

**PREPARED BY:**

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**OPA #S AND ADDRESSES:**

881445105 - 4701-15 Kingsessing Avenue, Phila., PA, 19143  
881707100 - 4720 Chester Avenue, Phila., PA, 19143  
461129001 - 4724 Chester Avenue, Phila., PA, 19143  
461212200 - 1115 S. 48th Street, Phila., PA, 19143  
461212301 - 1119 S. 48th Street, Phila., PA, 19143

**COMMUNITY BENEFITS AGREEMENT  
AND INDENTURE OF RESTRICTIVE COVENANTS**

This Community Benefits Agreement and Indenture of Restrictive Covenants (the “Agreement”) is made as of this 1st day of June, 2021, and effective as of the 1st day of June , 2021 (the “Effective Date”), by and between two affiliated entities, Kingsessing Realty, LLC, a Pennsylvania limited liability company and Chester Realty LLC, a New Jersey limited liability company (together, “**Developer**”), and Cedar Park Neighbors (“**CPN**”), a Pennsylvania nonprofit corporation (Developer and CPN are each a “**Party**” and collectively are the “**Parties**”).

W I T N E S S E T H:

WHEREAS, CPN is a nonprofit, 501(c)(3) organization whose purpose is to foster collaboration among all persons living and working in the Cedar Park neighborhood, to promote community development, to provide a forum for communication and community education, to respond to neighborhood concerns, and to advocate for and promote the general welfare of the Cedar Park community; and

WHEREAS, Developer has submitted an application (ZP-2020-004939) (the “**Application**”), to the City of Philadelphia’s (the “**City**”) Department of Licenses and Inspections (“**L&I**”) to obtain approval to construct a multifamily apartment building (the “**Project**”) at 4701-15 Kingsessing Avenue, 4720 and 4724 Chester Avenue, and 1115 and 1119 S. 48th Street, Philadelphia, Pennsylvania, 19143, as more fully described in the legal description attached hereto as Exhibit “A” (the “**Site**”); and

WHEREAS, L&I issued a Notice of Refusal in connection with the Application and Developer filed an Application with the City’s Zoning Board of Adjustment (“**ZBA**”) as to the Notice of Refusal (the “**Zoning Appeal**”); and

WHEREAS, CPN has agreed to support the Zoning Appeal on the condition that Developer and CPN enter into a recorded community benefits agreement ensuring that a certain percentage of the Project's units are maintained as long term affordable housing; and

WHEREAS, Developer and CPN have agreed that entering into a community benefits agreement is the best way to ensure that the Project is developed in a manner that maximizes the benefit to the local community; and

WHEREAS, Developer and CPN agree that Developer or any successor to Developer shall be required to provide the benefits outlined herein so long as a project is constructed which could not have been constructed without a grant of the Zoning Appeal.

NOW THEREFORE, intending to be legally bound, and in consideration of the premises and for other good and valuable consideration, Developer hereby declares that the Project and the Site are and shall be held, transferred, sold, conveyed, used, occupied, and encumbered subject to the conditions and restrictions set forth below as if said covenants were set forth in the deed by which Developer acquired title to the Project and the Site, and said conditions for all purposes shall be deemed to run with the land, and Developer and CPN agree as follows:

1. CPN Support. CPN has supported the Zoning Appeal by providing a letter of support to the ZBA. CPN's sole remaining obligation to Developer to support the project is to refrain from expressing opposition to the Project. CPN's obligation under the preceding sentence applies only to its actions in its corporate capacity and the actions of its board members, officers, and other persons CPN has authorized to speak on its behalf about the Project.

2. Affordable Housing Set Aside. Developer agrees to set aside fifteen (15) of the Project's apartments as affordable housing units (each an "AHU" and, collectively, the "AHUs"), based upon the following terms and conditions:

a. *AHU Unit Size*. Seven (7) of the AHUs shall be one-bedroom apartments and eight (8) of the AHUs shall be two-bedroom apartments.

b. *Compliance Period*. The AHUs shall be set aside as affordable housing under the terms of this Agreement for (i) fifty (50) years from the date Developer receives the last Certificate of Occupancy issued by L&I for residential dwelling units within the Project upon its initial construction or (ii) for such extended period of time beyond fifty (50) years as shall be applicable pursuant to Section 7.a.i below (the "**Compliance Period**").

c. *Parity*. The AHUs will be developed at the same time as the Project's market rate units, be identical to them in every respect, and be evenly distributed throughout the floors and layout of the Project. Any maintenance or renovations performed on the market rate units shall be performed on the AHUs in an equivalent manner and at the same time.

d. *Income Restriction*. The AHUs shall be leased to households whose gross annual income at the time of the household's initial occupancy of the AHU does not exceed forty percent (40%) of area median income ("**AMI**") (adjusted for household size) in the Philadelphia

Metropolitan Statistical Area (the “**PMSA**”) as established from time to time by the United States Department of Housing and Urban Development. The term “**Eligible Household**” means a household with income under this limit. Gross annual income shall be calculated in accordance with Section 3.a below.

e. *Rent & Utilities.* Each Eligible Household shall pay, for monthly rent and utilities (whether paid directly to Developer, the property manager, or a utility company), no more than thirty percent (30%) of the gross monthly income for households with incomes at forty percent (40%) of AMI for the PMSA, adjusted for household size. Therefore, the rent charged on a monthly basis for the AHUs (“**AHU Rent**”) shall not exceed (i) the Current gross monthly rent limits for Philadelphia, adjusted by unit type, as set forth by the Pennsylvania Housing Finance Agency for the Low Income Housing Tax Credit Program for forty percent (40%) AMI households (the “**PHFA Limits**”) *minus* (ii) the Current utility allowance as published by the Philadelphia Housing Authority (“**PHA**”) for each utility for which PHA Currently provides a utility allowance to PHA tenants. For the purposes of this subsection, “**Current**” and “**Currently**” means the rent limits and utility allowances most recently published or provided by the relevant agency or authority at the time a payment of rent is due and payable. Tenants of AHUs may not be charged any non-optional fees and charges associated with residing at the Project. For reference, the 2020 PHFA Limits are attached hereto as Exhibit “B”.

f. *Principal Residence.* The Eligible Household occupying the AHU must use the unit as its Principal Residence. “**Principal Residence**” shall mean the home or place in which one’s habitation is fixed and to which one, whenever they are absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a Principal Residence, the following circumstances relating to the tenant of the residence shall be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration.

g. *Household Composition.* An Eligible Household may consist of one (1) person living independently or a group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons who are unrelated by blood, marriage, adoption, or foster-child status, or are not life partners as defined by the Philadelphia Code. An Eligible Household may not consist only of full-time college or graduate students or other individuals (such as hospital house staff) who are likely to be Eligible Households for only a limited period of time. No Eligible Household may include anyone with a familial relationship with (a) Developer or any person with an interest in Developer; or (b) the property manager for the Project (“**Property Manager**”) or any person with an interest in the Property Manager. Furthermore, no Eligible Household may include anyone in a business relationship with: (1) Developer or Property Manager; (2) any person with an interest in Developer or Property Manager; (3) or anyone with a familial relationship with Developer or Property Manager.

h. *Leasing.* Developer and Property Manager shall establish initial lease-up and ongoing leasing practices in accordance with best practices for affordable housing leasing.

The process shall be equitable and transparent for all applicants for the AHUs. During initial lease-up, and during ongoing leasing if no prospective tenants are on a waitlist for an AHU, Developer and Property Manager shall advertise the availability of AHUs widely in the “**Neighborhood**”, as such area shall be determined in good faith by CPN, Developer and Property Manager. Developer and Property Manager shall also establish a leasing preference for residents of the Neighborhood according to a preference procedure established in good faith by CPN, Developer and Property Manager.

i. *Lease-Up Notifications.* Developer shall notify CPN no later than ninety (90) days prior to the commencement of initial residential leasing activities for the Project. Following initial lease-up, Developer shall notify CPN within ten (10) days of learning that any AHU will become available to a new Eligible Household. The purpose of these notifications is to allow CPN to share information about the availability of the AHUs with the community. Developer and CPN agree that CPN shall have no responsibility for identifying or referring applicants for the AHUs and that Developer is solely responsible for ensuring that the AHUs are occupied by Eligible Households.

j. *Applicant Screening.* In evaluating applications for AHUs, applicants shall not be rejected on any prohibited basis under Philadelphia Code § 9-1108 (including on the basis of status as a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937); for non-violent criminal offenses adjudicated over five (5) years ago; or for bankruptcies, foreclosures, or evictions adjudicated over five (5) years ago. Bases for rejection of applicants shall be clearly stated on the rental application.

k. *Over Income Units.* A household who was an Eligible Household at the time of its initial occupancy of an AHU will not cease to be an Eligible Household so long as the household’s gross annual income does not exceed fifty percent (50%) AMI for the PMSA, adjusted for household size, but will become an “**Over Income Household**” if its income increases above that limit. An Over Income Household’s unit (the “**Over Income Unit**”) will continue to qualify as an AHU, and the Over Income Household shall continue to pay the AHU Rent applicable to that unit, until the first date on which any lease for a market rate residential unit with the same number of bedrooms as the Over Income Unit at the Project expires. Upon that date, the market rate unit with the expiring lease shall be rented as an AHU, consistent with all requirements of this Agreement. Upon that same date, the Over Income Unit will cease to be counted as an AHU, and the Over Income Household will only be entitled to pay the AHU Rent through the end of the household’s current lease term. Within ten (10) days of becoming aware of the existence of an Over Income Unit, Developer shall provided the household in the Over Income Unit with notice that the unit’s rent will no longer be restricted at the end of the lease term. Developer may not charge the household an unrestricted rent at the beginning of the next lease term unless Developer has timely provided such notice.

l. *Equal Use and Enjoyment.* Households occupying AHUs shall have the same and equal use and enjoyment of all of the amenities of the Project and services provided as tenants occupying units that are not AHUs. No restrictions, requirements or rules shall be imposed on households occupying AHUs that are not imposed equally on the tenants occupying units that are not AHUs. If amenities, services, upgrades, rental of parking or other facilities are

offered as an option at an additional upfront or recurring cost or fee to tenants occupying units that are not AHUs, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the households occupying AHUs at the same upfront and or recurring cost or fee. If there is no cost or fee charged to tenants occupying units that are not AHUs for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to households occupying AHUs.

m. *No Sublease or Assignment.* A household occupying an AHU shall not sublease its AHU or assign its lease to any other unit.

n. *Lease Requirements.* For each AHU, the lease agreement, or a rider to the lease agreement, shall include an acknowledgment of the requirements of this Section 2 and an acknowledgment that the AHU will no longer be subject to this Agreement should the lease terminate after the Compliance Period has expired.

o. *Property Management.* The leasing and management of the AHUs shall be conducted at all times by a property management company experienced in leasing and managing income restricted multifamily housing. Unless otherwise agreed to in writing by CPN, the Developer shall not retain a property management company to manage the AHUs unless the company has at least 1,000 income restricted multifamily rental units under current management.

3. *Income Calculation, Certifications and Reporting.*

a. *Coordination with MIH Program.* The Parties agree that it is not practical to design a new income qualifying and reporting program for the AHUs. The Parties further agree that the program used for the City's Mixed Income Housing Bonus pursuant to Section 14-702(7) of the Philadelphia Code, as amended, or for any successor City mixed income housing bonus (the "**MIH Program**") shall serve as an income qualifying and reporting model for the AHUs, as further specified in this Section.

b. *Calculation of Annual Income.* All calculations of a household's annual gross income shall be made according to the calculation of gross household income prescribed by the City (or any of its departments or agencies) for the MIH Program. The calculation shall be made using the most current calculation prescribed by the City (or any of its departments or agencies) at the time the calculation is made. For reference, the current calculation is the sum of (i) employment income (gross amount of wages, salaries, overtime pay, commissions, fees tips, and bonuses); (ii) payments in lieu of earnings (Social Security, SSI, Pensions, etc.); (iii) public assistance; and (iv) other income for all members of the household.

c. *Initial Certification.* Upon entering into a residential lease for an AHU with an Eligible Household not already residing in the AHU, Developer or Property Manager shall submit to CPN a completed certification of resident income on the most form prescribed by the City (or any of its departments or agencies) to certify the income of households residing in affordable rental units under the MIH Program (the "**RIC Form**"), as well as any supporting documentation that the City (or any of its departments or agencies) requires to be submitted with the RIC Form. Developer or Property Manager shall use the most current RIC Form existing at

the time the certification is made. If there is any conflict between the specific income and rent limits listed on the RIC Form and the limits prescribed by Sections 2.d and 2.e of this Agreement, the limits in Sections 2.d and 2.e of this Agreement shall control and the RIC Form shall be revised by Developer or Property Manager to reflect those limits.

d. *Annual Reporting.* Every year after the initial occupancy of the AHUs, Developer or Property Manager shall submit to CPN a completed certification of resident income on the chart prescribed by the City (or any of its departments or agencies) on which information about all of a building's affordable rental units that are provided through the MIH Program is to be reported (the "**RIC Chart**"). Developer or Property Manager shall use the most current RIC Chart existing at the time the certification is made. The RIC Chart shall be submitted by January 15th of each calendar year unless a different deadline is specified by CPN to Developer in writing.

e. *Periodic Re-Certifications.* Every three years after an Eligible Household has been initially certified under Section 3.c above, Developer or Property Manager shall submit a re-certification of the Eligible Household to CPN in accordance with all requirements of the initial certification under Section 3.c above.

f. *Records.* Developer or Property Manager shall retain a copy of each document or record used to perform the income calculations and certifications required under this Section 3 for at least five (5) years from the date of the income calculation or certification that relied on such document or record. CPN or its designee shall have the right to conduct audits of the information related to AHUs and associated files and documentation to confirm compliance with the requirements of this Agreement.

4. Term. All rights and obligations under this Agreement shall exist from the Effective Date until the end of the Compliance Period (as defined in Section 2.b above).

5. Termination Events. This Agreement shall automatically terminate if one or more of the following occurs:

a. The ZBA does not grant Developer any relief for the Project pursuant to the Zoning Appeal; or

b. The ZBA grants the Developer partial relief for the Project pursuant to the Zoning Appeal, and such relief is not sufficient to permit the Developer to pursue the Project in a form substantially similar to the Project proposed in the Application, as the same has been amended; or

c. Following an appeal of a Notice of Decision (the "**NOD**") by the ZBA granting the Zoning Appeal, the NOD is reversed; or

d. Developer, after thirty (30) days written notice to CPN, (i) elects not to pursue the Project any longer and constructs a project on the Site: (A) which Developer could

have constructed by-right without a variance pursuant to the Zoning Appeal or (B) pursuant to a zoning permit not obtained pursuant to the Zoning Appeal.

6. Recording. Provided that the ZBA issues a NOD granting the Zoning Appeal, CPN shall cause this Agreement to be submitted for recording with the Philadelphia Recorder of Deeds within ten (10) business days following the earlier of (i) expiration of the period for appeals of the NOD if no appeal is filed to the Philadelphia Court of Common Pleas; or (ii) final disposition of any appeal of the NOD. If this Agreement is rejected for recording by the Philadelphia Recorder of Deeds for any reason, the Parties shall cooperate to correct the problem and CPN shall resubmit it for recording.

7. Remedies and Enforcement.

a. *Remedies*.

i. If Developer shall fail to (1) to rent any of the AHUs to Eligible Households in accordance with this Agreement or (2) provide certifications or reports required pursuant to Sections 33 above *then* (a) the Compliance Period shall be extended for the time period and for the number of AHUs equal to the time period and number of AHUs for which there was noncompliance or for which required certifications or reports were not provided; and (b) Developer shall pay CPN liquidated damages calculated on the basis of the difference between AHU Rent and the market rate rent at the Project charged for the unit type that was not in compliance or for which certifications or reports were not provided, on a per unit, per month basis for the term of noncompliance, times one and one half. The Parties agree in good faith that the remedy under subsection (b) of this provision is reasonable and just compensation for the substantial harms to the neighborhood and low-income neighbors from noncompliance beyond the loss of below market rents (e.g., through increased gentrification and displacement), that the amount of damages due to such harms would be difficult, if not impossible, to ascertain accurately, and that such remedy constitutes liquidated damages rather than a penalty.

ii. For any breaches of this Agreement not covered by Section 7.a.i above, CPN shall be entitled to injunctive or other equitable relief against any such breach, and shall, in addition, be entitled to monetary damages and specific performance for any injuries or losses resulting from any such breach.

b. *Notice of Default*. CPN shall not exercise any remedy available to it under this Section 7 until notice has been given to Developer and Developer has failed to comply with the covenants and restrictions contained herein within thirty (30) days from the date on which the notice is given.

c. *Fees & Costs*. In the event that CPN is the prevailing party in any litigation to enforce this Agreement, CPN shall be entitled to an award of its reasonable attorneys' fees and costs. In the event that Developer is the prevailing party in such litigation, no attorneys' fees and costs shall be awarded, and each Party shall pay its own fees and costs.

d. *Third Party Rights.* All prospective, present and former tenants or occupants of the Project meeting the income limitation applicable to the Project shall have the right, either individually or collectively, to enforce the terms of this Agreement.

8. Notices. All notices under this Agreement shall be in writing and shall be sent simultaneously by electronic mail *and* by (a) personal service; (b) certified or registered mail, postage prepaid, return receipt requested; or (c) other nationally recognized carrier (e.g., Fedex, UPS) to the Parties, at the following addresses (which may be changed by either Party by sending written notice as set forth herein):

If to Developer: Kingsessing Realty LLC  
260 Chambers Bridge Road  
Brick Township, NJ 08723  
Attn: Meir Gelley

If to CPN: Cedar Park Neighbors  
4740 Baltimore Avenue  
Philadelphia, PA 19143  
president@cedarparkneighbors.org  
Attn: President

With a copy to: Regional Housing Legal Services  
2 S. Easton Road  
Glenside, PA 19038  
joseph.jampel@rhls.org  
Attn: Joseph Jampel, Esq.

9. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties hereto as well as their respective successors, heirs, assigns, executors, administrators, agents and representatives. The Parties agree, intend, declare, and covenant that the covenants set forth herein governing the use and occupancy of the Project and the Site shall be and are covenants running with the Project and the Site for the Compliance Period and binding upon all subsequent owners of the Project and the Site for the Compliance Period. In the event that Developer transfers or divests itself of the Project and/or the Site, or any lesser interest therein, excepting only commercial or residential leases, Developer will ensure that this Agreement is a material term of any such transaction, and specifically assign its interests and duties in this Agreement to its successor in interest to the Project and/or Site.

10. Subordination of Mortgages. All mortgages placed against the Site, or any portion thereof, shall be subject and subordinate to this Agreement until the earlier of the expiration of the Compliance Period or the termination of this Agreement. In the event of a foreclosure of the Project or the Site, or any portion thereof, this Agreement shall not be released and the mortgagee or any person who takes title to the Site and the Project, or foreclosed portion thereof, shall be obligated to comply with the provisions of this Agreement.



11. Entire Agreement. This Agreement contains and constitutes the entire agreement and understanding of the Parties concerning the subject matter; it supersedes all prior oral or written promises, representations, agreements, or understandings of the Parties with respect to its subject matter. The terms and provisions of this Agreement may not be modified except by a writing duly executed by the Parties.

12. Severability. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision which is not essential to the effectuation of the basic purposes of this Agreement will not affect or impair the operation or effect of the remaining provisions which remaining provisions will continue in full force and operation.

13. Counterparts. This Agreement may be executed in counterparts. When each Party has executed a copy of this Agreement, the executed copies taken together shall have the same force and effect as if executed in one document. Facsimile or electronic signatures on this Agreement shall be deemed original signatures.

14. Due Authority. Each individual executing this Agreement represents and warrants that they have the authority to do so and that execution and delivery of this Agreement has been duly and validly authorized. Each Party to this Agreement further represents and warrants that they have not: (i) transferred, assigned or conveyed; (ii) agreed to transfer, assign or convey; or (iii) taken any action that would cause there to be transferred, assigned or conveyed, at any time to any other person and/or entity, in whole or in part, any claim released by or otherwise subject to this Agreement and any interest therein.

15. Headings. The headings used in this Agreement are for the convenience of the Parties only and shall not be considered in interpreting the meaning of any provision of this Agreement.


16. Waiver. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

17. Governing Law. The Parties agree that this Agreement shall be deemed to have been made and entered into in Philadelphia County, Pennsylvania and that the laws of the Commonwealth of Pennsylvania shall govern this Agreement, without regard to conflict of law principles. Venue is limited in any proceeding hereunder to a court of competent jurisdiction in Philadelphia, Pennsylvania.

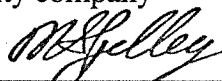
*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

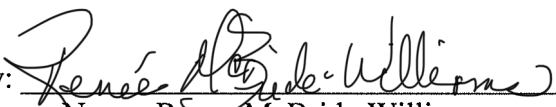
KINGSESSING REALTY, LLC, a Pennsylvania limited liability company

By:   
Name: Meir Gelley  
Title:

CHESTER REALTY LLC, a New Jersey limited liability company

By:   
Name: Meir Gelley  
Title:

CEDAR PARK NEIGHBORS, a Pennsylvania nonprofit corporation

By:   
Name: Renee McBride Williams  
Title: President