

EXECUTION

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (the "**Covenant**") is made as of this 31st day of ~~DECEMBER~~, 2019 ("**Effective Date**"), by SW LAND HOLDER LLC, a Delaware limited liability company, and its successors and assigns (the "**Developer**") having an address of c/o Akridge, 601 13th Street, NW, Suite 300N, Washington, DC 20005, for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**").

RECITALS

R-1. Developer is the fee simple owner of that certain real property located in the District of Columbia as further described in **Exhibit A** (the "**Property**"), as nominee for SW Land Investors, LLC a Delaware limited liability company, ("SWLI") pursuant to that certain Nominee Agreement dated August 25, 2005. According to the Nominee Agreement, SWLI holds all the beneficial interest in and to the Property.

R-2. In connection with its planned redevelopment of the Property, Developer requested District to establish a building restriction line located thirty (30) feet to the north of and parallel to V Street, SW, between First Street, SW and Second Street, SW on the Property line (the "**Building Restriction Line**").

R-3. District agreed to establish the Building Restriction Line in exchange for Developer and SWLI executing this Covenant and that certain Construction Covenant (defined below) to memorialize their agreement to redevelop the Property in conformance with District's public policy goals.

R-4. In reliance on the covenants contained herein and the Construction Covenant, District established the Building Restriction Line by filing that certain Complaint in Condemnation and Declaration of Taking with the District of Columbia Superior Court on or about the Effective Date.

R-5. District and Developer also filed that certain Consent Order and Final Judgment with the District of Columbia Superior Court on or about the Effective Date (the "**Judgment**"), which Judgment required the development of the Project (defined below) in accordance with the terms, execution and recordation of this Covenant and the Construction Covenant.

R-6. 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:

SUBMITTED FOR ELECTRONIC RECORDING BY:
Commonwealth Land Title Insurance Company
Fidelity National Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, DC 20036
File No. DPW 20-056 2 of 2

**ARTICLE I
DEFINITIONS**

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

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

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

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that a certain number of the Residential Units to be contained in the Project are to be Affordable Units reserved for Households with an Annual Household Income at or below sixty percent (60%) MFI. The number of Affordable Units to be reserved in the Project shall be determined in accordance with Section 2.1.

Affordable Unit: means each Residential Unit that will be used to satisfy the Affordability Requirement, all of which shall be identified in an Affordable Unit Index.

Affordable Unit Index: is an index of the Affordable Units contained in each Phase of the Project that identifies: (i) unit number (or similar identifier) and floor for each Affordable Unit and whether each Affordable Unit is a Rental Affordable Unit or For Sale 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 each Affordable 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 who own(s) a For Sale Affordable Unit.

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

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

Annual Report: has the meaning given in Section 4.10.

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

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

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

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

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

Conflict: is defined in Section 12.11.

Construction Covenant: is that certain Construction Covenant by and between District and Developer dated as of the Effective Date and recorded in the Land Records against the Property.

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

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

Developer: is identified in the preamble of this Covenant.

Development Plan: means the plan attached as Exhibit F to the Construction Covenant, as it may change from time to time in accordance with the terms of the Construction Covenant.

Federal Affordability Restrictions: is defined in Section 12.11.

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

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

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

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

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

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

Judgment: is defined in Recital R-5.

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 Allowable Rent: as defined in Section 4.4.2.

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

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 5.1.1**.

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

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

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

Mortgagee: means the holder of a Mortgage.

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

Occupancy Standard: means the minimum number of individuals in a Household permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in a Household
Studio/Efficiency	1
1	1
2	2
3	3
4	4
5	5
6	6

Over-Income Tenant: means a tenant of a Rental Affordable Unit who, at the time of execution of the lease qualified as an Affordable Unit Tenant, but, at the time of lease renewal, has an Annual Household Income greater than one hundred forty percent (140%) of the applicable Maximum Annual Household Income for the applicable Rental Affordable Unit.

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

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

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Phase: means each individual building comprising a portion of the Project, as described in the Development Plan.

Project: means the structures, landscaping, hardscape, and site improvements to be constructed or placed on the Property pursuant to the Judgment and Construction Covenant. In the event the Project as contemplated under the Construction Covenant is subject to a substantial rehabilitation or redeveloped with other improvements during the Affordability Term, the project resulting from such rehabilitation or redevelopment shall be deemed the "Project" under this Covenant.

Property: is defined in the Recital R-1.

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

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

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

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

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

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

Sale: is defined in **Section 5.1**.

Transferee: is defined in Section 5.7.

Utilities: means water, sewer, electricity, natural gas, trash, and any other fees required by the Developer, property manager, or condominium or homeowners' association in order to occupy the Affordable Unit, including, but not limited to, mandatory amenity or administrative fees, which amounts are included in the Rent and Price Schedule.

ARTICLE II AFFORDABILITY REQUIREMENT

2.1 Requirement of Affordability. Developer hereby agrees that it shall construct, reserve, and either maintain and lease as Rental Affordable Units or sell as For Sale Affordable Units in accordance with the Affordability Requirement. The number of Affordable Units required under this Covenant shall be based on the floor area ratio utilized for the Project and shall be determined pursuant to the chart attached as **Exhibit D**. Any Affordable Units required under the Affordability Requirement shall be in addition to any units required under the Inclusionary Zoning program and other law applicable to the Project or Property.

2.2 Affordable Unit Standards and Location.

2.2.1 Affordable Unit Index. Developer shall submit, and District shall approve, the Affordable Unit Index for each Phase in accordance with the Construction Covenant. Once approved by District, the parties shall amend this Covenant to attach each Affordable Unit Index as **Exhibit C**. Any amendments or modifications to an Affordable Unit Index (except to the extent permitted under Section 4.6.6) shall be subject to the Agency's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Any approved amendments or modifications to an Affordable Unit Index shall be recorded in the Land Records at such time as determined by the Agency.

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, and 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 Size. The Affordable Units shall be of a size substantially similar 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 substantially similar to the appearance, finish, and durability of the exterior finishes of the Market-Rate Units.

2.2.5 Interior Finishes. Developer agrees that the interior base finishes, appliances, and equipment in the Affordable Units shall be substantially similar 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, section, or Phase of the Project. Notwithstanding the foregoing, if the first Phase includes at least four hundred (400) Residential Units, then District and the Developer may jointly agree to locate all of the Affordable Units in that Phase; provided, however, if (a) the density achieved in the construction of the second

Phase imposes additional Affordable Units in accordance with Exhibit D or (b) additional Affordable Units are required to be reserved in the Project in accordance with Section 4.3.3 of the Construction Covenant, then any additional Affordable Units imposed thereunder shall be located in the second Phase.

2.3 Marketing Affordable Units.

2.3.1 Marketing Plan. Developer shall submit to Agency an Affirmative Fair Housing Marketing Plan and Household Selection Plan that set forth its plan for marketing the Affordable Units and for selecting Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affirmative Fair Housing Marketing Plan and Household Selection Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Developer may contract with the Certifying Entity to implement the Affirmative Fair Housing Marketing Plan and Household Selection Plan.

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

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

ARTICLE III USE

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

3.2 **Demolition/Alteration.** 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. 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.

**ARTICLE IV
RENTAL OF AFFORDABLE UNITS**

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

4.2 **Rental Affordable Unit Lease Requirements.**

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

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Unit Lease Rider, a Certification of Income, Affordability and Housing Size and a Declaration of Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall be deemed a default by Developer under this Covenant.

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

4.3 **Rental Affordable Unit Admissions Process.**

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

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

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

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

4.4 **Initial Rental Affordable Unit Lease Terms.**

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

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**") for each Rental Affordable Unit shall be determined by the then-current Rent and Price Schedule.

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

4.6 **Subsequent Lease Years**

4.6.1 *Establishment of Maximum Allowable Rent.* The Maximum Allowable Rent for lease years after the first lease year shall be determined by the then-current Rent and Price Schedule.

4.6.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, Developer shall obtain the following: (i) a Declaration of Eligibility from each such Affordable Unit Tenant and (ii) a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, each dated no earlier than ninety (90) days prior to the anniversary of the first day of the applicable residential lease. Developer shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Developer with these documents as required herein and the tenant is determined to be a Qualified

Tenant. If the Affordable Unit Tenant fails to provide such documents, Developer shall treat such tenant as an Over-Income Tenant and charge market-rate rent, and Developer shall designate another Residential Unit as a Rental Affordable Unit in accordance with Section 4.6.6.

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

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

4.6.5 Annual Recertification of Over-Income Tenants. Upon annual recertification, if an Affordable Unit Tenant is an Over-Income Tenant, then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income qualifies for a like-sized Market-Rate Unit, whereupon Developer shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

4.6.6 Changes to Unit Location. Developer may only change the designation of a Rental Affordable Unit to a Market-Rate Unit to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a Market-Rate Unit, Developer shall designate, as expeditiously as possible, the next available Market-Rate Unit of similar size and location in the Property to a Rental Affordable Unit in order to bring the Property in conformity with the Affordability Requirement. Developer shall notify the Agency of any such redesignation as expeditiously as possible.

4.6.7 Rent from Subsidies. Nothing herein shall be construed to prevent Developer from collecting rental operating subsidy or rental-related payments from any federal or District of Columbia agency paid to Developer and/or an Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. So long as Developer is in compliance with the requirement that a Qualified Tenant is paying no more than fifty percent (50%) of its Annual Household Income toward Maximum Allowable Rent, any rental operating subsidy or rental-related payments received by Developer, together with the Qualified Tenant's payment, may exceed the Maximum Allowable Rent for the applicable Affordable Unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V SALE OF AFFORDABLE UNITS

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

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

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 resale of such For Sale Affordable Unit.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale 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.* For any Qualified Purchaser, the Annual Household Income shall be determined within thirty (30) days of the date of the sales contract for such For Sale Affordable Unit. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income, Affordability and Housing Size from the Certifying Entity prior to entering into the contract. To the extent closing on the sale of a For Sale Affordable Unit will not occur within one hundred twenty (120) days after the date of the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again, so that the Certification of Income, Affordability and Housing Size is dated no more than one hundred twenty (120) days prior to the closing. The Certifying Entity shall determine a Household's eligibility to purchase a For Sale Affordable Unit by verifying that (a) the Household's Annual Household Income is less than the Maximum Annual Household Income for the applicable For Sale Affordable Unit; (b) the Household will not expend more than fifty percent (50%) of its monthly Annual Household Income on Housing Cost for the applicable For Sale Affordable Unit; and (c) the Household meets the Occupancy Standard for the applicable For Sale Affordable Unit.

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

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

5.3 **Closing Procedures and Form of Deed.**

EXECUTION

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

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

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

5.3.3 *Deed for For Sale 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 other property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations.* The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed Closing Disclosure, a copy of the deed recorded in the Land Records, the executed Declaration of Eligibility, the executed Certification of Income, Affordability and Housing Size, and the executed Acknowledgment of Covenant.

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

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

5.6 **Leasing For Sale Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit, or any portion thereof, without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Affordable Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules) and any Mortgage or other loan documents applicable to the Affordable Unit. This prohibition includes short-term

renting to, or permitting occupancy by, Persons who are not included in an Affordable Unit Owner's Household, of all or a portion of the Affordable Unit, either directly or through services such as AirBnb or other rental agency providers.

5.7 Transfers.

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

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

5.8 **Progress Reports.** Until all initial Sales of For Sale 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.

ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES

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

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

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

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

7.1 Running with the Land. 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 District, 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 District pertaining to the monitoring and/or enforcement of the obligations of 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, except as provided in Article VIII.

7.2 Transfer.

7.2.1 Assumption of Obligations Upon Transfer. Each of Developer and SWLI represents, warrants, covenants, and agrees, that any sale, conveyance, lease or other transfer of the Property, or any portion thereof, shall not be effective unless and until the transferee thereof has assumed the obligations of Developer under this Covenant and the Construction Covenant. The assumption by transferee shall be memorialized in writing by Developer and/or SWLI and the transferee executing and recording in the Land Records an assignment and assumption agreement on such terms as may be reasonably acceptable to Developer and/or SWLI, the transferee, and District.

7.2.2 No Unreasonable Restraint. Developer and SWLI hereby acknowledges and agrees that the requirements set forth in Section 7.2.1 do not constitute an unreasonable restraint on Developer's right to transfer the Property. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

**ARTICLE VIII
MORTGAGES**

8.1 Subordination of Mortgages. All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

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

8.3 Default of Mortgage and Foreclosure.

8.3.1 Notice of Default. The Mortgagee shall provide the Agency written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable

Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Right of Purchase by the District.* The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Affordable Unit.

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

8.3.4 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

8.3.5 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated 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 5.7.

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

ARTICLE IX AMENDMENT OF COVENANT

EXECUTION

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

ARTICLE X AFFORDABILITY PERIOD

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the "Affordability Period." The "Affordability Period" for each Affordable Unit shall run in perpetuity. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

ARTICLE XI NOTICES

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

Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE
Washington, DC 20020
Re: Housing Regulation Administration, Affordable Dwelling Unit Monitoring

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

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII MISCELLANEOUS

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

12.2 Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or District holiday is automatically extended to the next Business Day.

12.4 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 Further Assurances. Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 Severability. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision, unless this construction would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

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

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

building codes, regulations, standards, laws, or any requirements contained in this Covenant or any other covenant granted in favor of the District that is filed among the Land Records; or otherwise contractually required. The District shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District's interest under this Covenant.

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

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

(a) Developer is the owner of the Property, with SWLI holding all beneficial interest in and to the Property in accordance with the terms of the Nominee Agreement. No other Person holds a property interest, including a security interest, with respect to the Property;

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

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

(d) Each of Developer and SWLI (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is qualified to do business and is in good standing under the laws of the District of Columbia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

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

[Signatures on Following Pages]

EXECUTION

IN TESTIMONY WHEREOF, Developer has caused these presents to be signed, acknowledged and delivered in its name by ADAM GOOCH, its duly authorized AGENT, witnessed by DODD WALKER, its VICE PRESIDENT

WITNESS

By: D. Walker

Name: D. Walker

Title: Vice President

DEVELOPER

SW LAND HOLDER, LLC, a Delaware limited liability company

By: SW Land Investors, LLC, its managing member

By: JACo SW Land, L.L.C., its managing member

By: JACo Manager, Inc., its managing member

By: Adam Gooch [SEAL]

Name: ADAM GOOCH

Title: SENIOR VICE PRESIDENT

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

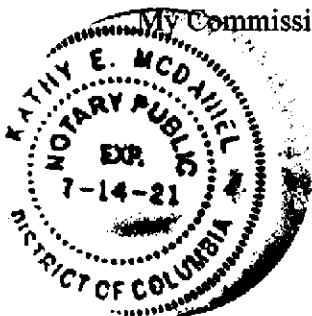
I, Kathy E. McDaniel, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT Adam Gooch who is personally known to be (or proved by oaths of credible witnesses to be) the person named as SVP for SW Land Investors, LLC in the foregoing and annexed Affordable Housing Covenant, bearing the date of the Dec 31, 2019 personally appeared before me in said District of Columbia, and as SVP, acting on behalf of JACo Manager, Inc, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this 7th day of January 2020.

Kathy E. McDaniel

KATHY E. MCDANIEL Notary Public
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2021

My Commission Expires: _____



JOINDER OF SWLI

SW Land Investors, LLC, a Delaware limited liability company, hereby executes this Joinder on and as of the date of the Covenant for the purpose of evidencing its consent and agreement to be bound to the provisions of this Covenant.

WITNESS

By: Dodd Walker

SW LAND INVESTORS, LLC

Name: Dodd Walker

By: JACo SW Land, L.L.C., its managing member

Title: Vice President

By: JACo Manager, Inc., its managing member

By: Adam Good [SEAL]

Name: ADAM GOOD

Title: SENIOR VICE PRESIDENT

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, Kathy E. McDaniel, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT Adam Good who is personally known to be (or proved by oaths of credible witnesses to be) the person named as SVP for SW Land Investors, LLC in the foregoing Joinder, bearing the date of the Dec 31, 2014 personally appeared before me in said District of Columbia, and as SVP, acting on behalf of JACO Manager, Inc, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this 7th day of January 2020

Kathy E. McDaniel
Notary Public

KATHY E. MCDANIEL
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2021

My Commission Expires: _____



APPROVED AND ACCEPTED THIS 31 DAY OF December, 2019:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development pursuant to delegation of authority contained in Mayor's Order 2019-87

By: [Signature]
Name: John Falcicchio
Title: Interim Deputy Mayor

LEGAL REVIEW

By: [Signature]
Office of the General Counsel

District of Columbia, ss:

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

Given under my hand and seal this 7 day of January, 2020.

DAVID C. SELMAN
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 14, 2022
[Signature]
Notary Public, D.C.

My commission expires: _____



EXHIBIT A
Legal Description of Property

Parcel 1

Lot 19 in Square 611 in the subdivision made by Potomac Electric Power Company, as per plat recorded in Liber No. 156 at folio 110 of the Records of the Office of the Surveyor for the District of Columbia.

AND

U Street Closed as per plat recorded in Liber No. 112 at folio 89 of the Records of the Office of the Surveyor for the District of Columbia, and being bounded and described as follows:

BEGINNING for the same at the northeast corner of U Street closed, being the southeast corner of Square 609 and running

Due South 80.00 feet to the northeast corner of Square 611; thence along the north line of said square

Due West 335.00 feet to the northwest corner of Square 611; thence

Due North to the southwest corner of Square 609; thence along the south line of said square

Due East 335.00 feet to the point of beginning

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as **Lot 810 in Square 611.**

Parcel 2

Lots 1 through 12 and 14 in Square 609, as shown on the Original Plats and Plans of the City of Washington, among the Records of the Office of the Surveyor of the District of Columbia.

ALSO

Lots 15 through 18 in Square 609 in the subdivision made by Samuel T. Harris, as per plat recorded in Liber No. 32 at folio 111 of the Records of the Office of the Surveyor for the District of Columbia.

ALSO

EXECUTION

The alley closed as per plat of Closing of Alley in Square 609 recorded in Liber No. 96 at folio 163 of the Records of the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof all of the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as **Lot 804 in Square 609**.

EXHIBIT B**Rental Affordable Unit Lease Rider**

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

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

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

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

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

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

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

Resident shall submit the foregoing listed documentation to the Certifying Entity within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Entity's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Entity will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's MFI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, verifying that the income of the Resident meets income eligibility for the Premises.

EXECUTION

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises at the time of lease renewal and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed 140% of the Maximum Annual Household Income applicable to the Premises, then the Resident shall be deemed an "Over-Income Tenant" as provided in the Covenant and may remain in the Premises and pay the rent applicable to a market-rate unit of like size and location.

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

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

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

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

Resident Signature

Date

Resident Signature

Date

Resident Signature

Date

EXHIBIT C

Affordable Unit Index

[to be attached following approval by District]

EXHIBIT D**Affordability Requirement**

	FAR	Affordable Units ¹
Development Plan ²	6.7	17
	6.8	19
	6.9	21
	7.0	23
	7.1	25
	7.2	27
	7.3	29
	7.4	31
	7.5	33
	7.6	35
	7.7	37
	7.8	39
	7.9	41
	8.0	43
	8.1	45
	8.2	47
	8.3	49
8.4	51	
8.5	53	
Maximum Legal Density with Relocated BRL ³	8.6	55

¹ The number of Affordable Units required under the Affordability Requirement shall be in addition to that number of units required to be affordable under the Inclusionary Zoning program and any law applicable to the Property or Project, including, without limitation, any laws applicable as a result of funding sources. The number of Affordable Units is also subject to increase in accordance with Section 4.3.3 of the Construction Covenant.

² Proposed FAR pursuant to Development Plan attached to the Construction Covenant as of its effective date.

³ In the event zoning changes during the Affordability Period to permit a higher FAR for the Property, the number of Affordable Units will increase by two for each increment of .1 increase in FAR realized.

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 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 Median Family Income ("MFI") 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 $F = (1 + [((MFI \text{ Year } m / MFI \text{ Year } m-10) ^ (1/10) - 1) + \dots + ((MFI \text{ Year } k / MFI \text{ year } k-10) ^ (1/10) - 1) / n]) ^ n$, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or
 - (2) As published by the Agency.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale 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 .

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6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.
8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.
9. 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.
10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an 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,

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stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

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RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50