

2204 INCLUSIONARY DEVELOPMENT COVENANT

2204.1 The Inclusionary Development Covenant shall be in a form found legally sufficient by the Office of the General Counsel of DHCD and shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as DHCD may require, but, at a minimum, shall include:

- (a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such MFI Levels and in such number, square footage, and comparable level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
- (b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such MFI Levels and in such number, and square footage as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
- (c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant;
- (d) A provision providing for the whole or partial release or extinguishment of the Inclusionary Development Covenant only upon the reasonable approval of the Director of DHCD if required by law or pursuant to the provision described in § 2204.1(g);
- (e) A provision requiring that the sale or resale of a For Sale Inclusionary Unit shall be only to an Eligible Household selected by DHCD or otherwise authorized by this chapter, at a price that does not exceed the Maximum Resale Price established in accordance with § 2219;
- (f) A provision requiring that a lease rider, pursuant to § 2216.5, shall be attached as an exhibit to the lease for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each Inclusionary Unit Tenant, including any occupant of a Rental Inclusionary Unit that is eighteen (18) years old or older; and
- (g) To the extent allowed by law, a provision requiring that in the event title to a For Sale Inclusionary Unit is transferred according to the provisions of § 2223.1, the proceeds from such foreclosure or transfer shall be apportioned and paid as described therein.

District of Columbia Municipal Regulations

- 2204.2 DHCD shall provide a draft or template Inclusionary Development Covenant to an Inclusionary Development Owner, who shall complete it and return an executed copy to DHCD prior to approval of the Certificate of Inclusionary Zoning Compliance by DCRA. Upon receipt of the Inclusionary Development Covenant by DHCD, signed by the Inclusionary Development Owner and otherwise conforming to the requirements of this § 2204, and upon receipt by DCHD of the fully executed Certificate of Inclusionary Zoning Compliance, DHCD shall have the Inclusionary Development Covenant fully executed and recorded with the District of Columbia Recorder of Deeds.
- 2204.3 DHCD may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner or Inclusionary Unit Owner with the Inclusionary Development Covenant.

SOURCE: Notice of Final Rulemaking published at 56 DCR 3907 (May 15, 2009); as amended by Final Rulemaking published at 56 DCR 9295, 9296 (December 11, 2009); as amended by Final Rulemaking published at 64 DCR 13582 (December 29, 2017).