

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

SOLID BRICK VENTURES LLC, et al.,

Defendants.

Civil Action No. 2022 CA 000446 B
Judge Anthony Epstein

**JOINT MOTION
FOR ENTRY OF CONSENT ORDER AND STIPULATION OF DISMISSAL**

Plaintiff, the District of Columbia (the “District”), through the Office of the Attorney General, jointly with Defendants Solid Brick Ventures, LLC, 93 Hawaii Ventures, LLC, 98 Webster Ventures, LLC, and M Squared Real Estate, LLC (collectively, “Defendants”, and with the District, the “Parties”), respectfully move for entry of the attached Consent Order settling this matter. The Parties state the following in support of this Motion:

1. On January 31, 2022, the District filed this lawsuit against Defendants, alleging violations of the Tenant Receivership Act, the Consumer Protection Procedures Act and the Lead-Hazard Prevention and Elimination Act at residential property owned and managed by Defendants.

2. Defendants denied the allegations in the District’s Complaint and the Parties litigated this dispute.

3. To avoid future litigation, the Parties have agreed on terms to settle the District’s claims, as set out in the attached Consent Order (Exhibit A). By signing the Consent Order, the Parties have agreed to the Court’s entry of the Consent Order.

4. The Parties thus respectfully move the Court to grant this Motion, and approve the attached Consent Order, entry of which is in the public interest.

Dated: December 8, 2022

Respectfully submitted,

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Attorney General for the District of Columbia

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Ventures, LLC, and M Squared Real Estate,
LLC*

Rule 12-I(a)(1) Certification

Under Super. Ct. Civ. R. 12-I(a)(1), the District certifies that it sought and obtained the consent of all counsel of record.

/s/ Christopher S. Peña

Christopher S. Peña

Certificate of Service

I certify that on December 8, 2022, I caused a copy of the foregoing document to be served on all counsel of record by electronic filing.

/s/ Christopher S. Peña

Christopher S. Peña

EXHIBIT A

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

SOLID BRICK VENTURES LLC, et al.,

Defendants.

Civil Action No. 2022 CA 000446 B
Judge Anthony Epstein

CONSENT JUDGMENT AND ORDER

This matter comes before the Court on the joint motion of the District of Columbia, (the “District”) and Defendants Solid Brick Ventures, LLC, 93 Hawaii Ventures, LLC, 98 Webster Ventures, LLC, and M Squared Real Estate, LLC (collectively, “Defendants”), pursuant to SCR-Civil R. 68-I, for entry of this Consent Judgment and Order (“Consent Order”) to resolve the District’s claims in this matter. The District and Defendants (collectively, the “Parties”) agree to the relief set forth in this Consent Order, and the Court finds that the entry of the Consent Order is in the public interest.

I. THE PARTIES

1. Plaintiff District of Columbia is a municipal corporation empowered to sue and be sued and is the local government for the territory constituting the seat of the government of the United States. The Attorney General is authorized to enforce the Tenant Receivership Act (the “TRA”), D.C. Code § 42-3651, *et seq.*, bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the Consumer Protection Procedures Act (the “CPPA”), D.C. Code § 28-3901, *et seq.*, and bring legal actions seeking penalties and other relief under the Lead-Hazard Prevention and Elimination Act (the “LHPEA”), D.C. Code § 8-231, *et seq.*

2. Defendant Solid Brick Ventures, LLC is a limited liability company organized under the laws of the District of Columbia, with its principal place of business at 1407 T Street NW, Suite 200, Washington, D.C. 20009. Solid Brick Ventures, LLC owns 65 through 89 and 97 Hawaii Avenue NE, and 66 Webster Street NE, Washington, D.C. 20011.

3. Defendant 93 Hawaii Ventures, LLC is a limited liability company organized under the laws of the District of Columbia, with its principal place of business at 1407 T Street NW, Suite 200, Washington, D.C. 20009. 93 Hawaii Ventures, LLC owns 93 Hawaii Avenue NE, Washington, D.C. 20011.

4. Defendant 98 Webster Ventures, LLC is a limited liability company organized under the laws of the District of Columbia, with its principal place of business at 1407 T Street NW, Suite 200, Washington, D.C. 20009. 98 Webster Ventures, LLC owns 98 Webster Street NE, Washington, D.C. 20011.

5. Defendant M Squared Real Estate, LLC is a limited liability company organized under the laws of the District of Columbia, with its principal place of business at 1407 T Street NW, Suite 200, Washington, D.C. 20009. M Squared Real Estate, LLC manages the Hawaii-Webster Apartments.

II. DEFINITIONS

6. “Affordable Unit” shall include all units at the Property in which the rent charged is the applicable Base Rent, as further defined below, including all requirements in D.C. Code § 42-3502.09 governing any rent charged for a unit upon the termination or expiration of an exemption claimed pursuant to § 42-3502.05(a)(1)(3) or (5).

7. “Base Rent” means that rent legally charged or chargeable for such unit under the District of Columbia Rent Stabilization Program on the effective date of the Affordable Housing Covenant, as further defined below.

8. “Consumer” shall include the definition contained in D.C. Code § 28-3901(a)(2) and, for purposes of this Consent Order, shall refer to any resident of the District of Columbia to whom Defendants offer or sell rental housing accommodations.

9. “Habitable housing” for purposes of this Consent Order shall mean housing in compliance with the D.C. Housing Code (Sections 1 through 16 of Title 14 of the District of Columbia Municipal Regulations and Titles 12A-12L of the District of Columbia Municipal Regulations), and the D.C. indoor mold law (D.C. Code §§ 8-241.01-241.09) and regulations (20 DCMR §§ 3200-3299).

10. “Property” or the “Hawaii-Webster Apartments” refers to the rental housing accommodation located at 65 through 97 Hawaii Avenue NE and 66 and 98 Webster Street NE, Washington, D.C. 20011.¹

III. PROCEDURAL BACKGROUND

11. On January 31, 2022, the District filed its Complaint against Defendants, alleging violations of the TRA, CPPA and LHPEA. Defendants filed an Answer to the Complaint on March 1, 2022.

12. On February 7, 2022, the District moved for a Temporary Restraining Order (“TRO”) seeking emergency relief for heating and fire safety deficiencies at the Property. On March 10, 2022, this Court granted the District’s Motion to Withdraw its Motion for a TRO based on the District verifying that, after the District’s Motion for a TRO, Defendants installed new

¹ 89 and 93 Hawaii Avenue, N.E are vacant, not subject to any tenancy, and have interiors that have been fully demolished. These two buildings are referred to herein as the “Vacant Buildings.”

boilers in all occupied buildings at the Property and installed smoke detectors, carbon monoxide detectors, and fire extinguishers in all occupied units at the Property.

13. On February 25, 2022, the District moved for Appointment of a Receiver. On May 13, 2022, this Court ordered that an abatement plan (the “Abatement Plan”), attached hereto as Exhibit A, be entered in lieu of the appointment of a receiver. Pursuant to D.C. Code §42-3651.05(a)(2), this Court retained this case for purposes of monitoring Defendants’ execution of the Abatement Plan.

IV. APPLICATION

14. The provisions of this Consent Order shall apply to Defendants. Defendants will cause their principals, officers, directors, and all persons or entities that Defendants control or have the ability to control, including without limitation their employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries, and all other persons acting in concert with Defendants, jointly or severally, now and in the future, to be notified of this order and to the extent that this order may apply to their duties, to comply with its terms.

A. REPRESENTATIONS OF DEFENDANTS

15. Defendants represent that they have provided the District with materially full, accurate, and complete rent roll information for the period of August 1, 2020 to March 1, 2022, including complete information concerning the rent monies that were (i) charged to tenants, (ii) paid by tenants, or (iii) due but not paid by tenants through March 2022. The District’s agreement to the terms stated herein is premised on these representations.

16. Defendants represent that they have provided the District with materially full, accurate, and complete financial disclosures for each Defendant, including a summary of each

Defendant's bank accounts, assets, loans, and other existing or foreseeable lines of credit. The District's agreement to the terms stated herein is premised on these representations.

17. Defendants represent that a purchaser has agreed-in-principle to purchase the Vacant Buildings subject to the Affordable Housing Covenant and that the purchaser has further agreed to increase the number of Affordable Units by four (4) additional units in each of the Vacant Buildings. The District's agreement to the terms stated herein is premised on these representations.

B. INJUNCTIVE TERMS

GENERAL PROHIBITIONS

18. Defendants shall not engage in any act or practice in violation of the CPPA in connection with the offer or sale of any consumer good or service.

19. Defendants shall not make any representation that their goods or services have a certification or characteristic that they do not have.

20. Defendants shall not make any representation that their goods or services are of a particular standard or quality if in fact they are of another.

21. Defendants shall not make any oral or written statement that has the capacity, tendency, or effect of deceiving or misleading a consumer.

22. Defendants shall not make any misrepresentation concerning a material fact that has the tendency to mislead a consumer.

23. Defendants shall not fail to state a material fact, the omission of which deceives or tends to deceive a consumer.

24. Defendants shall not make any statement that misleads a consumer concerning their willingness and ability to supply them with habitable housing.

25. Defendants shall not offer any residential housing for rental to any resident in the District of Columbia unless the housing which they propose to supply is habitable housing.

26. Defendants shall not violate the LHPEA, including failing to timely abate incidents of lead-paint hazards at the Property in a manner consistent with the LHPEA and failing to provide lead-based paint disclosures to all tenants at pre-1978 buildings owned or managed by Defendants in the District.

C. PAYMENT TO THE DISTRICT

27. Within thirty (30) days following the sale of the Vacant Buildings, as contemplated in Paragraph 16 hereof, Defendants will pay to the District the total sum of \$1,000,000 by wire payment consistent with instructions to be provided by the District. The District may use this payment for any lawful purposes, including, but not limited to, restitution to Defendants' current and former tenants of the Property; attorneys' fees, and other costs of investigation and litigation; and/or placement in, or application to, the District's restitution fund or litigation support fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General for the District of Columbia. Defendants agree to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph. Should the sale of the Vacant Buildings fail to be consummated within one hundred twenty (120) days of the entry of this Consent Order, then the instant Consent Order shall immediately become null and void and the Parties may resume this litigation. If this Consent Order becomes null and void and the Parties resume litigation, the Parties shall meet and confer in good faith to draft and file a joint motion to modify the existing scheduling order in this case.

D. TENANT REQUESTED RENOVATIONS OF UNITS AT THE PROPERTY

28. Within thirty (30) days of entry of this Consent Order, Defendants shall present a renovation plan (the “Renovation Plan”) for the Property to the District that must incorporate, either in whole or by reference, all terms governing the permanent or temporary relocation of tenants enumerated within Paragraphs 1 through 5 of the Abatement Plan, *see* Exhibit A. Defendants shall submit any final Renovation Plan to the District for approval and file such final Renovation Plan with the Court within thirty (30) days of receiving the District’s approval. Defendants represent that throughout the course of this action, they have offered tenants at the Property the option to take advantage of a full renovation of their units, rather than simply having repairs made pursuant to the Abatement Plan. Defendants plan on continuing to offer this option to tenants going forward and the Renovation Plan is meant to specifically address tenant requested renovations. While Defendants will make best efforts to provide any tenant with a full renovation of their unit who desires the same, the Parties recognize that certain tenants may prefer that their units not be renovated and this paragraph is not meant to create any affirmative duty on the part of Defendants to renovate a tenant’s unit should the tenant not desire the same.

29. The Parties agree that all terms governing tenant relocation in the Abatement Plan shall remain in effect during the Renovation Plan. The Parties also agree that at all times throughout the renovation process, current tenants at the Property shall retain the right to return to the renovated Property to either their original units or replacement units of at least the same size and with the same amenities.

E. PRESERVING AFFORDABLE HOUSING AT THE PROPERTY

30. Within thirty (30) days of the entry of this Consent Order, Defendants shall execute a written covenant in the form of Exhibit B to this Consent Order that preserves all Affordable

Units at the Property (the “Affordable Housing Covenant”) for a period of twenty-five (25) years from the entry of this Consent Order (the “Affordable Housing Covenant Term”). The Affordable Housing Covenant shall run with the land unless the District and any future purchaser of any or all portions of the Property mutually agree to an early termination thereof. The Affordable Housing Covenant shall specify that no sale, redevelopment, rehabilitation, transfer, or foreclosure of the Property shall affect the validity of the Affordable Housing Covenant. Defendants shall file the final Affordable Housing Covenant with the Court within thirty (30) days of execution.

31. The Affordable Housing Covenant shall further specify that, during the Affordable Housing Covenant Term:

a. Defendants and subsequent owners of the Property shall not petition for, seek, or otherwise increase the rent charged for units at the Property other than as permitted under the District of Columbia Rent Stabilization Program’s provisions for annual adjustments of general applicability pursuant to D.C. Code § 3502.06 or D.C. Code § 3502.08 or for a vacant accommodation pursuant to D.C. Code § 42-3502.13, provided, however, that with respect to any unit as to which the rent is subsidized directly or indirectly by a Federal or District of Columbia government agency pursuant to a tenant-based subsidy, the rent determined by that agency shall be permitted to be charged but not less than the rent charged for said unit immediately prior to the commencement of the rent subsidy; provided, further, that upon termination of the tenant-based rental subsidy, any exemption from the Rent Stabilization Program related to such tenant-based subsidy will also terminate and the unit will be subject to all restrictions in D.C. Code § 42-3502.09 for the sum of rent that may then be charged unless the unit is next rented to an applicant with a tenant-based subsidy.

b. The sale of the Vacant Buildings, as contemplated in Paragraph 16 hereof, will be

to a purchaser who will covenant independently, as a part of the sale, to add four (4) additional Affordable Units to each building;

c. Any additional Affordable Units at the Property will constitute habitable housing and will be suitable for occupancy; and,

d. If any of the buildings comprising the Property (exclusive of the Vacant Buildings which are being sold as contemplated in Paragraph 16 hereof) are offered for sale at any time in the future, Defendants or their successors in interest to the Property shall forward to the District copies of any notices provided to tenants at the Property pursuant to the Tenant Opportunity to Purchase Act, D.C. Code § 42-3404.02, within seven (7) days of such notices being provided to tenants. With the exception of the Affordable Housing Covenant, which runs with the land, this Consent Order shall not apply to any future purchaser of the Property including the purchaser of the Vacant Buildings (which are being sold as contemplated in Paragraph 16 hereof).

F. ADDITIONAL TERMS

32. Defendants shall permanently forgive all rents owed and unpaid to them by tenants of the Property, including current and former tenants, through November 2022.

33. Defendants shall not cause or encourage third parties, or knowingly permit third parties acting on their behalf, to engage in practices from which Defendant is prohibited by this Consent Order.

34. In entering into this Consent Order, the Parties are neither extinguishing any rights otherwise available to consumers except those specifically addressed herein, nor creating any right not otherwise available under the laws of the District of Columbia. Nothing in this Consent Order shall be construed as an admission of liability.

35. This Court retains jurisdiction of this Consent Order for the purpose of enforcing

this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate.

36. If any clause, provision, or section of this Consent Order shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Consent Order, and this Consent Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

37. Nothing in this Consent Order shall be construed as relieving Defendants of the obligation to comply with all state and federal laws, regulations, or rules, or granting permission to engage in any acts or practices prohibited by such laws, regulations, or rules. The District retains the right to enforce any subsequent violations of such laws, regulations, or rules.

38. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.

39. The Parties may apply to the Court to modify this Consent Order by agreement at any time.

40. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

41. All notices under this Consent Order shall be provided to the following address by personal service or via overnight delivery by Federal Express, United Parcel Service, U.S. Postal Service Express Mail, or similar overnight courier with proof of delivery and electronic mail,

unless a different address is specified in writing by the party changing such address: For the District:

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CONSENTED TO BY THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division

/s/ _____
JENNIFER L. BERGER [Bar No. 490809]
Chief, Social Justice Section

/s/ _____
CHRISTOPHER PEÑA [Bar No. 888324806]

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Attorneys for the District of Columbia

Dated: December 8, 2022

CONSENTED TO BY DEFENDANTS

FOR SOLID BRICK VENTURES, LLC



Mark Mlakar

Dated: 12/6/2022

FOR 93 HAWAII VENTURES, LLC



Mark Mlakar

Dated: 12/6/2022

FOR 98 WEBSTER VENTURES, LLC



Mark Mlakar

Dated: 12/6/2022

FOR M SQUARED REAL ESTATE, LLC



Mark Mlakar

Dated: 12/6/2022

SO ORDERED AND ADJUDGED

Date: _____

Judge Anthony C. Epstein
Superior Court of the District of Columbia

For service via eFileDC:

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Exhibit A
to the Consent Order
(See attached)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,

Plaintiff,

v.

SOLID BRICK VENTURES, LLC, ET AL.,

Defendants.

Case No.: 2022 CA 000446 B
Judge Anthony C. Epstein

ABATEMENT PLAN ORDER

Pursuant to D.C. Code § 42-3651.04(a)(1) and this Honorable Court's March 25, 2022 Oral Order, Defendants Solid Brick Ventures, LLC, 93 Hawaii Ventures, LLC, 98 Webster Ventures, LLC, and M Squared Real Estate, LLC (“Defendants”) hereby submit this Abatement Plan Order (the “Plan”) for the properties located at 65 through 97 Hawaii Avenue, N.E. (excepting 89 and 93 Hawaii Avenue, N.E.) and 66 and 98 Webster Street, N.E., Washington, D.C. 20011 (collectively, the “Properties”).¹

Defendants’ Plan is hereby submitted: (i) without admission of fact, fault, or liability; (ii) in an effort to amicably resolve the claims in the Motion and any purported claims arising after the filing of the Motion; and (iii) to provide terms and conditions of a plan for the remediation and abatement of any alleged violation at the Properties that “seriously threatens the tenant’s health, safety, or security” under D.C. Code § 42-3651.01. The Plan incorporates by reference Exhibit A (April 25, 2022 mold assessment report of Rusty Spearman (“Mr. Spearman”) of Arrowhead

¹ 89 and 93 Hawaii Avenue, N.E are vacant, not subject to any tenancy, and have interiors that have been fully demolished. Defendants reserve their rights to seek both: (i) dismissal of 93 Hawaii Ventures, LLC as a Defendant to this action; and (ii) removal of 89 and 93 Hawaii Avenue, N.E. from the instant action.

Consulting) and Exhibit B (April 20, 2022 mold assessment report of A Veterans Environmental Technology Services, Inc. (“AVETS”)), which are referenced in context below.

RELOCATION OF TENANTS

1. Should relocation of tenants be necessary in order to remediate any condition in their unit, including but not limited to mold or deteriorating paint, Defendants shall relocate the tenants to the vacant, recently renovated units at the Properties during the period of remediation. These units are furnished with new furniture for the tenants’ comfort and convenience during the relocation. Tenants shall not be relocated into a temporary residence not at the Properties, unless they consent.

2. Defendants will cover the costs of moving the tenants’ belongings to and from the relocation units. If tenants’ belongings do not fit into their temporary units, Defendants shall provide storage to prevent damage to their belongings during relocation at no additional cost to tenants. Tenants shall have access to any storage facility storing their belongings during the relocation period.

3. Given the potential duration of the relocation, Tenants shall be encouraged to forward their mail to their temporary housing location. However, Defendants will create a unified site for ensuring tenants receive their mail that was delivered during relocation.

4. At all times throughout the renovation of the Properties or the redevelopment, tenants shall retain the right to return to either (at the tenant’s discretion) their renovated original units or redeveloped replacement units of at least the same unit type and amenities, and not waive any rights should they sign a new residential lease for the redeveloped replacement units. Defendants shall cover the costs of moving tenants’ belongings back to their units after renovations are complete.

5. Defendants agree that during the relocation, tenants retain their full tenancy rights, including maintaining rent at the same price of their original units, as if is they never relocated from their original units.

ISSUES AND PROCESSES FOR REPAIR AND ABATEMENT

6. Defendants are committed to promptly conducting all necessary maintenance and repair of any issues at the Properties, including and especially those related to tenant health, safety, and security, if any.

7. To this effect, Defendants represent that they have already addressed numerous alleged issues that arguably could be characterized as involving tenant health, safety, and security.

Process for Responding to Significant or Exigent Building Issues

8. Defendants commit to resolving significant or exigent building issues within 24 to 48 hours, provided that to the extent that any such conditions require access to individual units, the tenants provide such access as requested with 48-hours' written notice to tenants for non-emergencies. As it pertains to failures of certain building components, including but not limited to HVAC and plumbing, Defendants shall maintain contractors, approved by the District, who can respond to significant and exigent buildings issues. Defendants have hired a District of Columbia licensed general contractor, Progressive Builders, LLC (“Progressive”), who is at the Properties everyday Monday through Saturday and has the ability to deploy technicians during non-business hours. Progressive’s employees include electricians, HVAC professionals, plumbing professionals, carpenters, and maintenance technicians. If the contract with Progressive terminates for any reason, Defendants shall hire another District-approved contractor in its place.

9. Defendants shall monitor the Properties for any significant or exigent building issues that may arise.

10. To address any active building system failure or similar emergency that may arise, Defendants shall immediately mobilize Progressive, or its successor, to evaluate and investigate the failure and determine the necessary steps to mitigate or abate the event. The Properties then will have:

A. Progressive, or its successor, secure systems to mitigate any further damage and, upon completion, confirm as much to the Properties' management, M Squared Real Estate, LLC ("M Squared").

B. Progressive, or its successor, contact the necessary resource(s) to assess the circumstances, evaluate and provide an estimated timeline for the outage, and then make necessary repairs and to return service to the building.

C. M Squared notify other tenants of the failed condition and explain the impact of the system failure on the affected residents, and provide an estimated timeline for the outage.

D. M Squared note information about the event in a maintenance management system to document: (i) who reported the failure, (ii) location of failure, (iii) time of failure, (iv) a description of the failure, and (v) the service vendors contacted/retained to make the repair and the anticipated time the systems will be restored.

11. M Squared will continue to maintain an after-hours call-in number for service responses for evenings and weekends and when the management office is closed or otherwise unable to respond. This live answering service is available from 5:00 p.m. to 8:00 a.m. on weekdays, and can be reached at (202) 978-3758, and throughout the weekend as well. This number is specific to the Properties as located on Hawaii Avenue, N.E. and Webster Street, N.E. All calls made to this number are logged and documented. This number is capable of receiving

text messages. Defendants shall submit the maintenance occurrence log as part of its monthly reporting to the Court as described in Paragraph 59.

12. Defendants shall ensure that someone with Spanish-speaking capabilities is available to interpret and respond to tenants. Defendants shall provide notice to tenants of the live answering service phone number as well as the phone number of the Spanish-speaking employee. Notice shall be posted in the buildings, emailed to residents, and posted on the tenants' doors or slipped under tenants' doors.

13. Defendants have sent and will continue to send reminders to all tenants to encourage their prompt reporting of maintenance issues and other concerns. The Parties agree that any tenant interference, including, but not limited to, tenants' refusing to provide access to their units so that issues can be rectified (e.g., refusal to provide access to Defendants to make repairs, perform maintenance, conduct extermination services, etc.) will not place Defendants in breach of the Plan. Rather, Defendants will have five (5) business days from the date of a tenant's refusal to participate to alert both the District and the Court of the tenant's interference, at which point Defendants will seek an Order from this Court directing the non-complying tenant to allow access to the unit so that Defendants can abide by their obligations under this Plan.

Appliances

14. Defendants represent that each unit has a functioning refrigerator and oven. To effectuate the same, Defendants installed brand new appliances in any unit where a refrigerator or oven was previously not functioning properly. Moreover, Defendants are installing brand new appliances in any unit where a tenant simply requests the same. Defendants shall continue to replace defective refrigerators and ovens upon tenants' requests. Defendants additionally plan on sending a flyer, with copies in Spanish and English, to all tenants offering new appliances to any

tenant who wishes to receive the same. By May 13, 2022, the flyer shall be posted in each building, emailed to residents, and posted on tenants' doors or slipped under tenants' doors.

Security

15. Defendants represent that all: (i) exterior doors lock; (ii) exterior lighting is functional, and (iii) bars have been removed from the Properties' exterior windows to provide for fire safety egress. To increase security at the Properties, Defendants represent that they upgraded building entry and rear exit doors with security features including full night shaker features and security plates.

Trash Collection

16. Defendants represent that since November 1, 2020, they have retained Good Friends Waste Management ("Good Friends") for trash collection services at the Properties. Good Friends collects trash at the Properties six times a week, Monday through Saturday, with the exception of Legal Holidays.

17. In the event that Good Friends is unable to collect trash from the Properties for any period longer than one week, Defendants shall contract with a separate contractor for trash to be collected from the Properties.

Extermination

18. Defendants shall maintain a contract with a pest control provider for eleven buildings (specifically, the nine buildings representing the Properties, as well as 89 and 93 Hawaii Avenue, N.E.2) at all times. Defendants represent that since March 9, 2022, they have retained PestNow, LLC ("PestNow") for pest control services at the Properties.

² Should either 89 or 93 Hawaii Avenue, N.E. be sold to a third party purchaser, then Defendants' obligation to maintain a contract with a pest control provider for the sold building shall terminate at the time of closing on the relevant building.

19. Property-Wide Treatment and Extermination. In March 2022, PestNow conducted its first property-wide treatment for the elimination and prevention of pest infestation according to best practices under industry standards.³

20. Monthly Preventative Maintenance Treatments. Defendants shall maintain a contract for regular, monthly preventative maintenance treatments at the eleven buildings referenced in Paragraph 18 for all: (i) vacant units, (ii) occupied units where tenants permit access after 48 hours' notice as described in paragraph 21, and (iii) common areas. PestNow, or its successor, will continue to perform such monthly treatments until all repairs at the Properties are completed. Thereafter, PestNow, or its successor, will continue to conduct regular, quarterly preventative maintenance treatments at the Properties.

21. 48 Hours' Notice. On a going forward basis, M Squared will provide at least forty-eight (48) hours' advance written notice to tenants of extermination with instructions, in Spanish and English, for tenants on how to prepare for extermination, unless the need for extermination services is deemed an emergency. All exterminations shall be conducted between the hours of 9:00 a.m. and 5:00 p.m. Monday through Saturday, except for holidays, unless otherwise requested or agreed to by the tenant(s). Each notice will be dated and provide a four hour window, for a specific

³ Specifically, Defendants represent that PestNow performed an initial treatment on February 14th, 2022, which consisted of accessing every unit and laying mouse traps in each unit, in the high traffic areas. On March 9th, 2022, Defendants contracted with PestNow for regular exterior treatments at 9 buildings. At this time, Defendants represent that PestNow installed forty (40) rodent stations. Defendants represent that Bobby Johnson, of PestNow, explained that PestNow did not recommend filling the rat holes until the rat population was first reduced by the bait, as leaving the burrows intact would provide for faster results. Defendants represent that on March 11th, 2022, PestNow screened off all vents in all buildings to prevent rodent infestation. Defendants represent that on April 7th, 2022 PestNow came back to inspect the rodent stations. Defendants represent that PestNow observed a little bit of activity at 65 and 85 Hawaii Avenue, N.E., but the rest of the buildings looked fine. On April 20th, 2022, Defendants updated the contract to general pest control (interior and exterior) throughout nine (9) buildings once a month. On April 28th, 2022, PestNow went through nine (9) buildings and treated twenty-eight (28) units for both cockroaches and rodents. Defendants represent that PestNow mostly observed evidence of cockroaches and laid bait. PestNow sprayed areas of larger concern when authorized by tenants. PestNow returned on May 5th, 2022 to continue individual unit treatment.

date, of when service is expected to take place, and the exterminator will use best efforts to accommodate specific timing concerns. Each notice shall be posted in the building, emailed to residents, and posted on the tenants' doors or slipped under tenants' doors.

22. Pest Sighting/Occurrence Log. A pest sighting/occurrence log shall be maintained onsite at the Properties for review by the PestNow service technician at each monthly visit. The pest sighting/occurrence log shall be created through tenant work orders as well as independent sightings, if any, by management staff or any third-party vendors during remediation or any repair or maintenance work. The log will also indicate any occurrences where a tenant refused PestNow access to conduct treatment and extermination. Defendants shall submit the pest sighting log as part of its monthly reporting to the Court as described in Paragraph 59.

23. Service at the Properties. Defendants will send a notice, in Spanish and English, to tenants about additional, weekly unit exterminations that will be arranged upon tenant notice to M Squared. A tenant who wishes to receive additional extermination services in between the monthly routine service may call or email M Squared and request an additional extermination service. M Squared will then contact PestNow, or its successor, to request and schedule an additional extermination service at the earliest possible date based on vendor availability.

24. External Exclusion Evaluation and Efforts. Defendants have engaged PestNow, an exterminator, licensed by the District, to conduct an assessment of external exclusion needs at the Properties to prevent the ingress and egress of rodents, insects, and vermin by May 13, 2022, and to perform and implement exclusion efforts and/or treatments within sixty (60) days of execution of this Agreement.

25. Defendants shall submit the pest sighting/occurrence log as part of its monthly reporting to the Court as described in Paragraph 59.

Mold Assessment and Remediation

26. **Mold Remediation.** Defendants engaged licensed mold assessor Jeffrey Powell (“Mr. Powell”) of AVETS to conduct a 100% unit mold assessment at the Properties. Mr. Powell conducted a visual mold assessment and prepared mold assessment reports for each unit of the Properties. *See* Exhibit B. Defendants also engaged Mr. Powell and AVETS to perform mold remediation services at the Properties.

27. **65 Hawaii – Unit 101 and Laundry Room, 77 Hawaii - Unit 202.** Defendants represent that they have completed mold remediation in three areas in which Defendants’ mold assessor (Mr. Powell, in his April 2022 inspection report) previously identified mold issues. Both Unit 101 and the Laundry Room located at 65 Hawaii Avenue, N.E. contained ten square feet or more of mold growth. Unit 202 at 77 Hawaii Avenue, N.E. only contained four square feet of mold growth, however, while not meeting the ten square feet or more test necessitating licensed remediation, Defendants also elected to have AVETS remediate this unit.

28. Additionally, Defendants identified ten units and one common area that contained less than four square feet of mold growth in each area. Defendants represent that as of April 27, 2022 Progressive has abated and corrected the mold issues in these eleven areas.

29. **April 2022 Mold Assessment.** Mr. Spearman performed a mold assessment in April 2022 (“April 2022 Mold Assessment”), where he identified mold growth in two additional units and one common area.

30. AVETS’s three Mold Remediation Protocols employed in the remediation of the two units and one common area referenced above in Paragraph 26 are attached hereto as Exhibit C and incorporated herein by reference. The Post Remediation Reports are also attached hereto as Exhibit D.

31. Defendants have retained Mr. Spearman and Arrowhead Consulting to inspect 100% of the Properties' units⁴ using the same process used by Mr. Spearman in the April 2022 Mold Assessment. Mr. Spearman's inspection shall be completed by June 1, 2022. This includes microbial sampling and analysis. Fungal analysis shall be performed by a certified Microbiologist under direct microscopic examination to identify fungal groups and concentration. Results of this inspection shall be provided to the District immediately upon its completion. Any unit or common area with elevated mold levels found as a result of this inspection shall be remediated by July 20, 2022. Defendants shall provide proof of remediation to the District by July 25, 2022.

32. At any point while this case is ongoing, if mold is discovered that requires assessment by a licensed indoor mold assessment professional in accordance with applicable regulations, Defendants will contract with a licensed mold professional to determine whether the unit's fungal ecology is abnormal and to document whether the amount of mold, if present, requires remediation per Department of Energy and Environment ("DOEE") standards.

Deteriorating Paint Assessment and Remediation

33. **Deteriorating Paint Remediation.** Defendants engaged licensed lead paint assessor Mr. Powell of AVETS to conduct a 100% unit deteriorating paint assessment at the Properties. Mr. Powell conducted a deteriorating paint assessment and prepared paint assessment reports for each unit of the Properties, which are attached hereto as Exhibit E. Defendants also engaged Mr. Powell and AVETS to perform deteriorating paint remediation services at the Properties.

34. Defendants have identified several units and common areas that contained deteriorating paint. Defendants are committed to remediating any deteriorating paint existing at

⁴ Excepting units previously inspected by Mr. Spearman in April 2022 and further excepting units located in 89 and 93 Hawaii Avenue, N.E.

the Properties. The remediation efforts for the deteriorating paint will proceed in accordance with the paint abatement protocols prepared by Defendants' vendor, AVETS. In light of the paint abatement protocols in place, the remediation efforts for these units may include plans to relocate tenants to alternate units during the remediation process, as described herein at page 2, *supra*. AVETS is abating the deteriorating paint in areas where the deteriorating paint is over two square feet and Progressive is abating the deteriorating paint in areas where the deteriorating paint is less than two square feet. AVETS and Progressive shall correct the same by June 20, 2022.

35. AVETS has submitted a Paint Remediation Protocol, which is attached hereto as Exhibit F and incorporated herein by reference. The Paint Remediation Protocol delineates the deteriorating paint remediation required as part of this Abatement Plan.

Water Supply / Plumbing System Analysis

36. Defendants shall engage a certified plumber licensed in the District of Columbia to perform a comprehensive, proactive, controlled inspection of water supplies in each of the occupied and unoccupied units to inspect for the possibility of water infiltration.

37. Defendants represent that they have engaged Sila Heating, Air Conditioning & Plumbing ("Sila") to conduct an assessment of the condition of the main hot and cold water lines and main sewer lines by June 10, 2022. In addition to this assessment of the main lines, Sila will conduct comprehensive, proactive, controlled inspections of water supplies in each of the occupied and unoccupied units in the Properties⁵ to inspect for the possibility of water infiltration. The analysis will establish the overall condition of the lines in each of unit. Sila will also confirm that:

⁵ For clarity, as the defined term "Properties" does not include 89 and 93 Hawaii Avenue, N.E., these two buildings will not have a Water Supply/Plumbing System Analysis Performed. Alternatively, Defendants shall take actions under this Abatement Plan Order to make sure 89 and 93 Hawaii Avenue, N.E. do not cause any risks to the tenants located in occupied buildings' health, safety, or security as follows: (i) water lines shall be capped by May 20, 2022; (ii) gas lines shall be capped by May 20, 2022; (iii) electrical lines shall be properly terminated by May 20, 2022; (iv) extermination services shall continue to be provided in accordance with the section entitled "Extermination" herein; and (v) these buildings shall remain secured so that unauthorized individuals cannot gain access to the same.

(i) all toilets are functional; (ii) all caulk is intact; and (iii) all bathrooms are structurally sound. Upon receipt of the plumbing inspection report described in this paragraph, Defendants shall review and produce said report to the District within five (5) business days, and thereafter a proposed timeline to address issues identified in the plumbing report, if any. Following the Parties' good faith efforts to confer on this issue, by July 1, 2022, the Parties shall jointly submit to the Court an addendum to this Abatement Plan Order relating to repairs and appropriate deadlines to address issues identified in the plumbing report.

38. Upon completion of the water supply and plumbing analyses, Defendants will classify the results in each unit into one of three categories: (1) Immediate Action Needed, for instances (if any) of water leaks or possible mold; (2) Routine Maintenance Needed (if any); and (3) Schedule for Next Enhanced Maintenance Inspection, for instances (if any) of non-emergencies that will require additional attention but have not triggered Immediate Action Needed.

39. In the event of an Immediate Action Needed circumstance, Defendants will immediately dispatch Progressive, or its successor, to implement the repair plan. Once the repair team (carpenter, remediation team, and plumber) is chosen, the project scope will be established, and repairs will be provided.

40. In the event that mold is discovered during these analyses that requires assessment by a licensed indoor mold assessment professional in accordance with applicable regulations, Defendants will contract with a licensed mold professional to determine whether the unit's fungal ecology is abnormal and to document whether the amount of mold, if present, requires remediation per DOEE standards.

41. The licensed mold professional then would develop a remediation protocol in compliance with the requirement of 20 DCMR Ch. 32, DOEE requirements, and IICRC (Institute

of Inspection Cleaning and Restoration Certification) S520 Standard and Reference Guide for Professional Mold Remediation, to include the mold remediation standards set forth above.

Heat

42. Defendants represent that they have contracted with Sila and replaced all of the boilers with new boilers in March 2022. Defendants shall maintain the boilers in working order.

43. Defendants shall inspect all radiators in between October 15, 2022 and October 31, 2022 to ensure they are in working order. If any radiator is not providing sufficient heat, Defendants shall ensure it is repaired within one week.

Vacant Unit Inspections

44. Defendants will conduct an inspection of all vacant units in the buildings that have missing appliances, to determine whether there remain any electrical wires that are not properly terminated and gas lines that are not properly capped and to provide such termination and capping, respectively, where applicable, and, to the extent necessary. Defendants will complete the vacant unit inspection, proper termination of electrical wires, and capping of gas lines in the vacant units by May 20, 2022. If any unit becomes vacant after May 20, 2022, Defendant shall inspect the unit within one week of the vacancy.

ABATEMENT SUPERVISION

45. M Squared will continue to oversee repairs at the Properties and will supervise the implementation of this Plan.

46. M Squared's management services shall include regular maintenance with reasonable notice under D.C. law and emergency maintenance with as much notice as is reasonably practicable, rent collection, maintenance of tenant ledgers and/or rent rolls, and other duties necessary to ensure the smooth operation of the Properties during remediation.

47. M Squared shall ensure that it employs at least one Spanish-speaker whose duties include interpreting tenants' maintenance requests. M Squared represents that it employs Reynaldo Guillermo, the Head of Maintenance, who speaks Spanish and is available by phone twenty-four hours a day at (202) 489-7153.

48. M Squared will continue to make any and all regular and/or emergency maintenance repairs in occupied units according to the existing "Work Order Policy" (as may be amended from time to time) or will promptly engage a third-party vendor to make regular and/or emergency maintenance repairs, where needed. M Squared will work in conjunction with Progressive to coordinate completion of projects, if any, that extend beyond standard maintenance issues.

49. Except in emergency situations, M Squared will continue to provide at least forty-eight (48) hours' advance written notice to the relevant tenant(s) of inspection, remediation, and/or repair activities, and shall make all reasonable efforts to conduct inspections, remediation, and abatement of conditions between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding federal holidays.

50. For the avoidance of doubt, the "Work Order Policy" is as follows:

To place a work order for repair or maintenance, residents can contact M Squared by phone at (202) 978-3759, by email at info@msqmgmt.com, by portal to which tenants have access through a personalized email sent to their email addresses, or can stop by the property management office located at 1407 T Street, N.W., Suite 200, Washington, D.C. in-person.

51. Each notice from M Squared relating to routine and non-emergency maintenance, which requires entry into an occupied unit, will be dated and contain an approximate window of time – where possible a three-hour window – for entry into a tenant's unit and a short description of the repair or maintenance to be performed. M Squared will keep an open line of communication with tenants, for instance if the contractor will not provide less than a four-hour window and/or if

other events arise which frustrate satisfaction of the proposed 3-hour window, and will promptly notify tenants if the approximate time in the notice changes.

52. For purposes of this Plan, an “emergency” is any condition that presents an immediate risk to the health and safety of a tenant at the Properties, including but not limited to: fire, flooding, carbon monoxide leaks, ceiling collapses, sewage backups, lack of heat in winter, lack of air conditioning in summer, and a lack of water or electricity in a unit.

53. When a tenant reports an emergency condition, M Squared shall confirm to the affected tenant within twenty-four (24) hours of the inspection or review undertaken, repair and/or efforts undertaken, completion, or other matters or information, including whether impediments to immediate repair exist. Confirmation shall be in accordance with the practices of M Squared, which can be in writing or electronic mail.

54. Emergency repairs shall be addressed within twenty-four (24) hours of being reported.

55. Should relocation be required during any emergency repair, the affected tenant may temporarily relocate in accordance with the procedures described herein at page 2.

56. When a tenant reports a non-emergency condition, M Squared shall confirm to the affected tenant within forty-eight (48) hours of the inspection or review undertaken, repair and/or efforts undertaken, completion, or other matters or information, including whether impediments to repair exist. Confirmation shall be in accordance with the practices of M Squared, which can be in writing or by electronic mail.

57. M Squared will continue to keep a log of all work orders requested by tenants and the actions taken in response to each work order; and Defendants shall submit copies of these logs as part of its monthly reporting to the Court described in Paragraph 59 below.

COURT MONITORING AND REPORTING REQUIREMENTS

58. **Court Monitoring.** Pursuant to D.C. Code § 42-3651.05(a)(2), the Court will retain the case for purposes of monitoring Defendants’ execution of the Plan. The monitoring shall continue until the Court:

A. Upon motion of Defendants dismisses the claims in the Motion based on D.C. Code § 42-3651.05(a)(2)(A) on the grounds that Defendants have completed the Plan; or

B. Finds that Defendants have not substantially complied or failed to make substantial progress on the Plan, in which event it may order appointment of a receiver under D.C. Code § 42-3651.05(a)(2)(B); or

C. Orders such other and further relief or conduct as may be appropriate under the circumstances of this matter.

59. **Progress Report.** Defendants shall submit a report to the Court (“Progress Report”) on a monthly basis that contains the following:

A. A description of the progress made in abating and remediating health and safety housing conditions at the Properties;

B. A description of any changes in the condition of the Properties that may change the proposed completion dates in the Progress Report;

C. A log of all work orders requested by tenants and the responses thereto during that reporting period;

D. A pest sighting/occurrence log during that reporting period;

E. A full accounting of expenditures on labor and materials for abatement and remediation; and

F. A list of all of Defendants’ employees and contractors performing work during that reporting period.

Anthony C. Epstein

Anthony C. Epstein
Judge

Date: May 13, 2022

Copies by CaseFileXpress to all counsel

Exhibit B
to the Consent Order
(See attached)

AFFORDABLE HOUSING COVENANT

THIS AFFORDABLE HOUSING COVENANT (this “Covenant”) is made as of the 8th day of December, 2022 (“Effective Date”), by Solid Brick Ventures, LLC, 93 Hawaii Ventures LLC and 98 Webster Ventures LLC, and their successors and assigns (collectively, the “Owners”), for the benefit of the District of Columbia, a municipal corporation, acting by and through the Office of the Attorney General for the District of Columbia (the “District”).

RECITALS

R-1. The Owners are the fee simple owners of certain real property located in the District of Columbia as further described in Exhibit A (the “Property”).

R-2. The Owners were subject to litigation commenced by the District in the Superior Court of the District of Columbia (the “Court”), case styled *District of Columbia v. Solid Brick Ventures, LLC, et al.*, 2022 CA 000446 B (the “litigation”).

R-3. The Owners and the District settled all claims involved in the litigation through a Consent Order and Judgment submitted to the Court on December 8, 2022 (the “Consent Order”).

R-4. In furtherance of the District’s public policy of increasing affordable housing stock in the District of Columbia, the Consent Order requires the Owners to execute a written covenant preserving affordable housing at the Property.

R-5. The District and the Owners desire to set forth herein the terms, restrictions, and conditions upon which the Owners will construct, maintain, and/or lease the Affordable Units at the Property.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Owners hereby declare, covenant, and agree as follows:

DEFINITIONS

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period is defined in Paragraph 20.

Affordable Unit means each residential unit at the Property in which the rent charged is the applicable Base Rent as further defined below, including all requirements in D.C. Code § 42-3502.09 governing any rent charged for a unit upon the termination or expiration of an exemption claimed pursuant to § 42-3502.05(a)(1)(3) or (5).

Base Rent means that rent legally charged or chargeable for such unit under the District of Columbia Rent Stabilization Program on the Effective Date.

Capital Improvement is defined in D.C. Code § 42-3501.03(6).

Elderly Tenant means a tenant who is 62 years of age or older, unless a different age is established by any future amendment to D.C. Code § 42-3501.03(13).

Hardship refers to the cause for any rent adjustment sought through a petition made pursuant to D.C. Code § 42-3502.12.

Mortgage means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

OAG means the Office of the Attorney General for the District of Columbia.

Person means any individual, corporation, limited liability company, trust partnership, association, or other legal entity, and their respective successors and assigns.

Property is defined in the Recitals.

Rent means the entire amount of money, money's worth, bonus, or gratuity demanded, received, or charged by the Owners as a condition of occupancy or use of a residential unit and its related services and facilities.

Rent Charged means the entire amount of money, money's worth, bonus, or gratuity a tenant must actually pay to the Owners as a condition of occupancy or use of a residential unit and its related services and facilities, pursuant to the Rent Stabilization Program.

Rent Stabilization Program means the program and related requirements established by Subchapter II of Chapter 35 of Title 42 of the Code of the District of Columbia and implementing regulations.

Rent Surcharge means a charge added to the rent charged for a residential unit in relation to any petition by the Owners for capital improvements, hardship, or substantial rehabilitation, and not included as part of the rent charged.

Residential Unit means an individual dwelling unit, whether occupied or vacant, constituting a part of the Property.

Substantial Rehabilitation is defined in D.C. Code § 42-3501.03(34).

Tenant includes a tenant, subtenant, lessee, sublessee, or other Person entitled to the possession, occupancy, or the benefits of any residential unit owned by the Owners.

Tenant with a Disability means any tenant included in the definition provided in D.C. Code § 42-3501.03(36A).

AFFORDABILITY REQUIREMENT

1. Affordability Requirement. The Owners shall maintain and lease all residential units at the Property as Affordable Units through the Affordability Period. If, during the Affordability Period, the Owners pursue or accept any form of financing that would customarily exempt the entire Property from the Rent Stabilization Program (e.g., Low-Income House Tax Credit or Housing Production Trust Fund financing), the Owners must maintain all residential

units at the Property as Affordable Units notwithstanding any exemption such financing would otherwise provide the Owners to the Rent Stabilization Program. Notwithstanding the foregoing, this Covenant shall not prevent the Owners from pursuing and accepting any local or Federal tenant-based rental subsidy that would exempt individual units from the Rent Stabilization Program, in which case the rent charged for such individual unit may be in accordance with the subsidy program. It is expressly understood and agreed that should any individual unit be occupied by a tenant using a tenant-based subsidy, then the requirements of the subsidy program shall control to the extent of any conflict with the terms of this Covenant. Upon termination of a tenant-based rental subsidy in any Affordable Unit, including after a tenant who is participating in the applicable subsidy program moves from such unit, any exemption from the Rent Stabilization Program related to such tenant-based subsidy will also terminate and such Affordable Unit will remain in the Rent Stabilization Program throughout the Affordability Period, subject to all restrictions in D.C. Code § 42-3502.09 for the sum of rent that may be charged following any such termination.

2. No Rent Increases Other Than Annual and Vacancy Adjustments. The Owners shall also refrain from seeking, petitioning for, or otherwise increasing the rent charged for units at the Property other than as permitted under the District of Columbia Rent Stabilization Program's provisions for (i) annual adjustments of general applicability pursuant to D.C. Code § 42-3502.06, subject to limitations on such increases for elderly tenants and tenants with disabilities under D.C. Code § 42-3502.24 or (ii) for a vacant accommodation pursuant to D.C. Code § 42-3502.13.

3. No Rent Surcharges. The Owners shall specifically forgo imposing any Rent Surcharge on any Affordable Unit at the Property and shall not file or pursue any petition under the Rent Stabilization Program based on capital improvements, hardship, or substantial rehabilitation.

4. Additional Affordable Units. If the Owners sell the portions of the Property located at 89 and 97 Hawaii Avenue NE, Washington, D.C. 20011 and the two vacant buildings thereon, such sale shall be to a purchaser who will covenant, as a part of the sale, to add four (4) additional Affordable Units to each building. Any additional Affordable Units at the Property must be maintained in compliance with the D.C. Housing Code (Sections 1 through 16 of Title 14 of the District of Columbia Municipal Regulations and Titles 12A-12L of the District of Columbia Municipal Regulations), Property Maintenance Code (12 DCMR § PM-101G, *et seq.*) and Air Quality Amendment Act (D.C. Code §§ 8-241.01-241.09).

5. Marketing Affordable Units Using Housing Locator. When an Affordable Unit becomes available for rent at the Property, the Owners shall register the Affordable Unit on the Housing Locator website established under the Affordable Housing Clearinghouse Directory Act of 2008, D.C. Law 17-215, effective August 15, 2008, and indicate availability of such Affordable Unit and the application process for the Affordable Unit. As of the Effective Date, no Affordable Units are available for rent at the Property. However, it is anticipated that two (2) Affordable Units will become available for rent at the Property once renovations are completed for current tenants.

Within thirty (30) days of the completion of said renovations, the Owners shall register all such available Affordable Units at the Property on the Housing Locator referenced above.

QUALITY OF AFFORDABLE UNITS

6. Quality of Components. Owner shall maintain, upkeep, repair, and replace interior components (including fixtures, appliances, flooring, and cabinetry) of the Affordable Units with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance, repair, or replacement with equal or better quality without the prior written approval of the District, which approval shall be in the sole discretion of the District.

AFFORDABLE RENTAL TERM

7. Maintenance of Lease Records. The Property shall maintain or cause to be maintained copies of all initial and renewal leases executed with the tenants at the Property for a period of no less than five (5) years from the expiration or termination of such lease.

8. Fair Housing Practices. In connection with the leasing of an Affordable Unit at the Property, the Owners must comply with all applicable District of Columbia and federal laws governing fair and nondiscriminatory housing practices, including the D.C. Human Rights Act, D.C. Official Code § 2-1400, *et seq.* Upon request, the Owners shall provide the District with all documents evidencing the Owners' review and rejection of an applicant to an Affordable Unit at the Property.

9. Rent from Subsidies. Nothing herein shall be construed to prevent the Owners from collecting rental subsidy or rental-related payments from any federal or District of Columbia agency paid to the Owners and/or a tenant in an Affordable Unit, or on behalf of a tenant in an Affordable Unit, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant.

10. Representation of the Owners. By execution of a lease for an Affordable Unit at the Property, the Owners shall be deemed to represent and warrant to the District, upon which the District will rely, that the Owners are not collecting rents in excess of the rent that may be charged for such Affordable Unit under this Covenant.

11. Annual Reporting Requirements. Beginning on the 15th day of the first month following the Effective Date of this Covenant, the Owners shall provide an annual report ("Annual Report") to the District regarding the Affordable Units, which shall be submitted thereafter on each anniversary of the Effective Date of this Covenant. The Annual Report shall include the following:

- a. the number and identification of the Affordable Units that are occupied;
- b. the number and identification of Affordable Units that are vacant;
- c. for each Affordable Unit that is vacant, or that was vacant for a portion of the report period, the manner in which the Affordable Unit became vacant (e.g., eviction or voluntary departure) and the progress in re-leasing that unit; and
- d. a copy of all forms, policies, procedures, and other documents reasonably requested by the District related to the Affordable Units.

Except as may be required by applicable law, including without limitation to, the District of Columbia Freedom of Information Act of 1967, D.C. Code § 2-531, *et seq.*, Owners and the District shall not disclose to third parties the personal information of the tenants, including the identity of the tenants, submitted as part of the Annual Report.

The Annual Reports shall be retained by the Owners for a minimum of five (5) years after submissions and shall be available, upon reasonable notice, for inspection by the District or its designee. The District may request the Owners to provide additional information in support of its Annual Report.

12. Inspection Rights. The District or its designee shall have the right to inspect the Affordable Units, upon reasonable advance notice to the Owners. If the Owners receive such notice, the Owners shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Affordable Unit(s). The District or its designee shall have the right to inspect a random sampling of the Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The District shall have the right to conduct audits of a random sampling of the Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

DEFAULT; ENFORCEMENT AND REMEDIES

13. Default; Remedies. In the event the Owners default under any term of this Covenant and do not cure such default within thirty (30) days following written notice of such default from the District, the District shall have the right to seek specific performance, injunctive relief, and/or other equitable remedies, including compelling the re-leasing of an Affordable Unit and the disgorgement of rents collected in excess of the rental rates permitted hereunder, for default of this Covenant.

14. No Waiver. Any delay by the District in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

15. Right to Attorney's Fees. If the District shall prevail in any such legal action to enforce this Covenant, then the Person(s) against whom the District prevails, shall pay the District

all of its costs and expenses, including reasonable attorney fees, incurred in connection with the District's efforts to enforce this Covenant. If OAG is counsel for the District in such legal actions, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Fitzpatrick Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of employees of OAG that prepared for or participated in any such action.

COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

16. This Covenant shall be binding upon the Property and each Affordable Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of the District, the Owners, and their respective successors, heirs and assigns shall be binding upon and insure to the benefit of the foregoing parties and their respective successors, heirs and assigns; provided however that all rights of the District pertaining to the monitoring and/or enforcement of the obligations of the Owners hereunder shall be retained by the District, or such designee of the District as the District may determine. No sale, redevelopment, rehabilitation, transfer, or foreclosure shall affect the validity of this Covenant.

17. The Owners, or their successors, heirs and assigns, shall forward to the District copies of any notices provided to tenants at the Property pursuant to the Tenant Opportunity to Purchase Act, D.C. Code § 42-3404.02, within seven (7) days of such notices being provided to tenants.

MORTGAGES

18. All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant.

AMENDMENT OF COVENANT

19. Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified, or released other than as provided herein by an instrument in writing executed by a duly authorized official acting on behalf of the District and by a duly authorized representative of the Owners. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it is deemed effective.

AFFORDABILITY PERIOD

20. All Affordable Unit at the Property shall be leased in accordance with the terms of this Covenant for the "Affordability Period." The Affordability Period for all Affordable Units shall begin on the Effective Date of this Covenant and continue for a period of twenty-five (25) years, which date shall be memorialized in an acknowledgement executed by the District and the Owners and recorded in the Land Records. Notwithstanding the foregoing, this Covenant may be

released and extinguished upon the approval of the Attorney General for the District of Columbia, in their sole and absolute discretion.

NOTICES

21. Any notices given under this Covenant shall be in writing and delivered by certified mail (return mail receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other Persons or locations as may be designated by the District or the Owners from time to time. All notices to be sent to the District shall be sent to the following address:

Christopher S. Peña
Social Justice Section
District of Columbia Office of the Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
(202) 705-1798
Christopher.Penal@dc.gov

All notices sent to the Owners shall be sent to the following address:

Richard W. Luchs [Bar No. 243931]
Gwynne L. Booth [Bar No. 996112]
Spencer B. Ritchie [Bar No. 1673542]
Natasha N. Mishra [Bar No. 1616440]
Alexandria J. Smith [Bar No. 1781067]
Greenstein DeLorme & Luchs, P.C.
801 17th Street, NW, Suite 1000
Washington DC 20006
(202) 452-1400
rwl@gdllaw.com
glb@gdllaw.com
sbr@gdllaw.com
nnm@gdllaw.com
ajs@gdllaw.com

It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the District with a current address, The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of deliver or refusal thereof; (ii) if by overnight courier services, then on the next business day after

deposit with the overnight courier services; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

MISCELLANEOUS

22. Applicable Law; Forum for Disputes. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. The Owners and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia (including the Superior Court of the District of Columbia) for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. The Owners and the District irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts of the District of Columbia (including the Superior Court of the District of Columbia), and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

23. Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

24. Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next business day.

25. Further Assurances. Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

26. Severability. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

27. District Limitation on Liability. Any review or approval by the District shall not be deemed to be an approval, warranty, or other certification by the District as to compliance of such submissions, any Affordable Unit, or the Property with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or otherwise contractually required. The District shall incur no liability in connection with the District's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District's interest under this Covenant.

28. No Third-Party Beneficiary. Except as expressly set forth in this Covenant, there are no intended third-party beneficiaries of this Covenant, and no Person other than the District shall have standing to bring an action for breach or to enforce the provisions of this Covenant.

29. Representations of the Owners. As of the Effective Date of this Covenant, the Owners hereby represent and warrant to the District as follows:

- a. This Covenant has been duly executed and delivered by the Owners, and constitutes the legal, valid and binding obligation of the Owners, enforceable against the Owners, and its successors and assigns, in accordance with its terms;
- b. Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by the Owners of any agreement or order which is binding on the Owners; and
- c. The Owners (i) are duly organized, validly existing and in good standing under the laws of its state of incorporation and are qualified to do business and are in good standing in the District of Columbia; (ii) are authorized to perform under this Covenant; and (iii) have all necessary power to execute and deliver this Covenant.

[Signatures on Following Pages]

IN TESTIMONY WHEREOF, the Owners have caused these presents to be signed, acknowledged and delivered in its name by Mark Mlakar, the duly authorized principal and sole member of each of the Owners, witnessed by [_____] its [_____].

By: Natasha Lidue
Date: 12/8/2022

[_____]
Witness

By: [Signature]
Date: 12/8/2022
Mark Mlakar
On behalf of the Owners

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, April Crook, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT, Mark Mlakar, who is personally known to be (or proved by oaths of credible witnesses to be) the person named as the duly authorized representative for the Owners in the foregoing and annexed Affordable Housing Covenant, bearing the date of 12/8, 2022, personally appeared before me in said District of Columbia, and that _____, acting on behalf of the Owners, as aforesaid witness, acknowledged the same to be his free act and deed.

Given under my hand and seal this 8 day of December

[Signature]
Notary Public

My Commission Expires: 7/31/2027

APRIL C. SULTZER
A Notary Public of District of Columbia
My Commission Expires July 31, 2027



APPROVED AND ACCEPTED THIS 8TH DAY OF DECEMBER, 2022:

KARL A. RACINE
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division

/s/

JENNIFER L. BERGER
Chief, Social Justice Section

/s/

CHRISTOPHER PEÑA
LILY BULLITT
Assistant Attorneys General
400 6th Street NW 10th Floor
Washington, D.C. 20001
(202) 705-1798
Email: christopher.penal@dc.gov

EXHIBIT A
Legal Description of Property
[See attached]

"EXHIBIT A"

All that certain land located in the District of Columbia and being more particularly described as follows:

Property 1:

Lot Numbered Nineteen (19), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in the subdivision made by Howard Homes, Inc., as per plat recorded in Liber 116 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

66 Webster Street, NE
Lot 19, Square 3674

Property 2:

Lot Numbered Eleven (11) in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

98 Webster Street NE
Lot 11, Square 3674

Property 3:

Lot Numbered Two (2), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

65 Hawaii Avenue, NE
Lot 2, Square 3674

Property 4:

Lot Numbered Three (3), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

69 Hawaii Avenue, NE
Lot 3, Square 3674

Property 5:

Lot Numbered Four (4), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:

73 Hawaii Avenue, NE
Lot 4, Square 3674

Property 6:

Lot Numbered Five (5), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
77 Hawaii Avenue, NE
Lot 5, Square 3674

Property 7:
Lot Numbered Six (6), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
81 Hawaii Avenue, NE
Lot 6, Square 3674

Property 8:
Lot Numbered Seven (7), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
85 Hawaii Avenue, NE
Lot 7, Square 3674

Property 9:
Lot Numbered Eight (8), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
89 Hawaii Avenue, NE
Lot 8, Square 3674

Property 10:
Lot Numbered 9 in Square Numbered 3674 in a subdivision made by Howard Homes, Inc. as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
93 Hawaii Avenue, NE
Lot 9, Square 3674

Property 11:
Lot Numbered Ten (10), in Square Numbered Thirty-Six Hundred Seventy-Four (3674) in a subdivision made by Howard Homes, Inc., as per plat recorded in Liber 115 at Folio 26 in the Office of the Surveyor for the District of Columbia.

For informational purposes only:
97 Hawaii Avenue, NE
Lot 10, Square 3674