

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS-RENTAL

THIS DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS FOR RENTAL UNITS ("Declaration") is made as of the ____ day of _____, 20__, by _____, a _____ [limited liability company] [partnership] [corporation] ("**Declarant**"), the owner of certain property ("**Project**") located in Loudoun County, Virginia, as described on **Exhibit A** attached hereto and made a part hereof.

RECITALS

WHEREAS, on June 16, 1993, in conjunction with the adoption of a new Zoning Ordinance, the Board of Supervisors of Loudoun County, Virginia ("**Board**") established an Affordable Dwelling Unit Program ("**Program**") to assist in providing affordable housing for persons with moderate income; and

WHEREAS, the Board has designated the Housing and Community Development Division of the Department of Family Services to regulate and administer the Program, and the term "**County**" as used herein shall refer to said Housing and Community Development Division or such other Division or Department as the Board may hereafter designate; and

WHEREAS, the Program is intended to be administered in accordance with Article 7 of the Revised 1993 Loudoun County Zoning Ordinance, Chapter 1450 of the Codified Ordinances of Loudoun County, and the regulations established thereunder (the ordinances and the regulations, as the same may be amended from time to time, are collectively referred to hereinafter as the "**Ordinance**"); and

WHEREAS, the Ordinance requires, in pertinent part, that owners of certain land seeking a rezoning or special exception or subdivision for development of projects included in the Program provide a number of affordable dwelling units (collectively, the "**Affordable Dwelling Units**" or "**ADUs**", each individually referred to as an "**Affordable Dwelling Unit**" or "**ADU**") for sale or rent to qualified individuals, all in accordance with and under the conditions set forth in the Ordinance; and

[**WHEREAS**, the Board, pursuant to approved rezoning application, ZMAP/ZCPA _____ - _____ ("**Rezoning**"), accepted certain proffers ("**Proffers**") affecting the Project; and

WHEREAS, the Proffers require that the owner(s) of the Project provide a number of ADUs as described above in accordance with the Proffers and the Ordinance; and]

WHEREAS, Declarant has agreed that in consideration of benefits conferred upon Declarant

under the Ordinance [and the Rezoning] and in compliance with the Declarant's obligations under the [Proffers and the] Ordinance [, as applicable,] regarding the provision of rental ADUs, the dwelling units described in **Exhibit [B][C]** and all ADUs substituted for such units in accordance with **Exhibit [B][C]** (collectively the "**Rental ADUs**") shall be subject to these covenants and the provisions of this Declaration and the Ordinance pertaining to rental of Affordable Dwelling Units; and

WHEREAS, in order that the purpose of this Declaration and the Ordinance to assist in providing affordable housing for rent for persons with moderate income may be accomplished efficiently and effectively, the Board and the Declarant further intend by this Declaration to establish a process by which the Declarant and the County, subsequent to the recordation of this Declaration, may agree, in writing ("**Written Agreement**"), at the sole discretion of the County, without the need to record an amendment to this Declaration, to the substitution of other dwelling units within the Project in place of dwelling units described in Exhibit [B][C], provided that such substituted dwelling units shall be comparable, as determined at the sole discretion of the County, to those dwelling units described in Exhibit [B][C] and subject to these covenants, and provided further that in any event and at all times the number of dwelling units administered and maintained as rental ADUs within the Project shall be no less than the number of such units required by the Ordinance [and/or the Proffers], and no less than the number of units listed in Exhibit [B][C], as set forth in the following paragraphs; and

WHEREAS, Declarant for itself and its assigns acknowledges and agrees that any such Written Agreement for the substitution of an ADU as provided for in the immediately preceding paragraph shall be kept on file with the County, and ANY SUBSEQUENT OWNER of the Project shall be obligated to inquire and verify with the County as to which rental dwelling units are currently designated as, being made available as, and administered and maintained as ADUS; and

WHEREAS, the Project has been approved for _____ [multi-family] dwelling units, _____ of which shall be established, administered, and maintained as ADUs and shall be for rent to persons who meet the income criteria promulgated by the County and who have been issued a Certificate of Qualification by the County ("**Certified Tenants**"); and

WHEREAS, the Ordinance [and the Proffers] establish[es] certain conditions, limitations and controls on the Project that are to remain in effect with regard to occupancy of each of the Rental ADUs for a period beginning on the date of the issuance of the initial occupancy permit for each Rental ADU within the Project and continuing for a period of twenty (20) years thereafter for each said Rental ADU (the "**Control Period**"); and

WHEREAS, the Ordinance further provides that with regard to the Project, covenants shall be recorded that will run with the land in favor of the Board for the Control Period specifying certain terms and conditions of the Program applicable to the Project; and

WHEREAS, in further compliance with [the Proffers and] the Ordinance under the terms of the Program, Declarant is making this Declaration as set forth below.

NOW, THEREFORE, in consideration of benefits conferred upon Declarant under the

Ordinance [and the Rezoning] and in compliance with the Declarant's obligations under the [Proffers and the] Ordinance [, as applicable,], and in further consideration of the foregoing recitals which are hereby incorporated as if fully set forth in this paragraph, Declarant hereby declares that the Project and the Rental ADUs shall be subject to the covenants set forth herein ("**Covenants**") which shall be binding in accordance with the terms herein on Declarant and all tenants of Rental ADUs and all Transferees of the Project until expiration of the Control Period. For purposes herein, Transferees shall be deemed to be all persons and entities that may hereafter acquire any interest whatsoever in the Project, or any part thereof, from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as a "**Transfer**"), for the Control Period.

ARTICLE I

ORDINANCE CONTROLS

A. No initial lease of a Rental ADU shall be made at a rental price in excess of the price permitted pursuant to the Ordinance, and during the Control Period no lease of a Rental ADU, or any part thereof, shall be made at a rental price in excess of the maximum rental price permitted pursuant to the Ordinance.

B. During the Control Period, each time a Rental ADU is offered for rental or re-rental, it must be offered exclusively through the County to Certified Tenants.

C. During the Control Period, the substitution of a comparable rental dwelling unit within the Project as a Rental ADU as referenced in the foregoing recitals and as described in Exhibit [B][C] may be permitted by Written Agreement between the Declarant and County in accordance with the procedure set forth in Exhibit [B][C].

D. During the Control Period, no lease of a Rental ADU, or any part thereof, shall be made except in compliance with all other requirements of the Ordinance.

E. During the Control Period, each of the Rental ADUs shall be subject to all provisions of the Ordinance.

F. During the Control Period, all lenders or other parties who have or may seek to place a lien on the Project shall provide to the County written notice of any delinquency or default under any mortgage, deed of trust, or other instrument or agreement that may permit a lien to be filed against the Project and shall offer the County at least sixty (60) days in which to cure any such delinquency or default ("**Right to Cure**").

G. During the Control Periods these Covenants shall be senior to all instruments subsequently recorded on the Project and shall be binding upon all Transferees; provided, however, that if the Project is sold to a bona fide purchaser for value at a foreclosure sale, or if a lender accepts a deed in lieu of foreclosure, the restrictions contained in these Covenants with regard to the Project shall terminate if all requirements of the Ordinance and this Declaration have been satisfied, including the obligation of the secured lender benefitted by the foreclosure to provide the County with the **60-**

day Right to Cure and, in addition, at least **thirty (30) days** written notice to the County of the date and place of the foreclosure sale.

ARTICLE II

DEED AND CONTRACT RESTRICTIONS

All deeds conveying any interest in the Project during the Control Period shall contain language specifically reciting that the Project is subject to these Covenants. Contracts pertaining to a lease of a Rental ADU or Transfer of the Project, or any part thereof, during the Control Period, shall also contain a complete and full disclosure of the rental restrictions and controls established by the Ordinance.

ARTICLE III

ASSIGNMENT OF RIGHTS TO COUNTY

Declarant, and Declarant's heirs, successors and assigns, hereby irrevocably assigns, transfers and conveys to the Board, and any successors thereto, all right, title and interest to enforce and maintain in full force and effect, the terms, conditions, and requirements of these Covenants.

ARTICLE IV

RIGHTS TO ENFORCE

If the County shall determine that any default has occurred under these Covenants, the County, or its successors, may enforce these Covenants on behalf of the Board by civil action against the persons or entities violating or attempting to violate any of the Covenants herein contained, either (i) to restrain any violation hereof, or (ii) to recover damages, which may include attorneys' fees and the costs of collection, or (iii) to proceed against the Project in the enforcement of any lien or obligation created by or resulting from these Covenants as allowed under the Ordinance. None of the foregoing remedies is intended to be nor shall be deemed to be exclusive of any other available remedy or remedies, but each and every such remedy is and shall be cumulative and in addition to every other remedy given under these Covenants and the Ordinance, whether available under the principles of law or equity. No delay or omission to exercise any right or power conferred under the Ordinance or hereunder will impair any such right or power or will be construed to be a waiver thereof. Notwithstanding the foregoing, nothing herein contained, or in the Ordinance, is intended to confer on the County a right to invalidate a Transfer made in violation hereof or otherwise to cause a forfeiture or reversion of title to any of the Project. Any liens filed pursuant to the Ordinance shall not relate back in time, but shall be effective as of the date recorded.

ARTICLE V

BINDING ON ALL SUCCESSORS

These Covenants are binding upon the Project, upon the Declarant and the Declarant's heirs, successors and assigns, and upon all tenants of Rental ADUs and Transferees of title to the Project

for the applicable Control Period and shall run with the land.

ARTICLE VI

NO AMENDMENTS

These Covenants cannot be amended, or released, unless by written instrument executed by the County, until expiration of the Control Period, except with respect to a foreclosure conducted in accordance with the Ordinance and this Declaration.

ARTICLE VIII

SEVERABILITY

If any provision of these Covenants shall be held invalid or unenforceable by final order of a court of competent jurisdiction, such holding shall not invalidate or make unenforceable any other provision hereof.

ARTICLE VIII

HEADINGS

The headings herein are for reference purposes only and shall not affect the meaning or interpretation of the terms and conditions hereof.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant _____ has caused the foregoing Declaration to be executed by _____ as _____, its corporate seal affixed hereto, and does hereby appoint _____ its true and lawful attorney in fact to acknowledge and deliver this Declaration.

Witness:

DECLARANT:

By: _____ (SEAL)
[Signature]

Name: _____
[Type or print]

Title: _____
[Type or print]

COMMONWEALTH OF VIRGINIA

COUNTY OF LOUDOUN, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of _____, whose name is signed to the foregoing Declaration of Affordable Dwelling Unit Covenants for Rental Units, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

My Notary Registration Number:

EXHIBIT A

Declarant is the owner and proprietor of certain real property situate in Loudoun County, Virginia, described as Parcel _____, Section _____, _____, as shown on that certain plat [recorded among the land records of Loudoun County, Virginia (the "**Land Records**"), as Instrument Number _____ - _____,] [attached hereto as Exhibit B,] which parcel is more particularly described as Tax Map Number _____ (PIN: ____ - __ - _____), and having been acquired by Declarant by deed recorded among the Land Records [in Deed Book ____ , at Page _____] [as Instrument Number _____ - _____]. This property, and the rental affordable dwelling units referenced in this Declaration, are being developed pursuant to Site Plan application (STPL) 20____ - _____.

EXHIBIT B or C

The following listed rental dwelling units located within that certain real property ("**Project**") located in Loudoun County, Virginia, as described on Exhibit A, are hereby designated as Rental Affordable Dwelling Units (collectively, the "**Rental Affordable Dwelling Units**" or "**Rental ADUs**", each individually referred to as a "**Rental Affordable Dwelling Unit**" or "**Rental ADU**") that are subject to the Covenants set forth in the attached Declaration (the "**Original Rental ADUs**"). Notwithstanding, the Declarant and the Housing and Community Development Division of the Loudoun County Department of Family Services or such other Division or Department as the Board of Supervisors may hereafter designate ("**County**") may agree, in writing ("**Written Agreement**"), at the sole discretion of the County, to the substitution of a comparable rental dwelling unit ("**Substitute ADU**") within the Project as a Rental ADU in the place of any Original Rental ADU, provided, however, that the calculation of the twenty (20) year control period for any such Substitute ADU shall be based upon the date of the issuance of the Occupancy Permit for the Original Rental ADU that such Substitute ADU is being substituted for, and provided further that in any event and at all times the number of rental dwelling units administered and maintained as Rental ADUs within the Project shall be no less than the number of such units required by the Ordinance [and/or the Proffers] as set forth below. The determination as to whether a proposed Substitute ADU is comparable to the Original Rental ADU for which it is to be substituted shall be at the sole discretion of the County, based upon a comparison of the Original Rental ADU with the proposed Substitute ADU with respect to such features as number of bedrooms, number of bathrooms, living space square footage, floor plan, and dispersal within the Project. Any such Written Agreement for the substitution of a Rental ADU shall be kept on file with the County, and any SUBSEQUENT OWNER of the Project shall be obligated to verify with the County which rental dwelling units are currently designated as Rental ADUs.

	<u>ADU Address</u>	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Footage)	<u>Anticipated Occupancy Permit Issuance Date</u>
1					
2					
3					
4					
5					