

Miriam Roskin  
OH Sixth and Yesler Use Covenant ATT B  
July 28, 2015  
#D1

*When recorded return to:*

City of Seattle, Office of Housing  
c/o Portfolio Manager  
P.O. Box 94725  
Seattle, WA 98124-4725

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## Housing Use Covenant

<b>Grantor:</b>	Stream Real Estate, LLC
<b>Grantee:</b>	The City of Seattle
<b>Abbreviated Legal Description (Full description on Exhibit A):</b>	<u><b>524780-1526</b></u> MAYNARDS D S PLAT E 1/2 Plat Block: 31 Plat Lot: 7-8  <u><b>524780-1525</b></u> MAYNARDS D S PLAT ALL OF LOT 6 & W 1/2 OF LOTS 7 & 8 Plat Block: 31 Plat Lot: 6-7-8
<b>Assessor's Property Tax Account Number(s):</b>	524780-1526 524780-1525

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This Housing Covenant (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between **Stream Real Estate, LLC**, a limited liability corporation, whose address is 2607 Second Avenue, Suite 300, Seattle, 98121 (the “Housing Owner”), and **The City of Seattle**, a Washington charter city, whose address is Office of Housing, P.O. Box 94725, Seattle, WA 98124-4725 (the “City”).

## RECITALS

As provided for by City of Seattle Ordinance \_\_\_\_\_, the City intends to convey King County Parcel 524780-1526, zoned IDR 45/125-240, located at the southwest corner of 6<sup>th</sup> Avenue South and Yesler Way, Seattle, Washington 98104 and legally described in Exhibit A-1 of this Covenant. In addition, the Housing Owner owns adjacent King County Parcel 524780-1525, also zoned IDR 45/125-240, located at 525 Yesler Way, Seattle, Washington 98104 and legally described in Exhibit A-2 of this Covenant. These two parcels, with all improvements now and hereafter constitute the “Property.”

The Housing Owner proposes to develop on the Property a \_\_\_-story mixed-use building including \_\_\_ residential units totaling \_\_\_\_\_ gross square feet and commercial uses totaling \_\_\_\_\_ gross square feet, with below-grade parking with stalls for \_\_\_ vehicles, permitted under the Seattle Department of Planning and Development (“DPD”) Master Use Permit (“MUP”) for Project number \_\_\_\_\_ (the “Project,” which term shall include any modified development of the Property under that project number).

The terms of the Purchase and Sale Agreement require that all residential units provided within the Project be affordable to low-income households.

NOW THEREFORE, in consideration of foregoing and the mutual promises in this Agreement, the Housing Owner agrees as follows for the benefit of the City, and grants and conveys to the City and imposes on the Property the covenants and restrictions described below:

## AGREEMENT

1. Definitions. Unless expressly provided otherwise in this Agreement or unless the context requires otherwise, the terms used in the Agreement above shall have the meanings provided for below:
  - A. “Code” means the Seattle Land Use Code, Title 23 of the Seattle Municipal Code.
  - B. “Designated Units” is as defined in Section 2 below.
  - C. “OH” means the City of Seattle’s Office of Housing and any other department or agency that shall succeed its functions with respect to low-income housing incentive programs.
  - D. “DPD” is defined in the recitals above.
  - E. “Director” means the Director of OH or his or her designee.
  - F. “Family” means Family as defined in 24 CFR Section 5.403 or successor provision. Family includes an individual person.
  - G. “Low-Income Household” means a household whose income, as determined consistent with an income certification form acceptable to the Director, does not exceed 80 percent of Median Income or 80 percent of the “county area median family income” as that term may be interpreted for purposes of RCW 36.70A.540.
  - H. “MUP” is defined in the recitals above.
  - I. “Median Income” means annual median Family income for the Seattle area, as published from time to time by HUD, with adjustment to be made according to a household size in a manner determined by the Director, which adjustments shall be based upon a method used by HUD to adjust income limits for subsidized housing, and which adjustments for purposes of determining affordability of rents or sale prices shall be based on the average size of household considered to correspond to the size of the housing unit (one person for studio units and 1.5 persons per bedroom for other units). For household sizes that include a half person, the average of the Median Income for the next higher and lower household sizes shall be used to calculate Median Income.
  - J. “Project” is defined in the recitals above.
  - K. “Property” is defined in the recitals above.
  - L. “Rent” shall include all amounts paid directly or indirectly for the use or occupancy of a Designated Unit and of common areas of the Housing Development.
  - M. “SMC” means the Seattle Municipal Code.
  - N. “Use Covenants” are provided for in the Agreement below, run with the land, and bind the Housing Owner, its successors, and assigns; and benefit the City for a term as provided for in this Agreement.

- O. "Unit" means a dwelling unit, as defined by SMC 23.84A.008, in the Project.
  - P. "Utility Allowance" means an allowance approved by the City for basic utilities such as water, sewer, electricity, and gas payable by the tenants, which unless otherwise approved in writing by the City, shall be equal to the utility allowance published from time to time by the Seattle Housing Authority for the type of Unit; or, if the City determines that no reasonably comparable figures are available from the Seattle Housing Authority, the utility allowance shall be such an amount as the City determines is an adequate allowance for basic utilities, to the extent that the items are not paid by the Housing Owner. The Utility Allowance shall not include telephone, internet/wireless, or cable TV services.
2. Agreement to Construct; Designated Units. The Housing Owner agrees to construct the Project substantially as described according to the floor plans on file with DPD. The Project includes \_\_\_\_ total Units, of which no fewer than 12 percent of Units shall include two or more bedrooms. Details on approximate net rentable square feet, number of bedrooms and baths, and location by Unit type are shown on Exhibit C. All Units are defined as "Designated Units." The \_\_\_\_ Designated Units shall be affordable to and reserved solely for Low-Income Households.
  3. Term of Agreement. This Agreement, unless extended or terminated by a written document executed by the City and the Housing Owner and recorded with King County Records, shall expire and terminate 50 years from the date when the final certificate of occupancy for the Project is issued. If the MUP for the Project expires without the Project being constructed, this Agreement shall terminate upon recording of a notice signed by the Director. The Housing Owner shall record a notice with King County Records stating the date of issuance of the final certificate of occupancy for the Project, and including a copy of the final certificate of occupancy. Upon the expiration or other termination of this Agreement, the Director shall promptly, upon request of the Housing Owner, execute and acknowledge a notice in form reasonably satisfactory to the Housing Owner and the Director, confirming that this Agreement is terminated. This notice shall be recorded by the Director with King County Records.
  4. Use Covenants. The Housing Owner grants to the City and subjects the Property to the conditions, covenants, and restrictions provided for in this Section (the "Use Covenants"), which are covenants running with the land, binding on the Housing Owner and its successors and assigns, and benefiting the City. The Housing Owner declares its express intent that the Use Covenants, and the remedies for breach in Section 6 below, shall pass to and be binding on the Housing Owner's successors in title including any

purchaser, grantee, owner or lessee of any portion of the Property (other than residential tenants of individual units) and of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest in the Property. The Housing Owner agrees not to transfer the Property or any portion thereof or interest in the Property, other than residential tenancies in the Project consistent with this Agreement, to any successor unless the successor agrees in writing to be bound by the provisions of this Agreement and the Housing Owner provides the Director with a copy of the successor's agreement prior to the transfer. Transfers of membership interests or changes of members in an entity whose members do not have an interest in specific property of the entity, as provided for in RCW 25.15.245 or other applicable laws, are not considered to be transfers of an interest in the Property or Project for purposes of this Agreement.

- A. **Income Requirements.** All Designated Units shall be used as rental housing solely for Income-Eligible Households, based on the Household Annual Income in accordance with subsection 4.D of this Agreement. For the purposes of this Agreement, Household Annual Income means the aggregate annual income of all persons over 18 years of age residing within the same household for a period of at least one month and shall be calculated for prospective tenants by projecting the income anticipated to be received over the twelve-month period following the date of initial occupancy, based on the prevailing rate of income of each person at the time of income verification, which shall be no more than 6 months prior to the date of initial occupancy.
- B. **Maximum Monthly Rent.** The monthly Rent for each of the Designated Units, together with a Utility Allowance, shall not exceed one-twelfth of 30 percent of 80 percent of Median Income. There shall be no additional charges imposed by the Housing Owner for occupancy of Designated Units other than Rent.
- C. **Maintenance.** The Designated Units and the structure in which they are located shall be maintained in decent and habitable condition, including the provision of adequate basic appliances, for the duration of this Agreement.
- D. **Initial and Annual Income Certifications.** The Housing Owner shall obtain from each new tenant in a Designated Unit a certification of Family size and income in form acceptable to the City. The Housing Owner shall also examine the income and Family size of any tenant Family at any time when the Housing Owner receives notice that the tenant's certification of Family size or income was not complete or accurate. The Housing Owner shall obtain tenant certifications or examine incomes and Family

- sizes no less than on an annual basis. The Housing Owner shall maintain all certifications and documentation obtained under this subsection on file for at least five years after the certifications and documentation are obtained, and the Housing Owner shall promptly make the certifications and documentation available to the City for inspection and copying upon the City's request.
- E. Reporting. For so long as this Agreement remains in effect, the Housing Owner shall submit to the City, by June 30 of the following year, or at other such times as may be authorized by the Director, a written report stating the monthly Rents charged for each Designated Unit during the prior calendar year and the income and Family size of each Designated Unit, as of their respective beginning of occupancy. The Director may require documentation of Rents, copies of tenant certifications, and documentation supporting determinations of tenant income (for example, employer's verification or check stubs).
- F. Subleases/Assignments. Tenants renting Designated Units shall not be permitted to sublease or otherwise assign their Designated Units.
- G. Lease Agreement and Information to Tenants. The Housing Owner shall prepare a lease or rental agreement (the "Lease") for all tenants who occupy Designated Units in accordance with the requirements in this Agreement. The Lease shall: (1) specify the maximum monthly Rent that may be charged for the Designated Unit; (2) state that information regarding the housing bonus program may be obtained from OH; and (3) comply with all requirements in this Agreement. To the extent that other agreements or restrictions on the Property or Project require Rents lower than those permitted under this Agreement, the Lease shall state the maximum monthly Rent under those agreements or restrictions in lieu of the maximum monthly Rents allowed by this Agreement.
- H. Insurance; Loss or Damage to Designated Units; Condemnation. The Housing Owner shall keep the Project insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with "broad form coverage," in the amount of 100 percent of the replacement value of the Project for the entire term of this Agreement, unless otherwise agreed to in writing by the City and the Housing Owner. The Housing Owner shall promptly provide to OH evidence satisfactory to OH of compliance with this insurance requirement upon OH's request. If any Designated Unit is destroyed or rendered unfit for occupancy by casualty or otherwise and is not replaced or restored

- within 30 days after it is rendered unfit, the Housing Owner shall substitute another unit in the Project of at least equal size and number of bedrooms for that Designated Unit, as soon as such a unit becomes vacant. If the Project is substantially destroyed, any new development on the Property shall include new Designated Units satisfying the terms of this Agreement, and the Housing Owner shall designate by notice to OH new Designated Units, at least equal in number, size and numbers of bedrooms as the original Designated Units, no later than the date a certificate of occupancy is issued for the new units. If the entire Property or a portion that includes any Designated Unit shall be taken by eminent domain and this Agreement is extinguished as to the Property or such Designated Unit, then the City shall be entitled to share in the condemnation proceeds based on the difference between what the fair market value of the Property or portion taken would be absent these Use Covenants and the fair market value subject to these Use Covenants, provided that the proceeds to the Housing Owner and its successors and assigns are not reduced to less than the fair market value subject to these Use Covenants.
- I. Segregation of Ownership. The Housing Owner, its successors or assigns, may segregate ownership of any portion of the Project in any manner permitted by law, provided that the segregation does not restrict the Housing Owner's ability to comply with this Agreement.
  - J. Other Agreements. If a lower Rent or income eligibility limit, or both, than that permitted within this Agreement is required by any other agreement applicable to any of the Designated Units, then that lower Rent requirement of income eligibility limit, or both as applicable, shall apply to the Designated Units.
  - K. No Subsidies. The Housing Owner agrees, as a condition of any bonus floor area, not to seek or accept any subsidies related to the Project. The Housing Owner represents, warrants and agrees that no person has received, is receiving or will receive with respect to the Project any charitable contributions or public subsidies for housing development or operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or grants, City of Seattle housing loans or grants, county housing funds, and State of Washington housing funds. The qualification for and use of property tax exemptions under Chapter 5.73 SMC, or any other program implemented under Chapter 84.14 RCW, does not constitute a subsidy.
5. Access License. The Housing Owner grants to the City a license, subject to existing laws, rules, regulations, matters of record, and the rights of residential tenants in occupancy, to



enter the Project during normal business hours upon not less than 72 hours' prior notice to the Housing Owner in order to inspect the Project and to inspect such records as are necessary to determine compliance with this Agreement, and to exercise any other rights or remedies that the City may have under this Agreement. This access license shall terminate upon expiration or termination of this Agreement.

6. Default and Remedies.

- A. Excess Rents. If Rent for any Designated Unit is charged in excess of the limits in this Agreement, the Housing Owner agrees to refund those Rents charged in excess, with interest at 12 percent per annum, to those tenants overcharged. The refund shall be made promptly upon receiving notice of the overcharge from the City.
- B. Other Violations. In the event of any other violation by the Housing Owner of any of the provisions of this Agreement, the City may notify the Housing Owner in writing of the violation. The Housing Owner shall have 30 days from the date of receipt of the notice to cure the violation. Failure by the Housing Owner to cure within 30 days shall constitute default by the Housing Owner under this Agreement. Notwithstanding the foregoing, if the violation is of such a nature that it may not be practicably cured within 30 days by the Housing Owner, the City may not be entitled to exercise its remedies under this Agreement so long as the Housing Owner commences cure of such violation within the 30 day period and diligently pursues the cure to completion.
- C. Remedies. If the Housing Owner is found to be in default of this Agreement, the City's remedies shall include, without limitation, specific performance, preliminary and permanent injunctive relief, appointment of a receiver on an interim or permanent basis, monetary damages, restitution, and recovery of all costs and attorneys' fees incurred by the City in enforcing this Agreement, including the reasonable value of services provided by attorneys who are City employees and including the reasonable value of any other services provided by City employees.
- D. No Waiver. No waiver of any breach or violation of this Agreement shall be binding unless made in writing by the City and no waiver or delay in enforcing the provisions of this Agreement as to any breach or violation shall impair, damage, or waive the right of the City to obtain relief or recover for the continuation or repetition of any breach or violation or any similar breach or violation of the Agreement at any later time.

- E. Nothing in this Agreement limits the authority of the City to take enforcement action under the Code.
7. Priority. The Housing Owner represents and warrants that there are no monetary liens on the Property or Project with priority over this Agreement except for those provided for in Exhibit B to this Agreement.
  8. Representations and Warranties, and No Conflict with other Documents. The Housing Owner represents and warrants that it has the full power and authority to enter into and perform this Agreement, that this Agreement represents the valid, binding obligation of the Housing Owner and is enforceable in accordance with its terms, and that the Housing Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to the provisions of this Agreement.
  9. Attorneys' Fees. If legal action is commenced involving any provision of this Agreement, including without limitation arbitration, bankruptcy, trial or appellate proceedings, reasonable attorneys' fees and costs shall be awarded to the substantially prevailing party.
  10. Choice of Law, Jurisdiction, and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Washington. The Housing Owner and the City consent to the jurisdiction of the courts of the state of Washington and agree that venue of any action arising under this Agreement shall be exclusively in King County, Washington.
  11. Captions. The section and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions in this Agreement.
  12. Genders. The use of any gender in this Agreement shall be deemed to include the other gender, and the use of the singular in this Agreement shall be deemed to include the plural and vice versa, wherever appropriate.
  13. Counterparts, Effectiveness, Recordation, Amendments. This Agreement may be executed in two or more counterparts, each of which shall constitute an original. This Agreement shall be effective upon recording. The provisions in this Agreement shall not be amended, revised or terminated, other than by the express terms of this Agreement and by an instrument in writing that is executed by the Director and the Housing Owner or their successors and assigns, and recorded with King County Records. Amendments to

this Agreement that affect the affordability level or term of agreement, the percentage of Units that must be Designated Units, or the minimum percentage of two-bedroom Units shall only be subject to approval by ordinance.

14. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.
15. Delivery of Notice. Any notice or other document required or permitted by this Agreement to be delivered to a party shall be deemed delivered on the day personally delivered, or shall be deemed delivered three days after mailing. If the delivery day after mailing falls on a Saturday, Sunday, or City of Seattle holiday, or if personal delivery is made after normal working hours, then the delivery day shall be determined to be the next day that is not a Saturday, Sunday, or City of Seattle holiday.

Delivery to the Director, OH, and to the City shall be made to:

City of Seattle Office of Housing  
Attention: Director  
700 5<sup>th</sup> Avenue, Suite 5700  
P.O. Box 94725  
Seattle, WA 98124-4725

Or to such other address or department as is later specified to the City by written notice to the Housing Owner.

Delivery to the Housing Owner should be made to:

Marc Angelillo  
President  
Stream Real Estate, LLC  
2607 Second Avenue, Suite 300  
Seattle, WA 98121

Or to other such address as is later specified by the Housing Owner by written notice to the City.

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16. Entire Agreement. This Agreement, including any exhibits, attachments and references to documents in the Agreement, contains the entire agreement and understanding between the Housing Owner and the City with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Housing Owner has executed this Covenant and Agreement as of the date set forth above.

Stream Real Estate  
a limited liability corporation,

By: \_\_\_\_\_  
Marc Angelillo  
Its: President

IN WITNESS WHEREOF, the City has accepted this Covenant and Agreement as of the date set forth above.

THE CITY OF SEATTLE,  
a Washington charter city,

By: \_\_\_\_\_  
Steve Walker  
Its: Director, Office of Housing

Exhibit A: Legal Description (A-1 and A-2)  
Exhibit B: Monetary Liens Permitted Prior to Housing Bonus Covenant  
Exhibit C: Project Units, including Designated Units, by Unit Type and Floor Area

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**GRANTOR/HOUSING OWNER ACKNOWLEDGEMENT**

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this \_\_\_ day of \_\_\_\_\_, **Fill In Year**, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared **FILL IN Name**, to me personally known or proven on the basis of satisfactory evidence to be the **FILL IN Title of FILL IN Grantor**, the **FILL IN Type of Corporation** that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the party for the uses and purposes therein mentioned, and on oath stated that the executing party was authorized to execute the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL ON THE DATE WRITTEN ABOVE IN THIS CERTIFICATE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

NOTARY PUBLIC in and for the State of Washington, residing at

\_\_\_\_\_  
My Commission Expires

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**GRANTEE/CITY ACKNOWLEDGEMENT**

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this \_\_\_ day of \_\_\_\_\_, **FILL IN Year**, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared **Steve Walker**, to me personally known or proven on the basis of satisfactory evidence to be the **Director of the Office of Housing of the City of Seattle**, the **municipal corporation** that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the party for the uses and purposes therein mentioned, and on oath stated that the executing party was authorized to execute the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL ON THE DATE WRITTEN ABOVE IN THIS CERTIFICATE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

NOTARY PUBLIC in and for the State of  
Washington, residing at

\_\_\_\_\_  
My Commission Expires

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**EXHIBIT A-1**  
**LEGAL DESCRIPTION, PARCEL 524780-1526**

THE EAST HALF OF LOTS 7 AND 8, BLOCK 31, TOWN OF SEATTLE AS LAID  
OUT BY D. S. MAYNARD, COMMONLY KNOWN AS D. S. MAYNARD'S PLAT  
OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1  
OF PLATS, PAGE 23, IN KING COUNTY, WASHINGTON.

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**EXHIBIT A-2**  
**LEGAL DESCRIPTION, PARCEL 524780-1525**

LOT 6 AND THE WEST HALF OF LOTS 7 AND 8, BLOCK 31, TOWN OF SEATTLE AS LAID OUT BY D. S. MAYNARD, (COMMONLY KNOWN AS D. S. MAYNARD'S PLAT OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 23, RECORDS OF KING COUNTY, WASHINGTON.

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**EXHIBIT B**  
**MONETARY LIENS PERMITTED PRIOR TO HOUSING BONUS COVENANT**

Click here to enter text.

**EXHIBIT C  
 PROJECT UNITS BY UNIT TYPE AND FLOOR AREA**

<b>DESIGNATED UNITS AND TOTAL UNITS</b>											
<b>FLOOR:</b>			<b>BELOW GRADE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>Subtotal Units, Floor Area</b>
<b>BR</b>	<b>B</b>	<b>UNIT TYPE</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>	<b># units NRSF</b>
2	1	Standard									
1	1	Standard									
1	1	Open									
0	1	Studio									
<b>Total Units in Project (equal to "Designated Units")</b>											
<b>Net Rentable Square Feet</b>											