

INSTRUCTIONS
DECLARATION OF WORKFORCE DWELLING UNIT COVENANTS and
NOTICE OF WORKFORCE DWELLING UNIT PROFFER

Attached to this cover sheet is the Fairfax County form Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer (the “Declaration of Covenants”), to be used in For-Sale Developments. The owner or developer should fill in all blanks. In addition, the signature block must accurately state the Declarant’s legal name, the organizational type (such as corporation, limited partnership or limited liability company), the state in which the entity is organized, and contain accurate identification of authorized signing officers, partners or members, whether entities or individuals.

The Declaration of Covenants must be signed by an authorized representative of the property owner or developer and notarized. The Declaration of Covenants must be recorded in the land records of Fairfax County, Virginia for each for-sale workforce dwelling units (“WDU”) in a development simultaneously with and immediately following the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with and immediately following the condominium declaration. The WDU Notice of Availability and Offering Agreement cannot be executed until this is done. A copy of the recorded Declaration of Covenants must be submitted with the WDU Offering Agreement before WDUs in a development can be sold.

Prior to selling any WDU in your development, you must do the following:

1. Complete and record the Declaration of Covenants in the Fairfax County land records. The Declaration of Covenants must be approved by the Fairfax County Department of Housing and Community Development (“DHCD”) prior to its recording.
2. Submit to DHCD a copy of the recorded Declaration of Covenants together with a completed WDU Notice of Availability and Offering Agreement (the “Offering Agreement”).

The Declaration of Covenants requires four Exhibits:

- **Exhibit A** is a legal description of the development property which is subject to the requirements of the WDU Policy.
- **Exhibit B** is a copy of the Board of Supervisors’ Workforce Dwelling Unit Administrative Policy Guidelines.
- **Exhibit C** is a copy of the Applicable Proffer(s).
- **Exhibit D** is a description of the specific lots or units within the development, as shown on the approved site plan, on which the WDUs will be constructed.

**DECLARATION OF WORKFORCE DWELLING UNIT COVENANTS and
NOTICE OF WORKFORCE DWELLING UNIT PROFFER**
(For-Sale Development)

Tax Map Parcel: _____
Rezoning Number: _____
Rezoning Name: _____

THIS DECLARATION OF WORKFORCE DWELLING UNIT COVENANTS and NOTICE OF WORKFORCE DWELLING UNIT PROFFER (the “Declaration” or “Covenants”) is made as of the ____ day of _____, 20__ ,by _____, a _____ (the “Declarant” or “Owner”) (“GRANTOR” for indexing purposes only), the owner of certain property (together with any improvements now or hereafter thereon, the “Property”) located in Fairfax County, Virginia as described on the attached **Exhibit A**.

RECITALS

R-1. In connection with [Rezoning Name _____ and Rezoning Number _____], approved by the Board of Supervisors of Fairfax County, Virginia (the “Board”) on [Date of BOS approval of the rezoning/proffer application], and pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County, and all applicable regulations, all as may be amended from time to time, Declarant proffered certain conditions of development for a for-sale development on the Property to be known as [_____] (the “Project”).

R-2. On October 15, 2007, the Board established the Workforce Dwelling Unit Administrative Policy Guidelines (the “WDU Policy”), to assist in providing affordable housing opportunities for various household income levels up to 120% of Area Median Income for the Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development. On October 30, 2018, the Board delegated its authority to administer the WDU Policy and acquire workforce dwelling units under the terms of the WDU Policy to the Fairfax County Redevelopment and Housing Authority (the “Authority”). The WDU Policy is attached to this Declaration as **Exhibit B**.

R-3. Proffer [____], as may be amended from time to time (the “Applicable Proffer”), which is attached to this Declaration as **Exhibit C**, requires Declarant to provide workforce dwelling units (collectively, “WDUs”; each individually a “WDU”) on the Property in conformance with the WDU Policy.

R-4. In consideration of benefits conferred upon Declarant under the rezoning and in compliance with the WDU Policy and the Applicable Proffer, Declarant will make available on the Property [____] WDUs, with the unit types and size and number of bedrooms as designated on the approved site plan for the Property, which site plan is attached as **Exhibit D**.

R-5. The WDU Policy requires that covenants be recorded for each WDU that will run with the land in favor of the Board and that specify certain terms and conditions of the WDU Policy applicable to each WDU.

R-6. In further compliance with and under the terms of the WDU Policy, Declarant is making this Declaration and these Covenants as set forth below.

NOW, THEREFORE, Declarant irrevocably transfers, conveys, and assigns to the Board and its successors (“GRANTEE” for indexing purposes only) all right, title, and interest to enforce and maintain in full force and effect, the terms, conditions, and requirements of these Covenants. Declarant further declares that the Property is subject to these Covenants, that touch and concern the land and improvements constituting the Property, that run with the Property, and that are binding on Declarant and all Transferees. For purposes of these Covenants, Transferees is defined as all persons and entities that may acquire any interest in the Property, or any part of the Property, from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, resale, lease, assignment, hypothecation, or any other means of conveyance or transfer (any and all of the foregoing means of transfer being defined as a “Transfer”).

ARTICLE I **CONTROL PERIODS**

1.1 The WDU Policy establishes certain conditions, limitations, and controls on each WDU that remain in effect with regard to the initial sale, any Transfer, and occupancy of each

WDU for a period of 30 years (the “Initial Control Period”), beginning on the date of the deed of conveyance from Declarant to the first purchaser of each WDU.

1.2 If there is a Transfer of a WDU at any time during the Initial Control Period, a new 30-year control period will commence on the date of the Transfer of the applicable WDU. Any subsequent Transfer of a WDU within a new 30-year control period will again commence a new 30-year control period. (The Initial Control Period and any subsequent control periods resulting from a Transfer may be referred to collectively in this Declaration as the “Control Period.”)

1.3 The WDU Policy establishes certain requirements applicable to each WDU during the period beginning at the expiration of the Control Period for such WDU and continuing until the Transfer of such WDU (the “Extended Control Period”). The Extended Control Period requirements establish procedures with regard to the right of the Authority to acquire each WDU and the payment of contributions of a portion of the proceeds from the sale of each WDU to the Fairfax County Housing Trust Fund.

1.4 The expiration of the Control Period occurs as to an applicable WDU only upon the ownership of the WDU by the same owner of an entire 30-year period.

1.5 During the Control Period and the Extended Control Period, each of the WDUs is subject to all the provisions of the WDU Policy.

ARTICLE II **TRANSFERS**

2.1 Any Transfer of a WDU during the Control Period must meet the requirements of the WDU Policy, including but not limited to the following:

- (a) No Transfer of any WDU may be made for any amount, or as security for any amount, or for a sales price, that is in excess of the maximum sales price permitted under Section 10 of the WDU Policy.
- (b) No Transfer of any WDU may be made without first offering such WDU exclusively to the Authority. The Fairfax County Department of Housing and Community Development (“DHCD”) must receive written notification (the “Sale Notification”) sent by certified mail by the WDU owner that the WDU is being offered for sale. The Authority will have the exclusive right to purchase

such WDU at a purchase price that may not exceed the control price of the WDU at that time as established in accordance with the WDU Policy. DHCD will notify the owner in writing within 30 days after receipt of the Sale Notification advising whether or not the Authority will enter into a contract to purchase the WDU, subject to certain conditions, such as, but not limited to, acceptable condition of title and acceptable physical and environmental conditions. An all cash closing will occur within 90 days after receipt of the Sale Notification, provided that all conditions of the contract are satisfied. The Authority may either take title to the WDU or assign the contract of purchase to a qualified homebuyer. In either case, amended and restated covenants consistent with the then current provisions of the WDU Policy may be recorded as a condition of the sale. The resale price may include certain marketing, transaction, and broker fees as described in Section 10(C) of the WDU Policy.

2.2 The first sale of each of the WDUs after expiration of the Control Period (the “First Applicable WDU Resale”) must meet the requirements of the WDU Policy, including but not limited to the following:

- (a) DHCD must receive written notification (the “Resale Notification”) sent by registered or certified mail by the WDU owner that the WDU is for sale. The Authority will have the exclusive right to purchase such WDU, and DHCD will notify the owner in writing within 30 days after receipt of the Resale Notification advising whether or not the Authority will purchase the WDU. If the Authority elects to purchase the unit, an all cash closing will occur within 60 days after such notice from DHCD to the owner.
- (b) To the extent the net sales price paid by the purchaser of the First Applicable WDU Resale, whether such purchaser is the Authority or a third party, exceeds the owner’s original purchase price, as such net sales price and such purchase price shall have been adjusted in accordance with the WDU Policy, one-half (1/2) of such excess will be contributed at the time of closing on the First Applicable WDU Resale to the Fairfax County Housing Trust Fund.

ARTICLE III
FINANCING

3.1 During the Control Period and the Extended Control Period, these Covenants will be senior to all instruments securing financing with respect to a WDU, and these Covenants will be binding upon all assignees, mortgagees, purchasers, and other successors in interest, except as described below.

3.2 As used in this Article III, an “Eligible Lender” is an institutional lender holding a first priority purchase money deed of trust on a WDU or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the WDU at the time of refinancing.

3.3 Any financing of a WDU during the Control Period and the Extended Control Period must comply with the provisions of Section 11 of the WDU Policy, as may be amended from time to time, including but not limited to the following:

- (a) The total aggregate amount of principal and accrued interest for all financing secured by a WDU may not exceed the owner’s purchase price (as adjusted in accordance with the WDU Policy). Any financing in excess of the owner’s purchase price (as adjusted in accordance with the WDU Policy) will not be deemed secured by any interest in the applicable WDU and the lender of such excess financing will not be an Eligible Lender.
- (b) Each Eligible Lender and any other lender secured by an interest in the WDU must provide a written notice of foreclosure to the Fairfax County Executive and DHCD at least 90 days prior to a foreclosure. At any time during the 90-day period, the Authority or a nonprofit agency designated by the County Executive will have the right to acquire the WDU at or before the foreclosure sale for a price equal to the outstanding indebtedness owed to the foreclosing lender, including principal, interest, and fees that in the aggregate do not exceed to the owner’s purchase price (as adjusted in accordance with the WDU Policy) and other reasonable costs and expenses.

- (c) If neither the Authority nor a nonprofit agency designated by the County Executive exercises its right to acquire the WDU at a foreclosure and the WDU is then sold for an amount greater than the outstanding first trust debt, one-half (1/2) of the amount in excess of the outstanding first trust debt must be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.
- (d) Upon foreclosure of a WDU by an Eligible Lender, these Covenants will terminate, provided the requirements set forth in the WDU Policy, the Applicable Proffer, these Covenants, and all other applicable regulations with respect to the foreclosure sale are satisfied.

3.4 No sale, pledge of a security interest in, Transfer, or foreclosure of a WDU will affect the validity of these Covenants, except as set forth in WDU Policy.

ARTICLE IV **OCCUPANCY REQUIREMENTS**

4.1 An Owner of a WDU, except for the Authority or a designated nonprofit agency, must occupy the WDU as that owner's principal domicile, and may not lease or rent or permit exclusive occupancy of the WDU to any other party or parties. WDU owners must provide to DHCD an executed affidavit, on or within 30 days prior to June 1 of each year of ownership, certifying their continuing occupancy of the WDU.

4.2 Any individual seeking to purchase a WDU must obtain a Certificate of Qualification from DHCD prior to purchase. The DHCD will consider the applicable criteria for low and moderate income persons prior to issuing a Certificate of Qualification.

ARTICLE V **DEED AND CONTRACT RESTRICTIONS**

5.1 Any sales contract for the sale of a WDU must include a copy of these Covenants, as recorded.

5.2 Any deed for a WDU must include an express statement that the WDU is subject to the WDU Policy, the Applicable Proffer, and these Covenants, with a specific reference to the deed book and page where the Covenants are recorded.

5.3 Any Deed for a WDU must include an express statement that the total aggregate amount of indebtedness that may be secured by the WDU is limited and that other terms and conditions apply, including, but not limited to, an exclusive right for the Authority or a nonprofit agency designated by the County Executive to acquire WDU on certain terms in the event of a foreclosure.

ARTICLE VI
REMEDIES

6.1 If the Board, the Authority, or DHCD determines that any default has occurred under these Covenants, the Board, the Authority, or their respective successors, may enforce the Covenants by proceeding at law, or in equity, against the persons or entities violating or attempting to violate any of the Covenants. The Board or the Authority may seek to restrain any violation of the Covenants, seek specific performance of the Covenants, or recover damages, including attorneys' fees and the costs of collection, including, without limitation, the value of legal services if provided by the Fairfax County Attorney's Office. No remedy conferred upon or reserved to the Board or the Authority by these Covenants is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and in addition to every other remedy given under these Covenants and the WDU Policy, existing at law or equity. No delay or omission to exercise any right or power conferred under the WDU Policy or these Covenants will impair any such right or power or be construed to be a waiver thereof.

ARTICLE VII
MISCELLANEOUS

7.1 These Covenants are binding upon the WDUs, upon the Declarant and the Declarant's heirs, successors and assigns, and upon all Transferees of title to each of the WDUs for the Control Period and the Extended Control Period and run with the land.

7.2 These Covenants cannot be amended or released unless by written instrument executed by the Authority, except with respect to a foreclosure by an Eligible Lender conducted in accordance with these Covenants and the WDU Policy.

7.3 If any provision of this Declaration or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any

extent, the remainder of this Declaration or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

7.4 The headings in this Declaration are for reference purposes only and will not affect the meaning or interpretation of its terms and conditions.

[Signature on Next Page]

DECLARANT:

[Name of Declarant]

By: _____ (Seal)

Name (Print): _____

Title: _____

STATE OF _____

CITY/COUNTY OF _____ : to-wit:

The foregoing instrument was acknowledged before me, a notary public in and for the state and city/county aforesaid, this ___ day of _____ 20___, by

_____, as the
duly authorized _____ of the
Declarant of the foregoing instrument on behalf of such Declarant.

Notary Public (Seal)

My Commission Expires: _____

Registration Number: _____

EXHIBIT A

Legal Description

EXHIBIT B

**Board of Supervisors' Workforce Dwelling Unit
Administrative Policy Guidelines**

Adopted October 15, 2007

EXHIBIT C

Applicable Proffer

EXHIBIT D

Approved Site Plan