#### CITY OF ANN ARBOR WORKFORCE HOUSING COVENANT

This Affordable Housing Covenant ("Covenant") is entered into as of the	day of
, 201_, by and between CORE SPACES ANN ARBOR FIFTH LLC, a [	elaware
limited liability company, whose address is 540 West Madison Street, Suite 2500, 0	Chicago,
Illinois 60661 ("Developer"), and the City of Ann Arbor, a Michigan municipal corporation	າ, whose
address is 301 East Huron Street, Ann Arbor MI 48107("City").	

This Covenant applies to the real property commonly known as 201 South First Street, in the City of Ann Arbor, Washtenaw County, State of Michigan ("Property"), more particularly described as:

LAND LOCATED IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN, AND DESCRIBED AS FOLLOWS:

PARCEL 1: LOTS 3 AND 4 IN BLOCK 3 SOUTH OF HURON STREET, RANGE 5 EAST, ORIGINAL PLAT OF VILLAGE (NOW CITY) OF ANN ARBOR, AS RECORDED IN TRANSCRIPTS, PAGE 152, WASHTENAW COUNTY RECORDS.

PARCEL 2: LOT 5 BLOCK 3 SOUTH OF HURON STREET, RANGE 5 EAST, ORIGINAL PLAT OF VILLAGE (NOW CITY) OF ANN ARBOR, AS RECORDED IN TRANSCRIPTS, PAGE 152, WASHTENAW COUNTY RECORDS.

PARCEL 3: THE SOUTH 30 FEET OF LOT 6 AND NORTH 36 FEET OF LOT 6, BLOCK 3 SOUTH OF HURON STREET, RANGE 5 EAST, ORIGINAL PLAT OF VILLAGE (NOW CITY) OF ANN ARBOR, AS RECORDED IN TRANSCRIPTS, PAGE 152, WASHTENAW COUNTY RECORDS.

Parcel ID:	

### **RECITALS**

WHEREAS, On April 17, 2017, Ann Arbor City Council approved Resolution R-17-121 (the "Authorizing Resolution") authorizing the sale of air rights over and above the Property, generally extending vertically from the existing City Library Lane (Parking) Structure, to be conveyed and transferred from City to Developer in one or more condominium units (each a "Unit").

WHEREAS, On May 30, 2017, the City entered into an Agreement of Sale pursuant to the Authorizing Resolution which incorporated the Developer's responses to the City's Offering Memorandum for the sale of the air rights, as well as further negotiated terms for the Developer to build a mixed-use project with components including retail, office, hotel, and multifamily residential apartments;

WHEREAS, consistent with the terms of the Master Deed for the Collective on Fifth Condominium (the "Condominium") that will consist of the Property and will be recorded subsequent to this Covenant, the terms and conditions of this Covenant shall apply to the Condominium, in perpetuity;

WHEREAS, the multi-family residential apartments portion of the Condominium (the "Apartments Unit") will contain apartments that will be available and rented as workforce housing, which is generally rental housing that will be affordable to households that may not be able to afford other housing in proximity to workplaces, but is more specifically defined below;

WHEREAS, it is the intent of the Developer and the City to maintain workforce housing through this Covenant and the Condominium, and for the Developer to grant the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. Definitions

As used in this Covenant, the following capitalized terms shall have the following meanings, and shall include the plural as well as the singular:

- A. "Annual Household Income" means the aggregate annual income of a Household determined by using the standards set forth in 24 CFR 92.203(b)(1), (which refer to the HUD Section 8 definition), or 24 CFR 92.203(b)(3), (which uses adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes), as amended. In the event that the IRS 1040 form is eliminated or the definition of income under 24 CFR 92.203 is substantially modified, then Annual Household Income shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts).
- B. "Area Median Income" or "AMI" means the Area Median Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development for the metropolitan statistical area, which includes the City of Ann Arbor, Michigan.
- C. "City" means the City of Ann Arbor or its designee. The City retains the right to conduct the activities described under this Covenant through a contract with another entity.
- D. "Certification of Income" means a certification made by the City that verifies that the Annual Household Income of a Qualified Tenant is within the Designated Income Range

for an applicable Workforce Housing Unit, on such form as the City approves.

- E. "Certification of Residency" means a certification made by a tenant of a Workforce Housing Unit that states that the tenant occupies the Workforce Housing Unit as its primary residence, on such form as the City approves.
- F. "Designated Income Range" means the range of 60% to 100% of AMI to which a Qualified Tenant's Annual Household Income must be within to be eligible for a Workforce Housing Unit.
- G. "Fair Market Rent" or "FMR" means the Fair Market Rent reported annually by bedroom size by the United States Department of Housing and Urban Development for the metropolitan statistical area, which includes the City of Ann Arbor, Michigan.
- H. "Household" means the lessee and all persons who will occupy the Workforce Housing Unit.
- I. "Market-Rate Dwelling Unit" means a rental apartment that is not a Workforce Housing Unit.
- J. "Qualified Tenant" means a Household that (i) has an Annual Household Income, as certified by the City, that is within the Designated Income Range for the Workforce Housing Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Workforce Housing Unit as its principal residence during its lease of such Workforce Housing Unit, (iii) shall not permit exclusive occupancy of the Workforce Housing Unit by any other Person, (iv) shall use and occupy the Workforce Housing Unit as a Workforce Housing Unit subject to this Covenant.
- K. "Workforce Housing Unit" means a rental apartment that shall be leased to a Qualified Tenant.

## 2. Term of Covenant

The term of this Covenant shall be perpetual starting from the date of issuance of the first certificate of occupancy for the Property for residential units.

## 3. Compliance with Laws

The Developer agrees to comply with all federal, state and local laws applicable to the Workforce Housing Units and the services required by this Covenant.

### 4. Affordability Requirement

Developer shall construct, reserve, maintain, and lease twelve percent (12%), but not fewer than thirty-five (35), of the residential units on the Property at 150% of Fair Market Rent to Qualified Tenants.

#### 5. Optional Affordability Requirement

The City, at its option, with notice provided to the Developer not later than 90 days prior to the closing date of the property when the Condominium Master Deed is recorded and the

Apartments Unit is created and transferred to Developer (the "Closing Date"), may elect to have the Developer construct, reserve, maintain and lease an additional two and one-half percent (2.5%), but not fewer than an additional nine (9) of the residential units on the Property at 150% of Fair Market Rent to Qualified Tenants.

Developer's obligation to provide additional Wokforce Housing Units consistent with this Optional Affordability Requirement is applicable only after the Developer receives payment of \$1,475,000 from the City, the Downtown Development Authority, or other entity to be named by the City on or prior to the Closing Date.

# 6. Workforce Housing Unit Standards and Locations

- A. <u>Unit Designation</u>. Prior to the initial occupancy of the residential apartments, and upon the issuance of the first certificate of occupancy for any residential apartment within the Apartments Unit, Developer shall designate the required number of rental apartments as Workforce Housing Units consistent with the terms of this Covenant, by providing notice of such designation to the City. Developer shall not modify the number of Workforce Housing Units, except to the extent permitted under Section 10E, without the City's prior written approval.
- B. <u>Unit Size.</u> The Workforce Housing Units shall be a mix of efficiencies, studios, and one bedroom apartments and shall be of a size equal to the Market-Rate Dwelling Units available in each category. Workforce Housing Units shall not be materially different from Market-Rate Dwelling Units available in each category.
- C. <u>Finishes.</u> All interior and exterior finishes of Workforce Housing Units shall be comparable in appearance, finish and durability to Market-Rate Dwelling Units, and appliances and equipment in Workforce Housing Units shall be functionally equivalent to the Market-Rate Dwelling Units.
- D. <u>Unit Locations.</u> Workforce Housing Units shall be disbursed throughout the Apartments Unit and not be concentrated on any one floor or within any one section of the Apartments Unit.
- E. <u>Alteration</u>. The Developer shall maintain, upkeep, repair and replace interior components (including, but not limited to fixtures, appliances flooring and cabinetry) of the Workforce Housing Units with equivalent components used to replace items in Market-Rate Dwelling Units. The Developer shall not remove fixtures or appliances installed in a Workforce Housing Unit other than for maintenance and repair.
- F. <u>Use.</u> Except as provided herein, all tenants of Workforce Housing Units shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the tenants of the Market-Rate Dwelling Units. No restrictions, requirements or rules shall be imposed on tenants of Workforce Housing Units that are not imposed equally on the tenants of the Market-Rate Dwelling Units. If amenities, services, upgrades, or other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Dwelling Units, such amenities, services, upgrades, or other facilities shall be offered to the tenants of the Workforce Housing Units at the same upfront and or recurring cost or fee. If there is no cost or fee charged to the tenants of Market-Rate Units for such amenities, services, upgrades, or other facilities, there shall not be a cost or fee charged to the tenants of the Workforce Housing Units.

# 7. Rental Process and Determination of Tenant Eligibility

A. <u>Determination of Eligibility.</u> Each Household occupying a Workforce Housing Unit shall be certified as a Qualified Tenant by the City prior to leasing such unit. The City shall review and approve or deny a prospective Household's Certification of Income and Certification of Residency.

The Developer shall collect the documentation needed to determine if the prospective tenant is eligible. If a prospective tenant has a rental subsidy voucher from HUD or an agency designated to issue vouchers by HUD, proof of the tenant's approval for the rental subsidy voucher may be submitted to the City as evidence of tenant eligibility. For all prospective tenants that a Developer offers to the City to certify as a Qualified Tenant, the City shall make such a determination in no more than 14 calendar days from the receipt of the required information needed to verify eligibility. Failure to timely respond to a request to certify a prospective tenant as eligible shall constitute a certification by the City that the prospective tenant is a Qualified Tenant.

- B. <u>Referrals.</u> The Developer may seek tenants on its own, or obtain referrals of prospective tenants for the Workforce Housing Units from the City, or federal, state, or local government agencies or nonprofits, provided such referrals comply with the requirements of this Covenant. In all cases, before a prospective tenant leases a workforce Housing Unit, their Annual Household Income shall be certified by the City.
- C. <u>Consideration of Applicants.</u> For the initial occupancy of the Workforce Housing Units, if the demand for Workforce Housing Units exceeds number of units available then the Developer shall select Qualified Tenants through a lottery system or other system as otherwise approved by the City. Following the initial occupancy of the Workforce Housing Units, the Developer shall consider each applicant in the order in which the application is received by the Developer.
- D. Rejection of Applicants. In connection with the leasing of a Workforce Housing Unit, Developer may reject any applicant if, after diligent review of such applicant's application, the Developer determines in good faith that such applicant does not meet the Developer's criteria to lease or occupy a Workforce Housing Unit, provided such criteria does not violate applicable state and federal laws, and is the same criteria used by the Developer to lease or occupy the Market-Rate Dwelling Units. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, the Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal or state law. Developer shall provide the City with all documents evidencing Developer's review and rejection of an applicant, upon the request of the City.

## 8. <u>Initial Lease Year / Income Determination</u>

- A. <u>Term.</u> The term of any Workforce Housing Unit lease agreement shall be for a period of one year.
- B. <u>Income Determinations.</u> A Household's income eligibility to rent a Workforce Housing Unit is determined by calculating the Annual Household Income for a Household occupying a Workforce Housing Unit. Annual Household Income for a Workforce Housing Unit shall be within the Designated Income Range.

C. If a prospective tenant is not income eligible at the time of application, they must be denied and cannot be allowed to make changes to their work status or Annual Household Income in order to qualify for the Restricted Unit. An involuntary change in Annual Household Income would not disqualify the prospective buyer from becoming income eligible.

### 9. Establishment of Maximum Monthly Rent

The maximum allowable monthly rent ("Maximum Monthly Rent") for each Workforce Housing Unit shall be the Fair Market Rent for each specific bedroom size.

The Maximum Monthly Rent shall include the following utilities: water, sewer, waste disposal, electricity and heating. If the Developer does not provide heat and the tenant must pay directly for heat, then the Developer shall reduce the Maximum Monthly Rent by 5%. If the Developer does not provide electricity, then the Developer shall reduce the Maximum Monthly Rent by 10%. If the Developer does not provide heat and electricity, then the Developer shall reduce the Maximum Monthly Rent by 10%. The City Administrator, in his or her sole discretion, may reduce the amount Maximum Monthly Rents are adjusted for utilities. If a Workforce Dwelling Unit tenant has a rental subsidy voucher from HUD or an agency designated to issue vouchers by HUD, then the Developer shall reduce the Maximum Monthly Rent by the amount required by the voucher program for a utility allowance.

# 10. Subsequent Lease Years

- A. <u>Rent Calculation.</u> The Developer shall use the Maximum Monthly Rent to determine the rental amount for Workforce Housing Units in each lease year.
- B. Renewal by Workforce Housing Unit Tenant. For each Workforce Housing Unit with a tenant who intends to renew their lease, no more than ninety (90) days and no less than thirty (30) days before each anniversary of the first day of a lease, Developer shall obtain the following: (i) a Certification of Residency from each such Workforce Housing Unit Tenant; and (ii) a Certification of Income for each tenant completed by the City. Developer shall not permit a renewal of a Workforce Housing Unit lease unless the Workforce Housing Unit has provided the Developer with these documents prior to the end of the lease term.
  - Any Workforce Housing Unit Tenant whose Annual Household Income remains within the Designated Income Range for his/her Workforce Housing Unit will be eligible to remain in the Workforce Housing Unit and to renew his/her lease at the then-current lease rate for the particular Workforce Housing Unit.
- C. <u>Annual Recertification of Over-Income Tenants.</u> Upon annual recertification, if a Workforce Housing Unit Tenant's Annual Household Income is determined to exceed the Designated Income Range for the a Workforce Housing Unit (such tenant, an "Over-Income Tenant"), then the Over-Income Tenant may may remain in the rental unit and pay the market rate rent for that rental unit, whereupon Developer shall designate a Market-Rate Unit as a Workforce Housing Unit pursuant to Section D.
- D. <u>Changes to Unit Location.</u> Developer may transfer a Workforce Housing Unit to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Workforce Housing Unit, the Developer shall designate the next available, like-sized Market-Rate Unit on the Property as a Workforce

Housing Unit to bring the Property into conformity with this Covenant. Developer shall notify City of any such change in designation within thirty (30) days of such a designation.

- E. <u>Notice of Vacancy.</u> Developer shall notify the City of a vacancy in a Workforce Housing Unit within 10 days of the Developer receiving notice that a Workforce Housing Unit will be vacated by the current tenant, or within 10 days of the Developer otherwise learning of a vacancy in a Workforce Housing Unit.
- F. <u>Dwelling Rent from Subsidies.</u> Rent from Subsidies. Nothing herein shall prevent the Developer from collecting rent from a subsidy or rent subsidy provider, such as a HUD rent voucher.
- G. <u>Additional Income During Lease Term.</u> An increase of Annual Household Income for a Household that causes an Annual Household Income to be outside of the Designated Income Range during the lease term for a Workforce Housing Unit shall not be a basis for the City to require the Developer designate an additional apartment as a Workforce Housing Unit.

# 11. No Subleasing of Workforce Housing Units

A Workforce Housing Unit tenant may not sublease any portion of its Workforce Housing Unit or assign its lease to any other person, except with the City's prior written consent, in the City's sole and absolute discretion.

## 12. Representations of Workforce Housing Unit Tenant

By execution of a lease for a workforce Housing Unit, each Workforce Housing Unit tenant shall be deemed to represent and warrant to the City and Developer, each of whom may rely thereon, that the Workforce Housing Unit tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Workforce Housing Unit.

### 13. Representations of Developer

By execution of a lease for a workforce Housing Unit, the Developer shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) based upon tenant supplied information, the Household is a Qualified Tenant, and (ii) the Developer is not charging the Workforce Housing Unit tenant more than the Maximum Allowable Rent.

## 14. <u>Annual Reporting Requirements</u>

Beginning with the first occupancy of any Workforce Housing Unit, the Developer shall provide an annual report ("Annual Report") to the City regarding the Workforce Housing Units during the previous calendar year, which shall be submitted by March 1 of each year. The Annual Report shall include the following:

- A. The unit number, bedroom count, of each Workforce Housing Unit that is occupied;
- B. For each Workforce Housing Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Workforce Housing Unit became vacant (e.g. eviction or voluntary departure) and the progress of having the unit re-occupied;

- C. For each occupied Workforce Housing Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, Annual Household Income as of the date of the most recent Certification of Income, and the lease rate;
- D. A sworn statement that, to the best of the Developer's information and knowledge, the Household occupying each Workforce Housing Unit meets the eligibility criteria of this Covenant:
- E. A copy of all forms, policies, procedures, leases, and other documents reasonably requested by the City related to the Workforce Housing Units.

The Annual Reports shall be retained by the Developer for a minimum of five years after submission and shall be available, upon reasonable notice, for inspection by the City. Notwithstanding anything contained herein to the contrary, in the event that the Developer is providing a report with content substantially similar to the content of the Annual Reports described in this section, subject to the City Administrator's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the City. Developer shall also maintain copies of all initial and renewal leases for Workforce Housing Units for three years from execution.

### 15. Confidentiality

Except as may be required by applicable law, including, without limitation to, the *Michigan Freedom of Information Act (MCL 15.231 et. seq.)*, the Developer and the City shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

### 16. Inspection Rights

City shall have the right to inspect the Workforce Housing Units, upon reasonable advance notice to the Developer. If the Developer receives such notice, the Developer shall, in turn, give reasonable advance notice of the inspection to the tenant occupying a Workforce Housing Unit. The City shall have the right to inspect a random sampling of the Workforce Housing Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The City shall have the right to conduct audits of a random sampling of the Workforce Housing Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

### 17. Default

The Developer and each subsequent owner hereby grants and assigns the City the right to review and enforce compliance with this Covenant. Compliance may be enforced by the City by any lawful means, including without limitation: (a) requiring that Developer meet any unmet obligations to provide a Workforce Housing Unit in a subsequent year (b) seeking specific performance of the Developer's obligations under this Covenant, and (c) seeking money damages, including damages to reimburse the City for its enforcement costs including attorney fees and damages relating to Developer's rental of a Workforce Housing Unit inconsistent with the terms of this Covenant.

If a default occurs under this Covenant, the City shall provide the Developer with written notice setting forth with particularity the alleged violation and shall provide at least 30 days to cure the alleged violation, prior to exercising its remedies. The City Administrator may extend

the cure period in his or her sole discretion.

## 18. <u>Indemnification</u>

The Developer shall indemnify, defend and hold the City, its officers and employees, harmless in the event of liability claims arising out of the Developer's activities undertaken in connection with this Covenant.

### 19. Releases

Upon recording of the Condominium and the establishment of the Apartments Unit, the City agrees to release from the terms of this Agreement all other Units of the Condominium (with the exception of the Apartments Unit). The City agrees to execute and deliver such documents necessary to effectuate this release no later than ten (10) days following written notice from Developer.

## 20. <u>Miscellaneous</u>

- A. Recital clauses listed above constitute an integral part of this Covenant and are incorporated by reference.
- B. Each Workforce Housing Unit is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to the terms, conditions, restrictions and limitations of this Covenant. All of the herein-stated terms, conditions, restrictions and limitations of this Covenant are intended to run with the land and shall be binding upon the successors and assigns, including mortgagees and purchasers at foreclosure sale, of the Property.
- C. Any buyer or transferee of the Property, or of any portion of or interest in the Property, by acceptance of a deed thereto, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the terms, conditions, restrictions and limitations set forth in this Covenant.
- D. This Covenant shall be interpreted under the laws of Michigan and venue for any suit regarding this Covenant shall be in Washtenaw County, Michigan.
- E. Notices to the Developer shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, or by a nationally recognized overnight courier service (such as Federal Express) to the Developer at the address set forth below, or such other address designated by the Developer by like notice:

Core Campus Investment Partners LLC 1643 N. Milwaukee Ave., 5 h Floor Chicago, Illinois 60647

and:

Core Campus Investment Partners LLC 540 W. Madison Street, Suite 2500 Chicago, Illinois 60661

F. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, or by a nationally recognized overnight courier service (such as Federal Express) to the City at the address set forth below, or such other address designated by the City by like notice:

Office of the City Administratrator City of Ann Arbor 301 East Huron P.O. Box 8647 Ann Arbor, MI 48107-8647

and:

Office of the City Attorney City of Ann Arbor 301 East Huron P.O. Box 8647 Ann Arbor, MI 48107-8647

- G. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or enforceability shall not in any way be affected or impaired thereby.
- H. No waiver of any term of this Covenant shall be deemed a further or continuing waiver of such term or any other term, and the City's failure to assert any right or provision of this Covenant shall not be deemed a waiver of such right or provision.
- I. Relief from any of the terms and conditions of this Covenant may be granted upon a written request to the City and approval of the City Council. Approval shall be in the City's sole discretion.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant as of the date first stated above.

CORE SPACES ANN ARBOR FIFTH LLC a Delaware limited liability company

By: Convexity Management LLC, a Delaware limited liability company, Manager

By:	
Name:	
Title:	
Date:	

By: Core Campus Manager, LLC, a Delaware

	limited liability	company, Manager	
	Name: Title:		
The foregoing instrument, 20, resp behalf of said company.	an	d	,
chair or said company.	Acting	, Notary enaw County, Michigan in the County of Washte nmission expires:	

	City OF ANN ARBOR, a Michigan municipal corporation
	By: Christopher M. Taylor, Mayor
	By: Jacqueline Beaudry, City Clerk
STATE OF MICHIGAN, COUNTY OF WA	SHTENAW
, 20, by Christopher M. T	acknowledged before me this day of aylor and Jacqueline Beaudry, Mayor and City Clerk, a Michigan municipal corporation, on behalf of said
	, Notary Public Washtenaw County, Michigan Acting in the County of Washtenaw My commission expires:
Approved as to Substance:	Approved as to Form:
Howard S. Lazarus City Administrator	Stephen K. Postema City Attorney
Drafted by and after recording return to:	
Kevin S. McDonald Senior Assistant City Attorney (P-61761) Office of the City Attorney City of Ann Arbor 301 E. Huron PO Box 8647 Ann Arbor, MI 48107-8647	