

UNOFFICIAL COPY

Doc#. 2003446058 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 02/03/2020 10:26 AM Pg: 1 of 18

THIS INSTRUMENT PREPARED BY,
AND AFTER RECORDING, PLEASE
RETURN TO:

James Wheaton
Chicago Community Land Trust
City of Chicago Department of Housing
121 N. LaSalle Street Suite 1006
Chicago, IL 60602
(312) 744-0874

41049270 G(2/4)

(The Above Space for Recorder's Use Only)

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT, INCLUDING RESALE, REFINANCING AND LEASING COVENANTS, CONDITIONS AND RESTRICTIONS ("Restrictive Covenant") is made and entered into this JANUARY 17, 2020, by and between the **CHICAGO COMMUNITY LAND TRUST**, an Illinois not-for-profit corporation (the "CCLT") and **AARON *AKERS** (the "Homeowner").

*JOSEPH RECITALS

A. The City Council, by ordinance adopted on February 28, 2018, approved the rezoning of the Rezoned Property from RS3 (Residential Single-Unit District) to B2-3 (Neighborhood Mixed-Use District) for the construction of a 48-unit residential project consisting of eight buildings, each containing six townhouses (the "Triggering Project").

B. Section 2-45-080 of the Municipal Code (the "2015 Affordable Requirements Ordinance" or the "ARO") obligates the City to impose certain affordability requirements upon developers who undertake residential development projects that include ten (10) or more dwelling units and that receive City assistance in the form of the sale of City land, financial assistance, or approval of certain zoning changes.

C. The Project Developer has acknowledged and agreed that the Triggering Project is a Residential Housing Project (as defined in the Affordable Housing Covenant and Agreement between the Developer and the City of Chicago, dated February 14, 2019 and recorded with the Cook County Recorder of Deeds on February 14, 2019 as Document number 1904519308) and that the rezoning of the Rezoned Property for the Triggering Project constitutes Zoning Assistance within the meaning of the ARO, thereby triggering the requirements of the ARO. The Developer has agreed to sell the unit legally described on Exhibit A attached hereto (the "Home") for a purchase price below its fair market value.

D. The Initial Fair Market Value of the Home is \$550,000.

UNOFFICIAL COPY

E. The Homeowner is on the date hereof purchasing the Home from Developer for the below-market price of \$ 240,000, which is \$310,000 below its fair market value (the "Purchase Price Write-Down") and constitutes the initial Subsidized Purchase Price (defined below).

F. In order to finance the purchase of the Home, the Homeowner is on the date hereof obtaining a Senior Mortgage (as hereafter defined) in the principal amount of \$232,800.

G. The Homeowner acknowledges and agrees that, but for the Affordable Requirements Ordinance and the Purchase Price Write-Down it offered, the Homeowner would have been unable to purchase the Home for an affordable price.

H. The City has required the Homeowner to execute this Restrictive Covenant in order to impose the Affordability Restrictions upon the Home and give notice of the Affordability Restrictions to the Homeowner, any subsequent buyer of the Home, and any lender having a mortgage secured by the Home, and to secure the payment obligations set forth in Article 5 and Article 8 hereof and the Homeowner's other obligations under this Restrictive Covenant.

NOW, THEREFORE, in consideration of the Purchase Price Write-Down, the benefits received by the Homeowner as a result of its purchase of the Home, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Homeowner hereby intends, declares and covenants that the following covenants, conditions, rights and restrictions shall run with the land and shall bind the Homeowner and shall inure to the benefit of, and be enforceable by, the CCLT.

ARTICLE 1. DEFINITIONS.

"Acknowledgment of Affordability Restrictions" means an acknowledgement in substantially the form of Exhibit B attached hereto, confirming the Homeowner's review and understanding of the terms and conditions of this Restrictive Covenant.

"Affordability Restrictions" means the restrictions and requirements related to residency in Article 4, leasing in Article 5, construction in Article 7, financing in Article 8, and resale and transfer in Article 10.

"Affordable" means an amount less than or equal to the price at which monthly homeownership costs (including principal and interest on a 30-year fixed rate residential mortgage in the amount of 95% of the purchase price, taxes, insurance, private mortgage insurance, monthly condominium assessment payments or similar homeowners' association payments) for the Home would total not more than 30% of household income for a household with a family size equal to the product of 1.5 multiplied by the number of bedrooms in the Home whose income is 120% of the AMI.

"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.

"CCLT" means the Chicago Community Land Trust, an Illinois not-for-profit corporation.

"City" means the City of Chicago, an Illinois Municipal Corporation, and its successors and assigns.

UNOFFICIAL COPY

"Condominium Association" means **The 1340 Walton Condominium** and its successors and assigns as set forth in the Homeowner Instruments.

"Covenant Term" shall have the meaning set forth in Article 3.

"CPI" means the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers for the Chicago metropolitan area (1982/84 = 100).

"Current Fair Market Value" means the fair market value of the Home at the time the Homeowner is selling, refinancing or otherwise transferring the Home (valued as if free of the restrictions imposed by this Restrictive Covenant) established by a qualified appraiser, reasonably acceptable to the CCLT.

"Declaration of Qualified Heir" shall have the meaning set forth in Article 10.

"Developer" shall have the meaning set forth in the Recitals.

"Home" shall have the meaning set forth in the Recitals.

"Homeowner" means **AARON J. AKERS** and any subsequent owner by sale, conveyance or other transfer of any legal or beneficial interest in the Home, and all heirs, successors and assigns of such persons.

"Homeowner Instruments" means the Declaration of Condominium for 1340 Walton Condominium recorded January 10, 2020, as Document No. 2001016103, the plat or plats of survey of the property, and such other documents and authorized amendments thereto.

"Homeowner's Share of Market Value Appreciation" means the Market Value Appreciation multiplied by **twelve percent (12.00%)**.

"Initial Fair Market Value" means, as of any determination date, the fair market value of the Home (valued as if free of the restrictions imposed by this Restrictive Covenant) established by a qualified appraiser, reasonably acceptable to the CCLT, at the time the Homeowner is purchasing the Home.

"Laws" means all present and future federal, state and local laws, ordinances, orders, judgments, codes, rules and regulations, and all documents of record, affecting the Home, including, without limitation, any applicable homeowner or condominium association covenants and requirements.

"Market Value Appreciation" means the Current Fair Market Value minus the Initial Fair Market Value, but in no event less than Zero Dollars (\$0).

"Maximum Resale Price" means the lowest of (a) the Current Fair Market Value, or (b) an amount that is Affordable to a household earning 120% of AMI, or (c) the price calculated in accordance with Article 10 below. The Maximum Resale Price does not include normal and customary closing costs.

"Purchase Price Write-Down" shall have the meaning set forth in the Recitals.

UNOFFICIAL COPY

"Qualified Heir" means (a) the spouse or "qualified domestic partner" (as defined in Section 2-152-072 of the Municipal Code of Chicago) of the Homeowner; or (b) dependents (as defined by the IRS) of the Homeowner, or, if such dependents are minors, a trustee or guardian for such minors.

"Qualified Household" means a person or group of people whose household income does not exceed 100% of AMI as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development or any successor department.

"Senior Lender" means the holder of a Senior Mortgage.

"Senior Mortgage" means a first lien on the Home. If the CCLT sends a notice of default hereunder to the Homeowner, the CCLT shall also send a notice of default to the Senior Lender at the most recent address for the Senior Lender that appears in the Office of the Recorder of Deeds of Cook County.

"Subsequent Homeowner Declaration" means a declaration and covenant in the CCLT's then-current form from future buyers of the Home agreeing to be bound by this Restrictive Covenant, as hereafter amended, and to undertake and perform all of the duties and obligations of the Homeowner hereunder.

"Subsidized Purchase Price" has the meaning set forth in the Recitals, and is equal to the original principal balance of the Senior Mortgage plus the Homeowner's down payment. The Subsidized Purchase Price does not include the Purchase Price Write-Down and other normal and customary out-of-pocket financing and closing costs. The Subsidized Purchase Price applicable to any subsequent resale of the Home shall be maintained in the records of the CCLT and furnished to the Homeowner from time to time on request. The records of the CCLT shall be determinative, absent manifest error.

"Transfer" shall have the meaning set forth in Article 10.

ARTICLE 2. PURPOSE OF RESTRICTIVE COVENANT.

The Homeowner understands and agrees that the purpose of this Restrictive Covenant is to expand access to homeownership opportunities for low- and moderate-income households and to preserve the affordability of the Home for the Covenant Term (as defined in Article 3 below). The Homeowner has signed an Acknowledgment of Affordability Restrictions (attached hereto as Exhibit B), confirming the Homeowner's review, understanding and acceptance of the terms and conditions of this Restrictive Covenant (in particular, the Affordability Restrictions).

ARTICLE 3. TERM OF RESTRICTIVE COVENANT.

The term of this Restrictive Covenant is 30 years commencing on the date hereof ("Covenant Term"). If, during the Covenant Term, the Homeowner sells the Home, the next owner must also be a Qualified Household and must sign a Subsequent Homeowner Declaration. At the expiration of the 30-year Covenant Term, the then-owner shall have the option, when the owner elects to sell, of (a) paying an amount equal to fifty percent (50%) of the difference between the Home's market value and its affordable price, as determined at the time of such sale, in which event the CCLT will release the Restrictive Covenant recorded against the Home, or (b) in lieu of paying the amount specified in (a), selling the Home to an income-

UNOFFICIAL COPY

eligible household at an affordable price, subject to a new affordable housing agreement in the City's then-current form. If the same Homeowner lives in the Home for thirty (30) years and otherwise complies with this Restrictive Covenant, this Restrictive Covenant will automatically terminate.

ARTICLE 4. PRINCIPAL RESIDENCE REQUIREMENT.

The Homeowner shall occupy the Home for at least nine (9) full months of every twelve (12) consecutive calendar months, unless the CCLT agrees otherwise. The Homeowner shall deliver any certifications or other information as the CCLT may reasonably request to confirm that the Homeowner is using the Home as the Homeowner's principal residence. Occupancy by the Homeowner's dependents shall be considered occupancy by the Homeowner.

ARTICLE 5. LEASING PROHIBITED.

The Homeowner may not lease the Home. Any rents, profits, or proceeds from any prohibited lease or other occupancy agreement shall be paid to and be the property of the CCLT.

ARTICLE 6. INSPECTION.

The CCLT and its representatives may inspect the interior of the Home following written notice to the Homeowner of at least three (3) business days, but only upon the occurrence of a material default. Notwithstanding the foregoing, in the event of an emergency (as reasonably determined by the CCLT), the CCLT is only obligated to give such notice as is practical under the circumstances.

ARTICLE 7. CONSTRUCTION AND ALTERATIONS.

The Homeowner may not perform any work on the Home requiring a building permit without the prior written consent of the CCLT, which shall be in the CCLT's sole and absolute discretion. The value of any construction conducted in violation of this Section 7 will be deducted from the appraisal used to determine the Current Fair Market Value under Article 10 below.

ARTICLE 8. RESTRICTIONS ON FINANCING.

8.1 CCLT's Consent Required to Mortgage and Refinance. The Homeowner may not mortgage, refinance or in any other manner encumber any of its interest in the Home without the prior written consent of the CCLT, which shall be in the CCLT's sole and absolute discretion, with the exception of a Senior Mortgage. If the Homeowner wishes to refinance its Senior Mortgage, or sell the Home, the Homeowner (or the prospective buyer) must give the CCLT copies of every document to be recorded in connection with the refinancing or sale in advance of the closing. **THESE RESTRICTIONS MAY PROHIBIT THE HOMEOWNER FROM GETTING ADDITIONAL LOANS THAT USE THE HOME AS COLLATERAL, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL PROPERTY.** The Homeowner acknowledges and agrees that the requirements of this Section 8.1 are necessary to ensure the continued affordability of the Home to the Homeowner and to minimize the risk of loss of the

UNOFFICIAL COPY

Home through default and foreclosure. Any lien purported to be granted by the Homeowner to any party that is done in violation of this Section 8.1 shall be absolutely void.

8.2 Removal of Certain Provisions Pursuant to Foreclosure. In the event of a transfer of title to the Home through foreclosure or recording of a deed in lieu of foreclosure to the Senior Lender in accordance with the provisions of this Restrictive Covenant, the Affordability Restrictions shall be released and thereupon shall have no further force or effect, provided that (a) the Senior Lender has given written notice to the CCLT of a default under the Senior Mortgage, and a reasonable opportunity to cure the default; (b) the Senior Lender has given the CCLT the opportunity to acquire the Home; and (c) if the CCLT does not acquire the Home, any proceeds from any subsequent sale of the Home by the Senior Lender or an affiliate of the Senior Lender, in excess of all sums secured by the Senior Mortgage, if any, which the CCLT is entitled to receive pursuant to this Section 8 are paid to the CCLT. Any person (including the transferees, assignees or successors of the Senior Lender) receiving title to the Home through a foreclosure or deed in lieu of foreclosure of the Senior Mortgage shall receive title to the Home free and clear of such restrictions. Notwithstanding the foregoing, if the Condominium Association acquires an interest in the Home through foreclosure or subsequent to foreclosure or sale in lieu of foreclosure, then all such Affordability Restrictions shall be revived according to the original terms.

8.3 CCLT's Right to Proceeds in Excess of Maximum Resale Price. The Homeowner agrees that any payment to the Homeowner in excess of the Maximum Resale Price in the event of foreclosure or sale in lieu of foreclosure would undermine the affordability goals of this Restrictive Covenant. Accordingly, in the event of foreclosure or sale in lieu of foreclosure, the CCLT shall calculate the Maximum Resale Price in accordance with Article 10 below and the Senior Lender shall apply the sale proceeds as follows:

- (a) first, to the Senior Lender, to pay all sums secured by the Senior Mortgage;
- (b) second, to the City to recapture the Purchase Price Write-Down;
- (c) third, to any junior lender approved pursuant to Section 8.1 above, in order of lien priority, to pay all sums owing to such approved junior lenders;
- (d) fourth, to the Condominium Association for the lien of any overdue condominium assessments;
- (e) fifth, to the Homeowner, to pay the difference between the Maximum Resale Price at the time of foreclosure or sale in lieu of foreclosure and any amounts owing as set forth above; and
- (f) sixth, the balance to the CCLT.

The Homeowner hereby irrevocably assigns to the CCLT the Homeowner's rights to any net proceeds of sale of the Home in excess of the Maximum Resale Price (after payment of all amounts set forth above), and authorizes and instructs the Senior Lender or any party conducting any sale to pay the amount of said excess proceeds directly to the CCLT. If, for any reason, such excess proceeds are paid to the Homeowner, the Homeowner hereby agrees to pay the amount of such excess proceeds to the CCLT within seven (7) days of receipt of such

UNOFFICIAL COPY

proceeds. The Homeowner's payment obligations set forth in this Article 8 shall survive the expiration or termination of this Restrictive Covenant.

8.4 Compliance with Senior Mortgage. The Homeowner shall pay, when due, monthly principal and interest payments, and any other sums owing under the Senior Mortgage and any other mortgage secured by the Home, and shall further perform and observe all other material obligations, terms and provisions under such mortgages. If the Homeowner receives a notice of default under any mortgage secured by the Home, the Homeowner shall notify the CCLT of such default within three (3) business days after receipt of such notice.

ARTICLE 9. LIABILITY, INSURANCE, DAMAGE, EMINENT DOMAIN.

9.1 Homeowner's Liability. The Homeowner assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy and use of the Home. The CCLT shall not be liable to the Homeowner or any third party for any losses, costs, damages, harms, claims or lawsuits connected with the Home.

9.2 Indemnification of CCLT and City. The Homeowner shall, and does hereby, indemnify, protect, defend and hold harmless the CCLT and the City, and the CCLT's and the City's agents, employees, officers, successors, designees and assigns, from and against any and all claims, damages, liabilities, obligations, losses, causes of action, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising directly or indirectly from: (a) the Homeowner's use of the Home, or any activity, work or other things done, permitted or suffered by the Homeowner in, on or about the Home; (b) the Homeowner's breach of this Restrictive Covenant or violation of any applicable Laws; (c) any act or omission of the Homeowner, or any guest or invitee of the Homeowner, or anyone claiming by, through or under the Homeowner; or (d) any cause in, on or about the Home. The Homeowner hereby assumes all risk of damage to property or injury to persons in, on or about the Home, from any cause, and the Homeowner hereby waives all claims in respect thereof against the CCLT, the City, and the CCLT's and/or the City's respective agents, employees, officers, successors, designees and assigns. This Section 9.2 shall survive the expiration or termination of this Restrictive Covenant.

9.3 Payment by CCLT. If the CCLT pays any sum that is the Homeowner's responsibility or liability under this Restrictive Covenant, the Homeowner shall, within ten (10) business days after written demand, reimburse the CCLT for such payment and for reasonable expenses caused thereby.

9.4 Insurance. The Homeowner shall keep the Home continuously insured throughout the Covenant Term in such amounts and against such risks and liabilities as the Senior Lender requires, or, if there is no Senior Lender, in such amounts and against such risks and liabilities as the CCLT may reasonably require, provided that such insurance shall specifically insure the Homeowner against all liability assumed under this Restrictive Covenant and imposed by Law.

9.5 Damage and Destruction. If the Home is damaged by fire or any other cause, and repair or restoration is not economically feasible, or is otherwise prohibited under the Senior Mortgage or Homeowner Instruments, then the Homeowner may terminate this Restrictive Covenant by delivering written notice to the CCLT within sixty (60) days after the date of the damage. Subject to the terms of the Senior Mortgage, any insurance proceeds shall be applied

UNOFFICIAL COPY

in the order provided for in Section 8.3, with the Maximum Resale Price determined as of the date immediately before the damage in accordance with Article 10.

9.6 Eminent Domain. In the event of a total taking (or partial taking, if repair or restoration is not economically feasible or is otherwise prohibited under the Senior Mortgage or Homeowner Instruments), the Restrictive Covenant shall terminate as of the date the Homeowner is required to give up possession of the Home. Subject to the terms of the Senior Mortgage, any condemnation award shall be applied in the order provided for in Section 8.3, with the Maximum Resale Price determined as of the date immediately before the taking in accordance with Article 10.

ARTICLE 10. RESALE AND TRANSFER RESTRICTIONS.

10.1 Intent. The CCLT and the Homeowner agree that the terms of this Restrictive Covenant, and in particular this Article 10, are intended to preserve the affordability of the Home for low- and moderate-income households and to expand access to homeownership opportunities for such households. The parties believe, acknowledge and agree that the restraints on alienation contained in this Restrictive Covenant are reasonable under the circumstances of the transaction and the public policy of the City of Chicago, State of Illinois and the United States.

10.2 Resale to Qualified Household at Restricted Price. Except as provided in Section 10.3 below, the Homeowner may not sell or otherwise directly or indirectly transfer any interest in the Home, except (a) to the CCLT (or its assignee) or a Qualified Household pursuant to the procedures set forth in this Article 10, (b) for an amount equal to or less than the Maximum Resale Price, and provided that (c) the buyer (excluding the CCLT) signs a Subsequent Homeowner Declaration. Any other purported transfer shall be null and void and confer no right, title or interest whatsoever upon the purported transferee. As used herein, the term "transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, without limitation, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a contract for sale, or a deed of trust.

10.3 Exceptions to Transfer Restrictions. The following transfers shall not be subject to this Article 10:

- (a) a transfer to a Senior Lender in accordance with Article 8, or
- (b) a transfer to a spouse or "qualified domestic partner" (as defined in Section 2-152-072 of the Municipal Code of Chicago) of the Homeowner where the spouse or domestic partner becomes the owner or co-owner of the Home, or into an *inter vivos* trust in which the Homeowner is the beneficiary, provided the Homeowner shall provide written notice of all such transfers to the CCLT, and the Homeowner shall continue to occupy the Home as his or her principal place of residence; or
- (c) a transfer between spouses as part of a marriage dissolution proceeding, provided the transferee shall occupy the Home as his or her principal residence and sign a Subsequent Homeowner Declaration; or
- (d) a transfer to a Qualified Heir by devise, bequest or the laws of intestacy following the death of the Homeowner, provided the Qualified Heir shall occupy the Home as his or her principal place of residence and sign a declaration agreeing to be

UNOFFICIAL COPY

bound by the Restrictive Covenant ("Declaration of Qualified Heir"). Any other heirs, legatees or devisees of the Homeowner must, in addition to signing a Declaration of Qualified Heir, demonstrate to the CCLT's reasonable satisfaction that he or she is a Qualified Household, or, if unable to do so, must transfer the Home pursuant to the procedures set forth in this Article 10. If there is more than one heir or devisee, all heirs or devisees shall be deemed qualified if any one of such heirs or devisees is a Qualified Heir and such Qualified Heir intends to occupy the Home as his or her principal place of residence. Within thirty (30) days after the Homeowner's death, the administrator of the Homeowner's estate or any person inheriting the Home must give written notice to the CCLT of the death. Within sixty (60) days after the CCLT's written request, any person inheriting the Home must provide the CCLT with documentation of his or her relationship to the Homeowner, and, if necessary, evidence of income-eligibility. If the heirs fail to provide this documentation, they shall be deemed non-qualifying, and must transfer the Home pursuant to the procedures set forth in this Article 10. Such non-qualifying heirs may own and occupy the Home for up to twelve (12) months prior to providing a notice of intent to sell to the CCLT pursuant to Section 10.4 below.

10.4 Homeowner's Notice of Intent to Sell. If the Homeowner wishes to sell the Home, the Homeowner must give the CCLT written notice at least one hundred twenty (120) days before the anticipated conveyance date.

10.5 Calculation of Maximum Resale Price. The Maximum Resale Price shall mean the lower of (a) the Current Fair Market Value, or (b) an amount that is Affordable to a household earning 120% of AMI, or (c) the price calculated as follows:

Step 1: Establish Market Value Appreciation of Home

$$\begin{aligned} & \text{Current Fair Market Value} \\ - & \text{Initial Fair Market Value} \\ = & \text{Market Value Appreciation} \end{aligned}$$

Step 2: Calculate Homeowner's Share of Market Value Appreciation

$$\begin{aligned} & \text{Market Value Appreciation} \\ \times & \text{12.00\%} \\ = & \text{Homeowner's Share of Market Value Appreciation} \end{aligned}$$

Step 3: Calculate Maximum Resale

$$\begin{aligned} & \text{Homeowner's Share of Market Value Appreciation} \\ + & \text{Subsidized Purchase Price} \\ = & \text{Base Price} \end{aligned}$$

10.6 No Guarantee of Maximum Resale Price. Nothing in this Restrictive Covenant constitutes a promise or guarantee by the CCLT that the Homeowner will be able to resell the Home for the Maximum Resale Price or any other price.

10.7 Approval of Transfer. The Homeowner may sell the Home to a Qualified Household for a price not to exceed the Maximum Resale Price, but no closing may occur, and no sale or other transfer of the Home shall be valid, until the CCLT has verified in writing that such transfer is a permitted transfer. If the Homeowner wishes to enter into a purchase

UNOFFICIAL COPY

contract, the Homeowner shall attach to the contract a rider in the CCLT's then-current form, stating that the sale is subject to the CCLT's verification that the prospective buyer is income-qualified and the purchase price does not exceed the Maximum Resale Price. In order to determine whether a prospective buyer is income-qualified, the Homeowner shall deliver to the CCLT any information reasonably required by the CCLT to determine a prospective buyer's income eligibility. Within ten (10) business days after receipt of all required buyer information, the CCLT shall deliver to the Homeowner either (a) a notice of resale compliance, stating that the prospective buyer of the Home is a Qualified Household, and that the proposed purchase price does not exceed the Maximum Resale Price, or (b) if the CCLT determines that a proposed sale does not comply with the requirements of this Restrictive Covenant, a notice of noncompliance, stating in reasonable detail the reasons for the finding of noncompliance. The Homeowner, any good faith buyer of the Home, any title company and any lender providing purchase money financing may rely upon the notice of resale compliance. If the proposed sale does not occur within six (6) months after the date the CCLT issues the notice of resale compliance, the CCLT's approval rights under this Section 10.7 shall be reinstated.

ARTICLE 11. DEFAULT

11.1 Monetary Default by Homeowner. It shall be an "Event of Default" if the Homeowner fails to pay any amount due under this Restrictive Covenant, when due, and such failure is not cured by the Homeowner within thirty (30) days after written notice of default from the CCLT.

11.2 Non-Monetary Default by Homeowner. Each of the following events shall constitute an "Event of Default" under this Restrictive Covenant:

(a) The Homeowner violates any of the Affordability Restrictions set forth in Section 4 (residency), Section 5 (leasing), Article 7 (alterations), Article 8 (financing), and Article 10 (resale and transfer), and for any violation that can be cured, such violation is not cured within thirty (30) days after written notice of default from the CCLT.

(b) There is a default under the Senior Mortgage or other financing secured by the Home, and such default continues beyond all applicable cure periods and permits foreclosure thereunder.

(c) The Homeowner fails to observe or perform any other material term in this Restrictive Covenant, and such failure continues for a period of sixty (60) days after written notice of default from the CCLT, or such longer period as shall be reasonably necessary to cure the default, so long as the Homeowner promptly commences to cure the default and proceeds diligently to complete the cure; provided, however, if such default constitutes an emergency condition (in the CCLT's reasonable judgment), the CCLT shall only be obligated to give such notice and opportunity to cure as is practical (in the CCLT's reasonable judgment) under the circumstances.

(d) The Homeowner is judicially declared bankrupt or insolvent according to law, or a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Homeowner's property by a court of competent jurisdiction, or the Homeowner files a voluntary petition for relief or a petition against the Homeowner in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter.

UNOFFICIAL COPY

(e) The Homeowner or any persons or entities acting at the direction of the Homeowner or with the Homeowner's knowledge or consent gave or shall give materially false, misleading, or inaccurate information or statements to the CCLT (or failed or shall fail to provide the CCLT with material information) in connection with the purchase of the Home, a subsequent disposition of the Home or the execution of this Restrictive Covenant (or Subsequent Homeowner Declaration) or the Homeowner's obligations under this Restrictive Covenant.

11.3 CCLT's Remedies. If an Event of Default occurs, the CCLT shall have, in addition to all other rights and remedies provided in this Restrictive Covenant, at law or in equity, the right, at the CCLT's option, without further notice or demand of any kind, to do the following:

- (a) cure the default and charge the cost thereof to the Homeowner, which amount shall then be payable within ten (10) business days after written demand;
- (b) seek injunctive relief to prevent or remedy any threatened or actual violation or to recover damages, or both;
- (c) seek specific performance;
- (d) rescind or have declared void any sale or transfer that violates this Restrictive Covenant, or recoup any funds from any such sale or transfer;
- (e) void any rental arrangement that violates this Restrictive Covenant; and
- (f) subject to the rights of the Senior Lender, and upon application to a court of competent jurisdiction, appoint a receiver to take possession of the Home.

The Homeowner hereby mortgages, grants and conveys to the CCLT a lien upon the Home to secure the payment of any amounts due under this Restrictive Covenant, which lien may be either foreclosed in the same manner as a mortgage lien or enforced in equity, subject however to the rights of the Senior Lender.

11.4 Default by the CCLT. The CCLT shall in no event be in default in the performance of any of its obligations under the Restrictive Covenant unless and until the CCLT has failed to perform such obligations within thirty (30) days after written notice from the Homeowner to the CCLT properly specifying the CCLT's failure to perform any such obligation, or such longer period as shall be reasonably necessary to cure such default, provided the CCLT promptly commences to cure said default and proceeds diligently thereafter to complete such cure.

11.5 Remedies Cumulative. No right, power or remedy herein or otherwise conferred upon or reserved to the CCLT is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

UNOFFICIAL COPY

ARTICLE 12. GENERAL PROVISIONS.

12.1 Notices. All notices given by the CCLT and the Homeowner in connection with this Restrictive Covenant shall be in writing and delivered to the addresses set forth below by first class mail, postage prepaid, personal service or overnight courier:

If to the CCLT: Chicago Community Land Trust
c/o Chicago Department of Housing
121 North LaSalle Street, Suite 1006
Chicago, Illinois 60602

with a copy to: City of Chicago
Department of Housing, Bureau of Homeownership
Programs
121 North LaSalle Street, Suite 1000
Chicago, Illinois 60602

If to the Homeowner: AARON J. AKERS
or the Owner of Record
1340 West Walton St., Unit 3-E
Chicago, Illinois 60642

Any notice or other communication shall be deemed to have been given upon deposit in the U.S. mail, one (1) business day after deposit with a courier service for next business day delivery, or upon personal service. Notice to any one Homeowner shall constitute notice to all Homeowners. The parties, by notice given hereunder, may designate a substitute address. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 12.1 shall constitute delivery.

12.2 Brokers. The Homeowner is solely responsible for any broker's commission or claim in connection with this Restrictive Covenant, or any permitted transfer of the Home. The Homeowner agrees to indemnify, defend and hold the CCLT harmless from and against any claim against the CCLT relating to any broker's commission or claim.

12.3 Severability. If any provision of this Restrictive Covenant or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Restrictive Covenant or the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

12.4 Waiver. The waiver by the CCLT at any given time of any term, covenant or condition of this Restrictive Covenant, or the failure of the CCLT to take action with respect to any breach of any such term, covenant or condition, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition. The CCLT may grant waivers in the terms of this Restrictive Covenant, but such waivers must be in writing and signed by the CCLT before being effective.

UNOFFICIAL COPY

12.5 Construction. Whenever in this Restrictive Covenant a pronoun is used it shall be construed to represent either the singular or the plural, masculine, feminine or neuter, as the case shall demand.

12.6 Captions. The captions appearing in this Restrictive Covenant are inserted for convenience of reference only, and do not in any way limit or amplify the terms or conditions of this Restrictive Covenant.

12.7 Assignment of Rights and Delegation of Duties. The CCLT may assign its rights or delegate its duties under this Restrictive Covenant, in whole or in part, without the consent of the Homeowner, to the City or another not-for-profit corporation approved by the City. Any reference herein to the CCLT shall include the CCLT, its successors and assigns.

12.8 Entire Agreement; Parties Bound; Amendments. This Restrictive Covenant sets forth the entire agreement between the CCLT and the Homeowner with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions, provided that the foregoing is not intended to negate the effectiveness of any factual representations made by the Homeowner to the CCLT in connection with the origination of this Restrictive Covenant. This Restrictive Covenant shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and, except as otherwise provided in this Restrictive Covenant, their respective heirs, executors, administrators, legal representatives, successors and assigns. All covenants and agreements of this Restrictive Covenant shall run with the land. This Restrictive Covenant may not be modified or amended in any manner without the prior written consent of the parties hereto or their legal representatives. No term of this Restrictive Covenant may be waived or discharged orally or by any course of dealing.

12.9 Covenants to Run With the Property. The covenants, conditions, rights and restrictions set forth in this Restrictive Covenant shall run with the land and shall be binding upon each Homeowner for the benefit of and enforceable by the CCLT, its successors and assigns, for the Covenant Term. The Homeowner agrees that any and all requirements of the laws of the State of Illinois to be satisfied in order for the provisions of this Restrictive Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, and that any privity of estate requirements are also deemed to be satisfied in full. Each and every contract, deed or other instrument hereafter executed conveying the Home or any interest therein shall be deemed to include and incorporate by this reference the covenants, conditions, rights and restrictions contained herein.

12.10 Governing Law. This Restrictive Covenant shall be interpreted in accordance with and governed by the laws of the State of Illinois. The language in all parts of this Restrictive Covenant shall be, in all cases, construed according to its fair meaning and not strictly for or against the CCLT or the Homeowner.

12.11 Joint and Several Obligations. If more than one person signs this Restrictive Covenant as the Homeowner, the obligations and liability set forth herein shall be deemed joint and several obligations and liability of each such party, and any notice required or permitted by the terms of this Restrictive Covenant may be given to any one person with the same force and effect as if given to all.

12.12 Time of Essence. Time is of the essence of this Restrictive Covenant and each and all of its provisions in which performance is a factor, and all provisions herein and all provisions relating thereto, shall be strictly construed.

UNOFFICIAL COPY

12.13 Calculation of Time. Unless specifically stated otherwise, any reference to a specific period of days shall be interpreted as a reference to calendar days; provided however, that if the final date of any time period falls on a Saturday, Sunday or legal holiday under the laws of the City, State of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

12.14 Counterparts. This Restrictive Covenant may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

12.15 Incorporation of Definitions, Recitals and Exhibits. The definitions and recitals set forth at the beginning of this Restrictive Covenant, and all exhibits referred to herein and attached hereto, are incorporated herein by this reference and made a part hereof.

12.16 Further Assurances. The Homeowner covenants and agrees to take such further actions and to execute and deliver such additional documents as may be necessary or desirable to: implement this Restrictive Covenant, correct any scrivener's error contained herein or in any related document, restate the Homeowner's obligations, and otherwise assure the continued affordability of the Home consistent with the objectives of this Restrictive Covenant.

12.17 Conflict. In case of a conflict between the terms and conditions of this Restrictive Covenant and the Homeowner Instrument, the Restrictive Covenant shall govern and control. The language of this Section 12.17 shall not be interpreted as to relieve the Homeowner of the obligation to adhere to the requirements of any other restriction affecting the property.

12.18 Third-Party Beneficiaries. The City is hereby made a third party beneficiary of this Restrictive Covenant and is authorized to enforce all of the terms contained herein.

(Signature Page Follows)

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF UNIT

Parcel 1: Proposed Unit No 3-E together with its undivided percentage interest in the Common Elements in the 1340 West Walton Condominium, as delineated and defined in the Declaration recorded as Document No. 2001016103 in the West ½ of Section 5, Township 39 North, Range 14, East of the Third Principal meridian in Cook County, Illinois.

Parcel 2: Exclusive use to Parking Space No. P-1, a Limited Common Element as set forth and defined in said Declaration of Condominium and Survey attached thereto, in Cook County, Illinois.

For informational purposes only the property is commonly known as 1340 West Walton Street, Unit 3-E, Chicago, IL 60642

UNDERLYING P.I.N. NOS: Part of 17-05-316-035-0000
 Part of 17-05-316-036-0000
 Part of 17-05-316-037-0000

Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

HOMEOWNER'S ACKNOWLEDGMENT OF AFFORDABILITY RESTRICTIONS

TO: Chicago Community Land Trust ("CCLT")

DATE: JANUARY 17, 2020

I am giving this letter to the CCLT to be made an exhibit to an Affordable Housing Restrictive Covenant and Agreement ("Restrictive Covenant"). I am buying the Condominium unit 1340 West Walton Street, Unit 3-E, Chicago, Illinois 60642 ("Home"), which will be subject to the Restrictive Covenant.

I understand how the terms and conditions of the Restrictive Covenant affect my rights as a homeowner, now and in the future. In particular, I understand and agree that:

- Long-Term Affordability. The purpose of the Restrictive Covenant is to keep housing affordable for future generations of low- and moderate-income households. I support this goal.
- Resale Restrictions. The CCLT controls the resale of my Home. If I want to sell my Home, I must sell it to another income-eligible buyer (or to the CCLT) for a restricted resale price determined in accordance with the resale formula in the Restrictive Covenant. If I violate the resale restrictions, the Restrictive Covenant gives the CCLT the right, among other remedies, to sue for damages or terminate the Restrictive Covenant and recover any sale proceeds. I realize this limits my ability to resell my Home (a "restraint on alienation"), but I agree that this limitation is reasonable under the circumstances set forth in the Restrictive Covenant.
- Refinancing Restrictions. The Restrictive Covenant may keep me from obtaining a home equity loan, debt consolidation loan, car loan or a similar loan that would use the Home as collateral. I acknowledge that this constitutes a restraint on alienation, but likewise agree that it is a reasonable restraint under the circumstances of the Restrictive Covenant.
- Principal Residence. I must occupy and use my Home as a principal residence. I cannot lease it, and if I move out, I must sell it. I cannot continue to own the Home as an absentee owner.
- Heirs. I can leave my Home to certain members of my household and, after my death, they can own the Home for as long as they want to live in it and comply with the Restrictive Covenant, including, without limitation, the Affordability Restrictions set forth in the Restrictive Covenant, or they can sell it on the terms permitted by the Restrictive Covenant.

I will honor the terms of the Restrictive Covenant. I consider these terms fair to me and others.

By: 

AARON J. AKERS

UNOFFICIAL COPY

STATEMENT OF LEGAL REPRESENTATION

TO: Chicago Community Land Trust ("CCLT")
DATE: JANUARY 17, 2020

I am buying Condominium unit 1340 West Walton Street, Unit 3-E, Chicago, Illinois 60642, which will be subject to an Affordable Housing Restrictive Covenant and Agreement ("Restrictive Covenant") between the CCLT and us.

Please check one of the following:

My lawyer has explained to me the terms and conditions of the Restrictive Covenant.

I am not represented by legal counsel.

I understand how these terms and conditions affect my rights as a homeowner, now and in the future.

By: _____

AARON J. AKERS

Property of Cook County Clerk's Office