

**[Note: Please format exhibit plans to be legible for recording purposes when reduced to letter size paper and scanned in black and white. Consider dividing plans over multiple pages and adding pages showing plan notes and other elements enlarged to show detail.]**

Prepared By:

Premises:

**[Note: For recording purposes, include street address to aid in indexing by street address.]**

**[Note: For recording purposes, the date of the document must be the date of the earliest acknowledgment.]**

### **DECLARATION OF AFFORDABLE HOUSING COVENANTS**

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (“Declaration”) is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, (“Declarant”), having an address of \_\_\_\_\_ in favor of the City of Philadelphia (“City”).

#### **BACKGROUND**

- A. In furtherance of the public policy of increasing the amount and distribution of affordable housing stock in the City, the Philadelphia Code (the “Code”) provides, in Section 14-702(7), for a Mixed Income Housing Bonus (the “Mixed Income Housing Bonus”).
- B. The Mixed Income Housing Bonus allows an owner to earn the right to construct significant additional floor area, building height or housing unit density by providing certain affordable housing, limited in time, all in accordance with the Code.
- C. Declarant is the fee owner of certain real estate located in Philadelphia, Pennsylvania known as \_\_\_\_\_ which is more fully described on **Exhibit A** attached hereto and made a part hereof (the "Property"). Declarant desires to develop housing on the Property meeting the requirements of the Mixed Income Housing Bonus provisions of the Code.

- D. Declarant has received zoning permit(s) number \_\_\_\_\_ from the City of Philadelphia Department of Licenses and Inspections for the Property and is applying for one (1) or more Building Permits and other permits and approvals for the Property, all based upon the benefits of the **[Inset Bonus Level and Type]** bonus provisions of the Mixed Income Housing Bonus.
- E. Declarant is required to remain in compliance with all applicable federal, state, and local laws and the covenants and restrictions of this Declaration, for the continued validity and issuance of permits and approvals.
- F. Declarant desires to earn the benefits of the **[Inset Bonus Level and Type]** bonus provisions of the Mixed Income Housing Bonus and to agree to, and subject the Property to, the covenants and restrictions of this Declaration.

## **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, intending to be legally bound, hereby agrees, commits, and declares as follows:

## **ARTICLE 1 DEFINITIONS**

In this Declaration, the words and phrases listed below are defined as follows:

“Affordable Owner-Occupied Units” has the meaning given it in Section 7.1.

“Affordable Rental Units” has the meaning given it in Section 6.1.

“AMI” shall mean Area Median Income, adjusted for household size, as reported by the United States Department of Housing and Urban Development for the Philadelphia Metropolitan Statistical Area.

“City” has the meaning given it in in the first Paragraph of this Declaration.

“Code” has the meaning given it in in Background Section A.

“Compliance Period” has the meaning given it in Section 5.1.

“Declarant” has the meaning given it in the first Paragraph of this Declaration.

“Declaration” has the meaning given it in the first Paragraph of this Declaration.

“Expected Occupancy” shall mean the imputed household size for determining unit affordability and occupancy requirements and shall be equal to one and one-half (1.5) people per each bedroom in the unit, except for studios and efficiencies, for which the imputed household size is one (1) person.

“Gross Rent” has the meaning given it in Section 6.4.

“Household” shall mean every person who resides or intends to reside in the unit, regardless of age, dependency status, or relationship.

“Maximum Sale Price” or “Maximum Resale Price” has the meaning given it in section 7.3.

“Mixed Income Housing Bonus” has the meaning given it in Background Section B.

“Mortgagee” shall mean the holder of any mortgage on an Affordable Owner-Occupied Unit. with such interested recorded with the City of Philadelphia Department of Records.

“Owner-Occupied Requirements” has the meaning given it in Section 7.1.

“Principal Residence” has the meaning given it in Sections 6.3 and 7.4.

“Property” has the meaning given it in Background Section A.

“Rental Requirements” has the meaning given it in Section 6.1.

“Transferee” has the meaning given it in Section 7.10. 9

“Tenant Voucher” has the meaning provided in Section 6.4.

## **ARTICLE 2 CONSTRUCTION OF MIXED INCOME DEVELOPMENT**

2.1 Construction of Mixed Income Development. Declarant hereby covenants and agrees to develop the Property with housing meeting the Mixed Income Housing Bonus requirements of the Code, in accordance with the Zoning Permits, Building Permits and other permits and approvals issued for the Property in connection with the Mixed Income Housing Bonus, and in accordance with this Declaration.

**ARTICLE 3  
DECLARATION; SUBJECT UNITS**

3.1 Declaration; Subject Units. Declarant hereby declares that the units of the Property described in **Exhibit B**, attached hereto and incorporated by reference, are and shall be subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the mixed income development of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value of the Property and further for the purpose of increasing the amount and distribution of the City's affordable housing stock.

**ARTICLE 4  
PARTIES BOUND; RIGHTS TO ENFORCE**

4.1 Parties Bound; Rights to Enforce. The covenants and restrictions on the use and enjoyment of the Property in this Declaration shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit of the City, its assignees or designees, shall run with the land with respect to the Property and be binding on any future owners of the Property, and inure to the benefit of and be enforceable by the City.

**ARTICLE 5  
COMPLIANCE PERIOD; REQUIRED USE FOR AFFORDABLE HOUSING**

5.1 Compliance Period; Required Use for Affordable Housing. Declarant covenants and agrees that during a period beginning on the date of this Declaration and ending not less than fifty(50) years from the last Certificate of Occupancy issued by the City of Philadelphia Department of Licenses and Inspections for residential dwelling units within the Property upon its initial construction (the "Compliance Period"), it will develop, construct and operate the Property, and will cause the units of the Property described in **Exhibit B** to be used for affordable housing, all in accordance with the Code, Zoning Permits, Building Permits and this Declaration.

5.2 Phasing. The Declarant shall cause the completion of construction of affordable units such that the number of temporary or final certificates of occupancy issued for affordable units shall be greater than or equal to 10% of the total number of temporary and final certificates of occupancy issued for dwelling units, or shall be in compliance with any phasing plan approved by the City of Philadelphia Department of Planning in Development, provided the Compliance Period shall remain as stated in subsection 5.1 above.

5.3 Evidence of Compliance and Modification of Plans. The City shall consider Declarant's execution of this Declaration and the recordation of a memorandum thereof with the City of Philadelphia Department of Records as sufficient evidence that Declarant has complied with the Mixed Income Housing Bonus provision of the Code applicable to **[Insert Bonus Level]** Income levels of affordability for the purpose of the City issuing building permits for the Property, subject to the terms of this Declaration, and provided that any proposed changes to the scope of the Development described in this Declaration shall be subject to the Code in effect at the time of such proposed changes.

## **ARTICLE 6 RENTAL OF AFFORDABLE UNITS**

6.1 Affordable Rental Units. With respect to units described in **Exhibit B** to be rented as affordable units in compliance with the Code ("Affordable Rental Units"), the requirements of this Article VI ("Rental Requirements") apply at all times prior to the expiration of the Compliance Period.

6.2 Household Occupancy. Each Affordable Rental Unit must be occupied by a Household whose annual income does not exceed sixty percent (60%) of the AMI for Moderate Income units or fifty percent (50%) of the AMI for Low Income units at the time of the Household's initial occupancy of the unit. At no time shall the Affordable Rental Units be occupied by households whose annual income exceeds 120% of the AMI for Moderate Income units and 100% of the AMI for Low Income Units. A Household may consist of one (1) person living independently or a group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons who are unrelated by blood, marriage, adoption, or foster-child status, or are not life partners as defined by the Philadelphia Code.

6.3 Principal Residence. The Household occupying the Affordable Rental Unit must use the unit as a Principal Residence. "Principal 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 Principal Residence, the following circumstances relating to the tenant of the residence shall 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.

6.4 The contract rent plus utilities or utility allowance of an Affordable Rental Unit ("Gross Rent"), shall not exceed thirty percent (30%) of the income of a Household at sixty percent (60%) of the AMI for Moderate Income units and fifty percent (50%) of the AMI for Low Income units, adjusted for Expected Occupancy. Declarant must be able to document the utility allowance deducted from the tenant's Gross Rent during an audit. Two established tools for calculating the utility allowance are available from HUD, or through the Philadelphia Housing Authority's Housing Choice Voucher Program. Declarant is not required to utilize either of these tools but must be able to establish the methodology utilized. Notwithstanding the foregoing, if an

Affordable Rental Unit is rented to a Household with a voucher or rental subsidy program (“Tenant Voucher”), the contract rent may, for such period that the Tenant Voucher is in effect, exceed the maximum rent otherwise permitted by this Section 6.4, as may be determined, and permitted by the administering housing authority.

6.5 Lease Term. The lease term for each Affordable Rental Unit shall be for a period of only one (1) year and shall be renewed only in accordance with the provision of this Declaration. All adults in a Household occupying an Affordable Rental Unit must appear on the lease except for the legal dependents of leaseholders as claimed on the most recent federal income tax return or legal minor children of leaseholders.

6.6 No Sublease or Assignment. A Household occupying an Affordable Rental Unit shall not sublease any Affordable Rental Unit or assign its lease to any other unit.

6.7 Comparable Quality. Affordable Rental Units shall be of comparable quality, in terms of the size, design, exterior appearance, energy efficiency, and overall construction, as units on the Property that are not Affordable Rental Units. This requirement shall apply to any maintenance or renovations performed during the Compliance Period. Where the quality of units on the Property that are not Affordable Rental Units varies from unit to unit in terms of the size, design, exterior appearance, energy efficiency, and overall construction, the quality of Affordable Rental Units shall vary substantially to the same degree. Affordable Rental Units may have interior finishes and features that are functionally equivalent to those units on the Property that are not Affordable Rental Units, so long as those finishes and features are durable, of good and new quality and consistent with any further standards the City of Philadelphia Department of Planning and Development may establish.

6.8 Equal Use and Enjoyment. Households occupying Affordable Rental Units shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided as Households occupying units that are not Affordable Rental Units. No restrictions, requirements or rules shall be imposed on Households occupying Affordable Rental Units that are not imposed equally on the Households occupying units that are not Affordable Rental Units. If amenities, services, upgrades, rental of parking or other facilities are offered as an option at an additional upfront or recurring cost or fee to Households occupying units that are not Affordable Rental Units, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Households occupying Affordable Rental Units at the same upfront and or recurring cost or fee. If there is no cost or fee charged to Households occupying units that are not Affordable Rental Units for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to Households occupying Affordable Rental Units.

6.9 Audit Rights of City. The City or its designee shall have the right to conduct audits of the information related to Affordable Rental Units and associated files and documentation to confirm compliance with Rental Requirements.

6.10 Annual Certification. Declarant must submit to the City of Philadelphia Department of Planning and Development annually, a certification that it continues to comply with the restrictions of the Rental Requirements. The certification shall be submitted on or with such documentation as may be reasonably prescribed by the City, which may include third party verification.

6.11 Lease Requirements. Declarant must include within the lease agreement, or as a rider to the lease agreement, for each Affordable Rental Unit, an acknowledgment of the Rental Requirements of this Declaration and an acknowledgment that the Affordable Rental Unit will no longer be subject to this Declaration should the lease terminate after the Compliance Period has expired.

6.12 City Remedies; Rental License. In the event the Declarant has failed to comply with the covenants and restrictions contained herein, the Declarant shall have one (1) year after notification by the City to bring any affordable rental unit deemed non-compliant into compliance. In the event, the Declarant remains in non-compliance with the provisions of this Declaration after one (1) year, the City of Philadelphia Department of Licenses and Inspections may refuse to issue a Rental License and the City may pursue any remedy afforded by this Declaration to enforce the covenants and restrictions of this Declaration without limiting the remedies and enforcement rights of the City under the Code and other applicable law.

6.13 Sale of Affordable Rental Units. During the Compliance Period, Declarant shall not offer any Affordable Rental Units for sale or otherwise convert such units to owner-occupied units without the prior written consent of the City.

## **ARTICLE 7 SALE OF AFFORDABLE UNITS**

7.1 Affordable Owner-Occupied Units. With respect to units described in **Exhibit B** to be sold or resold as units in compliance with the Code (“Affordable Owner-Occupied Units”), the requirements of this Article VII (“Owner-Occupied Requirements”) apply at all times prior to the expiration of the Compliance Period.

7.2 Household Occupancy. Each Affordable Owner-Occupied Unit must be sold or resold to a Household whose annual income does not exceed eighty percent (80%) of the AMI for Moderate Income Owner-Occupied units and seventy percent (70%) of the AMI for Low Income Owner-Occupied units. A Household may consist of one (1) person living independently or a group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons who are unrelated by blood, marriage, adoption, or foster-child status, or are not life partners as defined by the Philadelphia Code.

7.3 Maximum Sale or Resale Price. The maximum sale or resale price (the “Maximum Sale Price” and Maximum Resale Price” respectively) of each Affordable Owner-Occupied Unit may not exceed a price calculated on the basis of a down payment of no more than five percent (5%), an annual debt service on a mortgage (consistent with monthly average 30-year fixed interest rate published from time to time by Freddie Mac or another source deemed acceptable by the Department of Planning and Development should Freddie Mac cease publication), and total monthly costs, including property taxes, property insurance, condominium fees and homeowner association fees, that do not exceed thirty percent (30%) of the gross monthly income of a Household at eighty percent (80%) of the AMI for the Moderate-Income Owner-Occupied units and seventy percent (70%) of the AMI for the Low-Income Owner-Occupied units, adjusted for Expected Occupancy.

7.4 Principal Residence. At least one (1) particular person in the Household who owns the Affordable Owner-Occupied Unit must use the Affordable Owner-Occupied Unit as a Principal Residence. Failure to so use the Affordable Owner-Occupied Unit may result in the forced sale of the Affordable-Occupied Unit to persons at or below the maximum sales price, as described above. “Principal 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 Principal Residence, the following circumstances relating to the owner of the residence shall 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.

7.5 No Rental. An Affordable Owner-Occupied Unit may not be used as a rental property. Any part, room or the entirety of the Affordable Owner-Occupied Unit may not be leased or subleased.

7.6 Right of First Refusal. Declarant or the future owner of an Affordable Owner-Occupied unit shall provide the City a right of first refusal to purchase each Affordable Owner-Occupied Unit. Declarant or any future owner of an Affordable Owner-Occupied unit shall provide the City with ninety (90) days' written notice of any sale and shall provide the City written notice of any foreclosure of an affordable unit within seven (7) days of receipt of a foreclosure notice.

7.7 Comparable Quality. Affordable Owner-Occupied Units shall be of comparable quality, in terms of the size, design, exterior appearance, energy efficiency, and overall construction, as units on the Property that are not Affordable Owner-Occupied Units. Where the quality of units on the Property that are not Affordable Owner-Occupied Units vary from unit to unit in terms of the size, design, exterior appearance, energy efficiency, and overall construction, the quality of Affordable Owner-Occupied Units shall vary substantially to the same degree. Affordable Owner-Occupied Units may have interior finishes and features that are functionally equivalent to those units on the Property that are not Affordable Owner-Occupied Units, so long as those finishes and features are durable, of good and new quality and consistent with any further standards the City of Philadelphia Department of Planning and Development may establish.



7.8 Equal Use and Enjoyment. Affordable Owner-Occupied Unit owners shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided as owners of units that are not Affordable Owner-Occupied Units. No restrictions, requirements or rules shall be imposed on owners of Affordable Owner-Occupied Units that are not imposed equally on the owners of units that are not Affordable Owner-Occupied Units. If amenities, services, upgrades, ownership or rental of parking or other facilities are offered as an option at an additional upfront or recurring cost or fee to owners of units that are not Affordable Owner-Occupied Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the owners of Affordable Owner-Occupied Units at the same upfront and or recurring cost or fee. If there is no cost or fee charged to owners of units that are not Affordable Owner-Occupied Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to owners of Affordable Owner-Occupied Units.

7.9 Audit Right of City. The City or its designee shall have the right to conduct audits of the information related to Affordable Owner-Occupied Units and associated files and documentation to confirm compliance with the Owner-Occupied Requirements.

7.10 Deed Requirements. All deeds used to convey an Affordable Owner-Occupied Unit until the expiration of the Compliance Period shall include the following statement on the front page of the deed:

This Deed is delivered and accepted subject to the provision and conditions set forth in the certain Declaration of Affordable Housing Covenants, dated as of \_\_\_\_\_, 20\_\_\_\_, and recorded among the real property records for the City of Philadelphia, Pennsylvania, located in the Department of Records as instrument number\_\_\_\_\_, on \_\_\_\_\_ 20\_\_\_, which among other things imposes restrictions on the sale and conveyance of the subject property.

Failure to include the statement above on any deed, however, shall not in any way impair the enforceability of this Declaration against the subject property or otherwise.

7.11 Additional Documents. Declarant, any future owner of a unit specified in **Exhibit B**, and the City will execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Declaration and the Mixed Income Housing Bonus section of the Code (Section 14-702(7)), provided that such additional documents and instruments do not materially increase the obligations or burdens upon other parties.

7.12 Transfers. In the event an Affordable Owner-Occupied Unit owner voluntarily or involuntarily transfers all or part of the Affordable Owner-Occupied Unit pursuant to operation of law, court order, divorce or death, to a transferee, heir, devisee or personal representative of such owner of an Affordable Owner-Occupied Unit (each a “Transferee”), such Transferee shall be automatically bound by all of the terms, obligations and provisions of this Declaration; and shall either: (a) occupy the Affordable Owner-Occupied Unit, or (b) if the Transferee does not wish or is unable to occupy the Affordable Owner-Occupied Unit, he or she shall sell it in accordance with this Declaration and the Code.

## **ARTICLE 8 DECLARATION BINDING ON SUCCESSORS AND ASSIGNS**

8.1 Declaration Binding on Successors and Assigns. This Declaration is and shall be binding upon the Property and each Affordable Rental Unit and Affordable Owner-Occupied Unit and shall run with the land for the Compliance Period. The rights and obligations of the City, Declarant, tenants of Affordable Rental Units and owners of Affordable Owner-Occupied Units and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns. All rights of the City pertaining to the monitoring or enforcement of the obligations of the Declarant, tenants of Affordable Rental Units, and owners of Affordable Owner-Occupied Units under this Declaration shall be retained by the City, its designee or assignee. No sale, transfer or foreclosure shall affect the validity of this Declaration.

## **ARTICLE 9 MORTGAGES**

9.1 Subordination of Mortgages. All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Declaration until the earlier of the expiration of the Compliance Period or the termination of this Declaration.

9.2 Amount of Mortgage. In no event shall the aggregate amount of all Mortgages placed against an Affordable Owner-Occupied Unit exceed the Maximum Resale Price for such unit.

9.3 Notice of Default. All financing documents for a Mortgage for an Affordable Owner-Occupied Unit shall provide that a Mortgagee shall provide to the City written notice of any uncured delinquency or other uncured default under the Mortgage and that the City shall have the right to designate an agency or a third person to cure such delinquency or other event of default within a period of forty-five (45) days immediately after receipt by the City of such notice.

9.4 Foreclosure.

(a) In the event any Mortgagee of an Affordable Owner-Occupied Unit intends to initiate a foreclosure proceeding against such unit, the Mortgagee shall first notify the City in

writing of its intent to do the same, at least forty-five (45) days prior to the initiation of any proceeding relating to such unit, and shall include in its notice the amount of the unit owner's outstanding financial obligations to such Mortgagee as of the date of the notice (the "Foreclosure Notice"). A Mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a Mortgage on an Affordable Owner-Occupied Unit shall notify the City in writing not later than forty-five (45) days prior to the date of the foreclosure sale.

(b) To the extent the Property includes Affordable Owner Occupied Units, the City or its designee shall have the right to purchase any and all such units in the event of a foreclosure for the amount of the debt secured by the Mortgage against the subject unit(s) not to exceed the Maximum Resale Price for such unit(s). In the event of foreclosure of any such unit, this Covenant shall not be released, and the Mortgagee or any person who takes title to such unit through a foreclosure sale shall become a Transferee in accordance with Section 7.10. All proceeds of a foreclosure sale of such unit available for distribution shall be distributed as follows: (i) to the Mortgagee in an amount not to exceed the aggregate of all amounts due under the Mortgage; (ii) to the owner of the Affordable Owner Occupied Unit in an amount not to exceed the Maximum Resale Price, and (iii) all remaining proceeds shall be paid to the Philadelphia Housing Trust Fund.

(c) To the extent the Property includes Affordable Rental Units, in the event of a foreclosure of the Property, or any portion thereof, this Declaration shall not be released and the Mortgagee or any person who takes title to the Property, or foreclosed portion thereof, shall be obligated to comply with the provisions of this Declaration.

9.5 Estoppel Certificates. Upon request by any Mortgagee, the City shall promptly provide a commercially reasonable estoppel certificate confirming that Declarant or the current owner of the Property is in compliance with the terms of this Declaration.

## **ARTICLE 10 AMENDMENT OF DECLARATION**

### 10.01 Amendment of Declaration.

(a) Neither this Declaration, nor any part hereof, may be amended, modified or released other than as provided herein by an instrument in writing executed by or on behalf of the City, and by a duly authorized representative of the Declarant.

(b) Any amendment to this Declaration that alters the terms and conditions set forth herein shall be recorded in the City of Philadelphia Department of Records before it shall be deemed effective.

**ARTICLE 11**  
**DEFAULT; ENFORCEMENT AND REMEDIES**

11.1 Regulatory Authority and Police Powers. Nothing in this Declaration shall limit the City in the exercise of its regulatory authority and police powers, and its enforcement rights under the Code, the Zoning Permits, Building Permits, other permits and approvals, and other applicable law.

11.2 Compliance with and Enforcement of Restrictions.

(a) Without limiting the rights of the City described in Section 11.1 above, the City shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof. In addition to any other remedies to which it may be entitled to under law or in equity, the City shall be entitled to specific performance of the covenants and restrictions contained herein.

(b) The City shall not exercise any remedy available to it under this Section 11.2 until notice has been given to Declarant, tenant of an Affordable Rental Unit, or owner of an Affordable Owner-Occupied Unit, as the case may be, and such party has failed to comply with the covenants and restrictions contained herein within thirty (30) days from the date on which the notice is given.

11.2 Costs and Attorney's Fees. In any proceeding arising because of the failure of Declarant or any future owner of the Property to comply with the covenants and restrictions required by this Declaration, as may be amended from time to time, the City shall be entitled to recover costs and reasonable attorney's fees incurred in connection with such default or failure.

**ARTICLE 12**  
**NOTICES**

12.1 Method of Delivery and Addresses. Any notices given under this Declaration shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable person at the addresses identified in this Article, or to such other persons or locations as may be designated by the City or Declarant from time to time.

12.2 All notices to be sent to the City shall be sent to the following address:

Department of Planning and Development  
1515 Arch St.  
Philadelphia, PA, 19102  
Attention: Director

With a copy to:  
Department of Licenses and Inspections  
1401 John F. Kennedy Blvd.  
Philadelphia, PA, 19102  
Attention: Commissioner

And a copy to:  
Law Department  
1515 Arch St.  
Philadelphia, PA, 19102  
Attention: City Solicitor

12.3 All notices to be sent to the Declarant shall be sent to the following address:

**[Insert Address]**

12.4 All notices to be sent to an owner of an Affordable Owner-Occupied Unit shall be sent to the address on record with the Office of Property Assessment.

12.5 All notices to be sent to any Affordable Rental Unit tenant shall be sent to the unit number referenced in its lease.

12.6 Deemed Delivery Dates. Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage prepaid, then on the date of actual delivery or refusal thereof.

### **ARTICLE 13 APPROVALS BY CITY; SUBMISSIONS TO CITY**

13.1 Validity of City Approval. Unless otherwise stated expressly in this Declaration, any review, approval, permission, or consent that Declarant is required to obtain from the City under this Declaration will not be valid or effective unless obtained in writing from the City or the City's official's designee.

### 13.2 Effect of Reviews and Approvals.

(a) The City's review, approval, or consent under this Declaration of any plans, specifications, work or materials submitted or performed by Declarant, including but not limited to plans and specifications, does not constitute any representation, warranty, or guarantee by the City as to the quality or substance of the matter reviewed or approved or its compliance with the Code or other applicable laws. Tenant must use its own independent judgment as to the accuracy and quality of all such matters and their compliance with the Code or other applicable laws. The City shall incur no liability in connection with the review of any submissions required under this Declaration as its review is solely for the purpose of protecting the City's interest under this Declaration.

(b) The City's review, approval, or consent under this Declaration is not a review, approval, consent, license or permit otherwise required under the Code or other applicable laws by any departments, boards, commissions, and officials of the City of Philadelphia that are outside the scope of this Declaration.

## **ARTICLE 14 MISCELLANEOUS**

14.1 Waiver. Neither Declarant nor any future owner of the Property may exempt itself from liability for failure to comply with the covenants and restrictions required in this Declaration.

14.2 Declarant or any Future Owner's Limitation on Liability. Provided that the Declarant or any future owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Declarant or future owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Declaration. Notwithstanding the foregoing, the Declarant or any future owner shall be liable if the Declarant or future owner has knowledge that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Declaration.

14.3 Termination. Once the Compliance Period has expired, the covenants and restrictions imposed upon the Property by this Declaration shall become null and void and of no further force or effect. The termination of the covenants and restrictions shall be self-operative and shall not require the execution and recordation of any additional documents, provided, however, that upon the request of Declarant, the City shall execute and record a document confirming the foregoing termination of the Declaration.

14.4 Benefit. This Declaration shall run and bind the Property for a term commencing on the date of this Declaration and expiring after the expiration of the Compliance Period. The failure or delay at any time of the City or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

14.5 No Third Party Beneficiaries. There are no beneficiaries of this Declaration other than the City. No person other than the City, its designee or assignee, shall have standing to bring an action for enforcement of the provisions of this Declaration.

14.6 Severability. The invalidity of the covenants and restrictions or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

14.7 Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof. This Declaration shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflicts of law.

14.8 Recording. This Declaration must be recorded in the City of Philadelphia Department of Records by the Declarant, at its own expense, in order to comply with the provisions of the Code. Failure to record this Declaration will result in the City not issuing the Building Permit.

14.9 Waiver of Jury Trial. Declarant, so far as permitted by applicable laws, expressly, knowingly, voluntarily, and intentionally, waives trial by jury in any action, proceeding, or counterclaim arising out of or in any way related to this Declaration. The Declarant has consulted with legal counsel and understands that by agreeing to this waiver it is giving up an important right it has under law.

14.10 Representations of Declarant. Declarant hereby represents and warrants to the City as follows:

- (a) Declarant is the fee owner of the Property;
- (b) This Declaration has been duly executed and delivered by the Declarant and constitutes the legal, valid, and binding obligation of the Declarant, enforceable against the Declarant, and its successors and assigns, in accordance with its terms;
- (c) Neither the entering into of this Declaration nor performance hereunder will constitute or result in a violation or breach by the Declarant of any agreement or order which is binding on the Declarant; and
- (d) To the extent the Declarant is an entity, the Declarant (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Pennsylvania, (ii) is authorized to perform under this Declaration and (iii) has all necessary power to execute and deliver this Declaration.

14.11 Background. The Background of this Declaration is hereby incorporated into the terms of this Declaration as if set forth in full herein.

*[Signatures Appear on Following Pages]*

SAMPLE



IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

**DECLARANT**

By: \_\_\_\_\_  
Name: **[Insert Name]**  
Title: **[Insert Title]**

AGREED TO AND ACCEPTED BY:  
The City of Philadelphia

By: \_\_\_\_\_  
Name: Anne Fadullon  
Title: Director of Planning and Development

APPROVED AS TO FORM BY:  
The City of Philadelphia Law Department  
By: \_\_\_\_\_  
Name: **[Insert Name]**  
Title: **[Insert Title]**

SAMPLE

**Acknowledgment Forms**

[Entity – Individual Signing on Behalf]

COMMONWEALTH OF PENNSYLVANIA: :  
: ss.  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by himself/herself as such \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

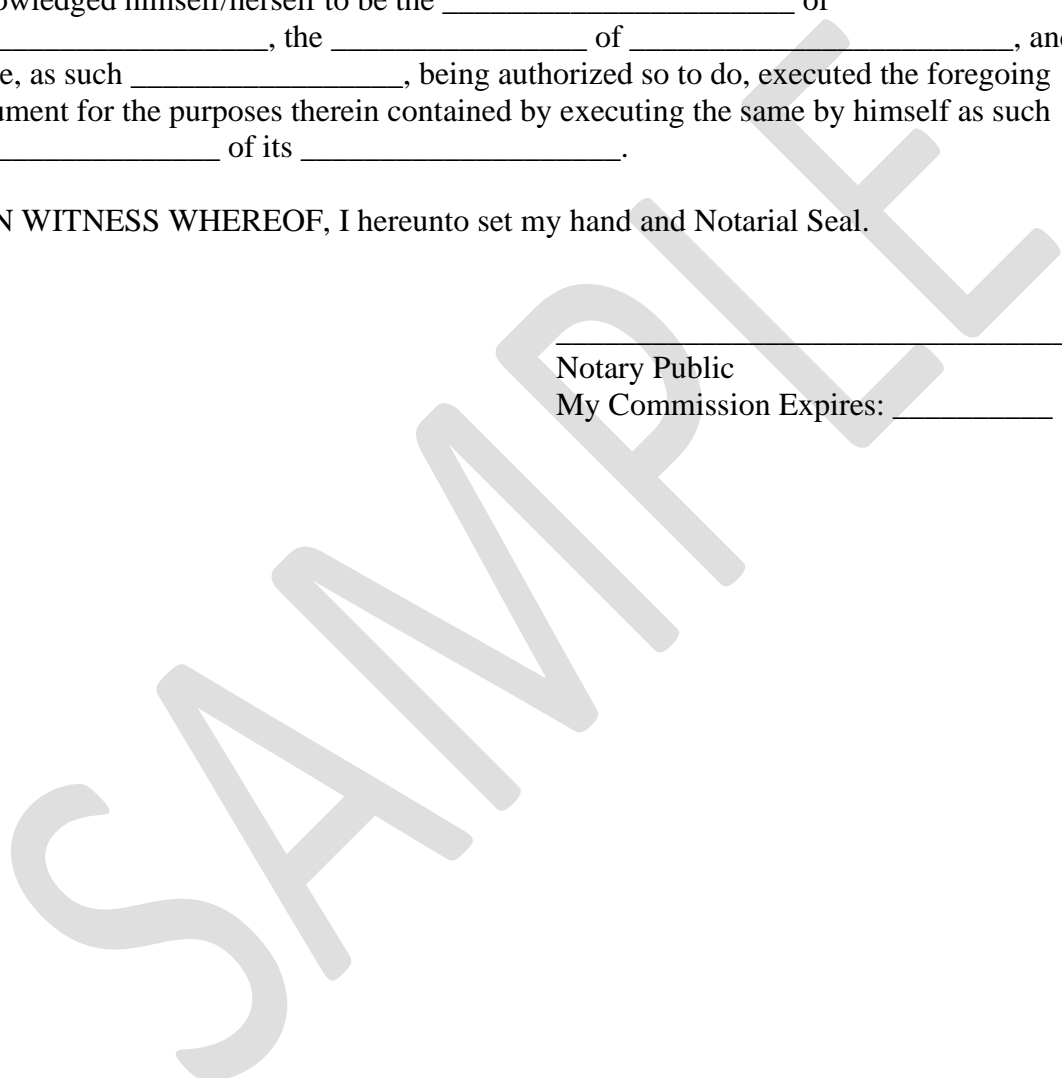
[Entity – Entity Signing on Behalf]

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by himself as such \_\_\_\_\_ of its \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



[One Individual]

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared \_\_\_\_\_, known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument, and acknowledged and that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

SAMPLE

[More than one Individual]

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared \_\_\_\_\_, known to me (or satisfactory proven) to be the persons whose names are subscribed to the within instrument, and acknowledged and that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**Legal Description**

SAMPLE

**Exhibit B**  
**Units of Property Subject to Affordable Housing Covenants**

SAMPLE