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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/04/2015 11:07 AM Pg: 1 of 15

Lisa Misher
City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602

(Above Space for Recorder's Use Only)

AFFORDABLE HOUSING COVENANT AND LIEN (ARO - Rental Project)

THIS AFFORDABLE HOUSING COVENANT AND LIEN (this "Covenant") dated as of January 30, 2014, is made by FLETCHER LOFTS, LLC, an Illinois limited liability company ("Developer"), for the benefit of the CITY OF CHICAGO, an Illinois municipal corporation (the "City"), acting by and through its Department of Planning and Development (the "Department"). Capitalized terms not otherwise defined herein shall have the meanings given in Section 1.

RECITALS

A. Developer is the owner of the property located at 3141 N. Sheffield Avenue, Chicago, Illinois, and legally described on Exhibit A attached hereto (the "Property").

B. In connection with the Development of the Property (the "Project"), and as more fully described in the Affordable Housing Profile Form attached hereto as Exhibit B, the Developer has received Zoning Assistance from the City.

C. Pursuant to Section 2-45-110 of the Municipal Code (the "Affordable Requirements Ordinance" or the "ARO"), the City requires any developer of a Residential Housing Project receiving Acquisition Assistance, Financial Assistance or Zoning Assistance to establish affordable housing through (a) the development of Eligible Units as part of the Residential Housing Project, or (b) the payment of a fee in lieu of such development of Eligible Units, or (c) a combination of (a) and (b), which requirement must be satisfied prior to the issuance of a building permit through either (i) the recordation of a lien, regulatory agreement or similar instrument against the Property, imposing such affordable housing requirements as covenants running with the land in order to secure their performance, or (ii) the payment of the required fee.

D. The Developer is executing this Covenant to satisfy the requirements set forth in Section 2-45-110 of the Municipal Code in lieu of payment of the required fee.

NOW THEREFORE, Developer agrees and covenants as follows:

Section 1. Definitions.

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"Acquisition Assistance" means the City's sale of real property to any developer on which a Residential Housing Project is subsequently developed.

"Affordable Housing Profile Form" means the agreement attached hereto as Exhibit B, specifying the number and types of affordable units required for the Project.

"AMI" means the median household income for the Chicago Primary Metropolitan Statistical Area as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development or any successor.

"Commissioner" means the commissioner of the Department of Planning and Development of the City, or any successor department.

"Completion Date" means the earlier of (a) the issuance of the certificate of occupancy for the Project (or the residential portion of the Project if the Project is a mixed-use development), or (b) the first day of the initial lease of Units in the Project.

"Development" means the construction or Substantial Rehabilitation of housing units or the conversion of any building into residential condominiums.

"Eligible Units" means those Units in the Project which will be occupied by or available for occupancy to Low-Income Households. The Eligible Units must be similar in size, construction, design, appearance and lot size as the market rate Units in the Project.

"Final Lease Commencement Date" means the date on which the last (in this case, second) Eligible Unit in the Project is first leased to a Low-Income Household.

"Financial Assistance" means any assistance provided by the City through grants, direct or indirect loans, or allocation of tax credits for the Development of Units.

"Household" means and includes an individual, a group of unrelated individuals or a family, in each case residing in one Unit.

"Imputed Income Limitation" means, for each Eligible Unit, the Income Limit which would apply to the Household occupying such Eligible Unit if the number of individuals in the Household were as follows: (a) in the case of an Eligible Unit which does not have a separate bedroom, one individual; and (b) in the case of an Eligible Unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

"Low-Income Household" means a Household whose adjusted annual income does not exceed 60% of AMI at the time of the first rental of an Eligible Unit by that Household.

"Municipal Code" means the Municipal Code of the City of Chicago.

"Residential Housing Project" means one or more buildings that collectively contain ten (10) or more Units on one or more tax parcels or lots marketed as a single or unified project or sharing common elements, or comprising a part of a planned development or the addition of ten (10) or more Units to an existing building.

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"Substantial Rehabilitation" means the reconstruction, enlargement, installation, repair, alteration, improvement or renovation of a building, structure or portion thereof requiring a permit issued by the City; provided the cost of the Substantial Rehabilitation must be \$25,000.00 or more per Unit.

"TIF Guidelines" means those guidelines established pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., and adopted by the City Council in "An Ordinance Adopting Guidelines for Use of Tax Increment Financing Revenues for Construction of Affordable Housing" passed on July 31, 2002, and published at pages 90838-90859 of the Journal of the Proceedings of the City Council of that date.

"Unit" means a room or suite of rooms designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping and sanitary facilities provided within the unit for the exclusive use of the occupants of the unit; provided that a "Unit" does not include dormitories, or a "hotel" as that term is defined in Section 13-4-010 of the Municipal Code.

"Zoning Assistance" means City approval of a rezoning of a lot (i) to permit a higher floor area ratio than would otherwise be permitted in the base district in which the Property is located at the time of such rezoning and the lot is subsequently developed with a Residential Housing Project; (ii) from a zoning district that does not allow household living uses to a zoning district that allows household living uses and the lot is subsequently developed with a Residential Housing Project; and/or (iii) from a zoning district that does not allow household living uses on the ground floor of a building to a zoning district that permits household living uses on the ground floor, and the ground floor is subsequently developed with a Residential Housing Project.

Section 2. Term of Covenant. Developer, for itself and its successors and assigns, agrees to be bound by the terms and provisions of this Covenant for the period (the **"Covenant Term"**) commencing on the date hereof and expiring on the earlier of (a) the thirtieth (30th) anniversary of the Final Lease Commencement Date, or (b) the date on which a first mortgagee providing construction or permanent financing for the Project acquires title to the Project by foreclosure or deed in lieu of foreclosure, or (c) the date on which an authorized condemning authority acquires the Project by condemnation. Developer shall inform the Department of the date the Project (or the residential portion of the Project if the Project is a mixed-use development) receives a certificate of occupancy from the City, or, if no certificate of occupancy is issued, the date of the commencement of the first lease term of a Project Unit within 60 days following Developer's receipt of the certificate of occupancy or the executed initial lease, as the case may be.

Section 3. Covenant Running with the Land. Developer hereby declares its express intent that the covenants and agreements set forth herein shall be deemed covenants running with the land from the date hereof to the expiration of the Covenant Term and shall pass to any person or entity (except tenants of the Units) to whom Developer may sell or assign all or a portion of its interest in the Property or any successor in title to all or a portion of the Property. In the event Developer sells or assigns all or any portion of the Property or Project it shall notify the City within sixty (60) days of such sale or assignment.

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Section 4. Affordability Restrictions.

4.1 Developer shall comply with the affordable housing commitment required pursuant to Section 2-45-110 of the Municipal Code through either or a combination of the following:

- (a) establishing and maintaining eight (8) Eligible Units: seven (7) containing one (1) bedroom, with a square footage of approximately 574 square feet, and one (1) containing two (2) bedrooms with a square footage of approximately 1,123 square feet; or
- (b) paying to the City \$100,000 per Unit not initially established as an Eligible Unit as required above.

4.2 Developer shall rent the Eligible Units required pursuant to Section 4.1(a) to Low-Income Households only.

4.3 The rent (including tenant-paid heat) charged each month for any Eligible Unit shall not exceed at any time 30% of the Imputed Income Limitation applicable to such Eligible Unit, as updated annually in the document titled "City of Chicago Maximum Affordable Monthly Rents," for a period of 30 years after the first day of the initial lease of such Eligible Unit.

4.4 On or prior to October 31 of each year during the Covenant Term, the Developer shall provide the City with a compliance certificate in substantially the form attached hereto as Exhibit C (the "**Compliance Certificate**"). Developer shall obtain and keep such records as are necessary to enable it to complete the Compliance Certificate and substantiate all statements made therein.

4.5 If on the date that is six (6) months following the Completion Date, the Eligible Units required under Section 4.1(a) above are not rented or available for rental by Low-Income Households in accordance with this Section 4, and Developer has not made payment to the City as provided by Section 4.1(b), then Developer shall be in breach of this Covenant and subject to the City's remedies set forth in Section 5. The Department may, in its sole discretion, extend such 6-month period based on the initial leasing of the Units in the Project.

Section 5. Remedies and Enforceability.

5.1 Upon the rental of any Eligible Unit at a rental price in excess of what is permitted by Section 4.3 above, or to a Household that is not a Low-Income Household, Developer shall pay to the City a fee ("**Fee**") of \$500.00 per Eligible Unit per day for each day that Developer is in noncompliance, subject to the right to cure such noncompliance as set forth below.

5.2 Developer shall have ninety (90) days after written notice from the Commissioner to cure any noncompliance with this Covenant. If after ninety (90) days, the Developer fails to cure the noncompliance, the Fee shall be assessed from the first day of noncompliance.

5.3 In addition to the foregoing remedy, the City shall have the right to enforce this Covenant and in furtherance thereof institute any action or proceeding at law or in equity against Developer.

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Section 6. General Provisions.

6.1 This Covenant shall be interpreted under the laws of the State of Illinois.

6.2 This Covenant shall not be waived, modified or amended except as set forth in a written document executed by the Commissioner and Developer.

6.3 Any notices and communications under this Covenant shall be in writing and shall be: (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by a reputable overnight express carrier, to the following address (or to such other or further addresses as the City or Developer may hereafter designate by like notice similarly sent):

If to Developer: Fletcher Lofts, LLC
341 Raven Circle
Wyoming, Delaware 19934

With a copy to: Jessica Schramm, Esq.
Thompson Coburn LLC
37th Floor
55 E. Monroe Street
Chicago IL 60603

If to the City: Commissioner
City of Chicago
Department of Planning and Development
121 N. LaSalle, 10th Floor
Chicago, IL 60602

Every notice or other communication hereunder shall be deemed to have been given as of the date evidenced by a receipt from such national courier service or the United States Postal Service or immediately if personally delivered.

6.4 The Developer hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City from and against any judgments, losses, liabilities, damages (including consequential damages), costs and expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations, incurred by the City that may arise in any manner out of or in connection with actions or omissions which result from the Developer's responses or documents provided pursuant to the terms of this Covenant or the Compliance Certificate, including breaches of the representations and warranties herein and therein contained.

(SIGNATURE PAGE FOLLOWS)

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IN WITNESS WHEREOF, the undersigned has executed this Covenant as of the date first above written.

DEVELOPER:

FLETCHER LOFTS, LLC, a Delaware limited liability company

By: *Donald P Barry*

Print Name: DONALD P BARRY

Its: AUTHORIZED SIGNATORY

ILLINOIS
STATE OF ~~DELAWARE~~)
COUNTY OF COOK) ss.

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY that DONALD P. BARRY, as Authorized Signatory of Fletcher Lofts, LLC, a Delaware limited liability company (the "LLC"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as his free and voluntary act and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth

GIVEN under my hand and official seal this 30th day of January, 2014.

[Signature]
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 1 AND 2 IN THE SUBDIVISION OF LOTS 16 AND 17 AND THE WEST 25 FEET OF LOT 15, IN SUBDIVISION BLOCK TWO (2) IN GEHRKE AND BRAUKMANN'S SUBDIVISION OF PART OF OUT LOT 1 IN CANAL TRUSTEE'S SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 3141 NORTH SHEFFIELD AVENUE
CHICAGO IL 60657

PERMANENT INDEX NO: 14-29-204-013-0000

Property of Cook County Clerk's Office

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EXHIBIT B

AFFORDABLE HOUSING PROFILE FORM

(ATTACHED)

Property of Cook County Clerk's Office



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Estimated date for completion of construction of the affordable units: ~~May 1, 2013~~

For each unit configuration, fill out a separate row, as applicable (see example).

	Unit Type*	Number of Units	Number of Bedrooms/Unit	Total Square Footage/Unit	Expected Market Rent	Proposed Affordable Rent*	Proposed Level of Affordability (60% or less of AMI)
Affordable Units	1 bed/ 1 bath	7	1	574	\$1,381		
	2 bed/ 2 bath	1	2	1,123	\$2,395		
Market Rate Units	1 bed/ 1 bath	67	1	574	\$1,381	N/A	N/A
	2 bed/ 2 bath	5	2	1,123	\$2,395	N/A	N/A
						N/A	N/A

*Rent amounts determined by the "City of Chicago's Maximum Affordable Monthly Rent Chart"

SECTION 4: PAYMENT IN LIEU OF UNITS

When do you expect to make the payment in-lieu? _____
 (typically corresponds with payment/issuance of building permits) Month/Year

For ARO projects, use the following formula to calculate payment owed:

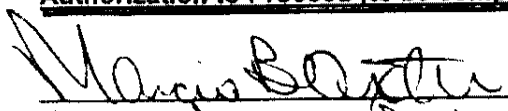
$$\frac{\text{Number of total units in development}}{\text{Number of total units in development}} \times 10\% = \frac{\text{(round up to nearest whole number)}}{\text{(round up to nearest whole number)}} \times \$100,000 = \$ \text{Amount owed}$$

For Density Bonus projects, use the following formula to calculate payment owed:


$$\text{Bonus Floor Area (sq ft)} \times 80\% \times \$ \text{median price per base FAR foot (from table below)} = \$ \text{Amount owed}$$

Submarket (Table for use with the Density Bonus fees-in-lieu calculations)	Median Land Price per Base FAR Foot
Loop: Chicago River on north/west; Congress on south; Lake Shore Dr on east	\$51
North: Division on north; Chicago River on south/west; Lake Shore Dr. on east	\$43
South: Congress on north; Stevenson on south; Chicago River on west; Lake Shore Dr. on east	\$22
West: Lake on north; Congress on south; Chicago River on east; Racine on west	\$29

Authorization to Proceed (to be completed by Department of HED)



 Marcia Baxter
 Department of Housing & Economic Development
 5741759.1



 date

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EXHIBIT C

COMPLIANCE CERTIFICATE

CITY OF CHICAGO
DEPARTMENT OF PLANNING AND DEVELOPMENT

ANNUAL OWNER'S CERTIFICATION FOR PROJECT
SUBJECT TO AFFORDABLE HOUSING COVENANT
OF THE MUNICIPAL CODE OF CHICAGO

Owner: _____

Project Name: _____

Project Address: _____

Date: _____

Owner Federal Employer Identification Number: _____

The Owner has executed an Affordable Housing Covenant and Lien ("**Covenant**") for the benefit of the City of Chicago (the "**City**"). The Covenant was filed with the Office of the Recorder of Deeds of Cook County, Illinois, on _____ (month/date/year). Pursuant to the Covenant, the Owner is required to maintain certain records concerning the Project and the City is authorized to monitor the Project's compliance with the requirements of the Covenant. This Annual Owner's Certification for Project Subject to the Affordable Housing Covenant ("**Compliance Certificate**") must be completed in its entirety and must be executed by the Owner, notarized and returned to the Department of Planning and Development by October 31 of each year until the expiration of the Covenant Term (as defined in Section 2 of the Covenant). No changes may be made to the language contained herein without the prior approval of the City. Except as otherwise specifically indicated, capitalized terms contained herein shall have the same meanings given to such terms in the Covenant.

All forms, including updates to this Compliance Certificate, department contacts, income limits, maximum allowable rents, and guidance for calculating household income are available on the Department of Planning and Development's website, or by contacting the Department directly at 312-744-4190 and requesting to speak with someone regarding ARO Compliance.

A. INFORMATION

1. Please list the address for each building included in the Project. (If necessary, use a separate sheet of paper and attach it to this document.)

Building Address(es):

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2. Has any change occurred, either directly or indirectly, (a) in the identity of the Owner, (b) in the identity of any shareholder, partner, member, trustee or other entity holding an ownership interest in the Owner, or (c) which would otherwise cause a change in the identity of the individuals who possess the power to direct the management and policies of the Owner since the date of the Covenant or the most recent Annual Owner's Certification?

Yes _____ No _____

If Yes, provide all the appropriate documents.

3. Have the Owner's organizational documents been amended or otherwise modified since they were submitted to the City?

Yes _____ No _____

If Yes, provide all amendments and modifications of the Owner's organizational documents.

B. REPRESENTATIONS, WARRANTIES AND COVENANTS

The Owner hereby represents and warrants to the City that each of the following statements is true and accurate and covenants as follows:

1. The Owner is [check as applicable]:

- (a) ___ an individual
- (b) ___ a group of individuals
- (c) ___ a corporation incorporated and in good standing in the State of _____
- (d) ___ a general partnership organized under the laws of the State of _____
- (e) ___ a limited partnership organized under the laws of the State of _____
- (f) ___ a limited liability company organized under the laws of the State of _____
- (g) ___ other [please describe]: _____

2. The Owner is [check as applicable] (a) ___ the owner of fee simple title to, or (b) ___ the owner of 100 percent of the beneficial interest in, the Project.

3. The Project consists of _____ building(s) containing a total of _____ residential unit(s), with total rentable square feet of _____.

4. (a) The Covenant requires the Owner to rent two (2) of the residential units in the Project (the "**Eligible Units**") to individuals whose income is 60 percent or less of the Chicago Primary Metropolitan Statistical Area median income ("**Low-Income Households**").

(b) For the 12-month period preceding the date hereof (the "**Year**"):

- (i) the Eligible Units in the Project (as identified in paragraph 8 below) were occupied or available for occupancy by Low-Income Households;

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- (ii) the Owner received an annual income certification from each Low-Income Household at the time of the first rental by that household and documentation to support such certification;
- (iii) all of the units in the Project were for use by the general public and used on a non-transient basis;
- (iv) each building in the Project was suitable for occupancy, taking into account the health, safety and building codes of the City; and
- (v) if an Eligible Unit became vacant during the Year, reasonable attempts were or are being made to rent such Eligible Unit or the next available residential unit in the Project of a comparable size to one or more Low-Income Households.

5. I have attached the Affordable Housing Profile Form signed by the Department of Planning and Development for this Project and acknowledge that I must provide the number and types of affordable units specified in that document.

6. I have attached copies of the first and last pages of the lease for each of the Eligible Units listed in paragraph 6 below. For any new tenants, I have attached copies of all documents required to certify that they are income-eligible.

7. For this Project, tenants pay for the following utilities [check as applicable]:

- (a) electric heat
- (b) cooking gas
- (c) other electric
- (d) gas heat
- (e) electric cooking

8. The following information accurately describes the Eligible Units required in this Project, as of today's date:

	Unit #	Number of bedrooms	Square footage	Rent charged	Household size	Household income	Date household income most recently calculated
1.		1	574				
2.		1	574				
3.		1	574				
4.		1	574				
5.		1	574				
6.		1	574				
7.		1	574				
8.		2	1,123				

9. The Project is in compliance with all of the currently applicable requirements of the Covenant. The Owner will take whatever commercially reasonable action is required to ensure that the Project complies with all requirements imposed by the Covenant during the periods required thereby.

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The Owner shall retain, for the period required under the Covenant, as from time to time amended and supplemented, all tenant selection documents, which include but are not limited to: income verification, employment verification, credit reports, leases and low-income computation forms, to be available for periodic inspections by the City or its representative. The City, at its option, can periodically inspect the Project, and all tenancy-related documents to determine continued compliance of the Project with all applicable requirements.

10. No litigation or proceedings have been threatened or are pending which may affect the interest of the Owner in the Project or the ability of the Owner to perform its obligations with respect thereto.

11. All Units in each building included in the Project are affirmatively marketed and available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap.

12. The Owner has not demolished any part of the Project or substantially subtracted from any real or personal property of the Project or permitted the use of any residential rental unit for any purpose other than rental housing. The Owner has used its commercially reasonable best efforts to repair and restore the Project to substantially the same condition as existed prior to the occurrence of any event causing damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of the Affordable Housing Profile Form attached to the Covenant.

13. The Owner has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Covenant. The Owner shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Covenant and the City or the City's counsel.

If the Owner is unable to make any representation or warranty set forth above, the Owner must immediately contact the City and inform the City of the reason that the Owner is unable to make such representation or warranty.

Under penalties of perjury, the Owner declares that, to the best of its knowledge and belief, each response, representation, warranty and document delivered by the Owner in connection herewith is true, correct and complete and will continue to be true, correct and complete.

C. PENALTIES FOR NONCOMPLIANCE

Upon the rental of any Eligible Unit at a rental price in excess of what is permitted by Section 4.3 of the Covenant, or to a Household that is not a Low-Income Household, Developer shall pay to the City a fee ("Fee") of \$500.00 per Eligible Unit per day for each day that the Developer is in noncompliance, subject to the right to cure such noncompliance as set forth below.

Developer shall have 90 days after written notice from the Commissioner to cure any noncompliance with this Covenant. If after 90 days, the Developer fails to cure the noncompliance, the Fee shall be assessed from the first day of noncompliance.

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In addition to the foregoing remedy, the City shall have the right to enforce this Covenant and in furtherance thereof institute any action or proceeding at law or in equity against Developer.

D. INDEMNIFICATION

The Developer hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City from and against any judgments, losses, liabilities, damages (including consequential damages), costs and expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations, incurred by the City that may arise in any manner out of or in connection with actions or omissions which result from the Developer's responses or documents provided pursuant to the terms of this Covenant or the Compliance Certificate, including breaches of the representations and warranties herein and therein contained.

IN WITNESS WHEREOF, the Owner has executed this Annual Owner's Certification this day of _____, _____.

Owner: _____

By: _____

Its: _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

(SEAL)