

AFFORDABLE HOUSING COVENANT

This Affordable Housing Covenant (“Covenant”) is entered into as of the _____ day of _____, 20____, by and between _____ (“Owner”), and the City of Ann Arbor, Michigan (“City”).

This Covenant applies to the real property commonly known as _____, Ann Arbor, Michigan, which is more fully described in Exhibit A attached hereto and incorporated by this reference herein (“Property”).

RECITALS

WHEREAS, the City has provided assistance for the development of this Property; and

WHEREAS, the Owner has benefited from this assistance; and

WHEREAS, the intent of the City in providing this assistance is to preserve the affordability of the Property for persons of low income; and

WHEREAS, subsequent purchasers will benefit from the limitation on the sales price which this Covenant requires;

WHEREAS, the City may contract with a nonprofit housing entity specializing in affordable housing to conduct some or all of the activities defined in this covenant; and

WHEREAS, the intent of the Owner is to preserve through this Covenant the affordability of the Property for persons of low income, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

A. “Area Median Income” means the Area Median Income reported annually for single persons and households of various size by the United States Department of Housing and Urban Development for the primary metropolitan statistical area which includes the City of Ann Arbor, Michigan.

B. “City” shall mean the City of Ann Arbor or its designee. The City has retained the right to conduct the activities described under this covenant through a contract with another entity.

C. “CPI-U” means the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the City of Ann Arbor. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

D. “Domestic partner” means a person who has been duly registered with the Ann Arbor City Clerk or other designated City official as a domestic partner of the Owner pursuant to the provisions of the City’s domestic partner ordinance.

E. “Mortgage” means a financing document which is recorded senior to any other deeds of trust or liens against the Property and secures a loan made by an Institutional Lender and is used to purchase the Property..

F. “Income” means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 609 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then Aincome≅ shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household shall not be included as “income” for purposes of this covenant.

G. “Institutional Lender” means any bank, savings and loan association, or any other financing agency that is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

H. “Owner” means the first purchaser and any subsequent purchaser, devisee, transferee, grantee, owner or holder of title of the Property or any portion of the Property.

I. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by Paragraph 11 hereof), or any interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

J. "Original Sale Price" means the price at which the current Owner purchased the Property (not including commissions, loan origination fees, appraisals fees, title insurance premiums and other similar transaction costs).

K. "Purchase Anniversary" means the calendar date on which the Property was transferred to an Owner.

L. "Running Sale Price" is a dollar amount used in the calculation of the actual sale price in any future sale of the Property, and is more fully defined in paragraph 4 below.

M. "Base Sale Price" means the sale price of any future sale of the Property before adjustments for Eligible Capitol Improvements, Excessive Damage Assessments, Realtor's Commission (limited to 6%), and other reasonable and customary closing costs not to exceed 1.5% of sale price as well as seller paid transfer taxes.

2. Requirement of Title

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

3. Use of Property as Owner's Primary Residence

The Owner shall use the Property as his or her primary residence. At or before the time when title is transferred to the Property, each new Owner shall certify to the City in writing his or her intent to occupy the Property as his or her primary residence. Upon written request of the City, the Owner shall provide the City with such information as the City may reasonably request to satisfy itself that the Property is being used as the Owner's primary residence.

4. Resale Price Limitation

Grantor and all subsequent Owners hereby covenant that the price in any future sale of the Property by the Grantor or any subsequent Owner shall be calculated as follows:

- (i) Multiply the original sale price (not including commissions, loan origination fees, appraisals fees, title insurance premiums and other similar transaction costs) by one-third of the percent change of the CPI-U over the year immediately previous to the first purchase anniversary, then divide that number by 100 and add the result to the original sale price. The result is the "running sale price."
- (ii) For each purchase anniversary after the first, multiply the previous year's running sale price by one-third of the percent change of the CPI-U during the year immediately previous to that purchase anniversary, then divide that number by 100 and add the result to the previous year's running sale price. The result is the new running sale price.
- (iii) Continue the calculation described in paragraph 4(ii) above to the most recent purchase anniversary. The result is the "base sale price."
- (iv) The sale price of any future sale of the Property by the Owner or any subsequent Owner shall be the total of the following:
- a. the base sale price; plus
 - b. the amount of Eligible Capital Improvements that have been approved by the City (not to exceed \$2,500 per year) up to the time of transfer; plus
 - c. a realtor commission not to exceed 6% of (a) plus (b); plus
 - d. reasonable and customary closing costs not to exceed 1.5% of sale price as well as seller paid transfer taxes; minus
 - e. the amount of any Excessive Damage Assessment.
- (v) If the sum of paragraph (iv) a-d is less than the amount of the original sale price, then the sale price shall be the original sale price less the amount of any Excessive Damage Assessment, unless the property appraises for less, in which case the sale price shall be the greater of the appraised value or the sums of paragraph 4(iv) a-e.
- (vi) If Owner or any subsequent Owner sells the Property prior to the first purchase anniversary, the "base sale price" for the purposes of paragraph 4(iv) above shall be the original sales price (not including commissions, loan origination fees, appraisals fees, title insurance premiums and other similar transaction costs).
- (vii) On or before May 1 of each year, the City shall provide a statement to the Owner with a statement indicating the "base sale price" of the property [Section 4(iv)(a)] plus the amount of any approved Eligible Capital Improvements [Section 4(iv)(b)] as of December 31 of the preceding year. If the Owner disputes this statement, the dispute shall be resolved under the procedures set forth in Section 9.

5. The City's Right of First Refusal

(i) The Owner shall not sell or otherwise transfer the property until 60 days after serving written notice upon the City of the Owner's intent to sell or otherwise transfer the Property.

(ii) Within 60 days of receiving the notice provided for in paragraph 5(i) above, the City may elect to purchase the Property from the Owner by serving the Owner a written notice of its intent to do so. If the City elects to purchase the Property as provided herein, Owner hereby covenants to sell the Property to the City at the price set forth in Section 4 above. The City shall resell the property subject to the resale price limitations of Section 4 and to an eligible buyer as defined in Section 6.

(iii) If the City does not elect to purchase the property as provided herein, the Owner must sell the Property to an Eligible Buyer chosen by the City as set forth in Section 6 below at the price set forth in Section 4 above. The new owner shall be subject to the City's right of first refusal. The City shall provide the Owner with the name of the buyer within 60 days after receiving the notice provided for in paragraph 5(i) above

(iv) The following transfers are exceptions to the above requirements, provided that the new Owners, other than an estate, shall use the Property as his or her principal residence:

- a. A transfer resulting from the death of an Owner where the transfer is to the spouse who is also an Owner.
- b. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a period of time not to exceed 24 months from the date of death of the Owner.
- c. A transfer resulting from the death of an Owner when the transfer is to one or more children of the deceased Owner.
- d. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Property.
- e. A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree by which a spouse who is an Owner becomes the sole Owner of the Property.

- f. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner who is an Owner becomes the sole Owner of the Property.

6. Eligible Buyers

The City shall maintain a list of buyers who are certified to buy the Property. With the exceptions listed below, title to the Property may only be transferred to a person who has been certified by the City and who also has been qualified by an Institutional Lender for a mortgage to be used to buy the Property and who agrees to execute and be bound by this covenant. In order to qualify, a buyer's projected income may be not more than 80% percent of Area Median Income at the time of the purchase, as the Area Median Income may be adjusted to reflect the family size of the buyer or buyers. If the Property is sold jointly to more than one buyer in the same transaction, or if the Property is sold to a buyer who is married or who has a domestic partner, or if the Property is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers plus any minor children shall be considered to be a household for the purposes of this Covenant; (b) the income of all persons in the household (which will include each buyer of the Property, the spouse or domestic partner of the buyer, and each buyer's children who are age eighteen or older and who plan to reside in the premises) shall be used in determining the buyer's(?) income; and (c) the Area Median Income shall be adjusted to reflect the household's size.

In addition to the income requirements, Eligible Buyers must have received homeowner's education as required by the City, and must have reviewed the provisions of this Covenant and expressed their willingness to accept them.

7. Eligible Capital Improvements

(i) Only the following categories of expenditures may qualify as Eligible Capital Improvements:

- (a) The addition of a habitable room or of storage space to the Property.
- (b) The finishing of unhabitable space so that it is converted into a habitable room.
- (c) Modifications or improvements needed to accommodate a person with a "disability," as defined in the Americans With Disabilities Act of 1990, 42 USC Section 12101, et seq.

- (d) Improvements which reduce the Owner's consumption on the Property of electricity from sources external to the Property, of coal, natural gas, propane, other fossil fuels, or of other forms of energy created by burning or otherwise consuming fossil fuels.
- (e) Improvements to the kitchen, provided that all expenditures are part of a comprehensive renovation project for the kitchen, (which may include, but are not limited to, major kitchen appliances that remain part of the kitchen until the next comprehensive renovation project or until they wear out whichever occurs first) that the last comprehensive kitchen renovation project which qualified as an Eligible Capital Improvement was completed at least twenty years before the current one, and that at least \$2,000 is spent on the comprehensive renovation project within a twelve month period.
- (f) Improvements to a bathroom, provided that all expenditures are part of a comprehensive renovation project for the bathroom, that the last such comprehensive renovation project for the bathroom which qualified as an Eligible Capital Improvement was completed at least twenty years before the current one, and that at least \$2,000 is spent on the comprehensive renovation project within a twelve month period.
- (g) Replacement of the roof, if roof repairs are not covered through the services of a condominium association, provided that the last roof replacement that qualified as an Eligible Capital Improvement was completed at least twenty years before the current one, and provided further, that the Owner's share of the roof replacement costs is paid through a special assessment by a homeowners' association.
- (h) Replacement of the furnace, provided that the last such replacement which qualified as an Eligible Capital Improvement was completed at least twenty years before the current one.

No other categories or types of expenditures may qualify as Eligible Capital Improvements unless prior approval by the City is given in writing, which approval may be granted or denied in the City's sole discretion.

(ii) Moreover, in order to qualify as an Eligible Capital Improvement, each expenditure must be conditionally approved in advance by the City; and, after a proposed Eligible Capital Improvement has been completed, it must be finally approved by the City as an Eligible Capital

Improvement and the amount thereof must be determined by the City under the procedures set forth in this section.

- (a) The Owner must submit in advance to the City detailed plans for each proposed Eligible Capital Improvement and an itemization of the expected costs. Within fourteen days after this information is received by the City, it will notify the Owner in writing whether or not the proposed expenditure is conditionally approved as an Eligible Capital Improvement.
- (b) Within the same calendar year during which the proposed Eligible Capital Improvement has been completed, the Owner shall submit to the City complete documentation showing all costs thereof. This documentation shall be reasonably satisfactory to the City. If labor of the Owner, his or her spouse, domestic partner, children or parents for construction work is included within the cost, a detailed account of the work and the time spent on the work shall be submitted along with two estimates of the value of that work by at least two licensed contractors licensed by the City. At least one of those contractors must also be named on a list of approved contractors maintained by the City.
- (c) The City shall have the right to inspect the Property at times that are mutually convenient to the City and the Owner to confirm that the proposed Eligible Capital Improvements have been completed in a workmanlike manner and the reasonable value thereof. If the City, in its reasonable discretion, is unsatisfied with the documentation provided by the Owner, it may base its determination of the value of the improvements upon the valuation of a person chosen by the City who is knowledgeable about local construction costs and practices. At the conclusion of this process, the City shall notify the Owner in writing if the improvement has been approved as an Eligible Capital Improvement and the amount thereof.

(iii) The amount of Eligible Capital Improvements included within the calculations of the re-sale price limit may not exceed a total of \$2,500.00 per calendar year. This allowance is not cumulative, and if any portion of the allowance is unused, it may not be carried over from year to year.

(iv) Nothing in this Covenant shall prohibit an Owner from making an improvement to the Property which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the re-sale price limit, as set forth herein.

8. Excessive Damage Assessment

Before the re-sale price limit is determined, the City shall have the right to inspect the Property to determine whether the Owner has complied fully with the maintenance obligations set forth in Paragraph 12 hereof. If, after such an inspection, the City determines in its judgment that the Owner has not fully complied with this obligation, the City shall determine in its judgment the cost to complete such repairs, replacements, and other work necessary to restore the Property to a good, safe and habitable condition in all respects, and to bring it into full compliance with all applicable laws ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. This amount shall be called the Excessive Damage Assessment, and it shall be included in the calculation of the re-sale price limit as set forth in Paragraph 4.

9. Resolution of Disputes

If the Owner reasonably disputes the City's determination of the running sales price, the amount of an Eligible Capital Improvement, or the amount of an Excessive Damage Assessment, the Owner may request that the City's decision be reviewed by appealing to the City Administrator or his/her designee. The decision of the City Administrator or his/her designee shall be final and binding upon the parties.

10. Complete Consideration Stated on Deed

The consideration for any transfer shall be the sum upon which the State Transfer Tax is levied. There may be no consideration from owner-seller to owner-buyer beyond what is stated on the deed.

11. Partial Subordination of Covenant – Termination of Covenant Upon Foreclosure Sale

The provisions of this Covenant shall be subordinate only to the lien of a first mortgage to secure a loan to purchase the Property made by an Institutional Lender. First Mortgage shall be deemed a Specified Mortgage and the holder of such mortgage shall be known as the Specified Mortgagee. The City shall have the right to review and approve any mortgage affecting the property. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the first mortgage in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. With respect to the first mortgage, upon the occurrence of a foreclosure sale, or acceptance of a deed in lieu of

foreclosure, this Covenant shall be forever terminated. The mortgagee in such case, or any purchaser at the foreclosure sale, will obtain title to the Real Estate free and clear of such Right of First Refusal and Right to Acquire Owner's Interest, and such rights will not reattach to the Property upon any subsequent sale of the Property.

12. Mortgage Default or Foreclosure

Subject to the following, upon the occurrence of an event of default under the Specified Mortgage (as determined by the Specified Mortgagee—an “Event of Default”), and without the consent of the City, the Specified Mortgagee shall be permitted to accelerate its note, foreclose on the Specified Mortgage, take an assignment in lieu of foreclosure, or exercise its other remedies for default. Further:

(i) Upon the occurrence of an Event of Default under the Specified Mortgage, the Owner shall immediately notify the City of such Event of Default and shall submit to City copies of all notices the Owner received from the Specified Mortgagee relating thereto. Further, provided the City may notify the Specified Mortgagee's mortgage loan servicer of the lien of the City, and ask such mortgage loan servicer to notify the City of an Event of Default. In such case, the Specified Mortgagee will be agreeable to having its loan servicer provide such notice and work with the City to cure the default.

(ii) The Owner and the City agree that, as between them, the City shall have the right, but not the obligation, to cure an Event of Default in the Owner's name and on the Owner's behalf. The Owner shall be responsible to the City for any payments made, and expenses incurred, by the City in curing such default.

13. Maintenance of Property

The Owner shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. The Owner shall suffer no mechanics liens to be recorded against the Property. The Owner shall remain current in all obligations under any mortgage or lien on the property. The Owner shall promptly notify the City of any alleged default on any mortgage or lien.

14. Assignment.

(i) The Owner shall not have the right to transfer or assign the property or the Owner's rights or responsibilities under this Covenant except with the express written consent of the City and subject to the terms of this Covenant.

(ii) The City shall have the right to assign or transfer in part or in whole its rights and responsibilities under this Covenant by contract or by ordinance. The City shall notify the Owner of any such assignment or transfer but assignment or transfer may occur without prior notice to or approval of the Owner.

15. Miscellaneous

(i) This Covenant shall run with the property. It shall bind the property perpetually, and the benefit hereof shall inure perpetually to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to the City, its successors, designees, or assignees.

(ii) In the event that the covenant is removed the City's rights under this Covenant shall become a lien upon the property. The value of the lien shall be determined by taking the appraised value of the property as of the date the Covenant expires and subtracting the Resale Price pursuant to Section 4 of this Covenant. The remainder is the value of the City's lien as of the date the Covenant expires. This lien shall be due and payable upon the transfer of the property. The lien shall accrue interest at 7% from the date it attaches until the date it is paid.

(iii) The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to these terms, conditions, restrictions and limitations of this covenant. All of the herein-stated terms, conditions, restrictions and limitations of this covenant are intended to run with the property.

(iv) Any buyer or transferee of the Property or of any portion of or interest in the Property, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the terms, conditions, restrictions and limitations set forth in this covenant. The Owner-buyer or transferee shall execute such an acknowledgement and/or consent in writing before any sale or transfer is valid. The acknowledgement and/or consent shall be recorded and a copy of the recorded acknowledgement and/or consent shall be provided to the City.

(v) The Owner and each subsequent Owner hereby grants and assigns the City the right to review and enforce compliance with this Covenant. Compliance may be enforced by the City by any lawful means, including without limitation: requiring that the Owner sell to the City under its right of first refusal (a) seeking specific performance of the Owner's obligations under this Covenant; (b) voiding or rescinding a sale in contravention of this Covenant; (c) terminating the Owner's interest in the property; and (d) and seeking money damages, including damages to reimburse the City for its enforcement costs including Attorney fees; damages requiring the Owner to repay with interest any assistance received in connection with the home purchase; and damages

relating to an Owner's unlawful sale or rental of the property. However, the City's enforcement rights shall not include the acceleration of the first mortgage or increasing the interest rate of the first mortgage.

(vi) This Covenant shall be interpreted under the laws of Michigan and venue for any suit regarding this Covenant shall be in Washtenaw County, Michigan. Service may be made or notice given to the Owner by posting such service or notice in a conspicuous place on the Property.

(vii) Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the City at the address set forth below, or such other address designated by the City by like notice:

City of Ann Arbor, Michigan
100 N. Fifth Ave.
P.O. Box 8645
Ann Arbor, MI 48107

Notices to the Owner shall be given in like manner addressed as follows:

Owner:
Address:

(viii) Nothing in this Covenant represents or guarantees that the Property will be re-sold at an amount equal to the re-sale price limit. Depending upon conditions affecting the real estate market, the Property may be re-sold for less than the re-sale price limit.

(ix) If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

(x) The captions of the paragraphs in this covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

(xi) The conditions of this Covenant shall be interpreted so as to avoid speculation on the Property and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable in perpetuity to persons and families of low income.

IN WITNESS WHEREOF, Owner has executed this Covenant as of the date first stated above.

OWNER

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.

My commission expires:

Notary Public

(seal)

Exhibit A (Legal Description)

City of Ann Arbor, Washtenaw County, Michigan described as follows:

Unit (individual number) of Ashley Mews Condominium