<b>Household Adjustment Factor</b>
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

**Housing Cost:** means the total monthly mortgage payments, property tax, hazard insurance and condominium or homeowner fees for For Sale Affordable Units.

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

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

**Market-Rate Unit:** is each Residential Unit that is not an Affordable Unit.

**Maximum Annual Household Income** or **MAXI:** is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 5.2 for For Sale Affordable Units.

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

**Maximum Sales Price:** as defined in Section 5.1.

**Minimum Annual Household Income** or **MINI:** is the minimum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant Section 5.2 for For Sale Affordable Units.

**Mortgage:** means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

**Mortgagee:** means the holder of a Mortgage.

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

**Owner:** means the Developer and any Affordable Unit Owner, as applicable.

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

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

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

**Qualified Purchaser**: means a Household that (i) has an Annual Household Income, as certified by the Developer, for initial sales, or the Certifying Authority, for subsequent sales, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit, (ii) shall occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person, and (iv) shall use, occupy, hold and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Unit to a Qualified Purchaser) and this Covenant.

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

**Transferee**: is defined in Section 5.7.

**Utilities**: means water, sewer, electricity, and natural gas.

## ARTICLE II AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability (“Affordability Requirement”)**. Developer shall construct, reserve, and sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within ninety (90) days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again no later than ninety (90) days prior to settlement. Any transfer to a Person who is not a Qualified Purchaser shall be null and void.

2.2 **Affordable Unit Standards and Location.**

2.2.1 *Affordable Unit Index*. As of the date of this Covenant, District has approved the Affordable Unit Index, which is attached hereto as **Exhibit B**. Developer shall not amend or modify the Affordable Unit Index, without the Agency’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Any such approved amendment or modification shall be recorded in the Land Records as an amendment to this Covenant.

2.2.2 *Unit Mix.* The distribution of Affordable Units shall be proportional to that of the Market Rate Units (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 *Size.* The Affordable Units shall be of a size equal to the Market-Rate Units, provided that Affordable Units may be the smallest size of each market rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be comparable in appearance, finish and durability to the exterior finishes of Market-Rate Units.

2.2.5 *Interior Finishes.* Developer agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be functionally equivalent to the Market-Rate Units.

2.2.6 *Affordable Unit Location.* Affordable Units shall be disbursed throughout the Project and shall not be concentrated on any one floor or within a tier or section of the Project.

2.3 **Affordable Unit Marketing Plan.** Developer shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Purchasers, as applicable. The Affordable Unit Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. The Developer may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan. The Affordable Unit Marketing Plan shall require that when a For Sale Affordable Unit, as applicable, becomes available, the Owner shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008, and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

2.4 **Certifying Authority.** Developer (for initial Sales) or Affordable Unit Owner (for subsequent Sales) shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Developer (for initial sales) or Affordable Unit Owner (for subsequent sales) may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review and approve or deny a proposed Household's Certification of Income for Affordable Units.

### **ARTICLE III USE**

3.1 **Use.** Except as provided herein, all Affordable Unit Owners shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on an Affordable Unit which are not imposed equally on the owners 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 Affordable Unit Owners of comparable Affordable 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 Affordable Unit Owners of comparable Affordable Units.

3.2 **Demolition/Alteration.** The Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of the Affordable Unit with interior components of equal or better quality than those interior components being replaced. The Owner shall not demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance and repair without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency.

3.3 **Warranty.** Following issuance of the Certificate of Final Completion, Developer warrants that:

- a) All appliances shall be under manufacturer's warranty from the date of transfer of each For Sale Affordable Unit from Developer to a purchaser; and
- b) all structural (including roofing), electrical, mechanical, heating and air conditioning systems shall be under warranty for a minimum of two (2) years from the date of transfer of each For Sale Affordable Unit.

3.4 **Casualty.** In the event of damage or destruction to the Project following the issuance of the Certificate of Final Completion, Developer shall promptly cause the Property to be restored to its condition existing prior to the casualty, subject to changes necessary to comply with then-current building code or insurance requirements, as approved by District (such approval not to be unreasonably withheld, conditioned or delayed).

#### **ARTICLE IV RENTAL OF AFFORDABLE UNITS**

4.1 **Lease of Rental Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written

approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate laws (e.g. condominium, cooperative or home owner's association).

## **ARTICLE V SALE OF AFFORDABLE UNITS**

**5.1 Sale of For Sale Affordable Units.** Neither Developer nor an Affordable Unit Owner may convey all or any part of his, her or their fee interest ("**Sale**"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. The Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall sell to a buyer within the Designated Affordability Level, [adjusted by household size], applicable to such For Sale Affordable Unit and who is a Qualified Purchaser.

*5.1.1 Maximum Sales Price.* The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed (the "**Maximum Sales Price**") that amount which is listed on **Exhibit B**, as approved by the Agency.

*5.1.2 Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit. The Owner may refinance the Property for a loan amount not to exceed the Maximum Resale Price and shall provide notice within ten (10) business days to the District prior to closing on such loan.

*5.1.3 Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1 and 5.1.1, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding in the purchase of the For Sale Affordable Unit.

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

*5.2.1 Income Eligibility.* A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the For Sale Affordable Unit and the Minimum Annual Household Income for a Household occupying the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the

use of the formula:  $MAXI = (AMI * DAL * HAF)$ . The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance. Notwithstanding the foregoing, if a Household holds a valid Notice of Eligibility from the District's Home Purchase Assistance Program, the Household's income eligibility shall be determined solely by confirming that the Household's Annual Household Income is below the Maximum Annual Household Income for the applicable For Sale Affordable Unit, provided the Household provides a copy of the Notice of Eligibility to the Certifying Authority.

5.2.2 *Sale.* A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility approved by the Developer and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit. Developer (for the initial Sale of an Affordable Unit), Affordable Unit Owner (for subsequent sales of the For Sale Affordable Unit), Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

### 5.3 Closing Procedures and Form of Deed.

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

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit.* A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

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

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable District of Columbia and federal laws and is the same criteria for Market Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, the Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.* Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

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

5.6 **Annual Certification of Residency.** The Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a certification that it continues to occupy the For Sale Affordable Unit as its principal residence ("**Certification of Residency**"). The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.7 **Transfers.** In the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable 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 Affordable Unit (each a "**Transferee**"), such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.8 **Prohibition on Occupancy.** In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.9 **Progress Reports.** Until all initial sales of Affordable Units are completed, Developer shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale of Affordable Units during the term of this Covenant.

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

6.1 **Default; Remedies.** The District shall have the right to seek: (i) specific performance, (ii) the right to have a receiver appointed by a court of competent jurisdiction to take possession and control of the Property and any improvement; (iii) the right to re-enter the Property and take possession of and re-acquire title to the Property; or (iv) injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the sale prices permitted hereunder, for defaults under this Covenant. In the event the District elects to re-enter the Property, Developer shall fully satisfy all liens, encumbrances, mortgages, and any document which encumbers the Property as a result of Developer's ownership and interest in the Property.

6.2 **Right to Cure Period.** If a default occurs under this Covenant, the 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 exercising its remedies. The 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.

6.3 **Right to Attorney's Fees.** If the District shall prevail in any such legal action to enforce this Covenant, then the Owner, Affordable 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 Affordable Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of the District, the Developer, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Developer or Affordable Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant.

## **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. Any Mortgage secured by the Property shall be subject to the District's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit for the initial sale or resale of such unit exceed one hundred five percent (105%) of the contracted sales price or for the refinance of such unit, the Maximum Resale Price. Prior to obtaining any refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Notice of Default.** All financing documents for a Mortgage shall provide that a Mortgagee shall provide to the Agency written notice of any uncured delinquency or other uncured default under the Mortgage and that the Agency shall have the right to designate an agency or a third Person to cure such delinquency or other event of default within a period of forty-five (45) days immediately after receipt by the Agency of such notice.

### **8.4 Foreclosure.**

8.4.1 In the event any Mortgagee intends to initiate a foreclosure proceeding against an Affordable Unit, the Mortgagee shall first notify the Agency in writing of its intent to do the same, at least forty-five (45) days prior to the initiation of any proceeding relating to the Affordable Unit, and shall include in its notice the amount of the Owner's outstanding financial obligations to such Mortgagee as of the date of the notice (the "**Foreclosure Notice**"). A Mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a Mortgage on an Affordable Unit shall notify the Agency in writing not later than forty-five (45) days prior to the date of the foreclosure sale.

8.4.2 The Agency or a District designee shall have the right to purchase any and all For Sale Affordable Units in the event of a foreclosure for the amount of the debt secured by the

Mortgage against the subject For Sale Affordable Unit(s) not to exceed the Maximum Resale Price for such For Sale Affordable Unit(s).

8.4.3 In no event shall the For Sale Affordable Unit be sold at foreclosure for an amount that exceeds the Maximum Resale Price. All proceeds of a foreclosure sale of a For Sale Affordable Unit shall be distributed as follows: (1) to the Mortgagee in an

amount not to exceed the aggregate of all amounts due under the Mortgage; and (2) to the Affordable Unit Owner in an amount not to exceed the Maximum Resale Price.

8.4.4 All Mortgagees securing and/or recording their interest in the Property after these Covenants acknowledges the terms and conditions of these Covenants and that any mortgage or deed of trust placed against the Property is subordinate to these Covenants. In the event of foreclosure, this Covenant shall not be released, and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.8. Notwithstanding the foregoing, if the Mortgagee holds a HUD insured mortgage or a Freddie Mac mortgage, this Covenant shall terminate upon foreclosure, deed-in-lieu of foreclosure or assignment of the insured mortgage to HUD or Freddie Mac.

## **ARTICLE IX AMENDMENT OF COVENANT**

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

## **ARTICLE X AFFORDABILITY PERIOD**

All Affordable Units in the Project shall be sold in accordance with the terms of this Covenant for the "Affordability Period." The "Affordability Period" for each For Sale Affordable Unit shall begin on the date of the Sale to the initial Affordable Owner and continue for a period of fifteen (15) years. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

## **ARTICLE XI NOTICES**

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the District at the following addresses, or

to such other persons or locations as the District may designate in writing to the Owner from time to time:

DISTRICT:

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

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

And to:

District of Columbia Department of Housing and Community  
Development  
Housing Regulation Administration  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, D.C. 20020  
Re: Affordable Dwelling Unit Monitoring

All notices to be sent to the Developer shall be sent to the address given in the preamble. All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. 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. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the District with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of 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 (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.

12.2 **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.

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, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

**12.8 Agency Limitation on Liability.** Any review or approval by the District or the Agency shall not be deemed to be an approval, warranty, or other certification by the District or the Agency as to compliance of such submissions, the Project, any 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.

**12.9 No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than District shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

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

(a) This Covenant has been duly executed and delivered by the Developer, and constitutes the legal, valid and binding obligation of the Developer, enforceable against the Developer, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Developer of any agreement or order which is binding on the Developer; and

(c) The Developer (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.

**[Remainder of Page Intentionally Blank. Signature Page to Follow.]**

**IN WITNESS WHEREOF**, the District has caused these presents to be executed, acknowledged and delivered for the purposes herein contained.

**DISTRICT**

Approved for Legal Sufficiency:  
D.C. Office of the Attorney General

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Attorney General

By: \_\_\_\_\_  
Name: John E. Hall  
Title: Acting Director, Department of  
Housing  
and Community Development

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011 by John E. Hall, the Acting Director of the Department of Housing and Community Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the Department of Housing and Community Development, has executed the foregoing and annexed document as his free act and deed.

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

[Notarial Seal]

My commission expires: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**DEVELOPER:**

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

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

Title: \_\_\_\_\_

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and the Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

\_\_\_\_\_

\_\_\_\_\_

Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Property**

[See attached]

**EXHIBIT B**  
**Affordable Unit Index**

## SCHEDULE 1

### Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price (“MRP”) for a subsequent sale of a For Sale Affordable 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 Affordable Unit;
  - (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and
  - (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average 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 after the Affordable Unit was purchased by the Owner, k = the year in which the Affordable Unit is sold by the Owner, and n = the number of years the Affordable Unit is owned by the Owner; or
    - (2) As published by the Agency.
2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:
  - (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and
  - (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.
3. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.
5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level .
6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
7. The Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by the Owner.
8. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.
9. 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 Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

**Eligible Replacement and Repair Cost:** in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including

furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

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

**Sample Covenant for NSP Properties NOT purchased from DHCD's PADD**

When Recorded Please Return to:

The Office of the Attorney General for the District of Columbia  
1800 Martin Luther King, Jr. Ave., S.E., 3rd Floor  
Washington, D.C. 20020

**DISTRICT OF COLUMBIA.**

**DECLARATION OF COVENANTS AND NSP2  
AFFORDABILITY/RESTRICTIVE COVENANT**

THIS Declaration of Covenants and Home Affordability/Restrictive Covenant ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_ 2011, by., a District of Columbia non-profit corporation (the "Grantor"), for the benefit of the District of Columbia, acting by and through the Department of Housing and Community Development, a municipal corporation (the "Department" or "Beneficiary").

**WITNESSETH: THAT**

**WHEREAS**, the District of Columbia Department of Housing and Community Development ("DHCD"), pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115, 217-220 (2009), and the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, § 2301-2304, 122 Stat. 2654, 2850-53 (2008), has been awarded NSP2 funds by the U.S. Department of Housing and Urban Development ("HUD"), through a grant agreement dated February 11, 2011, as amended. NSP2 is a component of the Community Development Block Grant Act of 1974 ("CDBG Act"), 42 U.S.C. 5301 et seq.;

**WHEREAS**, the Department has agreed to provide to the Grantor a NSP grant in the amount equal to \_\_\_\_\_ (the "NSP2 Grant"), the proceeds of which shall be used by the Grantor solely to fund certain construction costs necessary to provide and improve residential structures to be occupied by households which income is at or below 60% of Area Medium Income ("AMI") for the Washington Metropolitan Statistical Area as determined by HUD on the site located at \_\_\_\_\_ (the site is referred to herein as the "Property" and the site and improvements to be constructed/renovated thereon is referred to as the "Project") and further described in **Exhibit A** attached hereto;

**WHEREAS**, The Grantee's proposed Project activities are eligible for receipt of

available NSP2 funds under the HERA section 2301(c)(3)(E), under CDBG Act section 5305(a)(4), under Community Development Block Grant (“CDBG”) regulations at 24 Part 570 (“CDBG Regulations”), specifically §§ 570.202(a)(1) and (b)(1), and 570.208(a), and under the *Department of Housing and Urban Development Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008*, Federal Register Vol. 73, No. 194 (October 6, 2008), Notices, as amended;

**WHEREAS**, The Grantee certifies that the activities carried out under this Agreement will meet the national objective of benefiting low and moderate income persons in accordance with the criteria set forth in 24 CFR § 570.208(a) in that Grantee will operate the Project to provide \_\_\_\_ 3-bedroom homeownership condominium units for households at or below 60% AMI;

**WHEREAS**, the Grantor hereby covenants that the Property shall be operated as “affordable housing,” as such terms are defined at 24 CFR 92.254, as amended from time to time, for a period of fifteen (15) years commencing from the date of sale of each individual unit, and as further described in the Loan Agreement of even date herewith.

**NOW THEREFORE**, for and in consideration of the financial assistance provided by Beneficiary, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor covenants that:

1. The Property shall be qualified and operated as affordable housing in full compliance with the provisions of 24 CFR 92.254, as may be amended from time to time, for a period throughout the Fifteenth anniversary of the date of sale of the individual condominium units.
2. The Grantor shall comply fully with the usage and affordability requirements as outlined in the NSP Grant Agreement by and between Grantor and the Department. All \_\_\_\_ 3-bedroom homeownership condominium units must be sold at affordable prices to eligible purchasers with household incomes at or below 60% of the AMI, to be used as their principal residence throughout the Fifteen (15) year affordability period. If a unit is sold at any time before the expiration of the 15 year affordability period, it shall be sold to another low-moderate income household in conformance with HUD regulations at 24 CFR 92.254, and at the same AMI level required for the original purchase in order to maintain the levels of proffered affordability (60% AMI) .
3. Throughout the term of the NSP2 Grant, the Grantor shall comply with HERA NSP program requirements All NSP2 requirements, including those found in the ARRA, the Notice of Fund Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009 (Docket No. FR-5321-N-01, May 4, 2009) (“NOFA”), the three Notices of Fund Availability for Fiscal Year 2009 Neighborhood Stabilization

Program 2 under the American Recovery and Reinvestment Act of 2009, Correction (Docket No. FR-5321-C-04, June 11, 2009; Docket No. FR-5321-C-03, November 9, 2009; and Docket No. FR-5321-C-04) and all requirements applicable under HERA, the CDBG Act and the CDBG Regulations (as modified by NOFA as now in effect and as may be amended from time to time).

- 4. The covenants herein for the provision of affordable housing shall apply to the Grantor, its successors, heirs, executors, administrators, assigns, sub-lessees, and any purchaser or nominee at foreclosure, except as otherwise provided in 24 CFR 92.254, as may be amended from time to time.
- 5. The District of Columbia has the right to specifically enforce the covenants contained herein.
- 6. The Grantor hereby appoints \_\_\_\_\_, to be attorney-in-fact for the Grantor and in the Grantor's name to execute, acknowledge and deliver this Declaration as the Grantor's act and deed.
- 7. This Declaration shall terminate on the Fifteenth anniversary of the date of sale of the individual condominium units.
- 8. The Declaration described in this agreement shall run with the land. All mortgagees securing and/or recording their interest in the Property after this Declaration acknowledges the terms and conditions of this Declaration and that any mortgage or deed of trust placed against the Property is subordinate to this Declaration. Notwithstanding the foregoing, if the mortgagee holds a HUD insured mortgage this Declaration shall terminate upon foreclosure, deed-in-lieu of foreclosure or assignment of the insured mortgage to HUD.

**IN WITNESS WHEREOF**, the Grantor or the Grantor's duly authorized representative has executed this Declaration as its act and deed.

WITNESS:

GRANTOR

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

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

I HEREBY CERTIFY THAT the foregoing Declaration was executed and delivered pursuant to, and in strict conformity with the provisions of a resolution of\_\_\_\_\_. and in accordance with its Articles of Incorporation, as amended, and its Amended and Restated Bylaws..

\_\_\_\_\_  
Secretary

**ACKNOWLEDGEMENT**

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the above jurisdiction, hereby certify that\_\_\_\_\_, in the foregoing Declaration bearing date the \_\_\_\_\_day of \_\_\_\_\_, 2011, personally appeared before me in said jurisdiction, and as said attorney-in-fact, acknowledged and delivered said Declaration to be the act and deed of the Grantor.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

[SEAL]

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

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

**IN WITNESS WHEREOF**, the District of Columbia acting by and through the Department of Housing and Community Development does hereby appoint \_\_\_\_\_, as its true and lawful attorney-in-fact to execute, acknowledge and deliver this Declaration as the act and deed of said District of Columbia.

WITNESS/ATTEST:

DISTRICT OF COLUMBIA,  
a municipal corporation, acting by and  
through the DC DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGEMENT**

District of Columbia, ss:

I, \_\_\_\_\_, a Notary Public in and for the above jurisdiction, hereby certify that \_\_\_\_\_ of the Department of Housing and Community Development in the foregoing Declaration bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 2011, personally appeared before me in said jurisdiction and, being personally well known to me as the person named as the Attorney-in-Fact for the said Department of Housing and Community Development, acknowledged said Declaration to be the act and deed of the District of Columbia, as appropriate, and delivered the same as such.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

[SEAL]

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

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