

[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:

[Street Address]  
Philadelphia, PA [Zip Code]  
OPA No. [XXXXXXXX]

[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** (this “**Declaration**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, (“**Declarant**”), a [corporation/ Limited Liability Company/ Limited Partnership/ married person/ etc.] having an address of [Street Address] in favor of the **CITY OF PHILADELPHIA**, a body politic and corporate organized under the laws of the Commonwealth of Pennsylvania (the “**City**”) under the following circumstances:

### RECITALS

- A. By virtue of a *Deed* dated [\_\_\_\_], and recorded on [\_\_\_\_], as Document I.D. No.: [\_\_\_\_], City of Philadelphia Department of Records, Declarant is the fee owner of real property located at [Street Address], Philadelphia, PA [Zip Code], which real property is more particularly described on **Exhibit A** (*Legal Description-the Property*) attached hereto and made a part hereof (the “**Property**”).
- B. Declarant has applied to the City for certain permits to construct or cause the construction of certain building improvements at the Property containing approximately [Total # of Units] residential dwelling units, as more particularly detailed and depicted on the construction documents submitted to the City under Zoning Permit No.: ZP-[\_\_\_\_] and Building Permit No.

CP-[ ] (the “**Project**” and the residential dwelling units, together with all other improvements on the Property, referred to herein as the “**Improvements**”).

- C. In furtherance of the public policy to encourage an increase in the amount and distribution of affordable housing units throughout the City, the Philadelphia Code (the “**Code**”) Section 14-702(7) permits significant additional floor area, building height or housing unit density conditioned expressly on Declarant providing affordable housing in accordance with the provisions set forth in the Code (the “**Mixed-Income Housing Bonus**”).
- D. Declarant seeks the benefits of the [low/moderate]-income bonus provisions of the Mixed-Income Housing Bonus and has designed the Project in accordance with the provisions, terms, conditions, and requirements of the [low/moderate]-income bonus provisions of the Mixed Income Housing Bonus.
- E. Declarant further acknowledges that the City, in issuing the necessary permits, licenses, and other governmental approvals for the Project, has acted in material reliance upon certain statements, representations, and covenants made by Declarant in the Project-related applications, forms, plans, and specifications submitted by or on behalf of Declarant in seeking approval for the Mixed-Income Housing Bonus.
- F. In connection with the use and ownership of the Property and the construction, use, and occupancy of the Project, Declarant desires to establish certain rights, privileges, obligations, and duties to impose certain covenants and restrictions on the Property that shall run with the land to ensure compliance with the provisions of the Mixed-Income Housing Bonus and other applicable local laws.

## **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 that the Property shall be held, conveyed, leased, used, occupied, sold, or otherwise transferred subject to the terms and provisions of this Declaration, which shall run with the land and shall be binding upon and inure to the benefit of Declarant, its heirs, and successors and assigns.

## **ARTICLE 1 DEFINITIONS**

As used in this Declaration, the following words and phrases shall have the following meanings:

- 1.1 “**Affordable Units**” has the meaning given it in Section 3.1.
- 1.2 “**Affordable Owner-Occupied Units**” has the meaning given it in Section 7.1.
- 1.3 “**Affordable Rental Units**” has the meaning given it in Section 6.1.

1.4 “**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.

1.5 “**City**” has the meaning given it in the Header of this Declaration.

1.6 “**Code**” has the meaning given it in Recital C.

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

1.8 “**Declarant**” has the meaning given it in the Header of this Declaration.

1.9 “**Declaration**” has the meaning given it in the Header of this Declaration.

1.10 “**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.

Unit Size (Household Size)	Efficiency/ Studio (1)	1 Bedroom (1.5)	2 Bedroom (3)	3 Bedroom (4.5)	4 Bedroom (6)	5 Bedroom (7.5)
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1.11 “**Future Owner**” has the meaning given it in section 7.6.

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

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

1.14 “**Improvements**” has the meaning given it in Recital B.

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

1.16 “**Mixed-Income Housing Bonus**” has the meaning given it in Recital C.

1.17 “**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.

1.18 “**Principal Residence**” has the meaning given it in Sections 6.2(e) and 7.4.

1.19 “**Project**” has the meaning given it in Recital B.

1.20 “**Property**” has the meaning given it in Recital A.

1.21 “**Transferee**” has the meaning given it in Section 7.12

1.22 “**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 agrees and covenants to commence and complete, or cause the commencement and completion of, construction of the Improvements in accordance with the plans and specifications approved by the City under Zoning Permit No.: ZP-[ ] and Building Permit No. CP-[ ], and any amendments thereto, and any other permits and approvals issued for the Project. Declarant agrees and covenants to obtain, pay for, and maintain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the construction, alteration, and maintenance of the Improvements.

## **ARTICLE 3 DECLARATION; SUBJECT UNITS**

3.1 **Declaration; Subject Units.** Declarant hereby submits the Property to the provisions of this Declaration and declares that the residential dwelling units more particularly identified and depicted as “**Affordable Units**” on **Exhibit B**, attached hereto and incorporated herein by reference, are and shall be subject to all terms, provisions, conditions, covenants, obligations, duties, and restrictions hereinafter set forth, all of which are in furtherance of the Mixed-Income Housing Bonus, which zoning bonus specially benefits the Property to enhance and protect the value of the Property by enabling Declarant to construct and maintain significant additional floor area, building height, or housing unit density at the Property than would be permitted under the Zoning Code but for Declarant’s inclusion of the Affordable Units and further to increase 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.** All covenants, obligations, duties, 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. All such covenants, obligations, duties, and restrictions of this Declaration shall be construed as covenants and not merely as personal covenants of Declarant or as conditions and shall “run with the land” and shall inure to the benefit of and be binding upon Declarant, its heirs, successors, and assigns. The City, its successors, assigns, and designees are beneficiaries of this Declaration and shall have the right to enforce each and every provision hereof in an action at law or equity against Declarant, its heirs, successors, and assigns. Any failure by the City, its successors, assigns, or designees to enforce any provision of this Declaration shall not be deemed a waiver of the City's right to do so in the future.

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

5.1 **Compliance Period; Required Use for Affordable Housing.** Declarant hereby agrees, covenants, and declares that the Property shall be held, conveyed, leased, used, and occupied in accordance with the terms of this Declaration for a period beginning on the date of this Declaration and ending not less than 50 years from the last Certificate of Occupancy issued by the City of Philadelphia Department of Licenses and Inspections for the Project (the “**Compliance Period**”).

5.2 **Phasing.** 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.

## ARTICLE 6 RENTAL OF AFFORDABLE UNITS

6.1 **Affordable Rental Units.** The terms, provisions, covenants, obligations, duties, and restrictions of this Article VI shall apply to those portions of the Property identified on **Exhibit B** as units to be rented as affordable rental units in compliance with the Code and this Declaration (the “**Affordable Rental Units**,” and each an “**Affordable Rental Unit**,” as applicable) for the duration of the Compliance Period. Any Affordable Rental Unit that is converted to an Affordable Owner-Occupied Unit with the prior written consent of the City pursuant to Section 6.10 shall be subject to the terms, provisions, covenants, obligations and duties of Article VII.

6.2 **Lease Agreement Requirements.** An agreement for the lease and occupancy of each Affordable Rental Unit shall conform with the requirements below.

- (a) *Writing Requirement.* Each agreement shall be in writing, and the tenant parties thereto must include all adults in a Household occupying the respective Affordable Rental Unit, excluding the legal dependents of leaseholders as claimed on the most recent federal income tax return and legal minor children of leaseholders.
- (b) *Term.* The term of each lease agreement shall not exceed one year and may only be renewed in accordance with the provisions of this Declaration; provided, however, if an Affordable Rental Unit is rented to a Household with a Tenant Voucher, the lease term may, for such period that the Tenant Voucher is in effect, exceed a term of one year where such minimum lease term exceeding one year is required by the administering housing authority.
- (c) *No Assignment or Sublease.* Each agreement shall contain provisions establishing that the tenant(s) of an Affordable Rental Unit shall not sublet the Affordable Rental Unit or any portion thereof nor assign a lease to the Affordable Rental Unit.
- (d) *Acknowledgement of Restrictions.* Each agreement shall contain an acknowledgment of the rental requirements of this Declaration and an acknowledgment that the respective Affordable Rental Unit will no longer be subject to this Declaration should the lease agreement terminate following the expiration of the Compliance Period.
- (e) *Principal Residence.* Each agreement shall contain a provision establishing that the Affordable Rental Unit must be used and occupied as a Principal Residence. For the purposes of this subsection, “**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 a Principal Residence is, 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, the residence of parents, spouse, and children, if any, location of personal and real property, and motor vehicle registration.

6.3 **Household Occupancy.** The eligibility of a Household to lease and occupy an Affordable Rental Unit shall be determined before the initial occupancy of and the renewed lease and occupancy of said unit. Each Affordable Rental Unit must be leased to and occupied by a Household whose annual income does not exceed 60% of the AMI for Moderate-Income units or 50% of the AMI for Low-Income units at the time of the Household's initial occupancy of the unit. At no time shall an Affordable Rental Unit be occupied by a Household whose annual income exceeds 120% of the AMI for Moderate Income units and 100% of the AMI for Low-Income Units.

6.4 **Gross Rent.** The contract rent plus utilities or utility allowance of an Affordable Rental Unit (“**Gross Rent**”) shall not exceed 30% of the income of a Household at 60% of the AMI for Moderate-Income units and 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 the U.S. Department of Housing and Urban Development 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 6.3, as may be determined, and permitted by the administering housing authority.

6.5 **Comparable Quality.** Affordable Rental Units shall be of comparable quality, in terms of size, design, exterior appearance, interior finishes and features, 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 size, design, exterior appearance, interior finishes and features, energy efficiency, and overall construction, the quality of Affordable Rental Units shall vary substantially to the same degree.

6.6 **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.

6.7 **Audit Rights of City.** Declarant hereby agrees and covenants on behalf of itself and its heirs, successors, and assigns to collect and maintain throughout the Compliance Period such financial, business, administrative, operational, and other records, statements, and information pertaining to the Affordable Rental Units, as may be necessary to verify and certify compliance with the eligibility, rental, and comparable quality and maintenance requirements. The City or its designee shall have the right to review and audit the aforementioned records, statements, and information pertaining to the Affordable Rental Units to confirm compliance with the Code and this Declaration.

6.8 **Annual Certification.** Declarant hereby agrees and covenants on behalf of itself and its heirs, successors, and assigns to 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 of the Affordable Rental Units in the form and manner as reasonably required by the City.

6.9 **City Remedies; Rental License.** If Declarant, its heirs, successors, assigns, or grantees fail to comply with any terms, provisions, conditions, covenants, or restrictions of this Declaration and continues for 30 days after written notice is given by the City (or in the case of a default that cannot with due diligence be cured within 30 days if Declarant fails to promptly commence to cure the default and thereafter complete the curing of the default with due diligence), then the City shall be entitled to suspend or otherwise renew a rental license associated with the Property and the City may exercise any and all other rights and remedies afforded by this Declaration or available at law or in equity.

6.10 **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 or to any form of cooperative ownership without the prior written consent of the City.

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

7.1 **Affordable Owner-Occupied Units.** The terms, provisions, covenants, obligations, duties, and restrictions of this Article VII shall apply to those portions of the Property identified on **Exhibit B** as units to be sold and resold as affordable owner-occupied units in compliance with the Code and this Declaration (the “**Affordable Owner-Occupied Units**,” and each an “**Affordable Owner-Occupied Unit**,” as applicable) for the duration of the Compliance Period. Any Affordable Owner-Occupied Unit that is converted to an Affordable Rental Unit during the Compliance Period shall be subject to the terms, provisions, covenants, obligations and duties of Article VI.

7.2 **Household Occupancy.** Each Affordable Owner-Occupied Unit must be sold or resold to a Household whose annual income does not exceed 80% of the AMI for Moderate-Income Owner-Occupied units and 70% of the AMI for Low-Income Owner-Occupied units. A Household may consist of one 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 based on the following: (i) a down payment of no more than five percent of the purchase price; (ii) an annual debt service on a mortgage (consistent with monthly average 30-year fixed interest rate published from time to time by the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) or another source deemed acceptable by the Department of Planning and Development should Freddie Mac cease publication); and (iii) total monthly costs, including property taxes, property insurance, condominium fees, and homeowner association fees, that do not exceed 30% of the gross monthly income of a Household at 80% of the AMI for the Moderate-Income Owner-Occupied units and 70% of the AMI for the Low-Income Owner-Occupied units, adjusted for Expected Occupancy.



7.4 **Principal Residence.** At least one person in the Household who owns the Affordable Owner-Occupied Unit must use the Affordable Owner-Occupied Unit as a Principal Residence. The City shall have the right to enforce the provisions of this Section by an action at law or equity to force the sale of the Affordable Owner-Occupied Unit to eligible 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 a Principal Residence is, 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.** No Affordable Owner-Occupied Unit shall be used as a rental property without Declarant or successor-in-title to Declarant holding title in fee simple to an Affordable Owner-Occupied Unit first providing reasonable and adequate written notice to the City requesting to convert an Affordable Owner-Occupied Unit to an Affordable Rental Unit and obtaining the written consent of the City. No part, room, or the entirety of an Affordable Owner-Occupied Unit shall be leased or subleased.

7.6 **Right of First Refusal.** In consideration of the terms and provisions of this Declaration, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, intending to be legally bound, hereby declares that during the Compliance Period, a successor-in-title to Declarant holding title in fee simple to an Affordable Owner-Occupied Unit (a “**Future Owner**”) before accepting any offer from an eligible person desiring to purchase the Affordable Owner-Occupied Unit, a Future Owner shall provide the City a 90-day option to purchase the Affordable Owner-Occupied Unit by giving the City 90 days’ written notice of the Future Owner’s intent to sell the Affordable Owner-Occupied Unit. The City shall have the right to purchase the Affordable Owner-Occupied Unit for a price to be calculated according to the provisions of Section 7.3 of this Declaration. No Affordable Owner-Occupied Unit shall be conveyed, transferred, or demised without first providing notice and opportunity to the City to purchase the Affordable Owner-Occupied Unit. **Each instrument conveying a fee simple interest in and to an Affordable Owner-Occupied Unit shall contain a notice of the City’s right of first refusal substantially in the following form:**

**THIS DEED IS HEREBY CONVEYED AND ACCEPTED SUBJECT TO THE TERMS, PROVISIONS, CONDITIONS, AND RESTRICTIONS SET FORTH IN THAT CERTAIN DECLARATION OF AFFORDABLE HOUSING COVENANTS, DATED AS OF \_\_\_\_\_, 20\_\_\_\_, AND RECORDED ON \_\_\_\_\_ 20\_\_\_\_, AS INSTRUMENT NUMBER \_\_\_\_\_, CITY OF PHILADELPHIA DEPARTMENT OF RECORDS, WHICH DECLARATION IMPOSES CERTAIN RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY FOR THE COMPLIANCE PERIOD, AS DEFINED THEREIN, INCLUDING WITHOUT LIMITATION, A RIGHT OF FIRST REFUSAL IN FAVOR OF THE CITY OF PHILADELPHIA. GRANTEE, BY ACCEPTANCE OF THIS DEED, HEREBY ACKNOWLEDGES AND COVENANTS THAT IT SHALL NOT CONVEY THE SUBJECT PROPERTY WITHOUT FIRST GRANTING THE CITY OF PHILADELPHIA THE OPTION TO PURCHASE THE SUBJECT PROPERTY AS SET FORTH UNDER THE DECLARATION.**

**7.7 Comparable Quality.** Affordable Owner-Occupied Units shall be of comparable quality, in terms of size, design, exterior appearance, interior finishes and features, 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, interior finishes and features, energy efficiency, and overall construction, the quality of Affordable Owner-Occupied Units shall vary substantially to the same degree.

**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.** Declarant hereby agrees and covenants on behalf of itself and its heirs, successors, and assigns to collect and maintain throughout the Compliance Period such financial, residency, and other records and information pertaining to the Affordable Owner-Occupied Units as may be necessary to verify and certify compliance with the requirements of this Declaration prior to the sale of any Affordable Owner-Occupied Unit or the conversion of Affordable Owner-Occupied Units to Affordable Rental Units as set forth in Section 7.5.. The City or its designee shall have the right to review and audit the aforementioned records and information pertaining to the Affordable Owner-Occupied Units to confirm compliance with the Code and this Declaration.

7.10 **Deed Requirements.** All deeds used to convey an Affordable Owner-Occupied Unit during the Compliance Period shall include the language set forth above in Section 7.6 on the first page of the deed. 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 to fully carry out the purposes and intent of this Declaration and the Mixed-Income Housing Bonus provisions of the Code, 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 or, after following the procedure set forth in Section 7.5, lease it in accordance with this Declaration and the Code.

7.13 **City Ownership.** Declarant hereby acknowledges that the City, as a municipal corporation of the Commonwealth of Pennsylvania, is subject to the requirements, restrictions, and benefits of the applicable laws of the Commonwealth, the provisions and requirements of the Charter of the City of Philadelphia, and the Philadelphia Code, as such Declarant hereby agrees and declares that during any period that the City holds a fee simple interest in and to an Affordable Owner-Occupied Unit in accordance with the terms of this Declaration, the City shall (i) not be liable for making any payments for fees, costs, expenses, or assessments under the terms of any declaration or other agreement encumbering the Property for the common use, maintenance, or benefit of the Property; (ii) not be required to maintain any insurance under the terms of any declaration or other agreement encumbering the Property; (iii) not have any obligation to defend or indemnify any other person or entity under the terms of any declaration or other agreement encumbering the Property; (iv) have all rights afforded to the City under laws of the Commonwealth governing tort liability and immunity.

7.14 **Condominiums.** Any Property developed as a condominium, planned unit development or any form of cooperative ownership shall specify in the Declaration of Condominium or Planned Unit Development, Public Offering Statement and By-Laws that the allocation of fees attributed to any affordable unit shall be 0.0%. Such Declaration of Condominium or Planned Unit Development, Public Offering Statement and By-Laws, where applicable, shall be provided to the City prior to recording.

## 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 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.** An owner of an Affordable Owner-Occupied Unit shall cause all financing documents for a Mortgage for an Affordable Owner-Occupied Unit to 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 45 days immediately after receipt by the City of such notice. If an owner of an Affordable Owner-Occupied Unit receives a notice of default from a Mortgagee, said owner shall promptly send a copy of each such notice to the City.

9.4 **Foreclosure.**

(a) *Notice.* If any Mortgagee of an Affordable Owner-Occupied Unit sends a notice of default to the owner of an Affordable Owner-Occupied Unit and intends to exercise any right it may have under the financing documents to institute foreclosure proceedings because of such default, said Mortgagee shall, before exercising such right, send a copy of such notice of default to the City in writing of its intent to do the same, at least 45 days before 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. 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 45 days before the date the foreclosure sale date.

(b) *City's Purchase Right.* If a Mortgagee of an Affordable Owner-Occupied Unit institutes foreclosure proceedings on an Affordable Owner-Occupied Unit, the City, its successors, assigns, and designees shall have the right to purchase the Affordable Owner-Occupied for the amount of the debt secured by the Mortgage against the subject unit not to exceed the Maximum Resale Price for such unit. Upon the foreclosure of any Mortgage, lien, or encumbrance, the terms, provisions, covenants, and restrictions of this Declaration shall not be deemed to have been terminated, extinguished, or otherwise released. Any person foreclosing upon any Mortgage, lien, or encumbrance and any person acquiring title or interest in any portion of an Affordable Owner-Occupied Unit as a result thereof shall acquire and hold title to such portion subject to the terms, provisions, covenants, and restrictions of this Declaration as 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) *Survival.* If the Property includes Affordable Rental Units, then upon the foreclosure of any Mortgage, lien, or encumbrance, the terms, provisions, covenants, and restrictions of this Declaration shall not be deemed to have been terminated, extinguished, or otherwise 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.** The City shall execute and deliver an estoppel certificate within 30 days of receiving a written request (which such request shall include a draft form of an estoppel certificate) from Declarant, its heirs, successors, assigns, grantees or a mortgagee. The draft estoppel certificate shall be subject to the City's review and approval and shall state whether Declarant or the current owner of the Property is in compliance with the terms of this Declaration, and, if not, specifying the nature of such noncompliance.

## **ARTICLE 10 AMENDMENT OF DECLARATION**

### **10.01 Amendment to Declaration.**

(a) *Amendments.* 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 Declarant.

(b) *Recording.* 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's exercise of its regulatory authority, police powers, or enforcement rights under the Code, zoning permits, building permits, other permits and approvals, and other applicable laws.

11.2 **Compliance with and Enforcement of Restrictions.**

(a) *Enforcement.* 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. Further, the City shall be entitled to damages for any injuries or losses resulting from any violations thereof and any other remedies to which it may be entitled under law or in equity, without limitation to specific performance of the covenants and restrictions contained herein.

(b) *Notice and Opportunity to Cure.* The City shall not exercise any remedy available to it under this Section 11.2 until notice has been given to Declarant, a tenant of an Affordable Rental Unit, or an 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 30 days from the date on which the notice is given (or in the case of a default that cannot with due diligence be cured within 30 days, if the defaulting party fails to promptly commence to cure the default and thereafter complete the curing of the default with due diligence).

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 attorneys' 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 **Notices to the City.** 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 **Notices to Declarant.** All notices to be sent to Declarant shall be sent to the following address:

[Mailing Street Address 1]  
[Mailing Street Address 2]  
[Mailing City, State ZIP]

12.4 **Notices to Affordable Owner-Occupied Unit Owners.** 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 **Notices to Affordable Rental Unit Tenants.** 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.** Declarant acknowledges and agrees that the City makes no representations, warranties, guarantees, or other assurances that Declarant, its heirs, successors, assigns, or grantees will be able to obtain whatever variances, permits, or other approvals from City departments or any other governmental agency that may be required in connection with the Project or the Property. Further, Declarant acknowledges and agrees that the City's review, approval, or consent of plans, specifications, other materials, or work required to be submitted or performed by Declarant according to the terms and provisions of this Declaration shall not constitute a representation, warranty, or guarantee by the City as to the quality, accuracy, or substance of the matter reviewed or approved or its compliance with any applicable federal, state, and local laws, codes, ordinances, or other governmental requirements. Declarant acknowledges and agrees that it must use its independent judgment as to the accuracy and quality of all such matters concerning compliance with any applicable federal, state, and local laws, codes, ordinances, or other governmental requirements. Declarant acknowledges and agrees that the City shall not be equitably estopped from enforcing any federal, state, or local law, code, ordinance, or other governmental requirement concerning any error, defect, or omission found in such plans, specifications, or work. Any approval or consent given by the City in accordance with the terms and provisions of this Declaration shall not eliminate the need to obtain any and all official approvals required from any public or governmental agency or authority having jurisdiction over the subject matter thereof.

**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 **Termination.** Upon the expiration of the Compliance Period, all terms, provisions, covenants, and restrictions imposed upon and encumbering the Property by this Declaration shall be 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 written request of Declarant, its heirs, successors, assigns, or grantees the City shall execute and deliver an instrument memorializing the foregoing termination to the requesting party in recordable form for such party to record at their expense.



14.3 **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 estoppel against the enforcement thereof.

14.4 **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.

14.5 **Severability.** If any terms, provisions, conditions, covenants, or restrictions of this Declaration are determined to be invalid or unenforceable by a court of law, the remainder of this Declaration shall not be affected thereby, and all other terms, provisions, conditions, covenants, and restrictions of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

14.6 **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.

14.7 **Recording.** Declarant acknowledges and agrees that it shall cause this Declaration to be recorded in the City of Philadelphia Department of Records at its sole expense. Declarant acknowledges and agrees that the City has no obligation to issue a building permit for the Project unless and until this Declaration is duly recorded and properly indexed.

14.8 **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. 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.

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

(a) *Fee Owner.* Declarant holds title to the Property in fee simple.

(b) *Duly Executed.* Declarant has full power and authority to execute and deliver this Declaration and to carry out the duties and obligations provided for herein. This Declaration has by proper action been duly authorized, executed, and delivered by Declarant, and all actions necessary have been taken to constitute this Declaration, when executed and delivered, valid, binding, and enforceable covenants, duties, and obligations of Declarant, its heirs, successors, and assigns.

(c) *No Defaults.* Declarant's execution, delivery, and performance of the covenants, duties, and obligations hereunder this Declaration nor performance hereunder will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Declarant's organizational documents (as applicable), or any mortgage, contract, agreement, or other agreement to which Declarant is a party or which purports to be binding upon Declarant.

(d) *Duly Organized.* If Declarant is a legal person or entity, then 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.

(e) *Accuracy of Statements.* The statements and representations made by Declarant and the information contained in the Project-related applications, forms, plans, and specifications submitted by or on behalf of Declarant in seeking approval for the Mixed-Income Housing Bonus that are descriptive of Declarant or the Project have been reviewed by Declarant and do not contain any untrue statement of a material fact or omit to state any material fact necessary to make such representations or statements, in light of the circumstances under which they were made, not misleading.

14.10 **Recitals.** The Recitals of this Declaration are hereby incorporated into the terms of this Declaration as if set forth in full herein.

*[Signatures Appear on Following Pages]*

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: Emily Persico  
Title: Interim Deputy Director, Development Services

APPROVED AS TO FORM BY:  
The City of Philadelphia Law Department

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

## 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: \_\_\_\_\_

[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: \_\_\_\_\_

### Consent and Subordination by Lender

[\_\_\_\_], a [\_\_\_\_] organized under the laws of [\_\_\_\_] (the “**Lender**”), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consents to the foregoing *Declaration of Affordable Housing Covenants* (the “**Declaration**”) and subordinates the terms and conditions of, and the liens created by, the instruments set forth below (the “**Mortgages**”) to the Declaration as fully and completely as if the Declaration had been recorded prior to the Mortgages, but without otherwise affecting the lien or priority of the Mortgages as to the real property owned by [\_\_\_\_] and encumbered by the Mortgages, as more fully described on **Exhibit A** to the Declaration:

- (a) the [\_\_\_\_] dated as of [\_\_\_\_], and recorded on [\_\_\_\_], as Document I.D. No. [\_\_\_\_] of the City of Philadelphia Department of Records; and
- (b) the [\_\_\_\_] dated as of [\_\_\_\_], and recorded on [\_\_\_\_], as Document I.D. No. [\_\_\_\_] of the City of Philadelphia Department of Records.

Capitalized terms used but not defined in this Consent and Subordination will have the meanings given them in the Declaration. This Consent and Subordination will be binding upon the Lender and their successors and assigns.

[\_\_\_\_],  
a [\_\_\_\_] organized under the laws of  
[\_\_\_\_]  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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: \_\_\_\_\_



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

[Insert Legal Description]

SAMPLE

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

SAMPLE