

PREPARED BY AND AFTER  
RECORDING PLEASE RETURN TO:  
Department of Housing Stability  
201 W. Colfax Ave., Dept. 615  
Denver, CO 80202  
Attention: \_\_\_\_\_

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**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 **4295 INCA ST LLC** (“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 4295 Inca Street, Denver, Colorado (the “Subject Property”) and more particularly described as follows:

LOTS 24 TO 30, INCLUSIVE,  
BLOCK 14 VIADUCT ADDITION TO DENVER,  
CITY AND COUNTY OF DENVER,  
STATE OF COLORADO

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 12.5% of all residential units constructed on the Subject Property will, for a period of sixty (60) years, be income-restricted units (“IRUs”). The IRUs will be restricted to households earning 80% or less of Area Median Income. 20% of all IRUs will have 2 or more bedrooms.
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 will 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.

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 rental IRUs, Owner will record a For Rent Covenant (the "For Rent Covenant") in substantially similar form as attached to this Agreement as **Exhibit A**, which will run with the land and encumber the building on the Subject Property for a period of not less than sixty (60) years in order to ensure that certain rent limitations, occupancy limitations and administrative requirements for the IRUs are met.

AND

The parties agree that prior to the recordation of a condominium declaration for any building on the Subject Property that contains for sale IRUs, Owner will record a For Sale Covenant (the "For Sale Covenant") in substantially similar form as attached to this Agreement as **Exhibit A**, which will run with the land and encumber the building on the Subject Property for a period of not less than sixty (60) years in order to ensure that certain sale price limitations, occupancy limitations and administrative requirements for the IRUs are met. The For Rent Covenant and the For Sale Covenant are collectively referred to herein as the "Covenants."

5. Any exceptions to assessment and payment of linkage fees or applicable incentive requirements provided as a result of this Agreement shall apply only to residential development within the Subject Property. Assessment of linkage fees and applicable incentive overlay requirements shall apply to all non-residential development as if this Agreement did not exist.

6. The numbers and types of IRUs designated above presume that the project on the Subject Property will not receive any subsidy 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.

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 as may be necessary or required to effectuate the intent and purpose of this Agreement.

8. This Agreement shall encumber the Subject Property from the date of recording hereof and, except as provided below, shall not be amended or modified without the express written consent of the City and County of Denver and the Owner or Owner's successors and assigns. 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.

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 and sixty-five days (365) 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.

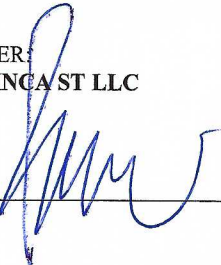
10. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. In the event the Owner sells the Subject Property (which does not include the transfer or sale of the Subject Property's individual IRUs), the Owner's successor or assign shall take title of the Subject Property subject to and be bound by this Agreement and the Covenants and in such event, the Owner shall be released from all obligations under this Agreement and the Covenants.

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.

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

OWNER:  
4295 INCA ST LLC

By: 

STATE OF COLORADO            )  
  )ss.  
COUNTY OF DENVER         )

The foregoing instrument was acknowledged before me this 16 day of July 2021 by  
Billy Wang, as owner of 4295 INCA ST LLC.

Notary Signature: 

**MELISA HERNANDEZ SANCHEZ**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20194027648**  
**MY COMMISSION EXPIRES 07/22/2023**