

**AMENDMENT TO DEVELOPMENT AGREEMENT**

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**BY AND BETWEEN**

**FOREST CITY ENTERPRISES, INC.,  
AN OHIO CORPORATION,**

**AND**

**THE CITY AND COUNTY OF DENVER,  
A MUNICIPAL CORPORATION OF THE STATE OF COLORADO**

## AMENDMENT TO DEVELOPMENT AGREEMENT

This **Amendment to Development Agreement** (this "Amendment") is made and entered into by and between **FOREST CITY ENTERPRISES, INC.** ("Forest City"), an Ohio corporation, and the **CITY AND COUNTY OF DENVER** ("City"), a municipal corporation of the State of Colorado, acting by and through its Office of Economic Development ("OED") and Community Planning and Development Department. Forest City and the City are referred to together herein as the "Parties."

### Recitals

This Amendment is made with respect to the following facts:

A. Forest City and the City are parties to that certain Development Agreement (the "Original Agreement") dated as of March 2, 2001 and approved by the City Council of the City on February 26, 2001, by Ordinance No. 148, Series of 2001, which Agreement relates to the development of the former Stapleton International Airport property (the "Property") as amended by the attached Minor Amendment to Development Agreement dated May 23, 2005 (collectively, the "Agreement"). Unless otherwise provided herein, capitalized terms used in this Amendment shall have the same meanings attributed to them in the Agreement, including the exhibits thereto.

B. Section IV(B) of the Agreement requires Forest City to comply with the requirements of the Affordable Housing Plan attached as Exhibit 1 to the Minor Amendment to Development Agreement and as Exhibit E to the Original Agreement.

C. Section D(1) of the Affordable Housing Plan requires that any Affordable Housing unit produced to fulfill the requirements of the Affordable Housing Plan be subject to a deed restriction or other mutually agreeable mechanism guaranteeing the long-term affordability of the unit. The Affordable Housing Plan does not specifically identify what party shall be responsible for administering and enforcing any such deed restriction or other mechanism.

D. Construction has been completed on certain of the Affordable Housing units required under the Affordable Housing Plan, and deed restriction agreements (the "Deed Restriction Agreements") have been imposed on certain Affordable Housing units. Under the Minor Amendment, those deed restrictions were amended into covenants on a voluntary basis with the property owners and provided for the City to be granted the right to enforce the Deed Restriction Agreements, the Covenants, and other mutually agreeable mechanisms established pursuant to the Affordable Housing Plan.

E. Section VII(D)(2) of the Agreement allows for Amendments to the Development Agreement, to be approved and executed by Forest City and the City's Manager of Community Planning and Development, with the same formalities as the Original Agreement.

G. Forest City has requested and the City has agreed to revise the Agreement in respect of the Affordable Housing Plan attached hereto and to reflect those changes in the form of Covenant as attached hereto to mirror key terms in the City's later adopted affordable housing ordinance found in Denver Revised Municipal Code at 27-101 et seq.

### Agreement

NOW THEREFORE, in consideration of the Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Forest City and the City agree as follows:

1. The definition of "Affordable Workforce Housing" in the Affordable Housing Plan is amended at paragraph B by adding the language underlined as follows:

**Affordable Workforce Housing:** Means dwelling units that are offered for initial sale or resale within 3 years of initial sale at a price which is affordable by and that are in fact sold to households earning 80% and below of ~~MFI~~ AMI for owner-occupancy ~~only~~ and are required thereafter to be offered for subsequent resale during the "long term affordability" period as follows:

From 3 years after initial sale to 6 years after initial sale at a price which is affordable by and that are in fact sold to households earning 90% and below of AMI for owner-occupancy; and

From 6 years after initial sale to the end of the period of long term affordability at a price which is affordable by and that are in fact sold to households earning 100% and below of AMI for owner-occupancy.

If an unit remains unsold after an active 120 day marketing period, it may be sold to a City approved non-profit 501(c)(3) partner, governmental or quasi-governmental entity for use as affordable housing but will remain classified as Affordable Workforce Housing.

2. The Affordable Housing Plan is amended at Paragraph D(1) by striking the language interlineated and adding the language underlined as follows:

1. Any Affordable Housing unit produced to fulfill the requirements of the Plan shall be subject to a deed restriction or other mutually agreeable mechanism guaranteeing the long term affordability of the unit. For Affordable Work Force Housing "long term affordability" means that the purchase and sale of the unit meets the requirements for affordability set for the in the Plan both upon the initial sale of the unit, and every other time the unit is sold for a period of at least ~~thirty~~ fifteen years from the date of the initial sale. For Affordable Rental Housing "long term affordability" means that the rent charged to any tenant for the occupancy of the unit shall always meet the requirements for affordability set forth in this Plan for a period of at least thirty years from the date of the initial lease. The period of long term affordability of any Affordable Housing

project may be extended beyond ~~thirty~~ fifteen years if required under the financing arrangement for the particular project. A deed restriction or other mutually agreeable mechanism shall not be required if binding provisions for ensuring long term affordability are included in the financing arrangement for a particular Affordable Housing project.

3. The Affordable Housing Plan is amended at Paragraph D(4) by striking the language interlineated and adding the language underlined as follows:

4. The City, SDC, and Forest City will strive to identify mechanisms that may extend affordability past ~~30~~ fifteen years for affordable for-sale units and past thirty years for affordable rental units.

4. All references in the Affordable Housing Plan, Minor Amendment to Development, and Exhibits to the Minor Amendment to Development Agreement to "Median Family Income" or "MFI" shall be amended to "Adjusted Median Income" or "AMI". "AMI" or "Adjusted Median Income" means the median income for the Denver metropolitan area, adjusted for household size as calculated by HUD.

5. The Minor Amendment to Development Agreement is amended at Paragraph 2 by striking the language interlineated and adding the language underlined as follows:

2. The City acknowledges that Forest City Stapleton or its designee has caused Deed Restriction Agreements, in substantially the form as set forth in Exhibit 2, to be recorded against title to certain Affordable Workforce Housing units (as defined in the Affordable Housing Plan) at the Property ("~~Current~~Original Restrictions"). The ~~Current~~ Original Restrictions ~~are~~ were applicable as of May 23, 2005 to the Affordable Workforce Housing units described on Exhibit 5 attached to the Minor Amendment to Development Agreement dated May 23, 2005 ~~hereto~~. The Parties acknowledge that the form of the ~~Current~~ Original Restrictions varies somewhat from the form attached ~~hereto~~ as Exhibit 2. Notwithstanding the foregoing, the City agrees that the ~~Current~~ Original Restrictions: (a) comply with the requirements of the Affordable Housing Plan; and (b) are hereby fully and irrevocably credited toward Forest City's obligations under the Affordable Housing Plan, which credit allocation is further set forth on Exhibit 5 attached hereto. The City acknowledges that certain of the ~~Current~~ Original Restrictions are subject to a Subordination Agreement granting certain rights to a second mortgagee. The City agrees to the terms of said Subordination Agreements. The City may replace for amendment any Affordable Housing deed or covenant, in any form, in existence as of the date of this Amendment to Development Agreement, upon request of the homeowner bearing the deed or covenant burden, with an executed and recorded Amended and Restated Affordable Housing Covenant in the form attached hereto as Exhibit 4-A to be updated and to reduce the affordability period,

revise the title, increase income levels of resale buyers, allow purchase by other entities, and allow for limited rental, as described in Exhibit 4-A hereto.

6. All references in the Minor Amendment to Development, and Exhibits to the Minor Amendment to Development Agreement to "Current Restrictions" shall be amended to "Original Restrictions".

7. The revised Affordable Housing Covenant Form is attached hereto and incorporated herein as Exhibit 3-A and all references in the Minor Amendment to Development Agreement to "Exhibit 3" are hereby amended to read "Exhibit 3-A".

8. The revised Amended and Restated Affordable Housing Covenant Form, to be used to replace existing deeds or covenants, is attached hereto and incorporated herein as Exhibit 4-A and all references in the Minor Amendment to Development Agreement to "Exhibit 4" are hereby amended to read "Exhibit 4-A".

9. That added to the notice addresses for the City is:

Office of Economic Development  
City and County of Denver  
201 W. Colfax Avenue, Dept. 204  
Denver, Colorado 80202

10. The terms and provisions of this Amendment are for the benefit of the parties hereto (including, in addition to the Parties, the Fund and Forest City Stapleton) and no other person shall have any right or cause of action on account thereof.

11. A new paragraph 10 is added to the Minor Amendment to Development Agreement to read as follows:

10. Forest City consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

12. Except as amended by this Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: OEDEV-XC1Y021-01

Contractor Name: Forest City Enterprises,  
By Forest City Resident West, Inc.,  
Its Agent

By: 

Name: John S. Lehigh  
(please print)

Title: Executive Vice President  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**EXHIBIT 3-A**  
**to**  
**Amendment to Development Agreement**

**(Notice of Voidable Title Transfer and  
Affordable Housing Covenant Form)**

**[see attached]**



**NOTICE OF VOIDABLE TITLE TRANSFER AND  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

**Denver, Colorado**

\_\_\_\_\_, 20\_\_

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**NOTICE OF VOIDABLE TITLE TRANSFER AND  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_ (“Covenant”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (“Developer”).

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property located in the City and County of Denver, Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing [*or mixed-use, if appropriate*] project (“Project”) developed by Developer that is subject to that certain \_\_\_\_\_ [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Sub-Declaration”), and that certain \_\_\_\_\_ [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado; and

**WHEREAS**, the Developer desires to subject the Unit to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Master Declaration and, to this end, desires to encumber the Unit with the occupancy, resale and other conditions and restrictions set forth herein, thereby establishing Affordable Workforce Housing as defined by the Plan; and

**WHEREAS**, the City of Denver (“City”) (and agencies of the City, including without limitation Denver’s Office of Economic Development agency) shall be the beneficiary of this Covenant and shall have the authority to administer and enforce certain terms and conditions in this Covenant as specifically set forth herein, and as provided in accordance with that certain Minor Amendment to Development Agreement dated May 23, 2005, by and between Forest City Enterprises, Inc., an Ohio corporation, and the City and County of Denver recorded on \_\_\_\_\_, 2005, at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

**WHEREAS**, the City has available certain HOME funds (defined below) to provide for downpayment assistance to initial Qualified Buyers (defined below) of certain Units (defined below) in the Project from the Developer in order to assist in preserving affordability of those Units to such Qualified Buyers, and to benefit subsequent Qualified Buyers of those same Units by applying such assistance in the calculation of the resale price hereunder; now therefore

In consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"City" shall mean and refer to the City and County of Denver, Colorado, its agencies, and its successors and assigns.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer to a Qualified Buyer, and terminating fifteen (15) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.D. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver, Colorado.

"Eligible Capital Improvements" shall mean those certain capital improvements to the Unit that are specifically designated by OED (as defined below) as eligible for purposes of determining the Maximum Sale Price of the Unit pursuant to Article VI hereof. To qualify for an Eligible Capital Improvement the Owner must submit to OED, in advance of commencing the installation or construction of the improvement, a request for approval of any proposed capital improvement, and obtain that approval from OED.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. "Institutional Lender" shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

"First Mortgagee" shall mean and include the holder or beneficiary of any First Mortgage.

"OED" shall mean the City's Division of Housing and Neighborhood Development or any successor agency.

"HOME" funds shall mean funds provided pursuant to the HOME Investment Partnership Act authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and pursuant to regulations therefore promulgated under 24 CFR Part 92.

"Household" shall mean: (1) a single person; or (2) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit housekeeping unit; or (3) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

"HUD" shall mean the United States Department of Housing and Urban Development, and its successors or assigns.

"Income" shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto, or any other definition determined by the City pursuant to Denver Revised Municipal Code Section 27-101 *et seq.*

"Market Units" shall mean the residential units in the Project that are not subject to the occupancy and resale restrictions set forth in this Covenant or any other recorded affordable housing covenant that limits the maximum sale price of the residential unit.

"Maximum Sale Price" shall have the meaning set forth in Article VI hereof.

"Mortgage" shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

"Mortgagee" shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

"OED" shall mean the City's Office of Economic Development agency or any successor agency.

"Owner" shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their recorded ownership interest in the Unit. "Owner" does not include a person whose interest is solely that of a Mortgagee.

"Project" shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

“Qualified Buyers” shall mean a person or persons (1) constituting a Household who for the initial sale or resale within 3 years of initial sale have a combined annual Income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, or for resale during the control period from 3 years after initial sale to 6 years after initial sale at a price which is affordable by and that are in fact sold to households earning 90% and below of AMI for owner-occupancy and from 6 years after initial sale to the end of the control period at a price which is affordable by and that are in fact sold to households earning 100% and below of AMI for owner-occupancy; and (2), in connection with sales after the initial sale of the Unit by Developer, holding a valid verification of eligibility from the City (as further described hereinafter) which entitles the Household to buy the Unit. If an affordable unit remains unsold after an active 12 month marketing period, it may be sold to a City approved non-profit 501(c)(3) partner, governmental or quasi-governmental entity for use as affordable housing but will remain classified as Affordable Workforce Housing. All City approved non-profit partners, governmental or quasi-governmental bodies who purchase, or otherwise take title to, the Unit for the purpose of sale or rental under any program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed to be “Qualified Buyers”. The verification of eligibility shall be calculated based on Income at the time of execution of a contract for purchase of the Unit.

## **ARTICLE II COVENANT BINDS THE PROJECT**

This Covenant shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the City. This Covenant shall bind the Developer and all Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner’s period of ownership of the Unit, and the Owner shall execute a Memorandum of Acceptance as set forth on Exhibit B attached hereto. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

## **ARTICLE III QUALIFIED BUYERS**

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.

B. Exceptions. Notwithstanding the foregoing paragraph, the following transfer of ownership of the Unit from a Qualified Buyer shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Calculation of Maximum Sale Price), so long as the transferee shall occupy the Unit as his or her permanent residence (as defined in Section IV.B. below): A transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law.

## **ARTICLE IV RESTRICTIONS**

A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however*, that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning or the Sub-declaration. The Developer and the Owners shall permit no use or occupancy of the Unit that is not in compliance with this Covenant.

B. Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner. A "permanent residence" shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to the Owner may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration. This residency requirement does not apply to governmental entities, quasi-governmental entities, or non-profit corporations designated by the City, although such entities shall use the Unit for affordable housing purposes.

C. Rental. The Owner of a Unit may share occupancy of the Unit with non-owners on a rental basis provided that the Owner continues to reside in the Unit and to meet the obligations contained in this Covenant. Upon approval of the Director of OED, the Owner of a Unit may rent the Unit after actively marketing the unit for sale only through a City approved partner and only so long as the tenants' eligible income may not exceed 65% AMI, depending on unit type and the rental charged does not exceed levels permitted by OED. The Affordable Covenant will remain in effect during the rental period; rental periods will not be included in the total duration of the control period. Rental without approval of the Director of OED is not permissible.

D. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status. Owners of the Unit shall have the same access to common area amenities at the Project as owners of the Market Units of the Project.

E. Maintenance of Unit. The Owner shall maintain the Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, and rules and regulations of any governmental authority and any homeowners association(s) with jurisdiction over matters concerning the condition of the Unit.

## **ARTICLE V VOLUNTARY SALE BY OWNER**

A. Notice. In the event that the Owner (other than Developer, it being understood and agreed that the provisions of this Article V shall not apply to Developer's initial sale of the Unit to a Qualified Buyer) desires to sell the Unit, the Owner shall provide written notice to OED of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for



sale or otherwise offering the Unit for sale. Said notice to OED shall include the original or duplicate receipts for all claimed Eligible Capital Improvements to verify the costs of such improvements, and an affidavit from the Owner verifying that the receipts are valid and correct. OED may keep a list of interested purchasers, and may provide same to any selling Owner, in OED's sole discretion. OED shall notify the selling owner of the Maximum Sale Price (see below), and the selling owner may then commence to market the Unit as further set forth below.

B. Sales Contract. After providing the notice required in Section V.A. above, the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as a so-called "for sale by owner", and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however*, that:

- (i) the purchase price shall not exceed the Maximum Sales Price;
- (ii) the selling Owner must believe in good faith that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price; and
- (iii) the contract must state as a contingency to closing that the purchaser will submit the application described in Section V.C. below to OED within three (3) days after contract acceptance, and that the closing of the sale is expressly contingent upon the City's determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price as evidenced by issuance of the Verification described in Section V.C. below.

C. Verification. Within three (3) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling Owner), the purchaser shall complete and submit an application form to OED requesting a determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price. OED shall promulgate the form of such application, which shall request only such information as is necessary to determine whether the purchaser is a Qualified Buyer and whether the purchase price exceeds the Maximum Sales Price. OED shall make its eligibility determination of the purchaser within ten (10) days after receipt of the completed application, as evidenced either by (i) the issuance of a verification, signed by OED and in recordable form, stating that the purchaser is a Qualified Buyer, the amount of the purchase price and that the purchase price does not exceed the Maximum Sales Price ("Verification"); or (ii) delivering a notice to seller and purchaser that a Verification cannot be issued and stating the reason(s) therefor. Failure by OED to make its determination and deliver the Verification or the notice as described above within the 10-day period will be deemed an approval of the purchaser and the purchase price, and OED shall thereafter issue a Verification with respect to the transaction promptly upon request therefor by the selling Owner or the purchaser.

D. Recordation. Upon the Transfer of the Unit, the Verification shall be recorded in the real estate records of the City and County of Denver, Colorado, along with the deed for the Unit, and if the Verification is not so recorded, then the Transfer shall be null and void, subject to Section VII.E. below.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT MAY BE SET FORTH IN THE CITY'S HOUSING AND NEIGHBORHOOD DEVELOPMENT RULES AND REGULATIONS, IF ANY, AS AMENDED FROM TIME TO TIME.

## **ARTICLE VI MAXIMUM SALE PRICE**

A. Calculation of Maximum Sale Price. During the time that this Covenant is in effect, but excluding the Developer's initial sale of the Unit to a Qualified Buyer, the Unit may be Transferred for no more than an amount calculated in accordance with this Article VI ("Maximum Sales Price"), as follows:

(i) Start with the purchase price paid by the selling Owner, approved by the City and for which such Owner purchased the Unit according to the Owner's purchase contract for the Unit; *provided*, however, that for one-bedroom Units, the purchase price paid for the Unit in the original purchase of that Unit from the Developer shall be reduced for purposes of this calculation by the amount of any HOME funds provided as downpayment assistance to the original Qualified Buyer ;

(ii) For each year from the date that the selling Owner acquired the Unit multiply the selling Owner's purchase price by the percentage change over the prior year in the CPI-U up to a maximum increase for any given year of 3.5 percent or a maximum decrease for any given year of 3.5 percent;

(iii) For each such year add the product of the multiplication described in (ii) above to the selling Owner's purchase price;

(iv) Add the costs of Eligible Capital Improvements that have been approved by the City up to the time of Transfer;

(v) Add the amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by OED on an annual basis;

(vi) Add any accrued negative amortization if the Unit was financed with a graduated payment mortgage; and

(vii) Add any applicable transfer assessment to be made, in connection with the sale, by the Master Community Association, Inc. pursuant to the Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, Colorado.

THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE

DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

B. Other Improvements. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Unit which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sales Price.

C. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

D. First Sale After Control Period Ends.

(1) When the Unit is offered for sale for the first time after the expiration of the Control Period, the City shall have the option ("Option") to either (a) purchase the Unit at the Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

(2) When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the City of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale. Such Notice of Intent to Sell, sent to the City, shall set forth: (a) the legal description for the Unit; (b) the Owner's original purchase price for the Unit; (c) the date Owner purchased the Unit; (d) the cost and date of Eligible Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs required as described elsewhere in this Covenant; (e) the date on which the Owner intends to offer the Unit for sale on the open market; and (f) an address and phone number at which the Owner may be contacted by the City.

(3) Within thirty (30) days from and after the City's receipt of the Notice of Intent to Sell and all information required by Section VI.D.2. above, the City shall deliver a notice to the Owner ("City's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the City in accordance with Section VI.A.); and (b) a statement regarding whether the City elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("City's Sale Proceeds"). The Maximum Sale Price set by the City hereunder shall include the Eligible Capital Improvement credits only if the Owner delivers to the City the information required hereunder with the Owner's Notice of Intent to Sell.

(4) In the event that the City elects to purchase the Unit, the City's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The City shall set the closing no later than forty-five (45) calendar days

after the date of the City's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the City shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to the City and surrender possession of the Unit to the City, free and clear of all encumbrances except any that are expressly assumed in writing by the City. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the City from a title insurance company acceptable to the City insuring marketable title in the City consistent with the terms of the purchase of the Unit by the City. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the City may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the City as its attorney-in-fact for the herein purposes.

(5) In the event that the City elects not to purchase the Unit and instead permits the sale of the Unit on the open market, as provided in paragraph D(3) above, then the Owner shall promptly deliver to the City any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the City's Notice of Maximum Sale Price & Election (or as otherwise determined by the City), the City shall be entitled to full payment of the City's Sale Proceeds at and upon the closing of the sale of the Unit.

(6) If the City fails to timely deliver the City's Notice of Maximum Sale Price & Election, the City shall have no option to buy the Unit, and it shall be deemed that the City elects to permit the Owner to sell the Unit on the open market, with the City receiving the City's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the City shall have such remedies against the selling Owner as are set forth in Article VII hereof.

(7) The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the City either purchases the Unit or receives the City's Sale Proceeds under this Section VI.D. shall be referred to herein as the "Post-Control Period".

## **ARTICLE VII REMEDIES IN THE EVENT OF BREACH**

A. Inspection. In the event that the City and/or OED has reasonable cause to believe that Owner is violating the provisions of this Covenant, the City and/or the OED, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.

B. Cure/Hearing. In the event a violation of this Covenant is discovered, the City and/or OED shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such default. Said notice shall state that Owner may request a hearing before the City or OED (as determined by the City or OED) pursuant to Denver Revised Municipal Code Section 27-115 and 27-116 *et seq.* If no hearing is requested and the violation is

not cured within the fifteen (15) day period, Owner shall be considered in violation of this Covenant. If a hearing is held before the City or OED, the decision of the City or OED based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. Enforcement. There is hereby reserved to the City the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

D. Voiding Transfers. In the event the Unit is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

E. HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the Unit; (iii) limiting the amount of sales proceeds retainable by the Owner to an amount less than that set forth pursuant to Article VI; or (iv) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the Unit affordable as low or moderate income housing.

## **ARTICLE VIII**

### **RELEASE OF COVENANT IN FORECLOSURE: CITY'S OPTION TO BUY**

A. Foreclosure. The City shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure with respect to the Unit, to a First Mortgagee (which shall be the only party (including HUD as provided below) entitled to take the Unit free of this Covenant pursuant to the provisions of this Article VIII). In the event that the City (or a designee empowered to hold title to real property) purchases the Unit at foreclosure, the City, or its designee, may sell the Unit to Qualified Buyers, or rent the Unit until such time that the Unit can be sold to a Qualified Buyer in accordance with this Covenant. This Covenant shall automatically and permanently terminate upon assignment to HUD of a first deed of trust encumbering the Unit.

B. Notice of Foreclosure. In the event of (i) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (ii) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a copy of any notice of intent to foreclose or request for deed in lieu to the City within ten (10) days of receipt of such notice or request. Notice to the City shall be to the address of the City as provided in this Covenant. In the event that the First Mortgagee takes title to the Unit pursuant to a deed in lieu of foreclosure, the Owner shall give notice to the City upon the vesting of title to the Unit in the First Mortgagee.

**ARTICLE IX  
TERM OF RESTRICTION**

This Covenant shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.D., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the City available hereunder against the Owner personally shall survive any release or termination of this Covenant.

**ARTICLE X  
GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; or (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent. All notices which concern this Covenant shall be sent to the address of the appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a separate memorandum of this Covenant is recorded against the Unit by the City summarizing the City's rights hereunder, then to the address set forth in such memorandum.

<u>To the City:</u>	Community Planning and Development 201 W. Colfax Avenue, #209 Wellington Webb Building Denver, Colorado 80202 Attn: Manager
With a copy to:	Office of Economic Development 201 W. Colfax Avenue, #209 Denver, Colorado 80202 Attn: Director
and a copy to:	City Attorney City of Denver 201 W. Colfax Avenue, Dept. 1207 Denver, Colorado 80202 Attn: Municipal Operations Section

To the Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Qualified Buyer/Owner: To the Unit address.

B. Owner's Disclosure. Each Owner who takes title from Developer and every subsequent Owner of the Unit shall execute and record a Memorandum of Acceptance in the form attached hereto as Exhibit B (completed with the appropriate information relating to the Unit and such

Owner) coincident with such Owner's deed to his or her Unit in the real property records of the City and County of Denver, Colorado, and such Owner shall promptly deliver a copy of same to OED.

C. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

D. Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

E. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the City except on the basis of a written instrument executed by the City.

F. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

G. Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the City and recorded with the Clerk and Recorder of the County.

H. No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver, the Owner and the Developer. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.

**(INTENTIONALLY LEFT BLANK)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Covenant on the day and year above first written.

**DEVELOPER:**

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

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

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

STATE OF \_\_\_\_\_ )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

\_\_\_\_\_

Notary Public

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



**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*,  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in the records  
of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_

**EXHIBIT B**  
**Memorandum of Acceptance**

\_\_\_\_\_ (Project Name)

WHEREAS, \_\_\_\_\_, the Buyer, is purchasing from \_\_\_\_\_, the Seller, at a price of \$ \_\_\_\_\_, a home described as:

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*, County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, and the Declaration recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in the records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_ (the "Unit"); and

WHEREAS, the Seller of the Unit is requiring as a prerequisite to the sale transactions that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "NOTICE OF VOIDABLE TITLE TRANSFER AND AMENDED AND RESTATED STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_", recorded on \_\_\_\_\_, 20\_\_, under Reception No. \_\_\_\_\_, in the real property records of the City and County of Denver, Colorado ("Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Understands that resale pricing is restricted and profits may be required to be shared after the termination of the Covenant; and that the Covenant provides that the owner of the Unit must occupy the Unit as his/her permanent residence.
3. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver's Office of Economic Development.



**EXHIBIT 4-A**  
**to**  
**Amendment to Development Agreement**

**(Notice of Voidable Title Transfer and  
Amended and Restated Affordable Housing Covenant Form)**

**[see attached]**

Exhibit 4-A

**NOTICE OF VOIDABLE TITLE TRANSFER AND  
AMENDED AND RESTATED  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

**Denver, Colorado**

\_\_\_\_\_, 20\_\_

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**NOTICE OF VOIDABLE TITLE TRANSFER AND  
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FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND AMENDED AND RESTATED STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ AT \_\_\_\_\_ (“Covenant”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (“Owner”) [and the [Community Investment Fund, Inc., a Colorado non-profit corporation (“Fund)]. **This Covenant amends, restates, supersedes and fully replaces that certain [Deed Restriction/Covenant] Agreement For The Occupancy And Resale Of Unit \_\_\_\_\_ recorded on \_\_\_\_\_, 20\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Original Covenant”); and this Covenant shall retain the recording priority of the Original Covenant.**

**WITNESSETH:**

**WHEREAS**, Owner is the Owner of certain real property located in the City and County of Denver, Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing project (“Project”) that is subject to that certain \_\_\_\_\_ [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Sub-Declaration”), and that certain \_\_\_\_\_ [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado; and

**WHEREAS**, the Unit is subject to the Original Covenant and, thereby, is also subject to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Community Declaration For the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at reception no. 2001167472 in the real estate records of the City and County of Denver, Colorado (“Master Declaration”); and

**WHEREAS**, Owner [and Fund] desire to amend, restate, supersede and fully replace the Original Covenant with this Covenant; and

**WHEREAS**, the City of Denver (“City”) (and agencies of the City, including without limitation Denver’s Office of Economic Development agency) shall be the beneficiary of this Covenant and shall have the authority to administer and enforce certain terms and



conditions in this Covenant as specifically set forth herein, and as provided in accordance with that certain Minor Amendment to Development Agreement dated May 23, 2005, by and between Forest City Enterprises, Inc., an Ohio corporation, and the City and County of Denver recorded on \_\_\_\_\_, 2005, at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

[WHEREAS, the City has available certain HOME funds (defined below) to provide for downpayment assistance to initial Qualified Buyers (defined below) of certain Units (defined below) in the Project from the Developer in order to assist in preserving affordability of those Units to such Qualified Buyers, and to benefit subsequent Qualified Buyers of those same Units by applying such assistance in the calculation of the resale price hereunder; AND/OR: WHEREAS, the Owner has requested this Amended and Restate Covenant replace the existing covenant]

Now therefore, in consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"City" shall mean and refer to the City and County of Denver, Colorado, its agencies, and its successors and assigns.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer (as defined in the Original Covenant) to a Qualified Buyer, and terminating fifteen (15) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.E. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver, Colorado.

"Eligible Capital Improvements" shall mean those certain capital improvements to the Unit that are specifically designated by OED (as defined below) as eligible for purposes of determining the Maximum Sale Price of the Unit pursuant to Article VI hereof. To

qualify for an Eligible Capital Improvement the Owner must submit to OED, in advance of commencing the installation or construction of the improvement, a request for approval of any proposed capital improvement, and obtain that approval from OED.

“First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. “Institutional Lender” shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

“First Mortgagee” shall mean and include the holder or beneficiary of any First Mortgage.

“HOME” funds shall mean funds provided pursuant to the HOME Investment Partnership Act authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and pursuant to regulations therefore promulgated under 24 CFR Part 92.

“Household” shall mean: (1) a single person; or (2) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit housekeeping unit; or (3) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

“HUD” shall mean the United States Department of Housing and Urban Development, and its successors or assigns.

“Income” shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto, or any other definition determined by the City pursuant to Denver Revised Municipal Code Section 27-101 *et seq.*

“Market Units” shall mean the residential units in the Project that are not subject to the occupancy and resale restrictions set forth in this Covenant or any other recorded affordable housing covenant that limits the maximum sale price of the residential unit.

“Maximum Sale Price” shall have the meaning set forth in Article VI hereof.

“Mortgage” shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

“Mortgagee” shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

"OED" shall mean the City's Office of Economic Development agency or any successor agency.

“Owner” shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant; it being understood that such person or persons shall be deemed an “Owner” hereunder only during the period of his, her or their recorded ownership interest in the Unit. “Owner” does not include a person whose interest is solely that of a Mortgagee.

“Project” shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

“Qualified Buyers” shall mean a person or persons (1) constituting a Household who for the initial sale or resale within 3 years of initial sale have a combined annual Income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, or for resale during the control period from 3 years after initial sale to 6 years after initial sale at a price which is affordable by and that are in fact sold to households earning 90% and below of AMI for owner-occupancy and from 6 years after initial sale to the end of the control period at a price which is affordable by and that are in fact sold to households earning 100% and below of AMI for owner-occupancy; and (2) holding a valid verification of eligibility from the City (as further described hereinafter) which entitles the Household to buy the Unit. If an affordable unit remains unsold after an active 120 days marketing period, it may be sold to a City approved non-profit 501(c)(3) partner, governmental or quasi-governmental entity for use as affordable housing but will remain classified as Affordable Workforce Housing. All City approved non-profit partners, governmental or quasi-governmental bodies who purchase, or otherwise take title to, the Unit for the purpose of sale or rental under any program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed to be “Qualified Buyers”. The verification of eligibility shall be calculated based on Income at the time of execution of a contract for purchase of the Unit.

**ARTICLE II  
COVENANT BINDS THE PROJECT AND REPLACES ORIGINAL  
DEED [COVENANT] RESTRICTION**

A. This Covenant shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the City. This Covenant shall bind the current Owner and all subsequent Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner’s period of ownership of the Unit, and the Owner shall execute a Memorandum of Acceptance as set forth on Exhibit B attached hereto. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the

terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

B. THIS COVENANT AMENDS, RESTATES, SUPERSEDES AND FULLY REPLACES THE ORIGINAL COVENANT OR DEED RESTRICTION, AND SHALL RETAIN THE RECORDING PRIORITY CONTAINED IN THE ORIGINAL COVENANT OR DEED RESTRICTION.

### **ARTICLE III QUALIFIED BUYERS**

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.

B. Exceptions. Notwithstanding the foregoing paragraph, the following transfer of ownership of the Unit from a Qualified Buyer shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Calculation of Maximum Sale Price), so long as the transferee shall occupy the Unit as his or her permanent residence (as defined in Section IV.B. below): A transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law.

### **ARTICLE IV RESTRICTIONS**

A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however*, that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning or the Sub-declaration. The Owners shall permit no use or occupancy of the Unit that is not in compliance with this Covenant.

B. Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner. A "permanent residence" shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to the Owner may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration. This residency requirement does not apply to governmental entities, quasi-governmental entities, or non-profit corporations designated by the City, although such entities shall use the Unit for affordable housing purposes.

C. Rental. The Owner of a Unit may share occupancy of the Unit with non-owners on a rental basis provided that the Owner continues to reside in the Unit and to meet the obligations contained in this Covenant. Upon approval of the Director of OED, the

Owner of a Unit may rent the Unit after actively marketing the unit for sale only through a City approved partner and only so long as the tenants' eligible income may not exceed 65% AMI, depending on unit type and the rental charged does not exceed will not exceed levels permitted by OED. The Affordable Covenant will remain in effect during the rental period; rental periods will not be included in the total duration of the control period. Rental without approval of the Director of OED is not permissible.

D. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status. Owners of the Unit shall have the same access to common area amenities at the Project as owners of the Market Units of the Project.

E. Maintenance of Unit. The Owner shall maintain the Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, and rules and regulations of any governmental authority and any homeowners association(s) with jurisdiction over matters concerning the condition of the Unit.

## **ARTICLE V VOLUNTARY SALE BY OWNER**

A. Notice. In the event that the Owner desires to sell the Unit, the Owner shall provide written notice to OED of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for sale or otherwise offering the Unit for sale. Said notice to OED shall include the original or duplicate receipts for all claimed Eligible Capital Improvements to verify the costs of such improvements, and an affidavit from the Owner verifying that the receipts are valid and correct. OED may keep a list of interested purchasers, and may provide same to any selling Owner, in OED's sole discretion. OED shall notify the selling owner of the Maximum Sale Price (see below), and the selling owner may then commence to market the Unit as further set forth below.

B. Sales Contract. After providing the notice required in Section V.A. above, the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as a so-called "for sale by owner", and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however,* that:

- (i) the purchase price shall not exceed the Maximum Sales Price;
  - (ii) the selling Owner must believe in good faith that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price;
- and

(iii) the contract must state as a contingency to closing that the purchaser will submit the application described in Section V.C. below to OED within three (3) days after contract acceptance, and that the closing of the sale is expressly contingent upon the City's determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price as evidenced by issuance of the Verification described in Section V.C. below.

C. Verification. Within three (3) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling Owner), the purchaser shall complete and submit an application form to OED requesting a determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price. OED shall promulgate the form of such application, which shall request only such information as is necessary to determine whether the purchaser is a Qualified Buyer and whether the purchase price exceeds the Maximum Sales Price. OED shall make its eligibility determination of the purchaser within ten (10) days after receipt of the completed application, as evidenced either by (i) the issuance of a verification, signed by OED and in recordable form, stating that the purchaser is a Qualified Buyer, the amount of the purchase price and that the purchase price does not exceed the Maximum Sales Price ("Verification"); or (ii) delivering a notice to seller and purchaser that a Verification cannot be issued and stating the reason(s) therefor. Failure by OED to make its determination and deliver the Verification or the notice as described above within the 10-day period will be deemed an approval of the purchaser and the purchase price, and OED shall thereafter issue a Verification with respect to the transaction promptly upon request therefor by the selling Owner or the purchaser.

D. Recordation. Upon the Transfer of the Unit, the Verification shall be recorded in the real estate records of the City and County of Denver, Colorado, along with the deed for the Unit, and if the Verification is not so recorded, then the Transfer shall be null and void, subject to Section VII.E. below.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT MAY BE SET FORTH IN THE CITY'S HOUSING AND NEIGHBORHOOD DEVELOPMENT RULES AND REGULATIONS, IF ANY, AS AMENDED FROM TIME TO TIME.

## **ARTICLE VI MAXIMUM SALE PRICE**

A. Calculation of Maximum Sale Price. During the time that this Covenant is in effect, the Unit may be Transferred for no more than an amount calculated in accordance with this Article VI ("Maximum Sales Price"), as follows:

(i) Start with the purchase price paid by the selling Owner, approved by the City and for which such Owner purchased the Unit according to the Owner's purchase contract for the Unit; *provided*, however, that the purchase price paid for the Unit in the original purchase of that Unit from the Developer shall be reduced for purposes of this

calculation by the amount of any HOME funds provided as downpayment assistance to the original Qualified Buyer;

(ii) For each year from the date that the selling Owner acquired the Unit multiply the selling Owner's purchase price by the percentage change over the prior year in the CPI-U up to a maximum increase for any given year of 3.5 percent or a maximum decrease for any given year of 3.5 percent;

(iii) For each such year add the product of the multiplication described in (ii) above to the selling Owner's purchase price;

(iv) Add the costs of Eligible Capital Improvements that have been approved by the City up to the time of Transfer;

(v) Add the amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by OED on an annual basis;

(vi) Add any accrued negative amortization if the Unit was financed with a graduated payment mortgage; and

(vii) Add any applicable transfer assessment to be made, in connection with the sale, by the Master Community Association, Inc. pursuant to the Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, Colorado.

THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

B. Sale By First Owner. Notwithstanding the foregoing Section VI.A., in connection with the sale of the Unit by the Owner who has purchased the Unit from the Developer (as defined in the Original Covenant), the City shall set the Maximum Sale Price at the amount which is the greater of the price determined pursuant to Section VI.A., or the price determined as follows:

1. The Owner's original purchase price for the Unit as set forth in the conveyance deed; *plus*;

2. A share of the Unit's appreciation determined by multiplying the applicable Appreciation Factor by the Adjusted Appreciation; *plus*;

2. The costs of Eligible Capital Improvements; plus
3. Any accrued negative amortization if the Unit was financed with a graduated payment mortgage; plus
4. The amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by OED on an annual basis; plus
5. The cost of the Current Market Appraisal (as defined below), not to exceed \$350.00.

***Sale Price Definitions:***

1. The "Appreciation Factor" is based on the number of years the Owner has owned the Unit:

- For less than 1 year of ownership the Factor is 0%;
- For 1 year but less than 2 years of ownership the Factor is 10%;
- For 2 years but less than 3 years of ownership the Factor is 15%;
- For 3 years but less than 5 years of ownership the Factor is 20%;
- For 5 years or more of ownership the Factor is 25%.

2. The "Adjusted Appreciation" is determined by subtracting the costs of Eligible Capital Improvements from the Market Appreciation.

3. The "Market Appreciation" is determined by subtracting the Original Market Appraisal from the Current Market Appraisal. The "Original Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she purchases the Unit. The "Current Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she sells the Unit. An Owner shall be required to timely obtain both an Original Market Appraisal and a Current Market Appraisal from an independent, duly licensed appraiser, and to promptly deliver upon receipt a copy of each appraisal to OED. OED may accept or reject either appraisal in its sole discretion upon written notice to the Owner. If OED so rejects an appraisal, OED shall, at its cost, engage an independent, licensed appraiser to perform a second appraisal and the average of both appraisals shall constitute the appraisal for purposes of this paragraph.



C. Other Improvements. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Unit which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sales Price.

D. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

E. First Sale After Control Period Ends.

(1) When the Unit is offered for sale for the first time after the expiration of the Control Period, the City shall have the option ("Option") to either (a) purchase the Unit at the Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

(2) When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the City of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale. Such Notice of Intent to Sell, sent to the City, shall set forth: (a) the legal description for the Unit; (b) the Owner's original purchase price for the Unit; (c) the date Owner purchased the Unit; (d) the cost and date of Eligible Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs required as described elsewhere in this Covenant; (e) the date on which the Owner intends to offer the Unit for sale on the open market; and (f) an address and phone number at which the Owner may be contacted by the City.

(3) Within thirty (30) days from and after the City's receipt of the Notice of Intent to Sell and all information required by Section VI.E.2. above, the City shall deliver a notice to the Owner ("City's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the City in accordance with Section VI.A.); and (b) a statement regarding whether the City elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("City's Sale Proceeds"). The Maximum Sale Price set by the City hereunder shall include the Eligible Capital Improvement credits only if the Owner delivers to the City the information required hereunder with the Owner's Notice of Intent to Sell.

(4) In the event that the City elects to purchase the Unit, the City's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The City shall set the closing no later than forty-five (45) calendar days after the date of the City's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the City shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to

the City and surrender possession of the Unit to the City, free and clear of all encumbrances except any that are expressly assumed in writing by the City. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the City from a title insurance company acceptable to the City insuring marketable title in the City consistent with the terms of the purchase of the Unit by the City. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the City may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the City as its attorney-in-fact for the herein purposes.

(5) In the event that the City elects not to purchase the Unit and instead permits the sale of the Unit on the open market, as provided in paragraph E(3) above, then the Owner shall promptly deliver to the City any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the City's Notice of Maximum Sale Price & Election (or as otherwise determined by the City), the City shall be entitled to full payment of the City's Sale Proceeds at and upon the closing of the sale of the Unit.

(6) If the City fails to timely deliver the City's Notice of Maximum Sale Price & Election, the City shall have no option to buy the Unit, and it shall be deemed that the City elects to permit the Owner to sell the Unit on the open market, with the City receiving the City's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the City shall have such remedies against the selling Owner as are set forth in Article VII hereof.

(7) The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the City either purchases the Unit or receives the City's Sale Proceeds under this Section VI.E. shall be referred to herein as the "Post-Control Period".

## **ARTICLE VII REMEDIES IN THE EVENT OF BREACH**

A. Inspection. In the event that the City and/or OED has reasonable cause to believe that Owner is violating the provisions of this Covenant, the City and/or the OED, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.

B. Cure/Hearing. In the event a violation of this Covenant is discovered, the City and/or OED shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such default. Said notice shall state that Owner may request a hearing before the City or OED (as determined by the City or OED) pursuant to Denver Revised Municipal Code Section 27-115 and 27-116 *et seq.* If no hearing is requested and the violation is not cured within the fifteen (15) day period, Owner shall be considered in violation of this Covenant. If a hearing is held before the

City or OED, the decision of the City or OED based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. Enforcement. There is hereby reserved to the City the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

D. Voiding Transfers. In the event the Unit is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

E. HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the Unit; (iii) limiting the amount of sales proceeds retainable by the Owner to an amount less than that set forth pursuant to Article VI; or (iv) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the Unit affordable as low or moderate income housing.

**ARTICLE VIII**  
**RELEASE OF COVENANT IN FORECLOSURE: CITY'S OPTION TO BUY**

A. Foreclosure. The City shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure with respect to the Unit, to a First Mortgagee (which shall be the only party (including HUD as provided below) entitled to take the Unit free of this Covenant pursuant to the provisions of this Article VIII). In the event that the City (or a designee empowered to hold title to real property) purchases the Unit at foreclosure, the City, or its designee, may sell the Unit to Qualified Buyers, or rent the Unit until such time that the Unit can be sold to a Qualified Buyer in accordance with this Covenant. This Covenant shall automatically and permanently terminate upon assignment to HUD of a first deed of trust encumbering the Unit.

B. Notice of Foreclosure. In the event of (i) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (ii) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a copy of any notice of intent to foreclose or request for deed in lieu to the City within ten (10) days of receipt of such notice or request. Notice to the City shall be to the address of the City as provided in this Covenant. In the event that the First Mortgagee

takes title to the Unit pursuant to a deed in lieu of foreclosure, the Owner shall give notice to the City upon the vesting of title to the Unit in the First Mortgagee.

**ARTICLE IX  
TERM OF RESTRICTION**

This Covenant shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.E., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the City available hereunder against the Owner personally shall survive any release or termination of this Covenant.

**ARTICLE X  
GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; or (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent. All notices which concern this Covenant shall be sent to the address of the appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a separate memorandum of this Covenant is recorded against the Unit by the City summarizing the City's rights hereunder, then to the address set forth in such memorandum.

To the City: Community Planning and Development  
201 W. Colfax Avenue, #209  
Wellington Webb Building  
Denver, Colorado 80202  
Attn: Manager

With a copy to: Office of Economic Development  
201 W. Colfax Avenue, #209  
Denver, Colorado 80202  
Attn: Director

and a copy to: City Attorney  
City of Denver  
201 W. Colfax Avenue, Dept. 1207  
Denver, Colorado 80202  
Attn: Municipal Operations

To the Qualified Buyer/Owner: To the Unit address.

B. Owner's Disclosure. Each Owner of the Unit shall execute and record a Memorandum of Acceptance in the form attached hereto as Exhibit B (completed with the appropriate information relating to the Unit and such Owner) coincident with such Owner's deed to his or her Unit in the real property records of the City and County of Denver, Colorado, and such Owner shall promptly deliver a copy of same to OED.

C. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

D. Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

E. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the City except on the basis of a written instrument executed by the City.

F. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

G. Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the City and recorded with the Clerk and Recorder of the County.

H. No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver and the Owner. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.

**(INTENTIONALLY LEFT BLANK)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Covenant on the day and year above first written.

**[FUND:**

**Community Investment Fund, Inc.**, a Colorado non-profit corporation

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

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

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

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Community Investment Fund, Inc., a Colorado non-profit corporation.

WITNESS my hand and official seal.

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

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

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_.

WITNESS my hand and official seal.

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

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

**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*,  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in the  
records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_

**EXHIBIT B**  
**Memorandum of Acceptance**

\_\_\_\_\_  
(Project Name)

WHEREAS, \_\_\_\_\_, the Buyer,  
is purchasing from \_\_\_\_\_, the Seller, at  
a price of \$ \_\_\_\_\_, a home described as:

UNIT \_\_\_\_\_, \_\_\_\_\_ [*INSERT NAME OF  
PROJECT*],  
County of \_\_\_\_\_, State of Colorado, according to the Map  
thereof recorded on \_\_\_\_\_, 20\_\_, at Reception No.  
\_\_\_\_\_, and the Declaration recorded on  
\_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in  
the records of the Clerk and Recorder of the County of  
\_\_\_\_\_, Colorado,  
also known by street and number as:

\_\_\_\_\_  
(the "Unit"); and

WHEREAS, the Seller of the Unit is requiring as a prerequisite to the sale transactions that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "NOTICE OF VOIDABLE TITLE TRANSFER AND AMENDED AND RESTATED STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_", recorded on \_\_\_\_\_, 20\_\_, under Reception No. \_\_\_\_\_, in the real property records of the City and County of Denver, Colorado ("Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Understands that resale pricing is restricted and profits may be required to be shared after the termination of the Covenant; and that the Covenant provides that the owner of the Unit must occupy the Unit as his/her permanent residence.
6. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver's Office of Economic Development.



**IN WITNESS WHEREOF**, the parties hereto have executed this instrument of the day and year first above written.

BUYER(S):

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

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

STATE OF                                    )  
  ) ss.  
COUNTY OF                                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

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

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

**ATTACHMENT**

**(for informational purposes only)**

**MINOR AMENDMENT TO DEVELOPMENT AGREEMENT**

**Dated May 23, 2005**

MINOR AMENDMENT TO DEVELOPMENT AGREEMENT

This Minor Amendment to Development Agreement (this "Amendment") is made and entered into as of May 23, 2005, by and between **FOREST CITY ENTERPRISES, INC.** ("Forest City"), an Ohio corporation, and the **CITY AND COUNTY OF DENVER** ("City"), a municipal corporation of the State of Colorado, acting by and through its acting Manager of Community Planning and Development. Forest City and the City are referred to together herein as the "Parties."

Recitals

This Amendment is made with respect to the following facts:

- A. Forest City and the City are parties to that certain Development Agreement (the "Agreement") dated as of March 2, 2001 and approved by the City Council of the City on February 26, 2001, by Ordinance No. 148, Series of 2001, which Agreement relates to the development of the former Stapleton International Airport property (the "Property"). Unless otherwise provided herein, capitalized terms used in this Amendment shall have the same meanings attributed to them in the Agreement, including the exhibits thereto.
- B. Section IV(B) of the Agreement requires Forest City to comply with the requirements of the Affordable Housing Plan attached as Exhibit 1 hereto and as Exhibit E to the Agreement.
- C. Section D(1) of the Affordable Housing Plan requires that any Affordable Housing unit produced to fulfill the requirements of the Affordable Housing Plan be subject to a deed restriction or other mutually agreeable mechanism guaranteeing the long-term affordability of the unit. The Affordable Housing Plan does not specifically identify what party shall be responsible for administering and enforcing any such deed restriction or other mechanism.
- D. Construction has begun on certain of the Affordable Housing units required under the Affordable Housing Plan, and deed restriction agreements (the "Deed Restriction Agreements") have been imposed on certain Affordable Housing units.
- E. The City currently enforces almost all of the restrictions placed on Affordable Housing units in other parts of the City and, subject to the provisions hereof, the Parties believe that it would be efficient for the City to be granted the right to enforce the Deed Restriction Agreements and other mutually agreeable mechanisms established pursuant to the Affordable Housing Plan.
- F. Section VII(D)(1) of the Agreement allows for Minor Amendments to the Development Agreement, which Minor Amendments may be approved and executed by Forest City and the City's Manager of Community Planning and Development, and shall be fully enforceable against the Parties.

G. Forest City and the City have determined that amending the Agreement to clarify that the City will be responsible for administering and enforcing the Deed Restriction Agreements and other mutually agreeable mechanisms established pursuant to the Affordable Housing Plan, and updating the notice provisions, constitute Minor Amendments to the Agreement and the Parties desire to make the Minor Amendment set forth below.

### Agreement

NOW THEREFORE, in consideration of the Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Forest City and the City agree as follows:

1. The City hereby approves (a) the form of Deed Restriction Agreement attached hereto as Exhibit 2, (b) the form of Affordable Housing Covenant attached hereto as Exhibit 3, and (c) the form of Amended and Restated Affordable Housing Covenant attached hereto as Exhibit 4, and agrees that all of the forms comply with the requirements of the Affordable Housing Plan. The City agrees that each Deed Restriction Agreement may, at the sole discretion of Forest City Stapleton, Inc., a Colorado corporation ("Forest City Stapleton"), be made subordinate to secondary financing secured by the Affordable Workforce Housing dwelling unit that is subject to the Deed Restriction Agreement.

2. The City acknowledges that Forest City Stapleton or its designee has caused Deed Restriction Agreements, in substantially the form as set forth in Exhibit 2, to be recorded against title to certain Affordable Workforce Housing units (as defined in the Affordable Housing Plan) at the Property ("Current Restrictions"). The Current Restrictions are applicable to the Affordable Workforce Housing units described on Exhibit 5 attached hereto. The Parties acknowledge that the form of the Current Restrictions varies somewhat from the form attached hereto as Exhibit 2. Notwithstanding the foregoing, the City agrees that the Current Restrictions: (a) comply with the requirements of the Affordable Housing Plan; and (b) are hereby fully and irrevocably credited toward Forest City's obligations under the Affordable Housing Plan, which credit allocation is further set forth on Exhibit 5 attached hereto. The City acknowledges that certain of the Current Restrictions are subject to a Subordination Agreement granting certain rights to a second mortgagee. The City agrees to the terms of said Subordination Agreements.

3. For a period of time from the date of this Agreement until September 30, 2005 ("Conversion Period"), Forest City Stapleton or its designee shall attempt to release the Current Restrictions and replace them with the form of Amended and Restated Affordable Housing Covenant attached hereto as Exhibit 4, by attempting to obtain the consent of owners of units encumbered by the Current Restrictions to the release of the Current Restrictions and the recordation of Amended and Restated Affordable Housing Covenants in the place and stead of the Current Restrictions ("Conversion Consent"). On or before September 30, 2005, Forest City Stapleton will notify DHND whether or not it has received Conversion Consent for at least fifty percent (50%) of the Current Restrictions and, if such Conversion Consent percentage has been achieved, said letter shall be accompanied by: (1) a summary of the numbers of units that were subject to the Current Restrictions, and the number of units for which Conversion Consent has been achieved; and (2) recorded copies of the released Current Restrictions and the newly

recorded Amended and Restated Affordable Housing Covenants (if recorded copies of the latter are not readily available, supply file-stamped copies of the ones submitted for recordation).

4. The Parties acknowledge that the current beneficiary of the Current Restrictions is the Community Investment Fund, Inc., a tax-exempt Colorado non-profit corporation ("Fund"). Upon the lapse of the Conversion Period, and so long as (a) at least fifty (50%) percent of the Current Restrictions have been released and replaced with an Amended and Restated Affordable Housing Covenant, and (b) the Fund deposits into escrow for the benefit of the City funds in the amount of \$500.00 for each of the Current Restrictions that have not been released pursuant to Section 3 above ("Remaining Current Restrictions"), then the Fund shall assign all of its rights and interests to administer and enforce all of the Remaining Current Restrictions to the City. From and after the Conversion Period, Forest City, Forest City Stapleton and the Fund shall have no obligation to administer or enforce the terms of the Remaining Current Restrictions. Upon the lapse of the Conversion Period, the City and the Fund shall execute, and Forest City Stapleton shall record, for each Remaining Current Restriction, an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6. The Fund has executed this Amendment below for the sole purpose of confirming its consent to the terms of this Section 4.

5. From time to time Forest City Stapleton may submit to the City (at the address indicated below): (a) copies of one or more fully executed and recorded Affordable Housing Covenants in substantially the form attached hereto as Exhibit 3, along with the date and recordation number for each such Affordable Housing Covenant; (b) a written certification ("Certification") from Forest City Stapleton, in substantially the form attached hereto as Exhibit 7, that the buyer of the Affordable Workforce Housing unit subject to each such Affordable Housing Covenant is a Qualified Buyer as defined in the Affordable Housing Covenant; and (c) a copy of the deed vesting title to the Affordable Workforce Housing unit in the Qualified Buyer. The City is granted the right to administer and enforce all Affordable Housing Covenants for which a Certification has been provided.

Upon delivery to the City of a Certification for an Affordable Workforce Housing unit or units:

(A) the City shall be deemed to, and shall in fact, have: (i) irrevocably credited the units referenced in the Certification toward Forest City's obligations under the Affordable Housing Plan to create Affordable Workforce Housing; and (ii) released Forest City, Forest City Stapleton and the Fund from all obligations to administer or enforce such Affordable Housing Covenants; and

(B) Forest City and/or Forest City Stapleton are entitled to record each Certification at their election. Moreover, Forest City and/or Forest City Stapleton may, at their election, execute and record an instrument confirming that the City has been assigned the rights to administer and enforce the Affordable Housing Covenants referenced in the Certification.

6. The Parties agree that this Amendment constitutes a Minor Amendment to the Agreement because it does not relate to: (a) the term of the Agreement; (b) the list of Uses or the amount of the Densities; (c) the material obligations of Forest City or the City; or (d) the remedies under the Agreement. The Parties therefore acknowledge that this Amendment may be approved and executed by Forest City and the Manager of Community Planning and

Development of the City and, if so executed, shall be fully enforceable as if included in the original Agreement.

7. The Notice provisions of Section VII(E) of the Agreement are hereby amended as follows:

All notices, demands, or other communications of any type ("Notices") given pursuant to this Amendment shall be in writing and shall be delivered to the persons set forth below, either: (a) by facsimile; (b) in person with a receipt requested therefor; (c) sent by a nationally recognized overnight service for next day delivery; or (d) by United States certified mail, return receipt requested, postage prepaid to the addresses set forth herein and shall be deemed delivered upon the date delivered by personal delivery or facsimile (in either case, if delivered before 5:00 pm Denver time on a Business Day, and if not, the notice shall be deemed delivered on the next Business Day), the Business Day following the date deposited with a nationally recognized overnight service, or the third (3rd) Business Day following the date deposited in the United States mail (date of postmail being determinative of date of deposit). Notices to the City or Forest City shall, until further Notice, be delivered to the Parties set forth below:

Forest City: Forest City Enterprises, Inc.  
c/o Forest City Stapleton, Inc.  
7351 E. 29th Avenue  
Denver, CO 80238  
Attn: Chief Operating Officer  
Fax (303) 996-5959

With copy to: Forest City Stapleton, Inc.  
7351 E. 29th Avenue  
Denver, CO 80238  
Attn: General Counsel  
Fax (303) 996-5959

City: Mayor  
City of Denver  
City and County Building  
1437 Bannock Street, Room 350  
Denver, CO 80202

With copies to: City Attorney  
City of Denver  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202  
Attn: Laurie Heydman  
Fax: 720-913-3180

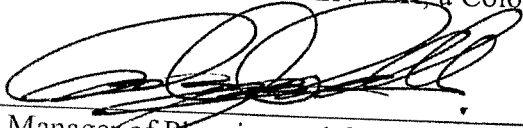
Community Planning and Development  
201 West Colfax Avenue, #209  
Wellington Webb Building  
Denver, CO 80202  
Attn: Manager

8. Except as amended by this Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

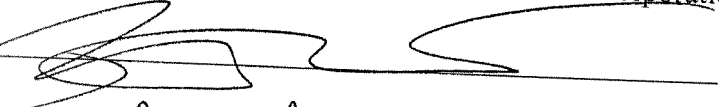
9. The terms and provisions of this Amendment are for the benefit of the parties hereto (including, in addition to the Parties, the Fund and Forest City Stapleton) and no other person shall have any right or cause of action on account thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**CITY AND COUNTY OF DENVER**, a Colorado municipal corporation

By:   
\_\_\_\_\_  
Manager of Planning and Community Development

**FOREST CITY ENTERPRISES, INC.**, an Ohio corporation

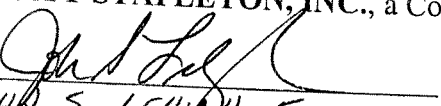
By:   
\_\_\_\_\_

Name: RONALD A. RATNER

Title: EXECUTIVE VICE PRESIDENT

Forest City Stapleton, Inc. executes this Amendment to confirm its consent to the terms of Sections 3, 4 and 5 above:

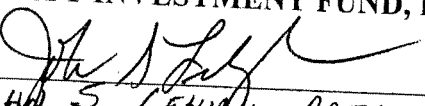
**FOREST CITY STAPLETON, INC.**, a Colorado corporation

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

Title: JOHN S. LEHIGH, EXECUTIVE VICE PRESIDENT

The Community Investment Fund executes this Amendment to confirm its consent to the terms of Section 4 above:

**COMMUNITY INVESTMENT FUND, INC.**, a Colorado nonprofit corporation

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

Title: JOHN S. LEHIGH, PRESIDENT

**TABLE OF EXHIBITS**  
**to**  
**Minor Amendment to Development Agreement**

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Exhibit 2	Deed Restriction Agreement Form
Exhibit 3	Affordable Housing Covenant Form
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**EXHIBIT 1**  
**to**  
**Minor Amendment to Development Agreement**

**(Affordable Housing Plan)**

**[see attached]**

Exhibit I

# Stapleton Affordable Housing Plan

January 29, 2001

## A. Background

The Stapleton Development Corporation ("SDC"), the City and County of Denver ("City"), and Forest City Enterprises ("Forest City") have developed this Stapleton Affordable Housing Plan ("Plan"). The purpose of the Plan is to set forth the expectations of the parties with regard to the development of housing for low and moderate income households at Stapleton, in furtherance of the requirements of Section IV (B) of the Development Agreement between the City and Forest City, and Section 5.19 (c) of the Amended and Restated Stapleton Purchase Agreement between SDC and Forest City ("Purchase Agreement"). In formulating this Plan, the parties have assumed that approximately 8,000 for-sale dwelling units and 4,000 multi-family rental units will be developed at Stapleton upon final buildout. However, the percentage requirements for affordable housing shall apply regardless of the number of units that are ultimately built.

The Stapleton Development Plan (the "Green Book"), adopted by Denver City Council in March 1995, calls for the development of affordable housing, including low income and very low income housing, as well as the attraction of middle and upper income families, to the northeast area through a broad mix of housing types, densities, and price ranges. To realize that vision, it is necessary to concentrate efforts towards serving renters earning 60% and below of the Median Family Income ("MFI") and homebuyers earning 80% and below of MFI. Through normal market forces the additional broad range of housing can be achieved. Therefore, this Plan establishes specific requirements that are needed to carry out the affordable housing objectives.

## B. Definitions

As used in this plan, the following terms have the following meanings:

**Affordable Workforce Housing:** Means dwelling units that are offered for sale at a price which is affordable by and that are in fact are sold to households earning 80% and below of MFI for owner-occupancy only.

**Affordable Housing:** Means Affordable Workforce Housing and Affordable Rental Housing.

**Affordable Rental Housing:** Means dwelling units that are offered for lease at a rent which is affordable by and that are in fact leased to households earning 60% and below of MFI, including Very Low-Income Housing.

**MFI:** Means the most current median family income for the Denver Metropolitan Statistical Area as published from time to time by the U.S. Department of Housing and Urban Development, adjusted for household size.

**Public Subsidy:** Means monetary or nonmonetary assistance, or both, from any city, county, state or federal program or any nonprofit organization provided to assist in the development of affordable housing.

**Special Needs Housing:** Means dwelling units for persons such as the dependent elderly, physically disabled, chronically mentally ill, and others that need services provided on site.

**Stapleton For-Sale Housing:** Means the total number of for-sale dwelling units to be developed at Stapleton upon final buildout.

**Stapleton Rental Housing:** Means the total number of for-rent dwelling units to be developed at Stapleton upon final buildout.

**Very Low-Income Housing:** Means Affordable Rental Housing units that are offered for lease at a rent which is affordable by and that are in fact leased to households earning 50% and below of MFI, of which a portion shall be affordable by and leased to households earning 30% and below of MFI.

### C. Production of Affordable Housing

Affordable Housing shall be generally dispersed throughout Stapleton's 2,935 developable acres, both north and south of I-70. However, the affordable housing should be located near public transportation and shopping areas, and consequently may be more concentrated in certain areas of the site.

#### 1. Affordable Rental Housing

- a. Forest City shall develop or cause to be developed at least 20% of Stapleton Rental Housing as Affordable Rental Housing meeting the requirements of this Plan.
  - (i) The parties mutually acknowledge that, in order to create Affordable Rental Housing, a Public Subsidy will be required.
  - (ii) If sufficient Public Subsidy is not available at the time Forest City is prepared to develop a particular Affordable Rental Housing project, then at Forest City's option, after consultation with SDC, it shall either (A) leave a parcel of land undeveloped, sufficient in size, to accommodate the Affordable Rental Housing project until such time as sufficient Public Subsidy is available, or (B) determine to meet the requirement for Affordable Rental Housing elsewhere at Stapleton at a later date.
  - (iii) To achieve the Stapleton Development Plan principles, SDC, the City and Forest City intend that at least 25% of the required Affordable Rental Housing units be developed as Very Low-Income Housing, a portion of which would be developed and made available as Special

Needs Housing. The parties acknowledge that, to accomplish this goal, significant Public Subsidy will be required, along with the participation of non-profit housing providers. In recognition of this fact, Forest City shall be deemed to have fulfilled the requirement for Very Low-Income Housing by: (A) donating eight acres of land at Stapleton to non-profit housing providers at no cost, which land shall be divided into at least four sites, each of which shall be zoned for a density of 25 dwelling units per acre and shall accommodate no more than 50 dwelling units; and (B) obtaining from such providers commitments acceptable to the City and SDC for the provision of Very Low-Income Housing in accordance with the requirements of this Plan. Forest City shall designate the development sites and select the providers to fulfill this requirement for Very Low-Income Housing. With regard to any particular site, if, after reasonable attempts, Forest City has been unable to obtain from such providers commitments acceptable to the City and SDC as provided in (B) above, Forest City shall have the option to convey such site to the City in lieu of continuing to seek such commitments and shall be deemed to have fulfilled its requirements under this paragraph for such site through such conveyance.

- b. Affordable Rental Housing shall be developed in mixed-income developments with the exception of Special Needs Housing. Special Needs Housing developments may be but are not required to be mixed-income.

## 2. Affordable Workforce Housing

Forest City shall develop or cause to be developed at least 10% of Stapleton For-Sale Housing as Affordable Workforce Housing meeting the requirements of this Plan.

### D. Provisions for Ensuring Long-Term Affordability of Housing

1. Any Affordable Housing unit produced to fulfill the requirements of this Plan shall be subject to a deed restriction or other mutually agreeable mechanism guaranteeing the long term affordability of the unit. For Affordable Work Force Housing, "long term affordability" means that the purchase and sale of the unit meets the requirements for affordability set forth in the Plan both upon the initial sale of the unit, and every other time the unit is sold for a period of at least thirty years from the date of the initial sale. For Affordable Rental Housing, "long term affordability" means that the rent charged to any tenant for occupancy of the unit shall always meet the requirements for affordability set forth in this Plan for a period of at least thirty years from the date of the initial lease. The period of long term affordability of any Affordable Housing project may be extended beyond thirty years if required under the financing arrangement for the particular project. A deed restriction or other mutually agreeable mechanism shall not be required if binding provisions for ensuring long term affordability are included in the financing arrangement for a particular Affordable Housing project.

2. Provisions for ensuring the long term affordability of Affordable Rental Housing units shall include a 1-year transition period, at the expiration of the requirement of long term affordability, to allow any tenant then qualifying for Affordable Rental Housing to make alternative housing arrangements. During this transition period, any such tenant, may remain in the unit, and the rent charged for the unit shall continue to meet the requirements for affordability set forth in this plan for so long as the tenant remains in the unit during the 1-year transition period. The requirements of this paragraph shall not apply to any unit that is vacant or that is not occupied by a tenant qualifying for Affordable Rental Housing upon the expiration of the requirement for long term affordability.
3. If any Affordable Housing unit becomes vacant while the requirement for long term affordability is in effect, the unit shall be made available for sale or lease to another qualifying household.
4. The City, SDC, and Forest City will strive to identify mechanisms that may extend affordability past 30 years.

E. Types of Affordable Units

1. The following minimum square footage requirements relating to types of affordable units shall not apply to Special Needs Housing.
2. Unit size shall, at least, meet these minimum square footage requirements for all Affordable Housing units.

Assumed household size and minimum square footage:

Unit Type	No. Of Persons	Sq. Ft.
Studio/Jr. Bdrm.	1	400
1 Bedroom	2	600
2 Bedroom	3	750
3 Bedroom	5	1100
4 Bedroom	6	1250

3. The following requirements shall apply separately both to the total number of Affordable Rental Housing units and to the total number of Affordable Workforce Housing units developed to fulfill the requirements of this Plan:
  - a. At least 15% of the units shall have three (3) or more bedrooms.
  - b. No more than 35% of the units shall have one (1) bedroom or less of which no more than 10% shall be studio apartments or junior bedroom units.
4. All Affordable Rental Housing and Affordable For Sale Housing shall be constructed of first quality materials equal to or better than FHA standards and

reasonably similar in character to surrounding market rate units and built in accordance with design standards consistent with the Stapleton Design Guidelines.

5. Not more than 35% of the Affordable Rental Housing shall be housing for independent seniors.

#### F. Buyer/Renter Qualification

1. Buyers and renters shall be qualified upon the initial purchase or leasing of an Affordable Housing unit using general HUD standards for income qualification.
2. No re-certification shall be required for so long as the buyer or renter remains a resident of the Affordable Housing unit unless such re-certification is required according to the financing arrangements for the particular Affordable Housing unit.
3. There shall be no discrimination on the basis of age (except in senior housing), race, creed, color, sex, sexual orientation, disability, religion, national origin, marital status or affiliation.
4. The owner of any Affordable Rental Housing unit shall not discriminate against the use of Section 8 vouchers by any tenant who is otherwise qualified to rent and occupy such a unit according to the standards set forth in this Plan.
5. Residents of Affordable Housing units shall have the same access to common area amenities as residents of the market rate units of the project within which they reside.
6. A household earning less than 60% of MFI shall not be disqualified from leasing an Affordable Rental Housing unit due to a rent-to-income ratio if such tenant has had a satisfactory rent-paying history for 24 months at a rent at least equal to the rent to be paid for the unit.

#### G. Resources

SDC and the City acknowledge that Public Subsidy will be necessary for Forest City to fulfill the requirements set forth in this Plan. The City will assess needs for affordable housing for Stapleton and throughout the City and will consider funding requests for Stapleton projects based on these ongoing needs assessments. Forest City shall be eligible to seek Public Subsidy from the City on the same basis as other developers operating within the City; however any decision to grant any such Public Subsidy shall be at the sole discretion of the City.

#### H. Monitoring for Compliance with Plan

The requirements set forth in this Plan for the production of Affordable Housing are expressed as percentages and sub-percentages of the total number of dwelling units that will ultimately be constructed at Stapleton. Nothing in this Plan shall be construed to require the inclusion of a certain number or percentage of Affordable Housing units in any

particular phase of the development or in every individual housing project at Stapleton. In fact, SDC, the City, and Forest City anticipate that some housing projects at Stapleton may contain no Affordable Housing units whatsoever. Nevertheless, Forest City shall endeavor to develop or cause to be developed Affordable Housing units at a pace reasonably consistent with the pace of development of market rate housing at Stapleton. Forest City shall report in writing to SDC and the City its progress in fulfilling the requirements of this plan no less frequently than once annually. Any disputes between the City and Forest City regarding compliance with this Plan shall be resolved as provided in Section VI (E) of the Development Agreement and Section 7.1 of the Purchase Agreement.

**EXHIBIT 2**  
to  
**Minor Amendment to Development Agreement**

**(Deed Restriction Agreement Form)**

**[see attached]**

Exhibit 2



**DEED RESTRICTION AGREEMENT  
FOR  
THE OCCUPANCY AND RESALE OF  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

***NOTICE: THIS DOCUMENT CREATES A LIEN AGAINST THE UNIT AND CERTAIN  
OPTION RIGHTS IN FAVOR OF THE COMMUNITY INVESTMENT FUND, INC., A  
COLORADO NON-PROFIT CORPORATION, AND ITS SUCCESSORS AND ASSIGN***

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**DEED RESTRICTION AGREEMENT  
FOR  
THE OCCUPANCY AND RESALE OF  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

THIS DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF UNIT \_\_\_\_\_ at \_\_\_\_\_ (“Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (“Developer”), and Community Investment Fund, Inc., a Colorado nonprofit corporation (“Fund”).

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property located in the City and County of Denver [*or County of Adams, as appropriate*], Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing [*or mixed-use, if appropriate*] project (“Project”) developed by Developer that is subject to that certain [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver [*or County of Adams*], Colorado (“Sub-Declaration”), and that certain [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver [*or County of Adams*], Colorado; and

**WHEREAS**, the Unit is further subject to that certain Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver [*add recording information if County of Adams*], Colorado (“Master Declaration”); and

**WHEREAS**, the Developer desires to subject the Unit to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Master Declaration and, to this end, desires to encumber the Unit with the occupancy and resale restrictions set forth herein, thereby establishing Affordable Workforce Housing as defined by the Plan; and

**WHEREAS**, the Fund is that certain Community Investment Fund defined and described in Section 1.6(t) of the Master Declaration and, pursuant thereto, shall be the beneficiary of this Agreement and shall have the authority and responsibility to administer and enforce certain covenants in this Agreement as specifically set forth herein; now therefore

In consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## ARTICLE I DEFINITIONS

"Agency" means any agency or corporation such as the U.S. Department of Housing and Urban Development, U.S. Veterans' Administration, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation that purchases or insures residential mortgages.

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"Committed Partner" shall have the meaning set forth in Title II, Chapter 28, Article IV of the Revised Municipal Code of the City and County of Denver, or any successor provision of said Code, including the requirement of executing a certificate of committed partnership before the Clerk of the City and County of Denver as set forth in said Code.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer to a Qualified Buyer, and terminating thirty (30) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.G. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver [*or County of Adams*], Colorado.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. "Institutional Lender" shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

"First Mortgagee" shall mean and include the holder or beneficiary of any First Mortgage.

"Fund" shall mean and refer to the Community Investment Fund, Inc., a Colorado nonprofit corporation, and its successors and assigns.

"HUD" shall mean and refer to the United States Department of Housing and Urban Development, and its successors or assigns.

"Income" shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto.

"Market Units" shall mean the residential units in the Project that are not subject to the occupancy and resale restrictions set forth in this Agreement or any other recorded deed restriction agreement that limits the maximum sale price of the residential Unit.

"Maximum Sale Price" shall have the meaning set forth in Article VI hereof.

"Mortgage" shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

"Mortgagee" shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

"Owner" shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Agreement; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their recorded ownership interest in the Unit. "Owner" does not include a person whose interest is solely that of a Mortgagee.

"Project" shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

"Qualified Buyers" shall mean a person or persons (1) constituting a household who have a combined annual Income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, and (2) who otherwise meet the requirements for eligibility set forth in the Workforce Housing Guidelines. The following household members shall not be considered part of the household for purposes of determining annual Income: foster children, live-in aides, children of live-in aides, unborn children, and children being pursued for legal custody or adoption who are not currently living with the household. A child who is subject to a shared-custody agreement in which the child resides with the household at least 50 percent of the time shall be considered part of the household for purposes of determining annual Income. All persons on record title to the Unit shall be considered part of the household for purposes of determining annual Income.

"Workforce Housing Guidelines" shall mean those certain guidelines promulgated by the Fund setting forth certain requirements applicable to Owners regarding Qualified Buyer application and eligibility standards and procedures, maximum sales price determinations (including Capital Improvement Credits, as defined in Section VI.B. below), re-sale procedures, occupancy standards and related matters. Owners shall have access to these Guidelines, shall review the Guidelines and shall be bound by the Guidelines. The Guidelines may be amended from time to time by the Fund; *provided, however,* that the guidelines shall not be amended in such a way as to materially impact a rule or regulation governing transfer restrictions imposed by HUD, to the extent that such amendment applies to Units that have first mortgages insured or held by HUD, without first obtaining the consent of HUD. The terms and conditions of the Guidelines are incorporated herein by this reference.

**ARTICLE II  
AGREEMENT BINDS THE PROJECT**

This Agreement shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the Fund. This Agreement shall bind the Developer and all Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership of the Unit. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Agreement, even without reference to this Agreement in any document of conveyance.

**ARTICLE III  
QUALIFIED BUYERS**

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.

B. Exceptions. Notwithstanding the foregoing paragraph, the following transfers of ownership of the Unit from a Qualified Buyer shall be permitted, so long as (except as to a transfer to an estate pursuant to Section III.B.2. below) the transferee shall occupy the Unit as his or her principal residence, as described in Section IV.B. below:

1. A transfer resulting from the death of an Owner where the transfer is to the Owner's spouse or Committed Partner who is also an Owner;
2. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during such time period as may be necessary to resell the Unit to a Qualified Buyer;
3. A transfer resulting from the death of an Owner when the transfer is to one or more children of the deceased Owner;
4. A transfer by an Owner where the spouse or Committed Partner of the Owner becomes the co-owner of the Property with the Owner;
5. A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree by which a spouse who is an Owner becomes the sole Owner of the Property; and
6. A transfer directly resulting from a termination of a committed partnership by which a Committed Partner who is an Owner becomes the sole Owner of the Property.

The foregoing transfers shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Maximum Sale Price) hereof.

## ARTICLE IV RESTRICTIONS

- A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however*, that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning, the Master Declaration or the Sub-declaration. The Developer and the Owners shall permit no use or occupancy of the Unit that is not in compliance with this Agreement.
- B. Unit Must Be Principal Residence. The Unit shall be utilized as the principal residence of the Owner. Principal residence shall mean the sole home or place in which the Owner resides for at least two hundred seventy (270) days of each calendar year. In determining what is a principal residence, the Fund may also take into account, without limitation, the following circumstances relating to an Owner: Location of business pursuits, employment and income sources; residence for income tax purposes; residence of parents, spouse and children, if any; location of personal and real property; and motor vehicle registration. The Workforce Housing Guidelines may set forth certain additional occupancy standards and exceptions thereto.
- C. Rental. Except for express rights granted the Fund hereunder regarding the rental of a Unit, the Owner of a Unit shall not rent the Unit; *provided, however*, that upon written approval from the Fund, which approval may be withheld in the Fund's sole discretion, an Owner may rent no more than one bedroom of a multiple-bedroom Unit, so long as the Owner occupies the Unit as his or her principal residence. The Workforce Housing Guidelines may set forth certain additional rental standards and exceptions thereto.
- D. No Ownership in Other Residential Property. At the time of purchase of the Unit, the Owner shall have no ownership interest in residential property other than the Unit. The foregoing prohibition shall not apply to family estate plans and trusts holding residential property in which the Owner has no present vested interest.
- E. Unit Size. Developer has caused the Unit to be constructed, and each Owner shall maintain the Unit, so as to meet at least the minimum habitable square footage requirements set forth on Exhibit B attached hereto, with the square footage measurement methodology to be approved by the Fund.
- F. Construction Quality. The Unit shall: (1) be constructed of first-rate quality materials equal to or better than applicable FHA standards; (2) be constructed and maintained in accordance with the architectural and design guidelines set forth in the Design Declaration as defined in the Master Declaration, unless and to the extent expressly exempt from the Design Declaration pursuant thereto; and (3) be reasonably similar in character and quality to the Market Units.
- G. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status. Owners of the Unit shall have the same access to common area amenities at the Project as owners of the Market Units of the Project.



H. No Subdivision. In no event shall an Owner subdivide the Unit into multiple dwelling units, or combine two or more Units into a single dwelling unit.

## ARTICLE V VOLUNTARY SALE BY OWNER

A. Notice. In the event that an Owner (other than Developer, it being understood and agreed that the provisions of this Article V shall not apply to Developer's initial sale of the Unit to a Qualified Buyer) desires to sell his or her Unit, the Owner shall deliver to the Fund a written notice of the Owner's intent to sell the Unit ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being marketed or otherwise offered for sale. Such notice to the Fund shall set forth: (1) the Unit type; (2) the size/square footage of the Unit; (3) the number of bedrooms and bathrooms within the Unit; (4) the Owner's original purchase price for the Unit; (5) the cost and date of Capital Improvements undertaken by the Owner for which the Owner desires to receive a Capital Improvement Credit, if any, along with supporting documentation of such costs pursuant to paragraph VI.B.4. below; (6) the date on which the Owner intends to offer the Unit for sale on the open market; (7) an address and phone number at which the Owner may be contacted by the Fund; and (8) a copy of the Original Market Appraisal and the Current Market Appraisal (as defined below).

B. Fund's Notice and Listing Agreement. Within thirty (30) days from and after the Fund's receipt of the Notice of Intent to Sell and all information required by Article V.A. above, the Fund shall deliver a notice to the Owner ("Fund's Notice of Maximum Sale Price") setting forth the Maximum Sale Price (as determined by the Fund in accordance with Section VI.A. and subject to Article IX hereof). The Maximum Sale Price set by the Fund hereunder shall include the Capital Improvement Credits only if the Owner delivers to the Fund the information required pursuant to Section VI.B.4. Coincident with the delivery of the Fund's Notice of Maximum Sale Price, the Fund may deliver to the Owner a listing contract for the Unit, which, if so delivered, shall be executed by the Owner as a condition precedent to the Owner's right to offer for sale, or to sell, the Unit. The listing contract shall be in a form approved by the Fund, naming the Fund as exclusive listing agent and providing for a minimum 180-day listing period. At the time of execution of the listing contract, the Owner shall deposit with the Fund an amount equal to one and one-half percent (1.5%) of the sale price for the Unit that is set forth in the listing contract ("Listing Fee"), subject to any exceptions set forth in the Workforce Housing Guidelines. This Listing Fee shall be used to off-set the Fund's initial administrative and marketing costs in connection with the sale of the Unit, and shall be non-refundable, except on such terms as may be set forth in the Workforce Housing Guidelines. The Fund shall promptly advertise the Unit for sale by competitive bid to Qualified Buyers. At the time of the closing of the sale of the Unit, the Owner shall pay to the Fund an additional one and one-half percent (1.5%) of the sale price of the Unit ("Sales Fee"), or such greater or lesser amount such that the total of the Listing Fee and Sales Fee shall be three percent (3.0%) of the actual sale price of the Unit. In the event that the Fund does not timely deliver the Fund's Notice of Maximum Sale Price and the listing contract, or if no contract for purchase of the Unit is executed within the Fund's listing period, then the Owner may engage a third party licensed broker to market and sell the Unit, subject to the terms of this Agreement.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT ARE SET FORTH IN THE WORKFORCE HOUSING GUIDELINES, AS AMENDED FROM TIME TO TIME.

C. Sales Contract. The selling Owner may accept a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable; *provided*, however, that:

1. the purchase price shall not exceed the Maximum Sale Price;
2. the selling Owner must believe in good faith, and receive (as a part of the purchase contract requirements prior to closing of the contemplated sale) a certification from the Fund, that the buyer is a Qualified Buyer; and
3. the contract must provide, as express contract contingencies and conditions precedent to the selling Owner's performance thereunder, that: (a) the buyer will submit evidence that the buyer is a Qualified Buyer; and (b) the purchase price does not exceed the Maximum Sale Price.

The Fund may require that the sales contract include an affordable housing rider, as further described in the Workforce Housing Guidelines, that reconfirms some of the obligations set forth in this Agreement.

#### ARTICLE VI MAXIMUM SALE PRICE

A. Maximum Sale Price. Except for Developer's initial sale of the Unit to a Qualified Buyer, in no event shall the Unit be sold for an amount in excess of the following amount, which shall be referred to herein as the "Maximum Sale Price":

1. The Owner's original purchase price for the Unit as set forth in the conveyance deed; *plus*;
2. A share of the Unit's appreciation determined by multiplying the applicable Appreciation Factor by the Adjusted Appreciation; *plus*;
3. The amount of the approved Capital Improvement Credits; *plus*
4. Any accrued negative amortization if the Unit was financed with a graduated payment mortgage; *plus*
5. The amount of the Listing/Sales Fee set forth in Section V.B. above (i.e., 3.0%); *plus*
6. The cost of the Current Market Appraisal (as defined below), not to exceed \$350.00.

B. Sale Price Definitions.

1. The "Appreciation Factor" is based on the number of years the Owner has owned the Unit:

- For less than 1 year of ownership the Factor is 0%;
- For 1 year but less than 2 years of ownership the Factor is 10%;
- For 2 years but less than 3 years of ownership the Factor is 15%;
- For 3 years but less than 5 years of ownership the Factor is 20%;
- For 5 years or more of ownership the Factor is 25%.

2. The "Adjusted Appreciation" is determined by subtracting the approved Capital Improvement Credits from the Market Appreciation.

3. The "Market Appreciation" is determined by subtracting the Original Market Appraisal from the Current Market Appraisal. The "Original Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she purchases the Unit. The "Current Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she sells the Unit. An Owner shall be required to timely obtain both an Original Market Appraisal and a Current Market Appraisal from an independent, duly licensed appraiser, and to promptly deliver upon receipt a copy of each appraisal to the Fund. The Fund may accept or reject either appraisal in its sole discretion upon written notice to the Owner. If the Fund so rejects an appraisal, the Fund shall, at its cost, engage an independent, licensed appraiser to perform a second appraisal and the average of both appraisals shall constitute the appraisal for purposes of this paragraph.

4. The "Capital Improvement Credit" shall be a certain dollar amount per year of Unit ownership, as set forth in the Workforce Housing Guidelines. The maximum credit available may be adjusted each year by the Fund and published in the Workforce Housing Guidelines. The Owner shall be deemed to have earned that portion of the Capital Improvement Credit equal to the costs that the Owner incurs for installing approved Capital Improvements in the Unit. Only those Capital Improvements identified from time to time in the Workforce Housing Guidelines shall qualify for the Capital Improvement Credit. In addition, in order to qualify as a Capital Improvement, the Owner must furnish to the Fund the following information:

a. Original or duplicate receipts to verify the actual costs expended by the Owner for the Capital Improvements;

b. Owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase; and

c. True and correct copies of any building permit or certificate of occupancy required to be issued by the local building department with respect to the Capital Improvements.

C. Examples of Maximum Sale Price Calculations. See attached Exhibit C.

D. DISCLAIMER. NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE FUND THAT THE OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE FUND HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLEGED OR ATTRIBUTED.

E. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer; *provided, however,* that Owner may receive from the buyer one-half of the cost of Owner's Current Market Appraisal, if the Owner provides the buyer with a copy of the appraisal and the appraisal is acceptable to the buyer's lender.

F. Priority Among Bids.

1. In the event that only one bid is received from a Qualified Buyer that is equal to the Maximum Sale Price, the Unit may be sold to such bidder at the Maximum Sale Price.

2. In the event that an Owner, before executing a contract for the sale of the Unit, receives two or more bids from Qualified Buyers equal to the Maximum Sale Price, the Owner shall have five (5) days from the date of the bids to notify the Fund of the bid the Owner has selected. If the Owner has not so notified the Fund, then the Qualified Buyer shall be selected by the Fund from among such equal bids by applying the following priorities:

a. Priority may be given to a buyer with a member of the household who works within the physical boundaries of the area encompassed by the Master Declaration at least thirty (30) hours per week;

b. If the Unit has 3 bedrooms, priority may be given to households with at least 3 persons, including at least one dependent child under the age of 18 who shall reside in the Unit a minimum of 182 consecutive days;

c. If the Unit has 4 bedrooms, priority may be given to households with at least 4 persons, including at least two dependent children under the age of 18 who shall reside in the Unit a minimum of 182 consecutive days; and

d. If the Unit has been specially constructed for mobility-impaired persons, and so certified by the Fund, priority may be given to a buyer with a documented mobility-impaired person in the household.

The application of the foregoing priorities shall be determined by the Fund in its sole discretion, and the Fund's decisions in this regard shall be final. The Fund may alter and/or add

to the foregoing priorities and the application of said priorities, from time to time, which modifications shall be set forth in the Workforce Housing Guidelines.

In the event that the Fund determines that the application of the foregoing priorities does not distinguish among otherwise equal bids for the Unit, the Qualified Buyer shall be selected by lottery, from among the equal bids, conducted by the Fund, whereupon the Unit shall be sold to the winner of such lottery at the Maximum Sale Price. If the terms of the proposed purchase contract, other than price, as initially presented to the Owner by the lottery winner, are unacceptable to the Owner, there shall be a mandatory negotiation period of five (5) business days to allow the Owner and potential buyer to reach an agreement regarding said terms, including but not limited to, the closing date and financing contingencies. If, after the negotiation period is over, the Owner and potential buyer have not reached an agreement, the offer of the bidder next in priority will then be presented to the Owner for consideration and a five (5) business day negotiating period will begin again.

Subject to any provision herein to the contrary, the Owner may reject any and all bids; *provided, however*, the Owner may not reject a bid in favor of a subsequently offered lower bid. Bids in excess of the Maximum Sale Price shall be rejected. If all bids are below the Maximum Sale Price, the Owner may accept the highest qualified bid. If all bids are below the Maximum Sale Price and the two highest bids are for the same price, the Qualified Buyer shall be selected pursuant to the foregoing procedure set forth in this Section VI.F.2.

G. First Sale After Control Period Ends.

1. When the Unit is offered for sale for the first time after the expiration of the Control Period, the Fund shall have the option ("Option") to either (a) purchase the Unit at the Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

2. When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the Fund of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale on the open market. Such Notice of Intent to Sell, sent to the Fund, shall set forth: (a) the Unit type; (b) the size/square footage of the Unit; (c) the number of bedrooms and bathrooms within the Unit; (d) the Owner's original purchase price for the Unit; (e) the cost and date of Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs pursuant to paragraph VI.B.4. above; (f) the date on which the Owner intends to offer the Unit for sale on the open market; (g) an address and phone number at which the Owner may be contacted by the Fund; and (h) a copy of the Original Market Appraisal and the Current Market Appraisal.

3. Within thirty (30) days from and after the Fund's receipt of the Notice of Intent to Sell and all information required by Section VI.G.2. above, the Fund shall deliver a notice to the Owner ("Fund's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the Fund in accordance with Section VI.A. and subject to Article IX hereof); and (b) a statement regarding whether the Fund elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("Fund's Sale Proceeds"). The Maximum

Sale Price set by the Fund hereunder shall include the Capital Improvement Credits only if the Owner delivers to the Fund the information required pursuant to Section VI.B.4. with the Owner's Notice of Intent to Sell.

4. In the event that the Fund elects to purchase the Unit, the Fund's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The Fund shall set the closing no later than forty-five (45) calendar days after the date of the Fund's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the Fund shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to the Fund and surrender possession of the Unit to the Fund, free and clear of all encumbrances except any that are expressly assumed in writing by the Fund. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the Fund from a title insurance company acceptable to the Fund insuring marketable title in the Fund consistent with the terms of the purchase of the Unit by the Fund. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the Fund may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the Fund as its attorney-in-fact for the herein purposes.

5. If the Fund's Notice of Maximum Sale Price & Election permits the Owner to sell the Unit on the open market, or if the Owner otherwise undertakes to sell the Unit in violation of this Section VI.G., the Fund is hereby granted a lien against the Unit securing its right to the Fund's Sale Proceeds, if any, upon the sale of the Unit, as further described in Section IX.C. below. The Owner shall promptly deliver to the Fund any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the Fund's Notice of Maximum Sale Price & Election (or as otherwise determined by the Fund), the Fund shall be entitled to full payment of the Fund's Sale Proceeds at and upon the closing of the sale of the Unit. In the event the Fund's Sale Proceeds are not paid at the closing of the sale of the Unit, the Fund may foreclose its lien created hereunder in the same manner as is allowed for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Fund's Sale Proceeds, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable costs and attorney's fees incurred in connection with the enforcement of the lien.

6. If the Fund fails to timely deliver the Fund's Notice of Maximum Sale Price & Election, the Fund shall have no option to buy the Unit, and it shall be deemed that the Fund elects to permit the Owner to sell the Unit on the open market, with the Fund receiving the Fund's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the Fund shall have such remedies against the selling Owner as are set forth in Article IX hereof, including foreclosure of its lien created hereinabove.

7. The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the Fund either purchases the Unit or receives the Fund's Sale Proceeds under this Section VI.G. shall be referred to herein as the "Post-Control Period".

**ARTICLE VII  
INSPECTION AND HEARING FOR BREACH**

A. Inspection Upon Reasonable Cause. In the event that the Fund has cause to believe that the Owner or Developer is violating any provision of this Agreement, the Fund, through its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner and/or the Developer, as applicable, with no less than 24 hours written notice by personal delivery or by posting such notice on the exterior door to the Unit.

B. Notice of Violation and Hearing. In the event a violation of this Agreement is discovered, the Fund shall send a notice of violation to the Owner (or Developer, as applicable) detailing the nature of the violation and allowing the Owner (or Developer) fifteen (15) calendar days to cure. Said notice shall state that the Owner (or Developer) may request, within said fifteen (15) calendar day cure period, a hearing before the Fund to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) calendar day period, the Owner (or Developer) shall be considered in violation of this Agreement.

C. Hearings.

1. *Conduct.* When requested by the Owner (or Developer, as applicable) under this Article, hearings before the Fund shall be conducted in accordance with the provisions set forth herein.

2. *Setting Date.* Upon the timely filing of a request for hearing by the Owner (or Developer) pursuant to this Article, the date for the hearing shall be set by the Fund, which shall not be more than thirty (30) days from the date of the filing of such request.

3. *Notice.* Not less than ten (10) days prior to the date set for the hearing before the Fund, the Fund shall notify the Owner (or Developer) of the date, time and place of the hearing, name of the person(s) requesting the hearing, a brief statement of the subject matter of the hearing, and a statement that information relating to the proposed hearing is available in the Fund's office during regular business hours for review and inspection by the Owner (or Developer).

4. *Evidence.* Hearings before the Fund shall be conducted in such a manner as to afford the Owner (or Developer) the opportunity to submit for the record, exceptions, contentions, and arguments with respect to the issues involved; *provided*, that the Fund may limit the taking of evidence to evidence not previously submitted and made a matter of record. The Fund shall base its determinations upon statements contained in the request for hearing, upon reports from the Fund's representatives, including staff and consultants, if any, and upon evidence presented to the Fund at the hearing. The decision of the Fund following such hearing shall be final for the purpose of determining if a violation has occurred.

D. No Hearing for Fund's Options to Redeem or Buy. The provisions of Sections VII.B. and C. shall not apply, and shall not be a condition precedent to, the Fund's rights under Article XI. hereof.

**ARTICLE VIII  
DEFAULT UNDER FIRST MORTGAGE**

A. First Mortgage Default. It shall be a breach of this Agreement for an Owner to default in the payment or other obligations to a First Mortgagee such that foreclosure proceedings are commenced against the Unit as evidenced by: (1) the recording of a notice of election and demand for sale by the applicable public trustee; (2) the entry of a decree of foreclosure directing the sheriff to sell the Unit; or (3) by such other action as is recognized by Colorado statutory law to commence foreclosure proceedings.

B. Lien.

1. In the event foreclosure proceedings are commenced pursuant to Section VIII.A. above, the Fund shall have an automatically vested lien against the Unit effective as of the day prior to the date upon which such foreclosure proceedings were commenced in accordance with the provisions of Section VIII.A above (see "Fund's Lien" defined below under Section IX.B.). Said lien as applied hereunder shall be in an amount equal to the difference between (i) the Appraised Market Value (as defined below) for the Unit as of the date foreclosure proceedings commenced pursuant to Section VIII.A. above, and (ii) the Owner's original purchase price for the Unit increased by an amount equal to said original purchase price for the Unit multiplied by the percentage change in the CPI-U from the date that the Owner's deed to the Unit was recorded to the date foreclosure proceedings commenced pursuant to Section VIII.A. above. The "Appraised Market Value" of the Unit shall be determined by an independent, licensed appraiser selected by the Fund. The appraiser shall determine the market value of the Unit as if unencumbered by this Agreement.

2. The calculation of the lien amount pursuant to subsection VIII.B.1. above shall be rescinded if the Owner exercises either his right to cure the default under the First Mortgage or to redeem the Unit, as provided by C.R.S. 38-38-101 *et seq.*, or any related successor statute. The amount of the lien hereinabove created shall thereafter be re-calculated in accordance with subsection VIII.B.1 upon the commencement of any subsequent foreclosure proceedings. The Fund shall have such additional remedies against the Owner for such breach as are set forth in Article IX hereof.

**ARTICLE IX  
REMEDIES**

A. All Remedies Available.

1. There is hereby reserved to the Fund the right to enforce this Agreement, including any and all remedies provided by law or in equity for breach of this Agreement or any of its terms, including, but not limited to: (i) damages, including damages resulting from the sale of the Unit in violation of this Agreement, which damages are deemed to include, without limitation, the proceeds of the sale that exceed the Maximum Sale Price applicable to the Unit at the time of sale; (ii) specific performance; (iii) injunction (including an injunction to prohibit a sale of the Unit in violation of this Agreement); (iv) prohibiting the Owner from retaining rental proceeds; (v) damages in such amounts as are necessary to reimburse the Fund for its enforcement costs, including reasonable attorneys fees; and (vi) requiring the Owner to repay



with reasonable interest any assistance received in connection with the purchase of the Unit. The costs assessed against the Owner, including the costs incurred by the Fund (including reasonable attorneys fees), for any violation or breach of this Agreement may be assessed against the proceeds of the sale of the Unit. In the event the Fund resorts to litigation with respect to any or all provisions of this Agreement and the Fund prevails, the Fund shall be entitled to recover damages and costs, including reasonable attorneys' fees. The Fund may elect to assign its rights to pursue any or all remedies hereunder to the County (or an agency thereof) by written instrument agreed to and executed by the Fund and the County (or an agency thereof).

2. If the Owner is found to be in violation of any of the provisions of this Agreement by the Fund as set forth in Article VII, then, in addition to any and all other remedies provided herein, the Owner shall be subject to an additional penalty of up to One Hundred dollars (\$100.00) for such violation as determined by the Fund.

B. Lien. The Fund shall have, and is hereby granted, a lien against the Unit ("Fund's Lien") to secure payment of: (i) any amounts due and owing the Fund pursuant to this Article IX; (ii) the Fund's Sale Proceeds under Section VI.G.5. above; and (iii) amounts due to the Fund in the event of a foreclosure of a First Mortgage as set forth in Article VIII above. The Fund's Lien on the respective Unit shall be superior to all other liens and encumbrances except the following:

1. liens and encumbrances recorded prior to the recording of this Agreement;
2. real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts; and
3. the lien of any First Mortgage against the Unit.

Recording of this Agreement constitutes record notice and perfection of the Fund's Lien. No further recordation of any claim of lien is required. However, the Fund may elect to prepare, and record in the Office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the Fund's Lien, the Fund shall have the rights granted a lienor under C.R.S. 38-38-101 *et seq.*, and the Fund shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Unit, as provided by C.R.S. 38-38-101 *et seq.* In addition, unless otherwise instructed by the Fund in writing, the Owner shall sign and acknowledge, and the Developer shall cause to be recorded in the County immediately subsequent to the recording of the First Mortgage, a notice of the Fund's Lien, substantially in the form attached hereto as Exhibit D, in order to assure that the Fund receives notice in the event of the foreclosure of the First Mortgage pursuant to Article VIII hereof. Failure of the Developer to record said notice shall not affect the Fund's Lien as established herein. The notice shall not alter the priority date of the Fund's Lien as established herein.

The sale or transfer of the Unit shall not affect the Fund's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from continuing personal liability for payment of his or her obligations hereunder. The Fund's Lien does not prohibit actions or suits to recover sums due pursuant to this Article, or to enforce the terms of Article XI hereof, or to prohibit the Fund from taking a deed in lieu of foreclosure. The Fund's Lien shall survive for the Control Period, and thereafter for the Post-Control Period (as defined in Section VI.G.), unless earlier terminated pursuant to the terms hereof.

C. Exception for Units Encumbered by HUD-Insured Mortgages. Notwithstanding anything in this Agreement to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the Fund's remedies shall specifically not include remedies prohibited by HUD, such as: (1) voiding a conveyance, including a lease, by the Owner; (2) terminating the Owner's interest in the Unit; (3) limiting the amount of sales proceeds retainable by the Owner to an amount less than that set forth in Article VI; or (4) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the property affordable as low or moderate income housing.

## ARTICLE X TERM OF RESTRICTION

This Agreement shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.G., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the Fund available hereunder against the Owner personally shall survive any release or termination of this Agreement.

## ARTICLE XI FORECLOSURE

A. Release. Expressly subject to the process and rights described in Section XI.B. below, this Agreement shall be deemed released as to the Unit in the event of: (1) the foreclosure by a First Mortgagee; or (2) the acceptance of a deed in lieu of foreclosure by a First Mortgagee. This Agreement, including the Fund's Lien, shall also automatically terminate and be released as to the Unit upon the assignment to HUD of an HUD-insured mortgage encumbering the Unit. Notwithstanding the foregoing, any and all claims of the Fund available hereunder against the Owner personally shall survive any release or termination of this Agreement.

B. Fund's Option to Redeem and to Buy.

1. Foreclosure/Fund's Option to Redeem. In the event of a foreclosure, the Fund shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Unit that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 *et seq.*, or any succeeding statute). The Fund shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The Fund's lien is created pursuant to Article VIII hereinabove.

2. Deed in lieu of Foreclosure/Option to Buy. In the event that the First Mortgagee takes title to the Unit by deed in lieu of foreclosure, the Fund shall have an option to buy the Unit ("Option to Buy") exercisable in accordance with this paragraph. Within three (3) days after the Owner's first attempt to secure a deed in lieu of foreclosure, the Owner shall deliver written notice to the Fund of such intent to transfer title. The Fund may exercise its Option to Buy by tendering the Deed In Lieu Price (as defined below) to the First Mortgagee, within thirty (30) days from and after vesting of title to the Unit in the First Mortgagee by deed in lieu of foreclosure ("Deed in Lieu Option Period"). Upon receipt of the Deed in Lieu Price, the First

Mortgagee shall deliver to the Fund a special warranty deed conveying fee simple title in and to the Unit, in which event this Agreement shall remain valid and in full force and effect. The Deed in Lieu Price shall be equal to: (i) the amounts unpaid pursuant to the First Mortgage note; (ii) any other reasonable costs incurred by the First Mortgagee that directly relate to the deed in lieu of foreclosure; and (iii) any additional reasonable costs incurred by the First Mortgagee during the Deed in Lieu Option Period that are directly related to maintenance of the Unit. The First Mortgagee shall convey only such title as it received through the deed in lieu of foreclosure and will not create or suffer the creation of any additional liens or encumbrances against the Unit following issuance of the deed in lieu of foreclosure to the First Mortgagee. The First Mortgagee shall not be liable for any of the costs of conveyance of the Unit to the Fund or its designee; *however*, the First Mortgagee shall cooperate with the Fund in calculating the Deed in Lieu Price and in the execution of the Fund's Option to Buy.

3. *Upon Exercising Option.* In the event that the Fund obtains title to the Unit pursuant to this Article XI, the Fund or its designee may sell the Unit to a Qualified Buyer, or rent the Unit to third parties until such time that the Unit can be sold to a Qualified Buyer. The Fund's subsequent sale of the Unit shall not be subject to the Maximum Sale Price restrictions set forth in Section VI.A. hereof.

4. *Release upon Electing Not to Exercise Options.* In the event that the Fund does not exercise its Option to Redeem as described in Section XI.B.1, or its Option to Buy as described in Section XI.B.2. above, as applicable, within the time periods set forth in this Section XI., this Agreement shall automatically terminate and shall be of no further force and effect, and the Fund shall prepare and execute a release of this Agreement and, within thirty (30) days of such termination, cause such release to be recorded in the records of the Clerk and Recorder of the County. Notwithstanding the foregoing, any and all claims of the Fund available hereunder against the Owner personally shall survive any release or termination of this Agreement.

C. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Article XI shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Agreement, or (y) the period of the lives of the current duly elected and seated board of directors of the Fund, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

## ARTICLE XII GENERAL PROVISIONS

A. Notices. All notices and demands required or permitted under this Agreement shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent; or (4) by facsimile to the facsimile number of the appropriate party indicated below, in which case it will be deemed received at the time indicated on the facsimile confirmation report. All notices which concern this Agreement shall be sent to the address or facsimile number of the

appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a separate memorandum of this Agreement is recorded against the Unit by the Fund summarizing the Fund's rights hereunder, then to the address set forth in such memorandum.

**FUND:**

**Community Investment Fund, Inc.**, a Colorado nonprofit corporation

Address: c/o Forest City Stapleton  
7351 East 29th Avenue  
Denver, Colorado 80238  
Attn: Melissa Knott

FAX: 303-996-5959  
PHONE: 303-382-1800

Copy to: Forest City Stapleton  
7351 East 29th Avenue  
Denver, Colorado 80238  
Attn: General Counsel

FAX: 303-996-5959  
PHONE: 303-382-1800

**DEVELOPER:**

Address:

FAX:  
PHONE:

Copy to:

Address:

FAX:  
PHONE:

**QUALIFIED BUYER/OWNER:**

To the Unit address of the Owner.

B. Owner's Disclosure. Coincident with the sale of the Unit, the selling-Owner shall obtain the signature of the Qualified Buyer to the Owner's Disclosure in the form attached hereto as Exhibit E, and shall promptly deliver a copy of same to the Fund.

C. Exhibits. All exhibits attached hereto (Exhibits A, B, C, D and E) are incorporated herein and by this reference made a part hereof.

D. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement.

E. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

F. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City and County of Denver, the Fund, the Owner and the Developer. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Agreement or right to claim any right or benefit from the terms provided in this Agreement or be deemed a third party beneficiary of this Agreement.

G. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against the Fund except on the basis of a written instrument executed by the Fund.

H. Further Actions. The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

I. Modifications. Except as otherwise provided herein, any modification to this Agreement shall be effective only when made in a writing signed by the Owner and the Fund and recorded with the Clerk and Recorder of the County. Notwithstanding the foregoing, this Agreement may be amended by the Fund, without the consent of the Owner or any other person, in order to satisfy requirements imposed by an Agency. **NOTWITHSTANDING THE FOREGOING, THE DEVELOPER, THE FUND AND ALL OWNERS (BY TAKING TITLE TO THE UNIT) HEREBY AGREE THAT THE FUND MAY AMEND AND/OR WHOLLY REPLACE THIS AGREEMENT, WITHOUT THE CONSENT OR JOINDER OF ANY OTHER PARTY, AS REQUESTED OR REQUIRED BY THE CITY OF DENVER IN ORDER TO FACILITATE AND EFFECTUATE THE ASSIGNMENT TO THE CITY OF DENVER OF THE FUND'S RIGHTS HEREUNDER AND UNDER SUCH AMENDED AGREEMENT. AT THE REQUEST OF THE FUND AND/OR THE CITY OF DENVER, THE DEVELOPER AND/OR THE OWNER SHALL EXECUTE AN INSTRUMENT PREPARED BY THE FUND OR THE CITY CONFIRMING THE DEVELOPER'S AND THE OWNER'S CONSENT TO SUCH AMENDMENT, WHICH INSTRUMENT MAY BE RECORDED; PROVIDED, HOWEVER, THAT SUCH CONSENT SHALL NOT BE REQUIRED TO EFFECT SUCH AMENDMENT.**

J. Assignment. Notwithstanding any provision in this Agreement to the contrary, the Fund may assign part or all of its rights and interests under this Agreement to a third party by written assignment recorded in the real estate records of the City and County of Denver, Colorado, without the consent of Developer, any Owner or any other party except the designated assignee. Upon the recordation of such assignment, the Fund shall be fully released from any and all liability relating to the rights and interests so assigned. The foregoing right of assignment shall also be assignable by the Fund and its successors and assigns.

**(INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above first written.

**FUND:** Community Investment Fund, Inc., a Colorado nonprofit corporation

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

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

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

STATE OF COLORADO )

CITY AND COUNTY OF DENVER ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the Community Investment Fund, Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

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

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

**DEVELOPER:**

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

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

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

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

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

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

**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*,  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in the  
records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_



**EXHIBIT B**  
**Minimum Finished Square Footage of Unit**

Developer has caused the Unit to be constructed, and each Owner shall maintain the Unit, so as to meet at least the minimum finished square footage requirements:

*[include only appropriate unit size]*

	<u>Unit Type:</u>	<u>Sq. Ft.</u>
<input type="checkbox"/>	Studio/Jr. Bdrm. Unit	400
<input type="checkbox"/>	1 Bedroom	600
<input type="checkbox"/>	2 Bedroom	750
<input type="checkbox"/>	3 Bedroom	1100
<input type="checkbox"/>	4 Bedroom	1250

**[For purposes of this Agreement, "finished square footage" of the Unit shall be determined by measuring the interior living space of the Unit from the interior surfaces of the walls. All lath, furring, wallboard, plasterboard, plaster, paneling, titles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls and floors shall not be calculated within the square footage of the Unit.]**

## EXHIBIT C

### Examples of Maximum Sale Price Calculations

The following are example calculations only and should not be relied on as accurate or complete representations of actual calculations to be made by the Fund.

*Example 1 -- no Capital Improvement Credits received by Owner*

Assumptions:

Owner owned Unit for 5 years.  
Original Market Appraisal = \$140,000  
Original purchase price = \$125,000  
Current Market Appraisal = \$190,000  
Approved Capital Improvement Credits = 0  
Listing Fee = 3.0%

Maximum Sale Price = Original purchase price + (Adjusted Appreciation x Appreciation Factor) + Capital Improvement Credits + Fees.

Appreciation Factor: 25%  
Market Appreciation: \$190,000 - \$140,000 = \$50,000  
Adjusted Appreciation: \$50,000 - 0 (no Capital Improvement Credits) = \$50,000  
Listing Fee: 3.0%

Maximum Sale Price:  $\$125,000 + (\$50,000 \times 25\%) + 0 = \$137,500 + (\$137,500 \times 3.0\%) = \$141,625$

*Example 2 -- with Capital Improvement Credits completed by Owner*

Assumptions:

Owner owned Unit for 5 years.  
Original Market Appraisal = \$140,000  
Original purchase price = \$125,000  
Current Market Appraisal = \$190,000  
Approved Capital Improvement Credits = \$5000  
(Owner paid \$8000 for Capital Improvements. However, since homeownership was only for 5 years, the maximum credit is \$5000. This example does not include CPI-U increases.)  
Listing Fee = 3.0%

Maximum Sale Price = Original purchase price + (Adjusted Appreciation x Appreciation Factor) + Capital Improvement Credits + Fees.

Appreciation Factor: 25%  
Market Appreciation: \$190,000 - \$140,000 = \$50,000  
Capital Improvement Credit = \$5,000  
Adjusted Appreciation: \$50,000 - \$5000 (Capital Improvement Credit) = \$45,000  
Listing Fee: 3.0%

Maximum Sale Price:  $\$125,000 + (\$45,000 \times 25\%) + \$5000 = \$141,250 + (\$141,250 \times 3.0\%) = 145,487.50$

**EXHIBIT D**  
**Notice of Lien**

*As provided in Section IX.C. hereof, unless otherwise instructed by the Fund in writing, the Owner shall sign and acknowledge, and the Developer shall cause to be recorded in the County immediately subsequent to the recording of the First Mortgage, a notice of the Fund's Lien, substantially in the form set forth below:*

NOTICE OF LIEN

KNOW ALL MEN BY THESE PRESENTS:

1. Lien of the Community Investment Fund, Inc. Pursuant to that certain Deed Restriction Agreement recorded in the real estate records of the City and County of Denver, Colorado on \_\_\_\_\_ at Reception No. \_\_\_\_\_ ("Deed Restriction"), Community Investment Fund, Inc., a Colorado non-profit corporation, its successors and assigns (the "Fund") has a lien (the "Fund's Lien") against the Unit described below for such purposes as set forth in the Deed Restriction, including without limitation to secure payment to the Fund of sums owed in the event of a foreclosure of a First Mortgage (as defined in the Deed Restriction) against the Unit. This notice shall not affect the priority of the Fund's Lien as established by the recording of the Deed Restriction.

2. Legal Description of the Unit.

UNIT \_\_\_\_\_, \_\_\_\_\_ [INSERT NAME OF PROJECT],  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, and the Declaration recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in the records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado

3. Lien Priority. The priority of the Fund's Lien is established by the Deed Restriction as being superior to all other lien and encumbrances against the Unit except:

- a. liens and encumbrances recorded prior to the recording of the Deed Restriction;
- b. real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts; and
- c. the lien of any First Mortgage against the Unit.

A purpose of this Notice of Lien is to confirm the Fund's right to receive any and all notices of foreclosure of the First Mortgage (as defined in the Deed Restriction) against the Unit.

4. Lien Amount. As further stated in the Deed Restriction, in the event of the foreclosure of a First Mortgage (as defined in the Deed Restriction), the Fund's Lien shall be in an amount equal to the difference between (1) the Appraised Market Value (as defined below) for the Unit as of the date foreclosure proceedings commenced pursuant to the Deed Restriction, and (2) the Owner's original purchase price for the Unit increased by an amount equal to the Owner's original purchase price for the Unit multiplied by the percentage change in the CPI-U from the date that the Owner's deed to the Unit was recorded to the date foreclosure proceedings commenced pursuant to the Deed Restriction. The Appraised Market Value of the Unit shall be determined by an independent, licensed appraiser selected by the Fund. The appraiser shall determine the market value of the Unit as if unencumbered by the Deed Restriction.



**EXHIBIT E**  
**Owner's Disclosure**

*The following disclosures are hereby made to the buyer of a Unit in the Stapleton Development. For purposes of this disclosure, \_\_\_\_\_ is referred to as "Seller" and the buyer is referred to as "Buyer."*

Buyer acknowledges receipt of and agrees to be bound by the Community Declaration for the Project Area Within the Former of Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, as amended and supplemented, and the declaration of covenants, conditions and restrictions for \_\_\_\_\_ [insert applicable sub-association, if any] recorded in the City and County of Denver [or Adams County] on \_\_\_\_\_ at Reception No. \_\_\_\_\_, as amended and supplemented, and agrees that any interest in the Unit will be subject to such declarations.

Buyer further acknowledges that the Master Community Association, Inc., a Colorado nonprofit corporation, has been established for Stapleton and has certain assessment and other powers, and that upon buying the Unit, Buyer will be subject to the jurisdiction of such homeowners association. Additionally, a separate homeowners' association has been established for The \_\_\_\_\_ [insert applicable sub-association, if any] (which association may also have jurisdiction over other filings within Stapleton), and upon buying the Unit, Buyer will be subject to the jurisdiction of this association as well.

Buyer further acknowledges that the occupancy and resale of the Unit may be subject to that certain Deed Restriction Agreement for the Occupancy of Unit \_\_\_\_ at \_\_\_\_\_ recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver [or Adams County]. The deed restriction also sets forth certain remedies in the event of a violation of the Deed Restriction by the Buyer.

**BY SIGNING BELOW, BUYER AFFIRMS THAT IT HAS READ AND DOES UNDERSTAND AND AGREE TO EACH OF THE FOREGOING DISCLOSURES:**

Unit Being Purchased: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

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

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

**EXHIBIT 3**  
**to**  
**Minor Amendment to Development Agreement**

**(Affordable Housing Covenant Form)**

[see attached]

Exhibit 3

**STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

**Denver, Colorado**

\_\_\_\_\_, 200\_\_

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**STAPLETON AFFORDABLE HOUSING COVENANT  
FOR**

UNIT \_\_\_\_\_ AT \_\_\_\_\_

THIS STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_ (“Covenant”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (“Developer”).

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property located in the City and County of Denver, Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing [*or mixed-use, if appropriate*] project (“Project”) developed by Developer that is subject to that certain [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Sub-Declaration”), and that certain \_\_\_\_\_ [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado; and

**WHEREAS**, the Developer desires to subject the Unit to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Master Declaration and, to this end, desires to encumber the Unit with the occupancy, resale and other conditions and restrictions set forth herein, thereby establishing Affordable Workforce Housing as defined by the Plan; and

**WHEREAS**, the City of Denver (“City”) (and agencies of the City, including without limitation Denver’s Housing and Neighborhood Development agency) shall be the beneficiary of this Covenant and shall have the authority to administer and enforce certain terms and conditions in this Covenant as specifically set forth herein, and as provided in accordance with that certain Minor Amendment to Development Agreement dated \_\_\_\_\_, 2005, by and between Forest City Enterprises, Inc., an Ohio corporation, and the City and County of Denver recorded on \_\_\_\_\_, 2005, at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

**WHEREAS**, the City has available certain HOME funds (defined below) to provide for downpayment assistance to initial Qualified Buyers (defined below) of certain Units (defined below) in the Project from the Developer in order to assist in preserving affordability of those Units to such Qualified Buyers, and to benefit subsequent Qualified Buyers of those same Units by applying such assistance in the calculation of the resale price hereunder; now therefore

In consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## ARTICLE I DEFINITIONS

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"City" shall mean and refer to the City and County of Denver, Colorado, its agencies, and its successors and assigns.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer to a Qualified Buyer, and terminating thirty (30) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.D. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver, Colorado.

"Eligible Capital Improvements" shall mean those certain capital improvements to the Unit that are specifically designated by DHND (as defined below) as eligible for purposes of determining the Maximum Sale Price of the Unit pursuant to Article VI hereof. To qualify for an Eligible Capital Improvement the Owner must submit to DHND, in advance of commencing the installation or construction of the improvement, a request for approval of any proposed capital improvement, and obtain that approval from DHND.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. "Institutional Lender" shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

"First Mortgagee" shall mean and include the holder or beneficiary of any First Mortgage.

"DHND" shall mean the City's Division of Housing and Neighborhood Development or any successor agency.

"HOME" funds shall mean funds provided pursuant to the HOME Investment Partnership Act authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and pursuant to regulations therefore promulgated under 24 CFR Part 92.

"Household" shall mean: (1) a single person; or (2) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter,

brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit housekeeping unit; or (3) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

“HUD” shall mean the United States Department of Housing and Urban Development, and its successors or assigns.

“Income” shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto, or any other definition determined by the City pursuant to Denver Revised Municipal Code Section 27-101 *et seq.*

“Market Units” shall mean the residential units in the Project that are not subject to the occupancy and resale restrictions set forth in this Covenant or any other recorded affordable housing covenant that limits the maximum sale price of the residential unit.

“Maximum Sale Price” shall have the meaning set forth in Article VI hereof.

“Mortgage” shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

“Mortgagee” shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

“Owner” shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant; it being understood that such person or persons shall be deemed an “Owner” hereunder only during the period of his, her or their recorded ownership interest in the Unit. “Owner” does not include a person whose interest is solely that of a Mortgagee.

“Project” shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

“Qualified Buyers” shall mean a person or persons (1) constituting a Household who have a combined annual income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, and (2), in connection with sales after the initial sale of the Unit by Developer, holding a valid verification of eligibility from the City (as further described hereinafter) which entitles the Household to buy the Unit. All governmental or quasi-governmental bodies who purchase, or otherwise take title to, the Unit for the purpose of sale or rental under any government program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed to be “Qualified Buyers”. The verification of eligibility shall be calculated based on Income at the time of execution of a contract for purchase of the Unit.

**ARTICLE II  
AGREEMENT BINDS THE PROJECT**

This Covenant shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the City. This Covenant shall bind the Developer and all Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership of the Unit, and the Owner shall execute a Memorandum of Acceptance as set forth on Exhibit B attached hereto. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

**ARTICLE III  
QUALIFIED BUYERS**

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.

B. Exceptions. Notwithstanding the foregoing paragraph, the following transfer of ownership of the Unit from a Qualified Buyer shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Calculation of Maximum Sale Price), so long as the transferee shall occupy the Unit as his or her permanent residence (as defined in Section IV.B. below): A transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law.

**ARTICLE IV  
RESTRICTIONS**

A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however,* that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning or the Sub-declaration. The Developer and the Owners shall permit no use or occupancy of the Unit that is not in compliance with this Covenant.

B. Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner. A "permanent residence" shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to the Owner may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration. This residency requirement does not apply to governmental entities, quasi-governmental entities, or non-profit corporations designated by the City, although such entities shall use the Unit for affordable housing purposes.

C. Rental. The Owner of a Unit shall not rent the Unit; *provided, however*, the Owner may share occupancy of the Unit with non-owners on a rental basis provided that the Owner continues to reside in the Unit and to meet the obligations contained in this Covenant.

D. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status. Owners of the Unit shall have the same access to common area amenities at the Project as owners of the Market Units of the Project.

E. Maintenance of Unit. The Owner shall maintain the Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, and rules and regulations of any governmental authority and any homeowners association(s) with jurisdiction over matters concerning the condition of the Unit.

## ARTICLE V VOLUNTARY SALE BY OWNER

A. Notice. In the event that the Owner (other than Developer, it being understood and agreed that the provisions of this Article V shall not apply to Developer's initial sale of the Unit to a Qualified Buyer) desires to sell the Unit, the Owner shall provide written notice to DHND of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for sale or otherwise offering the Unit for sale. Said notice to DHND shall include the original or duplicate receipts for all claimed Eligible Capital Improvements to verify the costs of such improvements, and an affidavit from the Owner verifying that the receipts are valid and correct. DHND may keep a list of interested purchasers, and may provide same to any selling Owner, in DHND's sole discretion. DHND shall notify the selling owner of the Maximum Sale Price (see below), and the selling owner may then commence to market the Unit as further set forth below.

B. Sales Contract. After providing the notice required in Section V.A. above, the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as a so-called "for sale by owner", and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however*, that:

- (i) the purchase price shall not exceed the Maximum Sales Price;
- (ii) the selling Owner must believe in good faith that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price; and
- (iii) the contract must state as a contingency to closing that the purchaser will submit the application described in Section V.C. below to DHND within three (3) days after contract acceptance, and that the closing of the sale is expressly contingent upon the City's determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price as evidenced by issuance of the Verification described in Section V.C. below.

C. Verification. Within three (3) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling Owner), the purchaser shall complete and submit an application form to DHND requesting a determination that the purchaser is a

Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price. DHND shall promulgate the form of such application, which shall request only such information as is necessary to determine whether the purchaser is a Qualified Buyer and whether the purchase price exceeds the Maximum Sales Price. DHND shall make its eligibility determination of the purchaser within ten (10) days after receipt of the completed application, as evidenced either by (i) the issuance of a verification, signed by DHND and in recordable form, stating that the purchaser is a Qualified Buyer, the amount of the purchase price and that the purchase price does not exceed the Maximum Sales Price ("Verification"); or (ii) delivering a notice to seller and purchaser that a Verification cannot be issued and stating the reason(s) therefor. Failure by DHND to make its determination and deliver the Verification or the notice as described above within the 10-day period will be deemed an approval of the purchaser and the purchase price, and DHND shall thereafter issue a Verification with respect to the transaction promptly upon request therefor by the selling Owner or the purchaser.

D. Recordation. Upon the Transfer of the Unit, the Verification shall be recorded in the real estate records of the City and County of Denver, Colorado, along with the deed for the Unit, and if the Verification is not so recorded, then the Transfer shall be null and void, subject to Section VII.E. below.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT MAY BE SET FORTH IN THE CITY'S HOUSING AND NEIGHBORHOOD DEVELOPMENT RULES AND REGULATIONS, IF ANY, AS AMENDED FROM TIME TO TIME.

## ARTICLE VI MAXIMUM SALE PRICE

A. Calculation of Maximum Sale Price. During the time that this Covenant is in effect, but excluding the Developer's initial sale of the Unit to a Qualified Buyer, the Unit may be Transferred for no more than an amount calculated in accordance with this Article VI ("Maximum Sales Price"), as follows:

(i) Start with the purchase price paid by the selling Owner, approved by the City and for which such Owner purchased the Unit according to the Owner's purchase contract for the Unit; *provided*, however, that the purchase price paid for the Unit in the original purchase of that Unit from the Developer shall be reduced for purposes of this calculation by the amount of any HOME funds provided as downpayment assistance to the original Qualified Buyer ;

(ii) For each year from the date that the selling Owner acquired the Unit multiply the selling Owner's purchase price by the percentage change over the prior year in the CPI-U up to a maximum increase for any given year of 3.5 percent or a maximum decrease for any given year of 3.5 percent;

(iii) For each such year add the product of the multiplication described in (ii) above to the selling Owner's purchase price;

(iv) Add the costs of Eligible Capital Improvements that have been approved by the City up to the time of Transfer;

(v) Add the amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by DHND on an annual basis;

(vi) Add any accrued negative amortization if the Unit was financed with a graduated payment mortgage; and

(vii) Add any applicable transfer assessment to be made, in connection with the sale, by the Master Community Association, Inc. pursuant to the Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, Colorado.

THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

B. Other Improvements. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Unit which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sales Price.

C. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

D. First Sale After Control Period Ends.

(1) When the Unit is offered for sale for the first time after the expiration of the Control Period, the City shall have the option ("Option") to either (a) purchase the Unit at the Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

(2) When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the City of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale. Such Notice of Intent to Sell, sent to the City, shall set forth: (a) the legal description for the Unit; (b) the Owner's original purchase price for the Unit; (c) the date Owner purchased the Unit; (d) the cost and date of Eligible Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs required as described elsewhere in this Covenant; (e) the date on which the Owner intends to offer the Unit for sale on the open market; and (f) an address and phone number at which the Owner may be contacted by the City.



(3) Within thirty (30) days from and after the City's receipt of the Notice of Intent to Sell and all information required by Section VI.D.2. above, the City shall deliver a notice to the Owner ("City's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the City in accordance with Section VI.A.); and (b) a statement regarding whether the City elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("City's Sale Proceeds"). The Maximum Sale Price set by the City hereunder shall include the Eligible Capital Improvement credits only if the Owner delivers to the City the information required hereunder with the Owner's Notice of Intent to Sell.

(4) In the event that the City elects to purchase the Unit, the City's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The City shall set the closing no later than forty-five (45) calendar days after the date of the City's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the City shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to the City and surrender possession of the Unit to the City, free and clear of all encumbrances except any that are expressly assumed in writing by the City. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the City from a title insurance company acceptable to the City insuring marketable title in the City consistent with the terms of the purchase of the Unit by the City. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the City may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the City as its attorney-in-fact for the herein purposes.

(5) In the event that the City elects not to purchase the Unit and instead permits the sale of the Unit on the open market, as provided in paragraph D(3) above, then the Owner shall promptly deliver to the City any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the City's Notice of Maximum Sale Price & Election (or as otherwise determined by the City), the City shall be entitled to full payment of the City's Sale Proceeds at and upon the closing of the sale of the Unit.

(6) If the City fails to timely deliver the City's Notice of Maximum Sale Price & Election, the City shall have no option to buy the Unit, and it shall be deemed that the City elects to permit the Owner to sell the Unit on the open market, with the City receiving the City's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the City shall have such remedies against the selling Owner as are set forth in Article VII hereof.

(7) The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the City either purchases the Unit or receives the City's Sale Proceeds under this Section VI.D. shall be referred to herein as the "Post-Control Period".

## ARTICLE VII

## REMEDIES IN THE EVENT OF BREACH

- A. Inspection. In the event that the City and/or DHND has reasonable cause to believe that Owner is violating the provisions of this Covenant, the City and/or the DHND, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.
- B. Cure/Hearing. In the event a violation of this Covenant is discovered, the City and/or DHND shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such default. Said notice shall state that Owner may request a hearing before the City or DHND (as determined by the City or DHND) pursuant to Denver Revised Municipal Code Section 27-115 and 27-116 *et seq.* If no hearing is requested and the violation is not cured within the fifteen (15) day period, Owner shall be considered in violation of this Covenant. If a hearing is held before the City or DHND, the decision of the City or DHND based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.
- C. Enforcement. There is hereby reserved to the City the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.
- D. Voiding Transfers. In the event the Unit is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.
- E. HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the Unit; (iii) limiting the amount of sales proceeds retainable by the Owner to an amount less than that set forth pursuant to Article VI; or (iv) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the Unit affordable as low or moderate income housing.

## ARTICLE VIII

### RELEASE OF COVENANT IN FORECLOSURE: CITY'S OPTION TO BUY

- A. Foreclosure. The City shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure with respect to the Unit, to a First Mortgagee (which shall be the only party (including HUD as provided below) entitled to take the Unit free of this Covenant pursuant to the provisions of this Article VIII). In the event that the City (or a designee empowered to hold title to real property) purchases the Unit at foreclosure, the City, or its designee, may sell the Unit to Qualified Buyers, or rent the Unit until such time that the Unit can be sold to a Qualified Buyer in accordance with this Covenant.

This Covenant shall automatically and permanently terminate upon assignment to HUD of a first deed of trust encumbering the Unit.

B. Notice of Foreclosure. In the event of (i) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (ii) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a copy of any notice of intent to foreclose or request for deed in lieu to the City within ten (10) days of receipt of such notice or request. Notice to the City shall be to the address of the City as provided in this Covenant. In the event that the First Mortgagee takes title to the Unit pursuant to a deed in lieu of foreclosure, the Owner shall give notice to the City upon the vesting of title to the Unit in the First Mortgagee.

#### **ARTICLE IX TERM OF RESTRICTION**

This Covenant shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.D., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the City available hereunder against the Owner personally shall survive any release or termination of this Covenant.

#### **ARTICLE X GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; or (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent. All notices which concern this Covenant shall be sent to the address of the appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a separate memorandum of this Covenant is recorded against the Unit by the City summarizing the City's rights hereunder, then to the address set forth in such memorandum.

To the City:

Community Planning and Development  
201 W. Colfax Avenue, #209  
Wellington Webb Building  
Denver, Colorado 80202  
Attn: Manager

With a copy to:

Housing and Neighborhood Development  
201 W. Colfax Avenue, #209  
Denver, Colorado 80202  
Attn: Director

and a copy to:

City Attorney  
City of Denver  
201 W. Colfax Avenue, Dept. 1207  
Denver, Colorado 80202  
Attn: Laurie Heydman

To the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Qualified Buyer/Owner: To the Unit address.

B. Owner's Disclosure. Each Owner who takes title from Developer and every subsequent Owner of the Unit shall execute and record a Memorandum of Acceptance in the form attached hereto as Exhibit B (completed with the appropriate information relating to the Unit and such Owner) coincident with such Owner's deed to his or her Unit in the real property records of the City and County of Denver, Colorado, and such Owner shall promptly deliver a copy of same to DHND.

C. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

D. Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

E. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the City except on the basis of a written instrument executed by the City.

F. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

G. Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the City and recorded with the Clerk and Recorder of the County.

H. No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver, the Owner and the Developer. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.



**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*,  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in the  
records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_

**EXHIBIT B**  
**Memorandum of Acceptance**

\_\_\_\_\_  
(Project Name)

WHEREAS, \_\_\_\_\_, the Buyer, is purchasing from \_\_\_\_\_, the Seller, at a price of \$ \_\_\_\_\_, a home described as:

UNIT \_\_\_\_\_, \_\_\_\_\_ [INSERT NAME OF PROJECT],  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, and the Declaration recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in the records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,  
also known by street and number as: \_\_\_\_\_  
(the "Unit"); and

WHEREAS, the Seller of the Unit is requiring as a prerequisite to the sale transactions that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_", recorded on \_\_\_\_\_, 200\_\_, under Reception No. \_\_\_\_\_, in the real property records of the City and County of Denver, Colorado ("Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Understands that resale pricing is restricted and profits may be required to be shared after the termination of the Covenant; and that the Covenant provides that the owner of the Unit must occupy the Unit as his/her permanent residence.
3. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver's Division of Housing and Neighborhood Development.





**EXHIBIT 4**  
**to**  
**Minor Amendment to Development Agreement**

**(Amended and Restated Affordable Housing Covenant Form)**

**[see attached]**

Exhibit 4

AMENDED AND RESTATED  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_

Denver, Colorado

\_\_\_\_\_, 200\_\_

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**AMENDED AND RESTATED  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

THIS AMENDED AND RESTATED STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ AT \_\_\_\_\_ (“Covenant”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ (“Owner”) and the Community Investment Fund, Inc., a Colorado non-profit corporation (“Fund”). This Covenant amends, restates, supersedes and fully replaces that certain Deed Restriction Agreement For The Occupancy And Resale Of Unit \_\_\_\_\_ recorded on \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Original Covenant”); and this Covenant shall retain the recording priority of the Original Covenant.

**WITNESSETH:**

**WHEREAS**, Owner is the Owner of certain real property located in the City and County of Denver, Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing project (“Project”) that is subject to that certain \_\_\_\_\_ [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Sub-Declaration”), and that certain \_\_\_\_\_ [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado; and

**WHEREAS**, the Unit is subject to the Original Covenant and, thereby, is also subject to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Community Declaration For the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at reception no. 2001167472 in the real estate records of the City and County of Denver, Colorado (“Master Declaration”); and

**WHEREAS**, Owner and Fund desire to amend, restate, supersede and fully replace the Original Covenant with this Covenant; and

**WHEREAS**, the City of Denver (“City”) (and agencies of the City, including without limitation Denver’s Housing and Neighborhood Development agency) shall be the beneficiary of this Covenant and shall have the authority to administer and enforce certain terms and conditions in this Covenant as specifically set forth herein, and as provided in accordance with that certain Minor Amendment to Development Agreement dated \_\_\_\_\_, 2005, by and between Forest City Enterprises, Inc., an Ohio

corporation, and the City and County of Denver recorded on \_\_\_\_\_, 2005, at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

WHEREAS, the City has available certain HOME funds (defined below) to provide for downpayment assistance to initial Qualified Buyers (defined below) of certain Units (defined below) in the Project from the Developer in order to assist in preserving affordability of those Units to such Qualified Buyers, and to benefit subsequent Qualified Buyers of those same Units by applying such assistance in the calculation of the resale price hereunder; now therefore

In consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## ARTICLE I DEFINITIONS

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"City" shall mean and refer to the City and County of Denver, Colorado, its agencies, and its successors and assigns.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer (as defined in the Original Covenant) to a Qualified Buyer, and terminating thirty (30) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.E. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver, Colorado.

"Eligible Capital Improvements" shall mean those certain capital improvements to the Unit that are specifically designated by DHND (as defined below) as eligible for purposes of determining the Maximum Sale Price of the Unit pursuant to Article VI hereof. To qualify for an Eligible Capital Improvement the Owner must submit to DHND, in advance of commencing the installation or construction of the improvement, a request for approval of any proposed capital improvement, and obtain that approval from DHND.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. "Institutional Lender" shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

"First Mortgagee" shall mean and include the holder or beneficiary of any First Mortgage.

"DHND" shall mean the City's Housing and Neighborhood Development agency or any successor agency.

"HOME" funds shall mean funds provided pursuant to the HOME Investment Partnership Act authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and pursuant to regulations therefore promulgated under 24 CFR Part 92.

"Household" shall mean: (1) a single person; or (2) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit housekeeping unit; or (3) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

"HUD" shall mean the United States Department of Housing and Urban Development, and its successors or assigns.

"Income" shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto, or any other definition determined by the City pursuant to Denver Revised Municipal Code Section 27-101 *et seq.*

"Market Units" shall mean the residential units in the Project that are not subject to the occupancy and resale restrictions set forth in this Covenant or any other recorded affordable housing covenant that limits the maximum sale price of the residential unit.

"Maximum Sale Price" shall have the meaning set forth in Article VI hereof.

"Mortgage" shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

"Mortgagee" shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

“Owner” shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant; it being understood that such person or persons shall be deemed an “Owner” hereunder only during the period of his, her or their recorded ownership interest in the Unit. “Owner” does not include a person whose interest is solely that of a Mortgagee.

“Project” shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

“Qualified Buyers” shall mean a person or persons (1) constituting a Household who have a combined annual Income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, and (2) holding a valid verification of eligibility from the City (as further described hereinafter) which entitles the Household to buy the Unit. All governmental or quasi-governmental bodies who purchase, or otherwise take title to, the Unit for the purpose of sale or rental under any government program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed to be “Qualified Buyers”. The verification of eligibility shall be calculated based on Income at the time of execution of a contract for purchase of the Unit.

## ARTICLE II COVENANT BINDS THE PROJECT AND REPLACES ORIGINAL DEED RESTRICTION

A. This Covenant shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the City. This Covenant shall bind the current Owner and all subsequent Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner’s period of ownership of the Unit, and the Owner shall execute a Memorandum of Acceptance as set forth on Exhibit B attached hereto. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

B. THIS COVENANT AMENDS, RESTATES, SUPERSEDES AND FULLY REPLACES THE ORIGINAL COVENANT OR DEED RESTRICTION, AND SHALL RETAIN THE RECORDING PRIORITY CONTAINED IN THE ORIGINAL COVENANT OR DEED RESTRICTION.

## ARTICLE III QUALIFIED BUYERS

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.



B. Exceptions. Notwithstanding the foregoing paragraph, the following transfer of ownership of the Unit from a Qualified Buyer shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Calculation of Maximum Sale Price), so long as the transferee shall occupy the Unit as his or her permanent residence (as defined in Section IV.B. below): A transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law.

#### **ARTICLE IV RESTRICTIONS**

A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however,* that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning or the Sub-declaration. The Owners shall permit no use or occupancy of the Unit that is not in compliance with this Covenant.

B. Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner. A "permanent residence" shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to the Owner may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration. This residency requirement does not apply to governmental entities, quasi-governmental entities, or non-profit corporations designated by the City, although such entities shall use the Unit for affordable housing purposes.

C. Rental. The Owner of a Unit shall not rent the Unit; *provided, however,* the Owner may share occupancy of the Unit with non-owners on a rental basis provided that the Owner continues to reside in the Unit and to meet the obligations contained in this Covenant.

D. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status. Owners of the Unit shall have the same access to common area amenities at the Project as owners of the Market Units of the Project.

E. Maintenance of Unit. The Owner shall maintain the Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, and rules and regulations of any governmental authority and any homeowners association(s) with jurisdiction over matters concerning the condition of the Unit.

**ARTICLE V  
VOLUNTARY SALE BY OWNER**

A. Notice. In the event that the Owner desires to sell the Unit, the Owner shall provide written notice to DHND of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for sale or otherwise offering the Unit for sale. Said notice to DHND shall include the original or duplicate receipts for all claimed Eligible Capital Improvements to verify the costs of such improvements, and an affidavit from the Owner verifying that the receipts are valid and correct. DHND may keep a list of interested purchasers, and may provide same to any selling Owner, in DHND's sole discretion. DHND shall notify the selling owner of the Maximum Sale Price (see below), and the selling owner may then commence to market the Unit as further set forth below.

B. Sales Contract. After providing the notice required in Section V.A. above, the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as a so-called "for sale by owner", and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however*, that:

(i) the purchase price shall not exceed the Maximum Sales Price;

(ii) the selling Owner must believe in good faith that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price; and

(iii) the contract must state as a contingency to closing that the purchaser will submit the application described in Section V.C. below to DHND within three (3) days after contract acceptance, and that the closing of the sale is expressly contingent upon the City's determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price as evidenced by issuance of the Verification described in Section V.C. below.

C. Verification. Within three (3) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling Owner), the purchaser shall complete and submit an application form to DHND requesting a determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price. DHND shall promulgate the form of such application, which shall request only such information as is necessary to determine whether the purchaser is a Qualified Buyer and whether the purchase price exceeds the Maximum Sales Price. DHND shall make its eligibility determination of the purchaser within ten (10) days after receipt of the completed application, as evidenced either by (i) the issuance of a verification, signed by DHND and in recordable form, stating that the purchaser is a Qualified Buyer, the amount of the purchase price and that the purchase price does not exceed the Maximum Sales Price ("Verification"); or (ii) delivering a notice to seller and purchaser that a Verification cannot be issued and stating the reason(s) therefor. Failure by DHND to make its determination and deliver the Verification or the notice as

described above within the 10-day period will be deemed an approval of the purchaser and the purchase price, and DHND shall thereafter issue a Verification with respect to the transaction promptly upon request therefor by the selling Owner or the purchaser.

D. Recordation. Upon the Transfer of the Unit, the Verification shall be recorded in the real estate records of the City and County of Denver, Colorado, along with the deed for the Unit, and if the Verification is not so recorded, then the Transfer shall be null and void, subject to Section VII.E. below.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT MAY BE SET FORTH IN THE CITY'S HOUSING AND NEIGHBORHOOD DEVELOPMENT RULES AND REGULATIONS, IF ANY, AS AMENDED FROM TIME TO TIME.

#### ARTICLE VI MAXIMUM SALE PRICE

A. Calculation of Maximum Sale Price. During the time that this Covenant is in effect, the Unit may be Transferred for no more than an amount calculated in accordance with this Article VI ("Maximum Sales Price"), as follows:

(i) Start with the purchase price paid by the selling Owner, approved by the City and for which such Owner purchased the Unit according to the Owner's purchase contract for the Unit; *provided*, however, that the purchase price paid for the Unit in the original purchase of that Unit from the Developer shall be reduced for purposes of this calculation by the amount of any HOME funds provided as downpayment assistance to the original Qualified Buyer;

(ii) For each year from the date that the selling Owner acquired the Unit multiply the selling Owner's purchase price by the percentage change over the prior year in the CPI-U up to a maximum increase for any given year of 3.5 percent or a maximum decrease for any given year of 3.5 percent;

(iii) For each such year add the product of the multiplication described in (ii) above to the selling Owner's purchase price;

(iv) Add the costs of Eligible Capital Improvements that have been approved by the City up to the time of Transfer;

(v) Add the amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by DHND on an annual basis;

(vi) Add any accrued negative amortization if the Unit was financed with a graduated payment mortgage; and

(vii) Add any applicable transfer assessment to be made, in connection with the sale, by the Master Community Association, Inc. pursuant to the Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, Colorado.

THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

B. Sale By First Owner. Notwithstanding the foregoing Section VI.A., in connection with the sale of the Unit by the Owner who has purchased the Unit from the Developer (as defined in the Original Covenant), the City shall set the Maximum Sale Price at the amount which is the greater of the price determined pursuant to Section VI.A., or the price determined as follows:

1. The Owner's original purchase price for the Unit as set forth in the conveyance deed; *plus*;
2. A share of the Unit's appreciation determined by multiplying the applicable Appreciation Factor by the Adjusted Appreciation; *plus*;
3. The costs of Eligible Capital Improvements; *plus*
4. Any accrued negative amortization if the Unit was financed with a graduated payment mortgage; *plus*
5. The amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by DHND on an annual basis; *plus*
6. The cost of the Current Market Appraisal (as defined below), not to exceed \$350.00.

***Sale Price Definitions:***

1. The "Appreciation Factor" is based on the number of years the Owner has owned the Unit:

- For less than 1 year of ownership the Factor is 0%;
- For 1 year but less than 2 years of ownership the Factor is 10%;
- For 2 years but less than 3 years of ownership the Factor is 15%;
- For 3 years but less than 5 years of ownership the Factor is 20%;
- For 5 years or more of ownership the Factor is 25%.

2. The "Adjusted Appreciation" is determined by subtracting the costs of Eligible Capital Improvements from the Market Appreciation.

3. The "Market Appreciation" is determined by subtracting the Original Market Appraisal from the Current Market Appraisal. The "Original Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she purchases the Unit. The "Current Market Appraisal" shall be the appraisal for the Unit obtained by the Owner at the time he or she sells the Unit. An Owner shall be required to timely obtain both an Original Market Appraisal and a Current Market Appraisal from an independent, duly licensed appraiser, and to promptly deliver upon receipt a copy of each appraisal to DHND. DHND may accept or reject either appraisal in its sole discretion upon written notice to the Owner. If DHND so rejects an appraisal, DHND shall, at its cost, engage an independent, licensed appraiser to perform a second appraisal and the average of both appraisals shall constitute the appraisal for purposes of this paragraph.

C. Other Improvements. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Unit which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sales Price.

D. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

E. First Sale After Control Period Ends.

(1) When the Unit is offered for sale for the first time after the expiration of the Control Period, the City shall have the option ("Option") to either (a) purchase the Unit at the Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

(2) When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the City of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale. Such Notice of Intent to Sell, sent to the City, shall set forth: (a) the legal description for the Unit; (b) the Owner's original purchase price for the Unit; (c) the date Owner purchased the Unit; (d) the cost and date of Eligible Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs required as described elsewhere in this Covenant; (e) the date on which the Owner intends to offer the Unit for sale on the open market; and (f) an address and phone number at which the Owner may be contacted by the City.

(3) Within thirty (30) days from and after the City's receipt of the Notice of Intent to Sell and all information required by Section VI.E.2. above, the City shall deliver a notice to the Owner ("City's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the City in accordance with Section VI.A.); and (b) a statement regarding whether the City elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("City's Sale Proceeds"). The Maximum Sale Price set by the City hereunder shall include the Eligible Capital Improvement credits only if the Owner delivers to the City the information required hereunder with the Owner's Notice of Intent to Sell.

(4) In the event that the City elects to purchase the Unit, the City's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The City shall set the closing no later than forty-five (45) calendar days after the date of the City's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the City shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to the City and surrender possession of the Unit to the City, free and clear of all encumbrances except any that are expressly assumed in writing by the City. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the City from a title insurance company acceptable to the City insuring marketable title in the City consistent with the terms of the purchase of the Unit by the City. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the City may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the City as its attorney-in-fact for the herein purposes.

(5) In the event that the City elects not to purchase the Unit and instead permits the sale of the Unit on the open market, as provided in paragraph E(3) above, then the Owner shall promptly deliver to the City any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the City's Notice of Maximum Sale Price & Election (or as otherwise determined by the City), the City shall be entitled to full payment of the City's Sale Proceeds at and upon the closing of the sale of the Unit.

(6) If the City fails to timely deliver the City's Notice of Maximum Sale Price & Election, the City shall have no option to buy the Unit, and it shall be deemed that the City elects to permit the Owner to sell the Unit on the open market, with the City receiving the City's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the City shall have such remedies against the selling Owner as are set forth in Article VII hereof.

(7) The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the City either purchases the Unit or receives the City's Sale Proceeds under this Section VI.E. shall be referred to herein as the "Post-Control Period".

## **ARTICLE VII REMEDIES IN THE EVENT OF BREACH**

A. Inspection. In the event that the City and/or DHND has reasonable cause to believe that Owner is violating the provisions of this Covenant, the City and/or the DHND, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.

B. Cure/Hearing. In the event a violation of this Covenant is discovered, the City and/or DHND shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such default. Said notice shall state that Owner may request a hearing before the City or DHND (as determined by the City or DHND) pursuant to Denver Revised Municipal Code Section 27-115 and 27-116 *et seq.* If no hearing is requested and the violation is not cured within the fifteen (15) day period, Owner shall be considered in violation of this Covenant. If a hearing is held before the City or DHND, the decision of the City or DHND based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. Enforcement. There is hereby reserved to the City the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

D. Voiding Transfers. In the event the Unit is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

E. HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the Unit; (iii) limiting the amount of sales proceeds retainable by the Owner to an amount less than that

set forth pursuant to Article VI; or (iv) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the Unit affordable as low or moderate income housing.

### **ARTICLE VIII RELEASE OF COVENANT IN FORECLOSURE: CITY'S OPTION TO BUY**

A. Foreclosure. The City shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure with respect to the Unit, to a First Mortgagee (which shall be the only party (including HUD as provided below) entitled to take the Unit free of this Covenant pursuant to the provisions of this Article VIII). In the event that the City (or a designee empowered to hold title to real property) purchases the Unit at foreclosure, the City, or its designee, may sell the Unit to Qualified Buyers, or rent the Unit until such time that the Unit can be sold to a Qualified Buyer in accordance with this Covenant. This Covenant shall automatically and permanently terminate upon assignment to HUD of a first deed of trust encumbering the Unit.

B. Notice of Foreclosure. In the event of (i) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (ii) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a copy of any notice of intent to foreclose or request for deed in lieu to the City within ten (10) days of receipt of such notice or request. Notice to the City shall be to the address of the City as provided in this Covenant. In the event that the First Mortgagee takes title to the Unit pursuant to a deed in lieu of foreclosure, the Owner shall give notice to the City upon the vesting of title to the Unit in the First Mortgagee.

### **ARTICLE IX TERM OF RESTRICTION**

This Covenant shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.E., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the City available hereunder against the Owner personally shall survive any release or termination of this Covenant.

### **ARTICLE X GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; or



(3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent. All notices which concern this Covenant shall be sent to the address of the appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a separate memorandum of this Covenant is recorded against the Unit by the City summarizing the City's rights hereunder, then to the address set forth in such memorandum.

To the City: Community Planning and Development  
201 W. Colfax Avenue, #209  
Wellington Webb Building  
Denver, Colorado 80202  
Attn: Manager

With a copy to: Housing and Neighborhood Development  
201 W. Colfax Avenue, #209  
Denver, Colorado 80202  
Attn: Director

and a copy to: City Attorney  
City of Denver  
201 W. Colfax Avenue, Dept. 1207  
Denver, Colorado 80202  
Attn: Laurie Heydman

To the Qualified Buyer/Owner: To the Unit address.

B. Owner's Disclosure. Each Owner of the Unit shall execute and record a Memorandum of Acceptance in the form attached hereto as Exhibit B (completed with the appropriate information relating to the Unit and such Owner) coincident with such Owner's deed to his or her Unit in the real property records of the City and County of Denver, Colorado, and such Owner shall promptly deliver a copy of same to DHND.

C. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

D. Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

E. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the City except on the basis of a written instrument executed by the City.

F. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the

provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

G. Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the City and recorded with the Clerk and Recorder of the County.

H. No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver and the Owner. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.

**(INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have executed this Covenant on the day and year above first written.

**FUND:**

**Community Investment Fund, Inc.**, a Colorado non-profit corporation

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

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

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

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Community Investment Fund, Inc., a Colorado non-profit corporation.

WITNESS my hand and official seal.

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

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

**OWNER:**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ and \_\_\_\_\_.

WITNESS my hand and official seal.

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

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

**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*,  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in  
the records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,  
also known by street and number as: \_\_\_\_\_

**EXHIBIT B**  
**Memorandum of Acceptance**

\_\_\_\_\_  
(Project Name)

WHEREAS, \_\_\_\_\_, the Buyer,  
is purchasing from \_\_\_\_\_, the Seller, at  
a price of \$ \_\_\_\_\_, a home described as:

UNIT \_\_\_\_\_, \_\_\_\_\_ [INSERT NAME OF  
*PROJECT*],  
County of \_\_\_\_\_, State of Colorado, according to the Map  
thereof recorded on \_\_\_\_\_, 200\_\_, at Reception No.  
\_\_\_\_\_, and the Declaration recorded on  
\_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in  
the records of the Clerk and Recorder of the County of  
\_\_\_\_\_, Colorado,  
also known by street and number as:

\_\_\_\_\_  
(the "Unit"); and

WHEREAS, the Seller of the Unit is requiring as a prerequisite to the sale transactions that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_", recorded on \_\_\_\_\_, 200\_\_, under Reception No. \_\_\_\_\_, in the real property records of the City and County of Denver, Colorado ("Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Understands that resale pricing is restricted and profits may be required to be shared after the termination of the Covenant; and that the Covenant provides that the owner of the Unit must occupy the Unit as his/her permanent residence.
7. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver's Housing and Neighborhood Development Agency.



**EXHIBIT 5**  
to  
**Minor Amendment to Development Agreement**

**(Current Restrictions and  
Allocation of Credit under Affordable Housing Plan\*)**

	<u>Unit Address and Deed Restriction Recording Information</u>	<u>Credit Allocation</u>
1.	Unit 7403 E. 26 <sup>th</sup> Ave. (Bldg A) Rec. No. 2003205917; 9/30/03	1 Unit of Affordable Workforce Housing
2.	Unit 7411 E. 26 <sup>th</sup> Ave. (Bldg B) Rec. No. 2003215848; 10/14/03	1 Unit of Affordable Workforce Housing
3.	Unit 7421 E. 26 <sup>th</sup> Ave. (Bldg C) Rec. No. 2003215853; 10/14/03	1 Unit of Affordable Workforce Housing
4.	Unit 7433-3 E. 26 <sup>th</sup> Ave. (Bldg K) Rec. No. 2003232064; 11/05/03	1 Unit of Affordable Workforce Housing
5.	Unit 7433-2 E. 26 <sup>th</sup> Ave. (Bldg K) Rec. No. 2003232053; 11/05/03	1 Unit of Affordable Workforce Housing
6.	Unit 7463 E. 26 <sup>th</sup> Ave. (Bldg D) Rec. No. 2003232049; 11/05/03	1 Unit of Affordable Workforce Housing
7.	*Unit 7433-1 E. 26 <sup>th</sup> Ave. (Bldg K) Rec. No. 2003235427; 11/07/03	1 Unit of Affordable Workforce Housing
8.	Unit 7443 E. 26 <sup>th</sup> Ave. (Bldg I) Rec. No. 2003245009; 11/21/03	1 Unit of Affordable Workforce Housing
9.	Unit 206 at 2678 Syracuse Street Rec. No. 2004028888; 01/30/04	1 Unit of Affordable Workforce Housing
10.	Unit 201 at 2608 Syracuse Street Rec. No. 2004028885; 01/30/04	1 Unit of Affordable Workforce Housing

Exhibit 5

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| 11. | *Unit 103 at 2608 Syracuse Street<br>Rec. No. 2004019538; 01/21/04                 | 1 Unit of Affordable<br>Workforce Housing |
| 12. | Unit 202 at 2608 Syracuse Street<br>Rec. No. 2004026731; 01/28/04                  | 1 Unit of Affordable<br>Workforce Housing |
| 13. | Unit 207 at 2678 Syracuse Street<br>Rec. No. 2004023017; 01/24/04                  | 1 Unit of Affordable<br>Workforce Housing |
| 14. | Unit 2703 at Roslyn Street (Bldg. BB)<br>Rec. No. 2003261125; 12/17/03             | 1 Unit of Affordable<br>Workforce Housing |
| 15. | *Unit 2693 at Roslyn Street (Bldg. BB)<br>Rec. No. 2003261178; 12/17/03            | 1 Unit of Affordable<br>Workforce Housing |
| 16. | Unit 2783 at Roslyn Street (Bldg. DD)<br>Rec. No. 2004032345; 2/03/04              | 1 Unit of Affordable<br>Workforce Housing |
| 17. | Unit 7414-3 East 28 <sup>th</sup> Street (Bldg. W)<br>Rec. No. 2004076296; 3/23/04 | 1 Unit of Affordable<br>Workforce Housing |
| 18. | Unit 2623 at Roslyn Street (Bldg. Z)<br>Rec. No. 2004079795; 03/30/04              | 1 Unit of Affordable<br>Workforce Housing |
| 19. | Unit 7451-3 E. 26 <sup>th</sup> Avenue (Bldg. H)<br>Rec. No. 2004079777; 03/30/04  | 1 Unit of Affordable<br>Workforce Housing |
| 20. | Unit 7414-4 E. 28 <sup>th</sup> Avenue (Bldg. W)<br>Rec. No. 2004079811; 03/30/04  | 1 Unit of Affordable<br>Workforce Housing |
| 21. | Unit 7431-2 E. 26 <sup>th</sup> Avenue (Bldg. L)<br>Rec. No. 2004093460; 04/20/04  | 1 Unit of Affordable<br>Workforce Housing |
| 22. | *Unit 7431-3 E. 26 <sup>th</sup> Avenue (Bldg. L)<br>Rec. No. 2005027413; 02/14/05 | 1 Unit of Affordable<br>Workforce Housing |
| 23. | Unit 7431-4 E. 26 <sup>th</sup> Avenue (Bldg. L)<br>Rec. No. 2004095803; 04/26/04  | 1 Unit of Affordable<br>Workforce Housing |
| 24. | Unit 7444-4 E. 28 <sup>th</sup> Avenue (Bldg. T)<br>Rec. No. 2004095783; 04/26/04  | 1 Unit of Affordable<br>Workforce Housing |
| 25. | Unit 7433-4 E. 26 <sup>th</sup> Avenue (Bldg. K)<br>Rec. No. 2004095796; 04/26/04  | 1 Unit of Affordable<br>Workforce Housing |
| 26. | Unit 7451-4 E. 26 <sup>th</sup> Avenue (Bldg. H)<br>Rec. No. 2004095810; 04/26/04  | 1 Unit of Affordable<br>Workforce Housing |



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| 27. | Unit 7451-1 E. 26 <sup>th</sup> Ave. (Bldg. H)<br>Rec. No. 2004109339; 5/18/04   | 1 Unit of Affordable<br>Workforce Housing |
| 28. | Unit 2673 at Roslyn Street (Bldg. AA)<br>Rec. No. 2004113168; 5/24/04            | 1 Unit of Affordable<br>Workforce Housing |
| 29. | *Unit 2793 at Roslyn Street (Bldg. EE)<br>Rec. No. 2005020469; 2/2/05            | 1 Unit of Affordable<br>Workforce Housing |
| 30. | Unit 2723 E. 26 <sup>th</sup> Avenue (Bldg. CC)<br>Rec. No. 2004117277; 06/01/04 | 1 Unit of Affordable<br>Workforce Housing |
| 31. | Unit 7444-3 E. 28 <sup>th</sup> Avenue (Bldg. T)<br>Rec. No. 2004117293; 6/1/04  | 1 Unit of Affordable<br>Workforce Housing |
| 32. | Unit 7414-2 E. 28 <sup>th</sup> Avenue (Bldg. W)<br>Rec. No. 2004120872; 6/7/04  | 1 Unit of Affordable<br>Workforce Housing |
| 33. | Unit 7461 E. 26 <sup>th</sup> Avenue (Bldg. D)<br>Rec. No. 2004120883; 6/7/04    | 1 Unit of Affordable<br>Workforce Housing |
| 34. | Unit 109 at 2708 Syracuse Street<br>Rec. No. 2004216470; 10/15/04                | 1 Unit of Affordable<br>Workforce Housing |
| 35. | Unit 112 at 2788 Syracuse Street<br>Rec. No. 2004214910; 10/13/04                | 1 Unit of Affordable<br>Workforce Housing |
| 36. | *Unit 213 at 2788 Syracuse Street<br>Rec. No. 2004125751; 6/14/04                | 1 Unit of Affordable<br>Workforce Housing |
| 37. | Unit 111 at 2708 Syracuse Street<br>Rec. No. 2004125735; 6/14/04                 | 1 Unit of Affordable<br>Workforce Housing |
| 38. | Unit 210 at 2708 Syracuse Street<br>Rec. No. 2004214913; 10/13/04                | 1 Unit of Affordable<br>Workforce Housing |
| 39. | Unit 114 at 2788 Syracuse Street<br>Rec. No. 2004125747; 6/14/04                 | 1 Unit of Affordable<br>Workforce Housing |
| 40. | Unit 204 at 2678 Syracuse Street<br>Rec. No. 2004125726; 6/14/04                 | 1 Unit of Affordable<br>Workforce Housing |
| 41. | Unit 104 at 2678 Syracuse Street<br>Rec. No. 2004125730; 6/14/04                 | 1 Unit of Affordable<br>Workforce Housing |
| 42. | Unit 101 at 2608 Syracuse Street<br>Rec. No. 2004125740; 6/14/04                 | 1 Unit of Affordable<br>Workforce Housing |

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| 43. | 7494 E. 28 <sup>th</sup> Avenue (Bldg. EE)<br>Rec. No. 2004130822; 6/22/04  | 1 Unit of Affordable<br>Workforce Housing |
| 44. | 2603 E. 26 <sup>th</sup> Avenue (Bldg. Y)<br>Rec. No. 2004154497; 7/22/04   | 1 Unit of Affordable<br>Workforce Housing |
| 45. | 7413 E. 26 <sup>th</sup> Avenue (Bldg. B)<br>Rec. No. 2004160343; 8/3/04    | 1 Unit of Affordable<br>Workforce Housing |
| 46. | 7471 E. 26 <sup>th</sup> Avenue (Bldg. E)<br>Rec. No. 2004174728; 8/24/04   | 1 Unit of Affordable<br>Workforce Housing |
| 47. | 7473 E. 26 <sup>th</sup> Avenue (Bldg. E)<br>Rec. No. 2004184288; 9/2/04    | 1 Unit of Affordable<br>Workforce Housing |
| 48. | 7382 E. 28 <sup>th</sup> Avenue (Bldg. N)<br>Rec. No. 2004184269; 9/2/04    | 1 Unit of Affordable<br>Workforce Housing |
| 49. | 7444-2 E. 28 <sup>th</sup> Avenue (Bldg. T)<br>Rec. No. 2004184403; 9/2/04  | 1 Unit of Affordable<br>Workforce Housing |
| 50. | 7451-2 E. 26 <sup>th</sup> Avenue (Bldg. H)<br>Rec. No. 2004210497; 10/7/04 | 1 Unit of Affordable<br>Workforce Housing |
| 51. | Unit 209 at 2708 Syracuse Street<br>Rec. No. 2004216355; 10/15/04           | 1 Unit of Affordable<br>Workforce Housing |
| 52. | Unit 2763 at Roslyn Street (Bldg. DD)<br>Rec. No. 2004222453; 10/25/04      | 1 Unit of Affordable<br>Workforce Housing |
| 53. | 7423 E. 26 <sup>th</sup> Avenue (Bldg. C)<br>Rec. No. 2004245961; 12/1/04   | 1 Unit of Affordable<br>Workforce Housing |
| 54. | 7453-3 E. 26 <sup>th</sup> Avenue (Bldg. G)<br>Rec. No. 2005023151; 2/8/05  | 1 Unit of Affordable<br>Workforce Housing |
| 55. | 7453-4 E. 26 <sup>th</sup> Avenue (Bldg. G)<br>Rec. No. 2004245967; 12/1/04 | 1 Unit of Affordable<br>Workforce Housing |
| 56. | 7444-1 E. 28 <sup>th</sup> Avenue (Bldg. T)<br>Rec. No. 2004245955; 12/1/04 | 1 Unit of Affordable<br>Workforce Housing |
| 57. | Unit 102 at 2608 Syracuse Street<br>Rec. No. 2004212432; 10/11/04           | 1 Unit of Affordable<br>Workforce Housing |
| 58. | Unit 105 at 2678 Syracuse Street<br>Rec. No. 2005005044; 1/10/05            | 1 Unit of Affordable<br>Workforce Housing |

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| 59. | Unit 106 at 2678 Syracuse Street<br>Rec. No. 2004214917, 10/13/04        | 1 Unit of Affordable<br>Workforce Housing |
| 60. | Unit 107 at 2678 Syracuse Street<br>Rec. No. 2004214683; 10/13/04        | 1 Unit of Affordable<br>Workforce Housing |
| 61. | Unit 108 at 2708 Syracuse Street<br>Rec. No.2004214905; 10/13/04         | 1 Unit of Affordable<br>Workforce Housing |
| 62. | Unit 110 at 2708 Syracuse Street<br>Rec. No. 2004214377; 10/13/04        | 1 Unit of Affordable<br>Workforce Housing |
| 63. | Unit 208 at 2708 Syracuse Street<br>Rec. No. 2004214933; 10/13/04        | 1 Unit of Affordable<br>Workforce Housing |
| 64. | Unit 211 at 2708 Syracuse Street<br>Rec. No. 2004214928; 10/13/04        | 1 Unit of Affordable<br>Workforce Housing |
| 65. | Unit 212 at 2788 Syracuse Street<br><b>Rec. No. (to be determined**)</b> | 1 Unit of Affordable<br>Workforce Housing |
| 66. | 7404-4 E. 28th Avenue (Bldg. X)<br>Rec. No. 2005032811, 2/25/05          | 1 Unit of Affordable<br>Workforce Housing |
| 67. | 7481 E. 26th Avenue (Bldg. F)<br>Rec. No. 2005039631; 3/7/05             | 1 Unit of Affordable<br>Workforce Housing |
| 68. | 7474 E. 28th Avenue (Bldg. Q)<br>Rec. No. 2005044388; 3/15/05            | 1 Unit of Affordable<br>Workforce Housing |
| 69. | Unit 2663 at Roslyn Street (Bldg. AA)<br>Rec. No. 2005048244; 3/22/05    | 1 Unit of Affordable<br>Workforce Housing |
| 70. | Unit 2773 at Roslyn Street (Bldg. DD)<br>Rec. No. 2005048239; 3/22/05    | 1 Unit of Affordable<br>Workforce Housing |
| 71. | Unit 2633 at Roslyn Street (Bldg. Z)<br>Rec. No. 2005052794; 3/30/05     | 1 Unit of Affordable<br>Workforce Housing |
| 72. | 7404-3 E. 28th Avenue (Bldg. X)<br>Rec. No. 2005057953; 4/7/05           | 1 Unit of Affordable<br>Workforce Housing |
| 73. | 7441 E. 26th Avenue (Bldg. J)<br>Rec. No. 2005052810; 3/30/05            | 1 Unit of Affordable<br>Workforce Housing |

74. Unit 205 at 2678 Syracuse Street  
Rec. No. (to be determined\*\*)

1 Unit of Affordable  
Workforce Housing

All addresses are in Denver, Colorado and all recordings are in the real estate records of Denver County, Colorado

\* Units marked with an asterisk include specific subordinations of the respective Current Restriction to secondary financing.

\*\*Units marked with two asterisks require corrective action on the deed restriction instrument.

**EXHIBIT 6**  
**to**  
**Minor Amendment to Development Agreement**

**(Assignment and Assumption Agreement Form For Current Restrictions)**

**[see attached]**

(FORM OF)

ASSIGNMENT  
OF  
DEED RESTRICTION AGREEMENT  
Denver, Colorado

THIS ASSIGNMENT OF DEED RESTRICTION AGREEMENT ("Assignment") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by Community Investment Fund, Inc., a Colorado nonprofit corporation ("Assignor") and the City and County of Denver, Colorado, a municipal corporation of the State of Colorado ("Assignee") duly organized and existing as a home rule city pursuant to art. xx of the Colorado Constitution.

**Recitals**

A. Assignor is a party to, and has certain rights and enforcement powers under, that certain Deed Restriction Agreement recorded in the real estate records of the City and County of Denver, Colorado and legally described and identified on Exhibit A attached hereto ("Deed Restriction Agreement").

B. In accordance with that certain Minor Amendment to Development Agreement dated February 4, 2005 ("Amendment") which amends that certain Development Agreement ("Agreement") dated as of March 2, 2001 and approved by the City Council of the City on February 26, 2001, by Ordinance No. 148, Series of 2001 (which Agreement relates to the development of the former Stapleton International Airport property), Assignee has agreed to receive an assignment of the rights and assume the enforcement powers as specified herein of Assignor under the Deed Restriction Agreement.

NOW, THEREFORE, in consideration of the Agreement and the Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

**Agreement**

1. Upon the date hereof, Assignor assigns all of its rights and interests to administer and enforce the Deed Restriction Agreement to Assignee.
2. Assignor and Assignee agree that the Deed Restriction agreement is and shall be interpreted as a covenant running with the land described on Exhibit A hereto.
3. Upon the date hereof, Assignee assumes the enforcement powers of Assignor under the Deed Restriction Agreement as specified herein. Neither Forest City Enterprises, Inc., an Ohio corporation, nor Assignor shall have any

obligation to administer or enforce the terms of the Deed Restriction Agreement.

4. Assignor and Assignee agree that this Assumption and Assignment Agreement vests in Assignee all powers of the Community Investment Fund, Inc. ("the Fund") to enforce or manage the terms of the Deed Restriction, including, but not limited to, making any revisions to the Workforce Housing Program Guidelines. These powers of enforcement and management are and shall be exclusive to the Assignee with respect to the property defined on Exhibit A. All references in the Deed Restriction Agreement to "the Fund" shall be interpreted to mean "the City and County of Denver." Notices required to be provided to the Fund shall be provided to the City and County of Denver in care of Housing and Neighborhood Development, 201 West Colfax Avenue, Department 204, Denver, Colorado 80202.
5. Assignor and Assignee specifically agree that Denver will not and cannot assume the assignment of commercial listing rights contained in paragraph B of Article V of the Deed Restriction Agreement.
6. Assignor and Assignee specifically agree that Denver will assume the assignment of the hearing procedure contained in Article VII, and Denver will replace the Fund in all respects, such that hearings will be held before Denver.
7. From and after the date of this Assignment, the Fund shall have no further obligations regarding the Deed Restriction Agreement.

This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Assignment the day and year first above written.

**ASSIGNOR:**

Community Investment Fund, Inc., a Colorado nonprofit corporation

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

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

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

STATE OF COLORADO )  
 ) ss:  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, as \_\_\_\_\_ of the Community Investment Fund, Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

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

**ASSIGNEE:**

City and County of Denver, a Colorado municipal corporation

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

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

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

STATE OF COLORADO )  
 ) ss:  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, as \_\_\_\_\_ of the City and County of Denver, a Colorado municipal corporation.

WITNESS my hand and official seal.

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



**EXHIBIT A**  
**Deed Restriction Agreement**

***[INSERT TITLE OF DEED RESTRICTION(S) AND RECORDING  
INFORMATION]***