

PREPARED BY AND AFTER
RECORDING PLEASE RETURN TO:

Department of Housing Stability
201 W. Colfax Ave., Dept. 615
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 MGL Partners, LLC, a Colorado limited liability company (“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 Department of Housing Stability, 201 W. Colfax Avenue, Department 615, Denver, CO 80202 (“City”).

RECITALS:

- A. Owner is the owner of certain property located at 1091 S Parker Rd/7400 E Mississippi Ave and more particularly described on **Exhibit A** hereto (the “Subject Property”).
- B. In connection with the proposed rezoning of the Subject Property contemplated by Application No. 201000159 with the City (the “Rezoning”) and in satisfaction of linkage fee requirements set forth in Chapter 27 of the Denver Revised Municipal Code (“DRMC”), the Owner has agreed to construct certain affordable housing on the Subject Property, as described herein.

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

1. Owner agrees that at least 15% of all residential units constructed on the Subject Property will, for a period of sixty (60) years be income-restricted units (“IRUs”). All IRUs will be restricted to households earning 80% or less of Area Median Income.
2. Owner agrees to construct and market the IRUs concurrently with or prior to any market rate dwelling units on the Subject Property; provided, however, that the foregoing will not prohibit or limit Owner from entering into leases for market-rate residential dwelling units so long as its construction and marketing efforts are consistent with this Section 2.
3. Owner will offer, or cause to offer, the IRUs for sale or rent 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, as in effect as of the date of this Agreement. IRUs may be eligible for reduced parking requirements in accordance with any applicable provisions of the Denver Zoning Code. Subject to Owner’s compliance with this Agreement and the proposed development’s consistency with the City’s adopted plans and policies, the Department of Housing Stability will, in good faith, consider

Owner's requests for support of, including without limitation submitting letters of support for, Owner's efforts with respect to applications for bonds, tax credits, property tax exemptions and other financial and entitlement matters with respect to the development of the IRUs; provided, however, this consideration by the City is not an obligation to provide support.

4. The parties agree that prior to and as a condition of the issuance of the first building permit on the Subject Property for any building that contains IRUs, Owner will record, at Owner's election, either a Covenant in the form attached to this Agreement as **Exhibit B** (for rent) or a Master Covenant in the form attached to this Agreement as **Exhibit C** (for-sale), which will run with the land and encumber the building on the Subject Property for the Affordable Period in order to ensure that the applicable rent or sale price limitations, as applicable, occupancy limitations and administrative requirements for the IRUs are met; provided, however, that in the case of for rent IRUs, in no event shall such covenant designate which individual units will be marketed and leased as IRUs so long as the overall rent limitations, occupancy limitations and administrative requirements for the IRUs, as set forth in this Agreement, are met.

5. Any exceptions to assessment and payment of linkage fees provided as a result of this Agreement shall apply only to residential development within the Subject Property. Assessment of linkage fees shall apply to all non-residential development as if this Agreement did not exist. Without limiting the foregoing, the City acknowledges that Owner is relying upon on the terms and conditions of this Agreement, including without limitation the overall rent limitations, occupancy limitations and administrative requirements for the IRUs, as set forth in this Agreement, in connection with its contemplated development and financing of the Subject Property, and as such, the City and Owner agree that this Agreement qualifies as an exemption under DRMC Sec. 27-154(a). In furtherance of the foregoing, the Department of Housing Stability may, but is not obligated to, support a continued exemption of properties currently subject to DRMC Sec. 27-154(a) in any successor ordinance or other legislation.

6. The parties acknowledge that if any subsidy is received from, and directly funded solely by, the City, additional affordability requirements may be imposed in addition to those set forth herein.

7. The City shall record this Agreement upon execution in the real property records for the City and County of Denver. The parties agree to execute such additional documents, subject to the reasonable approval of the Owner and the City, as may be necessary or required to effectuate the intent and purpose of this Agreement.

8. This Agreement shall encumber the Subject Property for the Affordable Period and except as provided below shall not be amended, modified or released without the express written consent of the City and Owner. The Executive Director of the City's Department of Housing Stability, or the Executive Director's designee, is authorized to execute a release of this Agreement on behalf of the City. In the event Owner wishes to redevelop any buildings in which IRUs are located prior to the expiration of the Affordable Period, then the City and Owner may in good faith renegotiate this Agreement; provided, however, in no event is the City obligated to amend this Agreement.

9. The approval of the Rezoning of the Subject Property is a condition precedent to Owner's obligations under this Agreement. Should the Denver City Council fail to approve the rezoning within three hundred sixty-five (365) days after the date of this Agreement, or should the approved Rezoning Application ultimately be overturned on appeal at any time (as evidenced by a final, non-appealable judicial order), 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. If this Agreement has been voided pursuant to this Section 9 and, prior thereto, the Covenants under Section 4 above have been recorded against the Subject Property, then the City shall execute and record such instruments as may be reasonably requested by Owner in order to terminate and release such Covenants from title to the Subject Property.

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

11. 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, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers, and records related to Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Owner shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Owner to make disclosures in violation of state or federal privacy laws. Owner shall at all times comply with D.R.M.C. 20-276.

12. 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.

13. In the event that no residential units are constructed on the Subject Property, the Owner shall have no obligation to provide IRUs. For purposes of this Agreement, the term "residential dwelling unit" shall mean a "Dwelling Unit" as such term is defined in Section 11.12.2.1.B.1 of the Denver Zoning Code as of the date of this Agreement.

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

[Computer-generated City signature page will be located here]

**EXHIBIT A
LEGAL DESCRIPTION**

Legal Description

1091 S Parker Road/7400 E Mississippi Ave

PARCEL A:
PLOT 5, SECOND ADDITION TO HUGHES MOUNTAIN VIEW SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL B:
A PORTION OF PLOT 6, SECOND ADDITION TO HUGHES MOUNTAIN VIEW SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID LOT WHICH IS 190 FEET NORTHWESTERLY OF THE SOUTHEASTERLY CORNER OF SAID LOT;
THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, 233.40 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT;
THENCE SOUTHWESTERLY, 328.1 FEET TO THE MOST WESTERLY CORNER OF SAID LOT;
THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT, 170.2 FEET;
THENCE NORTHEASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF VACATED MISSISSIPPI DRIVE PURSUANT TO ORDINANCE NO. 192, SERIES OF 1996, RECORDED MARCH 8, 1996 AT RECEPTION NO. 9600030513, DENVER COUNTY RECORDS.

EXCEPT THAT PORTION CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY DEED RECORDED AUGUST 9, 1995 AT RECEPTION NO. 9500096269, DENVER COUNTY RECORDS.

**EXHIBIT B
FORM COVENANT**

[See attached]