

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 Iselo 40<sup>th</sup> Avenue, LLC, a Colorado limited liability company, whose address is 2109 East 9<sup>th</sup> Avenue, Denver, Colorado 80206 (“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 208, Denver, CO 80202 (“City”).

**RECITALS:**

A. Owner is the owner of certain property located at 2535 East 40<sup>th</sup> Avenue (the “Subject Property”) and more particularly described on **Exhibit A** hereto.

B. In connection with the proposed rezoning and development of the Subject Property, 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 the seventy (70) residential units constructed on the Subject Property will, for a period of not less than forty (40) years, be income-restricted units (“IRUs”). IRUs shall be rental units. The IRUs will include the following affordability level restrictions and unit sizes:

- (a) all IRUs shall be offered at “≤ 60% AMI”;
- (b) not less than thirty percent (30%) of the IRUs shall be two (2) bedroom units.



2. Owner has the option to develop market rate units for up to seven (7) acres on the Subject Property prior to development of any IRUs required under this Agreement; however, the City will not issue any building permits for the development of any other market rate units on the remaining acreage of the Subject Property, until building permits have been issued for the IRUs required under this Agreement.
3. Owner will offer the IRUs for 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.
4. 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 a Covenant in the form attached to this Agreement as **Exhibit B**, which will run with the land and encumber the Subject Property for a period of not less than forty (40) years in order to ensure that certain sale price or rent limitations, occupancy limitations and administrative requirements for the IRUs are met.
5. The numbers and types of IRUs designated above presume that the project on the Subject Property will not receive any subsidization from the City to support development of such IRUs. The parties acknowledge that if any such subsidy is received from the City, additional affordability requirements will likely be imposed in addition to those set forth herein.
6. The City shall promptly upon execution record this Agreement in the public records for the City and County of Denver. The parties agree to execute such additional documents as may be necessary or required to effectuate the intent and purpose of this Agreement.
7. This Agreement shall encumber the Subject Property for a period of ninety-nine (99) years from the date of recording hereof and except as provided below shall not be amended, modified or released without the express written consent of the City and County of Denver.
8. 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 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.
9. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
10. 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.
11. In consideration of the Owner's agreement to construct the IRU's described herein, the City shall waive the collection of any linkage fees otherwise due and payable in

connection with the construction of residential units on the Subject Property. The Owner shall remain liable for the payment of any linkage fees with respect to non-residential uses on the Subject Property.

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

Contract Control Number: OEDEV-201948800-00

Contractor Name: Iselo 40th Avenue, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of April 09, 2019.



SEAL

CITY AND COUNTY OF DENVER

ATTEST:

*Debra Johnson*

Debra Johnson, Clerk and Recorder,  
Ex-Officio Clerk of the City and  
County of Denver

By *Michael D. Hancock*  
Michael D. Hancock, Mayor

APPROVED AS TO FORM:

Attorney for the City and County of  
Denver

By *Adam C. Hernandez*  
Adam C. Hernandez, Assistant City  
Attorney

REGISTERED AND COUNTERSIGNED:

By *Brendan J. Hanlon*  
Brendan Hanlon, CFO of Finance

By *Timothy M. O'Brien*  
Timothy M. O'Brien, Auditor



*See Attached*

**Contract Control Number:** OEDEV-201948800-00

**Contractor Name:** Iselo 40th Avenue, LLC

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

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

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

**ATTEST: [if required]**

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


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

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



OWNER:

Iselo 40<sup>th</sup> Avenue,  
a Colorado limited liability company

By:   
Name: Brooke E. Gordon  
Its: President

STATE OF COLORADO            )  
  )ss.  
COUNTY OF DENVER            )

The foregoing instrument was acknowledged before me this \_\_\_ day of April, 2019, by Brooke E. Gordon, as President of Iselo 40<sup>th</sup> Avenue, a Colorado limited liability company.

Notary Signature: Maureen F. Conway  
EXP: 4/12/2021

MAUREEN FRANCES CONWAY  
Notary Public  
State of Colorado  
Notary ID # 19874039231  
My Commission Expires 04-12-2021



**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LEGAL DESCRIPTION  
2535 E. 40<sup>th</sup> Avenue, Denver, CO

Parcel 1:

That part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Twenty-four (24), Township Three (3) South, Range Sixty-eight (68) West of the Sixth (6th) Principal Meridian, described as follows, to-wit:

Beginning at the intersection of the east line of Columbine Street, as described in warranty deed from The Walter S. Cheesman Realty Company to the City and County of Denver, recorded on the 5th day of June, A.D. 1914, in Book 2418 at page 3 of the records in the office of the County Clerk and Recorder, in and for said City and County of Denver, with the north line of Fortieth (40th) Avenue (also known as County Road numbered 34); thence east along the north line of said Fortieth (40th) Avenue, six hundred sixty-seven and twenty- seven hundredths (667.27) feet to the east line of the northwest quarter (NW1/4) of the southwest quarter (SW1/4) of said Section Twenty-four (24); thence northerly at an angle to last described course of eighty-nine degrees, fifty-eight and one-half minutes ( $89^{\circ} 58' 1/2''$ ) and along the east line of said northwest quarter (NW 1/4) of the southwest quarter (SW1/4) of said Section Twenty-four (24) , eight hundred sixty-five and thirty- six hundredths (865.36) feet to the southerly boundary line of the right of way of Union Pacific Railroad Company, formerly Kansas Pacific Railway Company; thence westerly along said right of way line at an angle of eighty-five degrees, fifty-nine minutes ( $85^{\circ} 59'$ ) to the last described course, six hundred sixty-eight and fifty-six hundredths (668.56) feet to the east line of Columbine Street, as described in the deed recorded in book 2418 at page 3 of said City and County of Denver records hereinbefore referred to thence south at an angle of ninety degrees, two and one-half minutes ( $90^{\circ} 2' 1/2''$ ) to the course last hereinbefore described and along the east line of said Columbine Street, eight hundred eighteen and twenty- three hundredths (818.23) feet to the point of beginning, the tract of land hereby conveyed containing twelve and eighty-nine fourteen ten-thousandths (12.8914) acres, together with all right, title and interest, reversionary or otherwise of the parties of the first part in and to the east half of Columbine Street and the north half (N1/2) of Fortieth (40th) Avenue abutting upon the premises hereby conveyed; but subject to that certain right of way granted to the City and County of Denver by an instrument duly recorded in book 1847 at page 320 of the records in the office of the County Clerk and Recorder of the City and County of Denver, being a right of way ten (10) feet in width, for the purpose of constructing a sanitary sewer, the center line of which right of way is described as follows: Commencing at a point sixty (60) feet north and ten (10) feet west of the southeast corner of said northwest quarter (NW1/4) of the southwest quarter (SW1/4) of said Section Twenty-four (24) and running thence north parallel with and ten (10) feet west of the east line of said Quarter (1/4 1/4), seven

hundred seventy (770) feet, more or less, to a point ten (10) Feet west of said east line, where the center line of Forty-second Avenue produced west would intersect the same.

BEING the same property conveyed by deed dated August 8, 1946 from Joseph B. Fleming and Aaron Colnon, Trustees of the Estate of the Chicago, Rock Island and Pacific Railway, to Western Electric Company, Incorporated, and recorded on September 25, 1946 in the City and County of Denver, Colorado. Recorders Office in Book 6118, Page 256.

Excepting therefrom that portion conveyed to Regional Transportation District in Deed recorded November 18, 2014 at Reception No. 2014140862, and those portions as condemned in Rule and Order of the District Court of the City and County of Denver as Recorded March 20, 2013 at Reception No. 2013039606.

City and County of Denver, State of Colorado

Parcel 2:

Lots 17 through 20 inclusive Block 61, First Addition to Swansea, Except those portions as conveyed in deeds recorded in Book 3749 at Pages 129 and 132, City and County of Denver, State of Colorado

Parcel 3:

Lots 17 through 32 inclusive Block 62, First Addition to Swansea, City and County of Denver, State of Colorado

Parcel 4:

Lots 16 through 26 inclusive Block 63 , First Addition to Swansea, City and County of Denver, State of Colorado

Parcel 5:

Those portions of 41st Avenue and. 42nd Avenue from. the West line of Clayton Street to the West line of First Addition to Swansea and an alley consisting of the East fifteen feet of the Northwest one-quarter of the Southwest one-quarter of Section 4, Township Three South, Range 68 West of the Sixth Principal Meridian, from the North line of 40th Avenue to the Southerly line of the right of way of the Union Pacific Railroad Company; as vacated by Ordinance No. 168, series of 1968 Recorded May 31, 1968 in Book 9885 Page 590, City and County of Denver, State of Colorado.



**EXHIBIT B  
FORM COVENANT**

(See attached.)

**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

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**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 seventy (70) units within the Subject Property will be 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. All seventy (70) of the Income Restricted Units 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. All seventy (70) of the 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 recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

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 \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

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

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