

PREPARED BY AND AFTER
RECORDING PLEASE RETURN TO:
Office of Economic Development
201 W. Colfax Ave., Dept. 1011
Denver, CO 80202
Attention: _____

AGREEMENT TO BUILD AFFORDABLE UNITS

THIS AGREEMENT TO BUILD AFFORDABLE UNITS (“Agreement”) is made and entered, and effective as of the date set forth below on the City’s signature page, by Gaylord Community, LLC, a Colorado limited liability company, with mailing address of 1520 West Canal Ct., Suite 220, Littleton, CO 80120 (“Owner”), and the City and County of Denver, a municipal corporation organized pursuant to the Constitution of the State of Colorado with a mailing address of Office of Economic Development, 201 W. Colfax Avenue, Department 1011, Denver, CO 80202 (“City”).

RECITALS:

A. Owner is the owner of certain property located in the City and County of Denver, Colorado, and more particularly described on **Exhibit A** hereto (the “Subject Property”).

B. Owner is also the owner of certain property located in the City and County of Denver, Colorado and more particularly described as follows (the “Adjacent Property”):

A PARCEL OF LAND BEING A PORTION OF BLOCK 2 OF CHEESMAN AND MOFFAT'S ADDITION TO THE CITY OF DENVER, ALSO LYING WITHIN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY & COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 65.00 FEET LOTS 1 THROUGH 15, INCLUSIVE, BLOCK 2, CHEESMAN AND MOFFAT'S ADDITION TO THE CITY OF DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

CONTAINING ± 23,915 TOTAL SQUARE FEET OR ± 0.549 TOTAL ACRES OF LAND, MORE OR LESS.

C. In connection with the proposed rezoning of the Subject Property from U-RH-2.5 to U-RX-5, and the Adjacent Property from U-RH-2.5 to U-RX-3, development of the Subject Property and in satisfaction of residential development linkage fee requirements set forth in Chapter 27 of the Denver Revised Municipal Code (“DRMC”), the Owner has agreed that upon development of the Subject Property, certain affordable housing on the Subject Property will be constructed in accordance with the terms and requirements of this Agreement.

D. The Adjacent Property is not subject to the requirements of this Agreement, and is not subject to the affordable housing covenant in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Owner agrees that twenty percent (20%) of all residential rental units constructed on the Subject Property will, for a minimum period of forty (40) years be restricted for rental by households earning no greater than sixty percent (60%) of the area median income for the Denver area, as determined by HUD (“AMI”). Owner further agrees that twenty percent (20%) of all residential for-sale units constructed on the Subject Property will for a minimum period of forty (40) years be restricted for sale to households earning no greater than eighty percent (80%) of AMI. Such income-restricted units are referred to herein as “IRUs”. If no residential rental units are constructed on the Subject Property, then no IRUs meeting the rental restrictions above need to be provided. If no residential for-sale units are constructed on the Subject Property, then no IRUs meeting the for-sale restrictions above need to be provided.

2. Owner agrees to construct and market the IRUs concurrently with or prior to any market rate dwelling units on the Subject Property.

3. Owner agrees to integrate the IRUs within the market rate residential units and provide IRUs with access to all common amenities or services available to market rate residential units.

4. Owner will offer the IRUs for sale or rent, and in a mix of number of bedroom types, in accordance with the requirements of the Rules and Regulations promulgated under the City’s Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC.

5. The parties agree that prior to and as a condition of the issuance of the first building permit on the Subject Property, Owner will record one or more covenant(s) substantially in the form(s) attached to this Agreement as **Exhibit B**, which will run with the land and encumber the Subject Property for a period of forty (40) years from the date of issuance of a building permit for the IRUs, in order to ensure that certain sale price or rent limitations, occupancy limitations and administrative requirements for the IRUs are met.

6. This Agreement shall satisfy the linkage fee requirements of Chapter 27 of the DRMC with regard to residential development only. Assessment of linkage fees and any applicable incentive overlay requirements shall apply to all non-residential development as if this Agreement did not exist.

7 This Agreement is conditioned on more than fifty percent (50%) of the development being developed for residential use. In the event that less than fifty percent (50%) of the development will be residential, the parties shall, in good faith, renegotiate this Agreement to account for the additional non-residential development and no building permits shall be granted by the City until an amendment to this Agreement accounting for such changed circumstances has been executed.

8. This Agreement presumes that development on the Subject Property will not receive any subsidization from the City in support of the IRUs. The parties acknowledge that if any such subsidy is received from the City, additional affordability requirements in addition to those set forth herein will likely be imposed as a condition to such subsidy.

9. The City agrees that this Agreement shall be recorded in the public records for the City and County of Denver only after final approvals by the Denver City Council of the rezoning referenced herein. The parties agree to execute such additional documents as may be necessary or required to effectuate the intent and purpose of this Agreement.

10. This Agreement shall encumber the Subject Property for so long as the obligations set forth herein remain outstanding. This Agreement shall not be amended or modified without the express written consent of both the City and County of Denver and Owner. Upon recordation of restrictive covenants substantially in form(s) attached as Exhibit B necessary to restrict all IRUs required to be constructed hereunder, the City shall, upon request by the Owner, release this Agreement, and the Executive Director of the City's Office of Economic Development is hereby authorized to execute such release on behalf of the City.

11. The approval of the rezoning of the Subject Property and the Adjacent Property is a condition precedent to Owner's obligations under this Agreement. Should the Denver City Council fail to approve the rezoning within one hundred eighty (180) days after the date of this Agreement, then this Agreement is automatically void without further action of the City or the Owner and shall no longer burden title to the Subject Property.

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

13. Owner consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, 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.

14. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents,

papers, and records of the parties, involving transactions related to the Agreement until the expiration of the applicable statute of limitations.

[Remainder of this page intentionally left blank. Signature page follows.]

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-201948317-00

Contractor Name: Gaylord Community, LLC

See Attached

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF BLOCK 2 OF CHEESMAN AND MOFFAT'S ADDITION TO THE CITY OF DENVER, ALSO LYING WITHIN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY & COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOTS 1 THROUGH 15 INCLUSIVE EXCEPT THE WEST 65.00 FEET OF SAID BLOCK 2, CHEESMAN AND MOFFAT'S ADDITION TO THE CITY OF DENVER.

TOGETHER WITH THAT CERTAIN VACATED ALLEY AS RECORDED AT RECEPTION NUMBER 2001203743 AND ADJACENT TO SAID LOTS, WHEN MEASURED AT RIGHT ANGLES.

ALSO TOGETHER WITH ALL OF LOTS 16 THROUGH 30, INCLUSIVE, BLOCK 2, CHEESMAN AND MOFFAT'S ADDITION TO THE CITY OF DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

CONTAINING \pm 74,027 TOTAL SQUARE FEET OR \pm 1.699 TOTAL ACRES OF LAND, MORE OR LESS.

EXHIBIT B

Forms of Covenants

WHEN RECORDED MAIL TO:

Office of Economic Development
Attention: _____
201 W. Colfax Ave., Dept. 208
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

RENTAL AND OCCUPANCY COVENANT

THIS RENTAL AND OCCUPANCY COVENANT is made this ____ day of _____, 20__ , by _____, a _____ (“Owner”).

RECITALS:

WHEREAS, Owner is the owner of the following described real property in the City and County of Denver, State of Colorado (the “Subject Property”):

[INSERT LEGAL DESCRIPTION]

And commonly known as _____ (the “Project”);

WHEREAS, Owner has entered into that certain Agreement to Build Affordable Units dated _____ and recorded under Reception No. _____ in the real estate records of the City and County of Denver, Colorado (the “ABAU”);

WHEREAS, pursuant to the ABAU Owner has agreed that twenty percent (20%) of all residential rental units within the Subject Property will be Income Restricted Units, which in this Covenant equals ____ Income Restricted Units, and Owner has agreed to record a covenant to run with title to the Subject Property to ensure that certain rental and occupancy limitations and administrative requirements for the Income Restricted Units are met; and

WHEREAS, the intent of Owner is to preserve through this Covenant the affordability of the Income Restricted Units described herein for persons of low to moderate income, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, the following are established as covenants running with the Subject Property:

1. **Rent Limitations.** The rent limitations for the Income Restricted Units are:

- i. The number of Income Restricted Units as stated in the Recitals shall have rents not exceeding the lesser of (i) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals sixty percent (60%) of the median income for the Denver area, as published by the Colorado Housing and Finance Authority (“CHFA”), with adjustments for the number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as published by CHFA (“Fair Market Rent”).
- ii. The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

2. **Occupancy/Income Limitations.** The occupancy and income limitations for the Income Restricted Units are:

- i. Income Restricted Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA.

3. **Applicability of City Rules and Regulations.** All provisions regarding marketing, tenant selection, verification, eligibility, reporting, and Preservation Ordinance applicability set forth in the Rules and Regulations promulgated under the Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC shall be applicable to Owner and the IRUs as if the IRUs were “Build Alternative Rental Units” as such term is defined therein.

4. **Term.** This Covenant shall encumber the Subject Property for a period of forty (40) years from the date of issuance of a building permit for the IRUs. This Covenant shall not be amended or modified without the express written consent of the City and County of Denver and Owner.

5. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

6. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or appropriate representatives thereof.

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the day and year first above written.

By: _____

Title: _____

“OWNER”

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

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

**NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT
FOR THE OCCUPANCY AND RESALE OF FOR SALE UNITS**

[project name]

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF UNITS at

_____, (the "Covenant") is
[project name]

made and entered into this _____ day of _____, 20____, by
[developer entity] (the

"Declarant"), and enforceable by the CITY AND COUNTY OF DENVER, COLORADO, or its designee (the "City").

WITNESSETH:

WHEREAS, Declarant owns the real property legally described as follows:

[INSERT LEGAL LOT DESCRIPTIONS]

OR

[Condominium Unit Nos. [INSERT INCOME RESTRICTED UNIT NUMBERS] in
_____, according to the Condominium Declaration
for _____ recorded under Reception No.

_____ and the Condominium Map of _____]

OR

[Townhome units located at [INSERT STREET ADDRESS] and identified by Assessor's
Parcel Numbers _____]

(each such unit being referred to herein as a "IRU", and two or more of such units being referred to herein as "IRUs").

WHEREAS, Declarant has entered into that certain Agreement to Build Affordable Units dated _____ and recorded under Reception No. _____ in the real estate records of the City and County of Denver, Colorado (the "ABAU").

WHEREAS, Declarant desires to satisfy the conditions of the ABAU by selling the IRUs at affordable prices to households meeting certain income requirements, restricting the use and occupancy of the IRUs, restricting the price for future sales, and imposing income requirements

for future purchasers of the IRUs, all as set forth herein;

WHEREAS, Declarant acknowledges and agrees that the covenants set forth herein shall run with the land and shall bind each IRU and all future owners of (and other parties with an interest in title to) such IRU until the Final Sale thereof;

WHEREAS, upon the Final Sale of each IRU, such IRU shall be released from the provisions of this Covenant;

NOW, THEREFORE, for consideration hereby acknowledged by Declarant, Declarant hereby represents, covenants and declares as follows:

1. **Definitions.** The following terms shall have the following meanings when used in this Covenant:

(a) “AHDF Rules” means the Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations adopted by the City, as they pertain to build alternative for-sale units. Such AHDF Rules shall be applicable to the IRUs, Owner, and Declarant and its successors in interest as if the IRUs were “Build Alternative For-Sale Units,” as such term is defined therein.

(b) “AMI” or “adjusted median income” or “median income” or “area median income” means the median income for the Denver metropolitan area, adjusted for household size as calculated by HUD.

(c) “Covenant Period” means, for each IRU, a period of forty (40) years, commencing on the date of building permit issuance of such IRU.

(d) “Director” means the Executive Director of OED or his or her designee.

(e) “Eligible Household” means a household that holds a valid verification of eligibility from OED (as described in Section 4 below) that entitles the household to buy an IRU. To be eligible to purchase an IRU at Initial Sale or resale, households must be earning no more than eighty percent (80%) of the AMI at the time of execution of a contract for purchase of an IRU and meet all other requirements set forth in the AHDF Rules.

(f) “Final Sale” means, with respect to each IRU, the first resale of such IRU occurring after the end of the Covenant Period in compliance with the terms and restrictions set forth herein. If the IRU is not resold within the period beginning on the expiration date of the Covenant Period and ending on the ten (10) year anniversary of such date, the Final Sale of such IRU shall be deemed to have occurred on such ten (10) year anniversary.

(g) “HUD” means the U.S. Department of Housing and Urban Development.

(h) “Initial Sale” means the first sale of an IRU by Declarant;

(i) “Maximum Gross Income” means the pre-tax income from all acceptable income sources as defined in the HUD Technical Guide for Determining Income;

(j) “Maximum Sale Price” means the maximum amount for which an IRU may be sold by Declarant, as set forth in Section 3(a) below or sold by a subsequent Owner, as set forth in Section 7 below.

(k) “Memorandum of Acceptance” shall have the meaning set forth in paragraph 5 below.

(l) “OED” means the City and County of Denver Office of Economic Development or any successor agency which is assigned responsibility for the City’s Affordable Housing Permanent Funds Program.

(m) “Owner” means any Eligible Household that purchases an IRU from the Declarant and any subsequent buyer, devisee, transferee, grantee or owner of, or holder of title to, any IRU, provided that if the City shall for any reason take title to the IRU, it shall not be considered an “Owner” for purposes of this Covenant.

(n) “Purchase Money First Lien Holder” means the lender who advances funds to an Eligible Household for the purchase an IRU and who is a holder of a purchase money first priority deed of trust against the IRU. The Purchase Money First Lien Holder shall be deemed to include assigns of the first lien holder but shall not include lenders who re-finance an IRU.

(o) “Transfer” means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in an IRU, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of an IRU is transferred and the Owner obtains title.

2. Property Subject to Covenant. Declarant and each subsequent Owner of any IRU, and every party with an interest in title to any IRU hereby covenants and agrees that their IRU will be used, occupied and Transferred strictly in conformance with the provisions of this Covenant, the ABAU for so long as this Covenant remains in force and effect with respect to such IRU.

3. Initial Sale. The Initial Sale of each IRU by Declarant shall be subject to the following restrictions:

(a) The Initial Sale of each IRU shall be at a price no greater than [the OED-published price for that size unit as of the date of the executed purchase and sale contract for that unit / _____ and No/100 Dollars (\$_____)].

(b) No less than thirty (30) days prior to the proposed offering of any IRU, Declarant shall provide written notice to OED containing the information required by the AHDF Rules. Within ten (10) days after receipt of such notice, OED shall notify Declarant whether the notice is adequate or materially deficient. If the notice is deemed to be deficient, the offering cannot proceed until the deficiency has been cured and approved by OED. If the notice is deemed adequate or if OED does not make a determination within such ten (10) day period, Declarant may proceed with the offering.

(c) Declarant shall make a good faith effort, as described in the AHDF Rules, to market each IRU for sale to households that are expected to qualify as Eligible Households and use the IRU as their own primary residence.

(d) If, during Declarant’s marketing of the IRUs, more than one offer is received for a particular IRU, the Declarant shall use a fair selection process to select among the prospective purchasers.

(e) The Declarant shall not close on any sale of any IRU without first obtaining

a verification of eligibility issued by OED for the buyer as set forth in Section 4 below. A copy of each verification shall be furnished by OED and maintained on file by OED.

(f) Upon closing of the Initial Sale of each IRU, the purchase contract, Memorandum of Acceptance, appraisal (if necessary), the warranty deed and a copy of the HUD-1 Settlement Sheet (or similar documentation), and any other documentation deemed necessary by OED shall be filed with OED to verify the sale of the IRU.

4. Eligible Household Verification.

(a) Within five (5) days after the date of full execution of a purchase and sale contract for any IRU, the seller shall ensure that the purchaser completes and submits to OED a request for income verification (on the form provided by the City), which shall constitute a request for determination that the purchaser meets all requirements to be deemed an Eligible Household and that the purchase price does not exceed the Maximum Sale Price.

(b) Within ten (10) business days after receipt of the income verification request, the City shall verify the potential purchaser's household income based on the potential purchaser's Maximum Gross Income and the AHDF Rules and either (i) issue a verification, signed by the City, stating that the purchaser is an Eligible Household and that the purchase price does not exceed the Maximum Sale Price (the "Verification"); or (ii) deliver notice to the selling Owner and purchaser specifying the reasons that a Verification cannot be issued. Failure by the City to make its determination and deliver a Verification or non-issuance notice within the ten (10) business day period described above shall be deemed an approval of the purchaser and the purchase price, and the City shall thereafter issue a Verification with respect to the transaction immediately upon request by the selling Owner or the purchaser.

5. Memorandum of Acceptance. Each Owner shall execute and record a Memorandum of Acceptance in substantially the form attached hereto as Exhibit B (completed with the appropriate information relating to the IRU and such Owner) in the real property records of the City and County of Denver, Colorado concurrently with the recordation of such Owner's deed to his or her IRU. Such Memorandum of Acceptance shall state that the conveyed property is an IRU and is subject to the restrictions contained in this Covenant.

Upon any sale or resale of the IRU, a Memorandum of Acceptance shall be recorded with the Clerk and Recorder of the City and County of Denver concurrently with the deed for the IRU. If the Memorandum of Acceptance is not so recorded, then the transfer shall be voidable at the option of the City.

6. Use and Occupancy.

(a) Purchasers of an IRU shall occupy the IRU within thirty (30) days after closing of their purchase thereof.

(b) At all times during the Covenant Period the IRU Owner shall occupy the IRU as the Owner's sole, exclusive and permanent place of residence. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever one 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 City may consider the following circumstances relating to the Owner: 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.

Temporary exceptions allowing the Owner of an IRU to rent out the IRU (subject to the limitations set forth in the AHDF Rules) may only be granted by OED as permitted by and justified under the AHDF Rules. Under no circumstances shall an IRU be used as a short-term rental, as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

(c) If an IRU Owner dies, at least one person taking title by will or by operation of law, whether eligible or not, either shall occupy the IRU as his, her, or their primary residence during the Covenant Period, or shall sell the IRU as provided herein. In no event shall the death of an IRU Owner affect the operation of the Covenant or the AHDF Rules

7. IRU Resale.

(a) If, at any time during the Covenant Period, an Owner desires to sell their IRU, the Owner shall, at least ten (10) days prior to offering such IRU for sale, complete and submit to OED a Maximum Resale Request (on the form provided by the City). Such form shall include the date on which the Owner will be ready to begin the marketing to Eligible Households.

(b) OED's determination of Maximum Sale Price for the IRU shall be based on the affordable sale price for a unit of similar size, as published by OED annually in accordance with the AHDF Rules.

(c) The Owner may not list the IRU for sale prior to receipt of OED's written determination of the Maximum Sale Price. After receiving such determination from the City, the selling Owner may list the IRU for sale to potential Eligible Households at or below such Maximum Sale Price. **THE MAXIMUM SALE PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE IRU, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE CITY OR DECLARANT THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM SALE PRICE. DEPENDING UPON THE CONDITION OF THE UNIT AND CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALE PRICE FOR THE IRU UPON RESALE.**

(d) The Owner shall make a good faith effort to market the IRU in accordance with the requirements set forth in the AHDF Rules to purchasers that are expected to qualify as Eligible Households.

(e) The Owner may only enter into a contract for the sale of the IRU with a purchaser who is reasonably expected to qualify as an Eligible Household.

(f) The Owner may enter into a contract for the sale of the IRU upon such terms and conditions as the selling Owner shall deem acceptable, provided, however, that the following conditions apply:

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

(ii) the selling Owner must believe in good faith that the purchaser will be verified by OED as an Eligible Household; and

(iii) the contract must state as a contingency that the purchaser will submit an income verification request in accordance with Section 4 above and that the selling Owner's obligations under the contract are expressly contingent upon the City's determination (by issuance of the Verification described in Section 4) that the purchaser is an Eligible Household and that the purchase price does not exceed the Maximum Sale Price. All earnest money must be

returned in the event that the contingencies above are not met.

(g) The verification procedure described above in Section 4 shall apply to each resale of any IRU.

(h) Upon the transfer of the IRU, the purchaser must sign and record a Memorandum of Acceptance as described above in Section 5.

(h) The Director may waive the restrictions on the resale prices for IRUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent Eligible Households from buying dwelling units under the IRU program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded in the records of the Clerk and Recorder for the City and County of Denver, Colorado.

8. Remedies in the Event of Breach.

(a) In the event that OED has reasonable cause to believe that an Owner is violating the provisions of this Covenant, an authorized representative of OED may seek permission to enter the IRU, if necessary to determine compliance.

(b) In the event the City becomes aware of an alleged violation of this Covenant, the City or OED shall send a notice of such alleged violation to the Owner detailing the nature thereof and allowing the Owner fifteen (15) days to cure such default or request a hearing before the City using the linkage fee appeals process described in the AHDF Rules, with the Director serving as the designated official in the stead of the Director of CPD. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Covenant. If a hearing is held before the City, the decision of the City based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

(c) There is hereby reserved to the City, OED and the Director the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

(d) Any Owner who violates the occupancy provisions of Section 6(b) above may be required by the Director to occupy such IRU as Owner's domicile, offer the IRU for resale to an Eligible Household, and/or turn over to the City all rents received without a City exception.

(e) Subject to the limitations set forth in Section 8(f) below, in the event the IRU 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 IRU, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

(f) Notwithstanding anything in this Covenant to the contrary, in the event that the IRU is encumbered by a deed of trust from a Purchase Money First Lien Holder and such deed of trust is insured by HUD, 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 IRU; or (iii) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest any amount paid for an IRU above the Maximum Sale Price.

9. Seniority of Covenant. This Covenant is senior to all instruments securing permanent financing, except as otherwise permitted herein.

10. Release of Covenant in Foreclosure.

(a) In the event that Owner receives a notice of default or notice of foreclosure from the Purchase Money First Lien Holder, the Owner shall send a copy of said notice to OED within seven (7) days of receipt.

(b) In the event of (i) a foreclosure action being brought by the Purchase Money First Lien Holder, or (ii) the request for the Purchase Money First Lien Holder to accept title to the IRU by deed in lieu of foreclosure, the Owner shall give a copy of any notice of intent to foreclose or request for deed in lieu to OED within ten (10) days of receipt of such notice or request. Notice to OED shall be to the address of OED as provided in this Covenant with a copy to the City Attorney's Office. In the event that the Purchase Money First Lien Holder takes title to the IRU pursuant to a deed in lieu of foreclosure, the Owner shall give notice to OED with a copy to the City Attorney's Office upon the vesting of title to the IRU in Purchase Money First Lien Holder.

(c) As to any IRU encumbered by a HUD-insured mortgage, this Covenant shall automatically and permanently terminate upon foreclosure of a deed of trust or acceptance of a deed in lieu of foreclosure by a Purchase Money First Lien Holder or assignment to HUD of a purchase money first priority deed of trust encumbering such IRU. In the event of foreclosure or the acceptance of a deed in lieu of foreclosure by any other Purchase Money First Lien Holder on an IRU, the mortgagee may request the release of this Covenant with respect to that particular IRU and the Director is authorized to execute such a release if warranted by the circumstances.

(d) In a cash funded purchase following foreclosure, any and all liens or deeds filed against the property in exchange for the cash portion of the purchase shall be subordinate to the covenant placed on the unit pursuant to the requirements of these rules and regulations. Such liens or deeds will not qualify the holder as a holder of a first deed of trust, nor a purchase money first lien holder, nor under the covenant, nor under the City's Housing Funds Ordinance Administrative Rules and Regulations.

11. Limitation on Equity Mortgages. During the Covenant Period, Owner shall not cause or allow any second mortgage, refinance mortgage, or equity mortgage greater than the then-current Maximum Sale Price to be placed on or recorded against the IRU. Any action in contravention of this provision shall be void and may subject the Owner to criminal and civil fraud penalties.

12. Covenant Running with Land; Duration of Covenant. The terms of this Covenant and the provisions of the AHDF Rules shall apply to the IRUs and run with the land as a burden thereof until Final Sale, and shall be specifically enforceable by the City and its successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion or eviction of non-complying Owners and/or occupants.

13. Final IRU Sale.

(a) Assuming no previous termination due to foreclosure, this Covenant shall terminate, expire and be of no further force and effect with respect to an IRU on the date of Final Sale.

15. Exhibits. All exhibits attached hereto are incorporated herein and by this reference made a part hereof.

16. 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 such documents.

17. Conflict or Inconsistency. In the event of any conflict or inconsistency between the terms of this Covenant and the terms and provisions of the AHDF Rules, as such are in effect on the date of this Covenant, the AHDF Rules shall prevail.

18. Choice of Law. This Covenant and each and every related document are to be governed and construed in accordance with the law of the State of Colorado.

19. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

20. Section Headings. Paragraph or section headings within this Covenant are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

21. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Covenant. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

22. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

23. Personal Liability. Owner shall be personally liable for any of the transactions contemplated herein.

24. 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 restriction or document relating hereto or entered into in connection herewith.

25. Modifications. The parties to this Covenant agree that any modifications of this Covenant shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of the City and County of Denver, Colorado.

26. Owner and Successors. It is understood that a person or persons shall be deemed an Owner hereunder only during the period of his, her or their ownership interest in the IRU and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

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EXHIBIT A
Legal 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
OF
NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT
FOR THE OCCUPANCY AND RESALE OF UNITS FOR**

_____ [Project Name]

WHEREAS, _____, the Buyer, purchased
_____ [Buyer Name]
_____, on the date of _____ from
_____. [Property Address]
_____. [Seller Name] Seller. The maximum resale price [is
/is deemed to be] \$ _____ as of _____, 201__.
_____ [purchase price amount]

WHEREAS, the Seller of the IRU 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 Master Covenant for The Occupancy and Resale of Units _____", recorded on _____ [Project Name], 20____, under Reception No. _____, in the real property records of the City and County of Denver, Colorado (the "Master Covenant").

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

1. Acknowledges that Buyer has carefully read the entire Affordable Housing Covenant ("Covenant"), that applies to the property and 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. Acknowledges the Covenant **voids title passage** if a transfer is attempted which is non-compliant with the affordability restrictions in the Covenant. The failure to transfer for a restricted price and to an eligible household under the Covenant means title is not transferred (void) and the buyer has no title or ownership of the property.
3. Acknowledges that, before selling this affordable home in the future, it is mandatory that approval is obtained **in writing** from the City and County of Denver, Office of Economic Development, 201 West Colfax Ave., Dept. 204, Denver, Colorado 80202.
4. Acknowledges that the terms of the Covenant restrict the resale price and profits may be required to be shared after the termination of this Covenant. Maximum resale price and profit share information are available only from the City and County of Denver.

5. Acknowledges that the terms of the Covenant restrict purchasers to households earning no more than 80% of Area Median Income (“AMI”). Allowable income maximums are available only from the City and County of Denver.

6. Acknowledges that the City and County of Denver may recover as financial penalty all amounts overpaid to the seller and require the purchaser to sell the property for the affordable price to an eligible household. The City’s recovery of a penalty does not limit any action a buyer or other injured party may have to recover their damages from the seller.

7. Acknowledges that the terms of the Covenant prohibit rentals except in limited circumstances. Exceptions to rental require the written approval of the City and County of Denver.

8. Acknowledges that the City and County of Denver may recover as financial penalty all rents paid for and require the purchaser to sell the property for the affordable price to an eligible household. The City’s recovery of a penalty does not limit any action a tenant or other injured party may have to recover their damages from the landlord.

9. Notice to Buyer, pursuant to Subsection _____ of the [Master] Covenant, should be sent to:

10. In addition to the above, the City and County of Denver may seek any remedy allowed to it for violations of Article V, Chapter 27, Denver Revised Municipal Code (including any adopted rules and regulations) or the Covenant.

11. 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 Community Planning and Development Agency.

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