

Memorandum of Understanding for Requirements and Procedures for For-Sale Inclusionary Housing Program at [REDACTED]

This Memorandum of Understanding for Requirements and Procedures for For-Sale Inclusionary Housing Program (this “MOU”) is between the City and County of Broomfield, a Colorado municipal corporation and county (the “City”) and [REDACTED] (the “Developer”).

1. Recitals.

- 1.1. The purpose of this MOU is to define the requirements and procedures for a For-Sale Inclusionary Housing Program for [REDACTED], located at [REDACTED] [legal description] in Broomfield, Colorado (the “Property”).
- 1.2. The City Council for the City and County of Broomfield approved a Final Plan and Improvement Agreement for the Property on _____, 20____. Such approval by the City is in reliance on the Developer’s commitment to participate in the For-Sale Inclusionary Housing Program set forth herein.

2. Developer Obligations.

2.1. Inclusionary Units.

- 2.1.1. The Developer commits to provide # single family or townhome units approved by the City for inclusion in the For-Sale Inclusionary Housing Program in accordance with the terms of the City’s Inclusionary Housing Ordinance, B.M.C. 17-76 (each is an “Inclusionary Unit(s)”). This equates to twelve percent (12%) of the proposed development of xxx total units, or ____ units. The Inclusionary Units shall consist of three (3) bedroom townhomes (which may include up to xx separate models-Model A, describe, Model B describe), and will be sold to homebuyers with respective incomes at or below [90% or 100%] of Area Median Income (“AMI”) as defined for 4-person households based on the Colorado Housing and Finance Authority (“CHFA”) Colorado Income Limits and Maximum Rents for Developments with Housing Tax Credits and CHFA Multifamily Loans for the Broomfield area (the “CHFA Rent and Income Table”). The Developer and the City acknowledge that such amount is subject to change as the CHFA Rent and Income Table is updated annually. To the extent not prohibited by law, priority shall be given to homebuyers having a household of three persons or greater and for those households that have been marginalized.
- 2.1.2. The Inclusionary Units shall be scattered throughout the site and be approximately the same size and include the same base features as a homes of the same model-type selling at market rate without the deed restrictions (each a “Market Rate Unit”); provided, however, that Market Rate Units may have higher level of finishes. Should the Developer seek to adjust or modify the design of the Inclusionary Units

in any material way, the Developer will seek the prior written consent from the City. Each Inclusionary Unit shall have access to all of the same common area amenities as the Market Rate Units.

- 2.2. Deed Restriction and Covenant. Each of the Inclusionary Units that are sold under this MOU will be deed restricted and covenant protected from the date of the original sale date to an eligible buyer for a period of 30 years (the “Restricted Period”). The deed restriction and covenant will define the appreciation allowance permitted for each Inclusionary Unit throughout the Restricted Period. If an Inclusionary Unit is sold prior to the conclusion of the Restricted Period, the sales price to an income qualified buyer will be calculated in accordance with the criteria set forth in the deed restriction. Appreciation on the Inclusionary Units shall be limited to no more than three and one-half percent (3.5%) annually during the Restricted Period. A copy of the covenant and deed restriction is attached hereto as Exhibit B.
 - 2.3. Eligible Buyers. The combination of mortgage principal, mortgage interest, applicable taxes and insurance shall not exceed 40% of potential buyer incomes and not exceed 45% of a potential buyer’s income when homeowners association fees and special district fees are added, at time of sale. If a potential buyer fails to qualify as an eligible buyer the Developer shall refund any and all earnest money received from the potential buyers within 30 days of the Developer receiving notice of ineligibility in substantially the form set forth on Exhibit D.
 - 2.4. Recording of this MOU. The Developer consents to the execution and recordation of this MOU on the following schedule:
 - 2.4.1. The MOU shall be recorded simultaneously with the other project related documents (Improvements Agreement, Plat, Site Development Plan etc.) and prior to the issuance of any building permits for the project.
 - 2.4.2. The Developer shall (i) record a deed restrictions and covenant in substantially the form as attached hereto as Exhibit A (the “Developer Covenant”) prior to the issuance of a certificate of occupancy for the Inclusionary Unit, or (ii) the Developer shall cause the buyer to, execute and record a deed restriction and covenant in substantially the form attached hereto as Exhibit B (the “Covenant”), concurrent with the initial sale of the Inclusionary Unit, whichever shall occur first. In either event, the first eligible buyer of an Inclusionary Unit will be required to sign and record a deed restriction and covenant in substantially the form attached hereto as Exhibit B at the closing.
3. City Obligations.

3.1. Program Administration.

3.1.1. The City will administer the For-Sale Inclusionary Housing Program in accordance with the terms of the City's Inclusionary Housing Ordinance, B.M.C. 17-76. The City will base the maximum income limits on the CHFA Rent and Income Table, for a 4 person household, as published by CHFA annually.

3.1.2. To the extent not prohibited by law, the eligible buyers will be given priority in accordance with the Fair Housing Act and will prioritize fair marketing practices with priority marketing in Broomfield.

3.2. Calculations. The Parties will verify the eligible sales price for the initial sale and any resale of the Inclusionary Units in accordance with this MOU and the appreciation formula set forth in the recorded covenant during the Restricted Period.

3.3. Certificate of Eligibility. Potential buyers will be required to submit the following documentation to the Developer in order to receive a Certificate of Eligibility for the For-Sale Inclusionary Housing Program at the time of initial sale:

3.3.1. Verification of current residency;

3.3.2. Copies of state and federal income tax returns, including W-2 forms, for the previous two years all employed household members are required;

3.3.3. Verification of employment and pay stubs for the most recent three months from each employed household member;

3.3.4. Two months of the most recent and complete bank issued statements for all bank accounts held by each household member 18 and over;

3.3.5. Provide a copy of the Court Orders when applicable for a divorce decree, child support orders, and maintenance/alimony orders (Note: Court proceedings must be finalized prior to purchasing an affordable unit. An order is not official without a judge's signature.);

3.3.6. A completed loan application form from the lender (Form 1003);

3.3.7. Financial gifts are restricted to 20% of the purchase price of the affordable home. The potential buyer must provide documentation of bank statements or other acceptable verification showing deposit of funds equal to the gift. Gift funds must be solely used towards the purchase of the affordable home (i.e. down payment) and the gift letter must include the following information:

3.3.7.1. Who is receiving the gift funds;

3.3.7.2. The name and relationship of the person giving the gift funds;

3.3.7.3. The exact dollar amount of the gift funds; and

3.3.7.4. A statement that no repayment is required and that the gift funds will be used solely for the purchase of an affordable home.

- 3.3.8. Any other documentation reasonably necessary to establish the prospective buyer's annual income and eligibility for the program;
- 3.3.9. Sales/Purchase contract (fully signed);
- 3.3.10. A certificate of homebuyer education for the persons purchasing the home (this is a certificate that is provided after a potential buyer has completed a HUD-certified Homebuyer Counseling Class which can be completed online or in-person); and
- 3.3.11. Signed Acknowledgment of For-Sale Inclusionary Housing Covenant, in substantially the form attached hereto as Exhibit C.

The Developer, or a third party lender, shall then be responsible for completing the City's income verification worksheet for each prospective buyer for the initial sale of the property, for subsequent sales the buyer seeking qualification will submit the income verification worksheet to the City's Housing Division directly. The Developer may rely on the truth and veracity of the documentation provided by each prospective buyer and the information contained therein without further investigation. The Developer may seek clarification from the City for questions related to the income verification process or methodology. If a prospective buyer qualifies for an Inclusionary Unit based on the calculations and methodology in the income verification worksheet, then the Developer shall send a copy of the completed income verification worksheet and a copy of the sales contract to the City and request a Certificate of Eligibility for the prospective buyer(s). A copy of the form of Certificate of Eligibility is attached hereto as Exhibit D. The Housing Division of the City may request any additional documentation as necessary to verify income eligibility and, upon final verification, the City will issue a Certificate of Eligibility or a Certificate of Ineligibility as applicable. In addition, the City will record the Acknowledgment of For-Sale Inclusionary Housing Covenant for each homebuyer following the closing on the Inclusionary Unit, except that for the initial sale the parties shall record the Covenant in substantially the form attached hereto as Exhibit B at the closing of the sale.

- 3.4. Marketing and Referrals. The City works in collaboration with the Broomfield Housing Authority, known as the Broomfield Housing Alliance, and other partners to further the For-Sale Inclusionary Housing Program. The City will perform various tasks and duties promoting and furthering the access and development of inclusionary housing in Broomfield. The City, or its partners, may:
 - 3.4.1. Provide the Developer and/or its real estate agent with referrals of individuals or families whose incomes may meet the criteria for eligibility; and
 - 3.4.2. Make connections to other City or partner programs increasing opportunities for residents in the Developer's project.

- 3.5. Fee Waivers. In exchange for the commitments from the Developer described herein, the City agrees to waive the following fees and taxes for the ___ (#) Inclusionary Units only:
- 3.5.1.1. 50% of the Building permit fees;
 - 3.5.1.2. 50% of the Plan review fees;
 - 3.5.1.3. 50% of the Service Expansion Fees (50%, which is the City's share of this fee); and
 - 3.5.1.4. 50% of the Use Taxes (50% based on the use tax rate of 3.5% attributed to the general fund).
4. Failure to Comply. Failure to comply with this Memorandum of Understanding shall within thirty (30) days following written notice from the City to the Developer constitute a violation of the Site Development Plan and Improvement Agreement which are incorporated herein by reference.
5. No Eligible or Qualified Buyers. If there are no eligible and qualified buyers within 180 days following the issuance of a certificate of occupancy on an Inclusionary Unit, the City, or its assignee, will be offered the opportunity to purchase the Inclusionary Unit for a purchase price equal the same amount offered to person at or below the Area Median Income identified above as defined for a 4-person household based on the CHFA Rent and Income Table for an Inclusionary Unit and as further described in the Developer Covenant.

[The remainder of this page is intentionally left blank.]

The parties hereto have duly executed this Memorandum of Understanding as of _____, 20____.

(DEVELOPER - ALL CAPS)

a _____ corporation

By: _____

Name:

Title:

STATE OF COLORADO)

) ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__, by ___[insert name of person signing]_____ as [insert title of person signing] of _____[insert name of company].

WITNESS my hand and official seal.

(SEAL)

Notary Public

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county

City and County Manager

APPROVED AS TO FORM:

City and County Attorney's Office

STATE OF COLORADO)
) ss.
COUNTY OF BROOMFIELD)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Jennifer Hoffman, as City and County Manager of the City and County of Broomfield, a Colorado municipal corporation and county.

WITNESS my hand and official seal.

Notary Public

Exhibit A
Developer Covenant at Time of Certificate of Occupancy

WHEN RECORDED RETURN TO:
Housing Program Manager
City and County of Broomfield
One DesCombes Drive
Broomfield, CO 80020

DEED RESTRICTION AND COVENANT CONCERNING LIMITATIONS ON RESALE PRICE AND BUYER INCOME

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

INCLUSIONARY FOR-SALE HOUSING COVENANT

This Deed Restriction and Covenant Concerning Limitations on Resale Price and Buyer Income (this “Covenant”) is entered into as of the ____ day of _____, 20__ (the “Effective Date”), by and between _____ (the “Developer”), and the City and County of Broomfield, a Colorado municipal corporation and county (the “City” or “Grantee”), collectively, the “Parties,” or individually, a “Party.”

This Covenant applies to the real property commonly known as [address], which is more fully described as [insert legal description - can be an exhibit - set forth in Exhibit A], and incorporated herein by this reference (the “Property”).

RECITALS

- A. The City has approved a PUD Plan Amendment and Site Development Plan to allow residential units in _____, including, for-sale —description of homes -single family detached homes and townhomes or multi-family units (the “Development”).
- B. The City adopted an Inclusionary Housing Ordinance (See B.M.C. 17-76-010 et. seq.) which requires 12% of the dwelling units within the Development be designated as “Affordable Units.”
- C. The Developer desires to designate the Property as an “Affordable Unit” for purposes of compliance with Broomfield’s Inclusionary Housing Ordinance.

- D. Terms not otherwise defined herein shall have the meaning set forth in the Memorandum of Understanding for Requirements and Procedures for For-Sale Inclusionary Housing Program recorded at **Reception No. _____** (the “MOU”).

AGREEMENT

In consideration of the benefits received by the Parties, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Requirement of Title. Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. The Property may not be transferred to anyone other than an Eligible Buyer that is verified by the City as more particularly described in the Memorandum of Understanding for Requirements and Procedures for For-Sale Inclusionary Housing Program recorded at **Reception No. _____**. Eligible Buyers must have a current and valid certification from the City in order to be eligible to purchase the Property.
2. Eligible Buyers.
 - a. Title to the Property may only be transferred to a buyer or buyers with a household projected income that may not be more than **90%/100%** of the Area Median Income as shown in the Broomfield income tables set by the Colorado Housing and Finance Authority, as established for a four (4) person household as more particularly described in the MOU. Potential buyers will be required to receive a Certificate of Eligibility from the City prior to closing on the sale.
 - b. Except as provided in Section 4 below, at the closing of the initial sale of the Property from the Developer to a buyer, the Developer shall cause the buyer to record a Subordinate Lien and Deed Restriction and Covenant Concerning Limitations on Resale Price and Buyer Income in substantially the form found in the MOU to memorialize the terms for the Affordable Unit.
3. Good Faith Marketing and Selection Process. The Developer shall, for a minimum of one-hundred and eighty (180) days after receipt of a certificate of occupancy, engage in good faith marketing efforts (the “Good Faith Marketing Period”) such that members of the public have a fair chance to become informed of the availability of the Property as an income-aligned home. The Developer shall maintain a marketing log that shows the advertisements and other information that was submitted to the public about the Property being an income-aligned home and keep a list of prospective buyers who have expressed an interest in and visited the Property. To the extent the Developer is not complying with the terms of the Good Faith Marketing Period, the time period shall be extended one day for each day of non-compliance. At any time prior to the conclusion of the Good Faith Marketing Period, the Developer shall coordinate with the City to sell to an Eligible Buyer or coordinate on a fair selection process if several Eligible Buyers are identified as potential purchasers. When a contract-to-purchase has been

executed, a copy of the contract shall be submitted to the City within two business days.

4. City's Purchase Right. In order to preserve the affordability of the Property in accordance with this Covenant, in the event the Developer is unable to find an Eligible Buyer within the Good Faith Marketing Period, the City, or its assignee, shall have the right to purchase the Property ("Purchase Right") at purchase price equal the same amount offered to person at or below **ninety percent (90%)/one hundred percent 100%** of Area Median Income as defined for a 4-person household based on the Colorado Housing & Finance Authority ("CHFA") Rent and Income Table for an Inclusionary Unit ("Purchase Right Price").
 - a. If the City, or its assignee, elects to purchase the Property, it shall exercise the Purchase Right by notifying the Developer, in writing, of such election ("Notice of Exercise of Right") within 30 days of the expiration of the Good Faith Marketing Period, or the Purchase Right shall expire. Having given such notice, the City, or its assignee, may either proceed to exercise the Purchase Right directly by purchasing the Property, or may assign the Purchase Right to an Eligible Buyer. In either case, the City or its assignee shall complete the sale within thirty (30) days of the date of the Notice of Exercise of Right. The time permitted for the completion of the purchase may be extended by mutual written agreement of the Developer and the City, such extension not to be unreasonably withheld. The Parties acknowledge that the City's right to assign may be provided to a local housing authority, such as the Broomfield Housing Alliance, or similar entity.
 - b. If the City assigns its Purchase Right to an Eligible Buyer, the Resale Price Limit shall be increased by Five Hundred and 00/100 dollars (\$500) (the "Assignment Fee") to cover the City's administrative costs of assigning its Purchase Right, and the City shall be paid such Assignment.
 - c. In either event above, the fees at the closing shall be split equally among the Parties and consistent with real estate closings in Colorado.
 - d. If the Purchase Right has expired or if the City, or its assignee, has failed to complete the purchase within the permitted 30-day period together with any extensions thereof, the Developer may sell the Property on the open market at market rate. If the home is sold at market rate, any balance between the actual sales price and the Purchase Right Price shall be paid to the City for deposit in the Housing Development Fund account, for use in other inclusionary housing programs in the City. Upon receipt of such payment, this Covenant shall be deemed released and the City shall record documentation confirming the release of this Covenant.

The Developer has executed this Covenant as of the Effective Date.

(DEVELOPER - ALL CAPS)

a _____ corporation

By: _____

Name:

Title:

STATE OF COLORADO)

COUNTY OF) ss.
)

The foregoing instrument was acknowledged before me this ____ day of _____
20__, by ___[insert name of person signing]_____ as [insert title of person
signing] of _____[insert name of company].

WITNESS my hand and official seal.

(SEAL)

Notary Public

Exhibit B
Income Aligned Housing Covenant and Subordinate Lien
(see attached)

Exhibit C
Acknowledgement of For-Sale Inclusionary Housing Covenant

A. _____, (“Buyer”), is purchasing from _____, (“Seller”), at a price of \$_____, a single family home (the “Subject Property”) described as:

[Insert legal description for Lot as appropriate]

- B. The Subject Property is enrolled in the City and County of Broomfield’s For-Sale Inclusionary Housing Program. A deed restriction has been recorded against the subject home which places income limitations on the Buyer and limits the resale price of the home.
- C. A copy of the deed restriction, titled “Subordinate Lien and Deed Restriction and Covenant Concerning Limitations on Resale Price and Buyer Income”, [recorded in the real property records of the City and County of Broomfield, Colorado, on _____, 20__, at Reception No. _____ (the “Covenant”) has been provided to the Buyer.] [to be recorded in the real property records of the City and County of Broomfield Colorado at closing has been provided to the Buyer.]
- D. As a prerequisite to the sale transaction, the Buyer acknowledges they have read and agree to the terms, conditions, and restrictions found in the Covenant and understands that the Buyer must submit to the City and County of Broomfield a signed copy of this Acknowledgment of For -Sale Inclusionary Housing Covenant prior to receiving a Certificate of Eligibility for the sale from the City and County of Broomfield.

The Buyer hereby:

1. Acknowledges that the Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant;
2. Acknowledges that the Buyer understands that the resale price of the Subject Property and the eligibility of potential future purchasers of the Subject Property may be restricted by the Covenant;
3. Acknowledges that the Buyer understands that they must occupy the Subject Property as their primary residence and that the Subject Property shall not be rented;
4. Acknowledges that the Buyer understands that during the term of the Covenant any second mortgage, refinance mortgage, or equity mortgage must comply with the terms and restrictions set forth in Section 8, Post Purchasing Financing, of the Covenant;

5. Acknowledges that any buyer or transferee of the Subject Property, or of any portion or interest in the Subject 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 covenants, conditions, restrictions, and limitations set forth in the Covenant;
6. Agrees to require any future buyer or transferee of the Subject Property, or of any portion or interest in the Subject Property, to submit to the City and County of Broomfield a signed copy of this Acknowledgment of For-Sale Inclusionary Housing Covenant and to obtain a Certificate of Eligibility prior to closing on said sale or transfer of the Subject Property;
7. Agrees to provide to the City and County of Broomfield written notice in accordance with Sections 3 and 13(E) of the Covenant of their intent to sell the Subject Property;
8. Directs that this Acknowledgment of For-Sale Inclusionary Housing Covenant be recorded against the Subject Property in the official records of the City and County of Broomfield.

The Buyer has executed this instrument as of the date set forth below.

Buyer Name:

 Buyer Name

 Buyer Name

STATE OF _____)
) ss.
 CITY AND COUNTY OF _____)

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

Witness my hand and official seal.

 Notary Public

(SEAL)

Exhibit D
City and County of Broomfield
For-Sale Inclusionary Housing Program Certificate of Eligibility

This is to certify that _____ and _____ have been qualified under the guidelines of the City and County of Broomfield For-Sale Inclusionary Housing Program for the purchase of an income restricted home at _____ [legal description of property and common address] for the purchase price of \$ _____ as indicated in the purchase contract.

This certification does not grant or imply any qualification for a mortgage nor does it give any rights to the named parties other than those specifically stated below:

- Number of household members _____
- Income and assets comply with the City and County of Broomfield guidelines for its For-Sale Inclusionary Housing Program

City and County of Broomfield

By: _____
Printed Name: _____
Position: _____
Date: _____

City and County of Broomfield
Inclusionary Housing Program Certificate of Ineligibility

We are sorry, but _____ and _____ do NOT qualified under the guidelines of the City and County of Broomfield For-Sale Inclusionary Housing Program for the purchase of an income restricted home at _____ [legal description of property and common address].

City and County of Broomfield

By: _____
Printed Name: _____
Position: _____
Date: _____