BOARD OF SUPERVISORS' TYSONS CORNER URBAN CENTER WORKFORCE DWELLING UNIT ADMINISTRATIVE POLICY GUIDELINES

Adopted (insert date)

The proposed Workforce Dwelling Unit Guidelines for the Tysons Corner Urban Center area are similar to the existing countywide Workforce Dwelling Unit policy; however several significant changes are proposed. Those changes are identified below in italics and bold.

The Planned Tysons Corner District Workforce Dwelling Unit Administrative Policy Guidelines ("Tysons Policy") are established to assist in the provision of affordable housing for persons of low to moderate income in the Tysons Corner Urban Center, as set forth in the adopted Comprehensive Plan. The provision of workforce housing is designed to promote a fuller range of housing choices by encouraging the proffering of workforce dwelling units consistent with the policies set forth in the Fairfax County Comprehensive Plan and to encourage the construction and continued existence of dwelling units affordable to households whose income is one hundred twenty (120) percent or less of the Area Median Income (AMI) for Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development (HUD), as adjusted for family size. Such income limit is divided into multiple tiers, as set forth in this Tysons Policy, to provide for a range of housing opportunities for various household income levels up to one hundred twenty percent (120) of AMI.

The provisions of this Tysons Policy are hereby adopted by the Board of Supervisors (Board) as the preferred administrative tool for the implementation and administration of workforce dwelling units that are proffered in conjunction with a rezoning application. As such, it is the intent of the Board that proffered workforce dwelling units accepted in conjunction with a rezoning for property located within the Tysons Corner Urban Center include a proffer of compliance with these Tysons Policy Guidelines. In the event that a specific development warrants consideration of an alternative scheme for the administration and continued availability of proffered workforce dwelling units, it is the intent of the Board to consider such variations when the applicant can clearly demonstrate that the alternate proposal furthers the workforce dwelling unit policies set forth in the Comprehensive Plan and offers appropriate controls to properly regulate, monitor, administer, and manage such units. Such controls shall be provided in sufficient detail to clearly demonstrate that the workforce dwelling units will function in the manner intended by the provisions of the preferred administrative tools set forth below.

Terms utilized herein that are not specifically defined shall have the meaning given to them in the Fairfax County Zoning Ordinance. The following specific administrative policy guidelines are hereby set forth for the uniform administration and assurance of the continued availability of workforce dwelling units in the Tysons Corner Urban Center:

1. Location of Workforce Dwelling Units

The location, integration and dispersion of the workforce dwelling units shall be as identified in the approved proffered conditions and/or development plans associated with the rezoning application for which the workforce dwelling units were generated. *[NOTE: this change will enable the*

flexibility in citing WDUs as part of a development or on a separate lot, as set forth in the comprehensive plan.]

2. Workforce Dwelling Unit Floor Area

The minimum gross floor area for any workforce dwelling unit should be as follows:

Efficiency Unit:	450 square feet	
1-Bedroom Unit:	600 square feet	
2-Bedroom Unit:	750 square feet	
3-Bedroom Unit	***900 square feet***	*[NOTE: the larger unit sizes*
4-Bedroom Unit	***1,050 square feet***	*will be added to the current WDU policy in a subsequent amendment.]*

The floor area for dwellings shall be determined in accordance with the gross floor area definition of the Zoning Ordinance, as modified for cellar space in the PTC - Planned Tysons Corner Urban District District, except the following features will not be deemed gross floor area: balconies, porches, decks, breezeways, stoops and stairs which may be roofed but which have at least one open side; or breezeways which may be roofed but which have two (2) open ends. An open side or open end shall have no more than fifty (50) percent of the total area between the side(s), roof and floor enclosed with railings, walls, or architectural features.

[NOTE: the provision regarding the limits on the size of the associated market rate bonus units to be not more than 10% larger than the WDU to which it is associated has been eliminated to provide greater flexibility in utilizing bonus intensity.]

Nothing included herein precludes the developer from providing workforce dwelling units as larger sized units, in terms of the square footage and/or the number of bedrooms.

3. Designation of Workforce Dwelling Units on Approved Plans

Except for multiple family rental developments under single ownership, each approved site plan, record subdivision plat, ***condominium plat/plan***, and/or building plan shall designate the specific lots or units that are the workforce dwelling units and any bonus market rate dwelling units. Such plans and/or plats shall also provide a tabulation of any bonus units and/or bonus floor area achieved on the site as a result of the provision of workforce dwelling units. If there is to be any change in the location of a workforce dwelling unit after the original approval of a site plan or subdivision, the owner shall be responsible for amending the approved plats and/or plans to reflect the designation of the alternate workforce dwelling unit prior to the issuance of a Residential Use Permit for the new workforce dwelling unit.

In the case of a multiple family rental development that is under single ownership, the site plan and/or record subdivision plats shall identify the development as a rental project and shall note the total number of workforce dwelling units and the number of bonus market rate units and/or bonus floor area provided.

For all for-sale developments, the floor area and bedroom count of each workforce dwelling unit shall be noted on each approved site plan, subdivision plat, condominium plats/plans and/or building plan.

Additionally, the bedroom count mix of the market rate units within the project as a whole shall be noted on all such approved plats and/or plans to demonstrate that the workforce dwelling units are of the same mix as the market rate dwelling units in terms of bedroom count.

For multiple section developments where all the workforce dwelling units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the workforce dwelling units will be or have been provided and a total of all workforce dwelling units for which such site plan(s) and/or record subdivision plat(s) have been approved. In the event that workforce dwelling units are approved to be provided at a location that is not on the same lot as the market rate dwelling units with which the workforce dwelling units are associated, all site plans, subdivision plats and/or building plans for all associated properties shall include a notation identifying the site plan(s) and/or subdivisions(s) that include the workforce dwelling units.

Workforce dwelling units that are accepted as part of proffered conditions associated with a rezoning application and are included on approved site plans and recorded subdivision plats shall be deemed features shown for purposes of Va. Code Ann. §15.2-2232 and, as such, shall not require further approvals pursuant thereto in the event the Board shall acquire or lease such units.

4. Condominium Developments

A. If a building is initially built as a condominium, then the workforce dwelling units within that building shall also be for-sale units and shall be specifically identified on the approved site plan and building plans and shall be designated as such as part of the recorded condominium declaration and disclosed in the required public offering statement.

B. If a building is initially built as a rental project under single ownership and such building should subsequently convert to a condominium, then:

(1.) The development shall offer the same number of for-sale workforce dwelling units as there were rental workforce dwelling units.

(2.) The workforce dwelling units shall be specifically identified by unit number as part of the recorded condominium declaration.

(3.) The sales price for such workforce dwelling units being converted shall be established by the County Executive pursuant to this Tysons Policy. If the owner of such condominium conversion elects to renovate the workforce dwelling units, the County Executive shall consider the reasonable cost of labor and materials associated with such renovation.

(4.) The rental tenant occupants of the workforce dwelling units subject to the condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive pursuant to this Tysons Policy. Subsequently, the Board shall have the right to purchase some or all of the workforce dwelling units that are not purchased by such rental tenants at the sales price established for such units by the County Executive pursuant to this Tysons Policy. Such units shall be offered to the Board and purchased by it in accordance with the provisions set forth below for for-sale workforce dwelling units.

5. Limitations on Building Permits and Residential Use Permits

[NOTE: this has been reworded, but the concepts are the same.]

Building Permits may be issued for all of the dwelling units in a development, provided, however, that for any development, other than one comprised solely of rental multiple family dwelling units under single ownership, Residential Use Permits (RUPs) shall not be issued for more than seventy-five (75) percent of the total number of units in the development until such time as RUPs have been issued for at least seventy-five (75) percent of the workforce dwelling units in the ***applicable phase of the*** development. Additionally, the required Notice of Availability and Sales Offering Agreement shall be submitted prior to the issuance of the first RUP for any workforce dwelling unit in the development

A rental multiple family dwelling unit development under single ownership shall not be subject to the limitation on the issuance of RUPs; however, the required Notice of Availability and Sales Offering Agreement shall be submitted prior to the issuance of the first RUP for any dwelling unit in the development.

6. Workforce Dwelling Unit Specifications

A. The Director of the Department of Housing and Community Development (DHCD) shall develop specifications for the prototype workforce housing products both for-sale and rental. All building plans for workforce dwelling units are to comply with such prototype standards for design and construction specifications. Any applicant or owner may voluntarily construct workforce dwelling units to a standard in excess of such specifications. In the event that workforce dwelling units are constructed in unit types other than multiple family dwelling units, only fifty (50) percent of any added cost for exterior architectural compatibility upgrades (such as brick facade, shutters, bay windows, etc.) and additional landscaping on the workforce dwelling unit lot may be included within recoverable costs, up to a maximum of two (2) percent of the sales price of the workforce dwelling unit. The allowance for additional landscaping may not exceed one-half (1/2) of the above-noted two (2) percent maximum.

B. In the administration of workforce dwelling units, the design and construction specifications established in both rental and sales prices will be structured to make the units affordable to households whose incomes do not exceed one hundred twenty (120) percent of the area median income (AMI) of the Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development (HUD), subject to the income tiers specified in this Policy.

7. Administration of For-Sale Workforce Dwelling Units

A. The sale of workforce dwelling units shall be regulated by the Director of DHCD on behalf of the Board. The Board may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of workforce dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

B. The Board has an exclusive right to purchase up to one-third (1/3) of the for-sale workforce dwelling units within a development for a ninety (90) day period beginning on the date that a complete Notice of Availability and Sales Offering Agreement, submitted by the owner, is

executed by the DHCD. The notice shall advise the Board that a particular workforce dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the DHCD and identify the unit or units being offered; the number of bedrooms, the floor area and amenities for each unit; the approved sales price for each unit and the evidence of issuance of a building permit for the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the workforce dwelling unit and approval of the sales price for the unit by the County Executive, but shall occur prior to the issuance of the first Residential Use Permit (RUP) for any workforce dwelling unit in the development. If the Board elects to purchase a particular workforce dwelling unit, the DHCD shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the respective ninety day period, provided a RUP has been issued for the unit prior to closing.

C. The remaining two-thirds (2/3) of the for-sale workforce dwelling units within a development and any units that the Board does not elect to purchase are to be offered for sale exclusively for a ninety (90) day period to persons who meet the income criteria established by the DHCD, and who have been issued a Certificate of Qualification by the DHCD. This ninety (90) day period begins on the date that a complete Notice of Availability and Sales Offering Agreement, submitted by the owner, is executed by the DHCD. The notice shall advise the DHCD that a particular workforce dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the DHCD and include the information described in Paragraph B, above. In addition, the owner shall provide marketing materials concerning the units and the development to be used in the sale of the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the workforce dwelling unit and approval of the sales price for the unit by the County Executive. Notwithstanding the foregoing, after the first thirty (30) days of the ninety (90) day period referenced in this paragraph, the Board may elect to purchase up to one-half (1/2) of the workforce dwelling units offered pursuant to this paragraph by giving written notice of its election to do so for those units then available within the ninety (90) day period, which notice shall provide for an all cash closing within thirty (30) days from the end of the ninety (90) day period, provided a RUP has been issued prior to closing.

D. After the expiration of the sixty (60) days of the ninety (90) day period(s) referenced in Paragraphs B and C above, the workforce dwelling units not sold are to be offered for sale to nonprofit housing groups, as designated by the County Executive, subject to the established workforce dwelling unit prices and the requirements of the applicable proffered conditions. The nonprofit housing groups shall have a thirty (30) day period within which to commit to purchase the units. This thirty (30) day period begins on the date of receipt of written notification from the owner, sent by registered or certified mail, advising them that a particular workforce dwelling unit is or will be ready for purchase. The notice shall state the number of bedrooms, floor area and amenities for each unit offered for sale. Such written notice may be sent by the owner any time after the commencement of the ninety (90) day period referenced in Paragraphs B and C above. If a nonprofit housing group elects to purchase a particular workforce dwelling unit, they shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the thirty (30) day period, provided a RUP has been issued for the unit prior to closing.

E. After the expiration of the time period(s) referenced in Paragraphs B, C, and D above, the workforce dwelling units not sold may be offered to the general public as for-sale units subject to established workforce dwelling unit prices and the requirements of the proffered conditions.

F. A schedule of County-wide cost factors and the cost calculation formula used to determine sales prices will be established initially and may be amended periodically by the County Executive, based upon a determination of all ordinary, necessary, and reasonable costs required to construct the various workforce dwelling unit prototype dwellings by private industry in Fairfax County, after consideration by the County Executive of written comment from the public, the DHCD, and other information that may be available, such as the area's current real estate market and economic conditions.

G. Sales prices will include, among other costs, a marketing and commission allowance of one and one-half (1 1/2) percent of the sales price for the workforce dwelling unit, provisions for builder-paid permanent mortgage placement costs and buy-down fees, and closing costs, except pre-paid expenses required at settlement, but will not include the cost of land associated with the workforce dwelling unit. Workforce dwelling units shall be distributed among each of five (5) income range tiers, as follows: ***2% of the total number of dwelling units as WDUs serving up to 60% of Area Median Income (AMI) for the Washington D.C. Metropolitan Area as specified annually by the Department of Housing and Urban Development (HUD); 3% serving up to 70% AMI; 5% serving up to 80% AMI, 5% serving up to 100% AMI and 5% serving up to 120% AMI.*** Nothing provided herein will preclude an owner/developer from providing a higher percentage of workforce dwelling units for households in the lower income tiers.

H. There will be a semiannual review and possible adjustment in workforce dwelling unit sales prices that will be applied to the workforce dwelling unit sales prices initially established by the County Executive adjusted according to the percentage change in the various cost elements as indicated by the U.S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices selected by the County Executive.

8. Administration of Rental Workforce Dwelling Units

A. The Board may adopt reasonable rules and regulations to assist in the regulation and monitoring of the rental of workforce dwelling units, which may include giving a priority to persons who live or work in Fairfax County. The regulation and monitoring of rental workforce dwelling units shall be by the DHCD on behalf of the Board.

For the initial rentals of units, the owner shall send the Board a Notice of Availability and Rental Offering Agreement in a form prescribed by the DHCD, to advise that a particular workforce dwelling unit or units are or will be completed and ready for rental. The Board or its designee has an exclusive right to lease up to one-third (1/3) of the rental workforce dwelling units. Such Notice of Availability and Rental Offering Agreement shall be submitted to and executed by the DHCD prior to the issuance of the first RUP for any dwelling within the development. The notice shall state the number of bedrooms, floor area, amenities, and rent for each unit offered for rental. Such written notice may be sent by the owner at any time after the issuance of a building permit for the workforce dwelling units that are being offered for rental. If the Board elects to assume control for a particular workforce dwelling unit, the Board shall so notify the owner in writing within thirty (30) days from the execution of the notice by the Board.

At the owner's option, the Board may lease additional rental units at the workforce dwelling unit rent or market rent as appropriate.

The remaining two-thirds (2/3) of the rental workforce dwelling units within a development are to be offered to persons who meet the established income criteria.

B. Any workforce dwelling units required pursuant to the proffered conditions that are not leased by the Board are to be leased for a minimum six (6) -month period with a maximum renewable term of lease for one (1) year to tenants who meet the eligibility criteria established by the DHCD. The lease agreements for such units shall include conditions that require the tenant to occupy the unit as his or her domicile, that prohibit the subleasing of the unit, that require continued compliance with the applicable eligibility criteria, and that require the tenant to annually verify under oath, on a form approved by the DHCD, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the applicable eligibility criteria.

C. Eligible tenants must continue to meet the income criteria established by the DHCD in order to continue occupancy of the workforce dwelling unit. However, a tenant who no longer meets such criteria may continue to occupy a workforce dwelling unit until the end of the lease term. Workforce dwelling units not leased by the Board may not be subleased.

D. By the end of each month, the owner of a development containing rental workforce dwelling units leased to individuals other than the Board shall provide the DHCD with a statement verified under oath that certifies the following as of the first of such month:

(1.) The address and name of the development and the name of the owner.

(2.) The number of workforce dwelling units by bedroom count and floor area, other than those leased to the Board, which are vacant.

(3.) The number of workforce dwelling units by bedroom count and floor area that are leased to individuals other than the Board. For each such unit, the statement shall contain the following information:

(i) The unit address, bedroom count and floor area.

(ii) The tenant's name and household size.

(iii) The effective date of the lease.

(iv) The tenant's (household) income as of the date of the lease.

(v) The current monthly rent.

(4.) That to the best of the owner's information and belief, the tenants who lease workforce dwelling units meet the eligibility criteria established by the DHCD.

(5.) The owner will provide the DHCD with a copy of each new or revised annual tenant verification obtained from the renters of workforce dwelling units pursuant to Paragraph B above.

E. ***Countywide rental prices shall be established by the County Executive such that rental workforce housing is affordable to households in the following income tiers: 2% of the total number of dwelling units as WDUs serving up to 60% of Area Median Income (AMI) for the Washington D.C. Metropolitan Area as specified annually by the Department of Housing and Urban Development (HUD); 3% serving up to 70% AMI; 5% serving up to 80% AMI, 5% serving up to 100% AMI and 5% serving up to 120% AMI.***

Nothing provided herein shall preclude an owner/developer from providing a higher percentage of workforce dwelling units for households in the lower income tiers. The base figures shall be adjusted by the following factors for different workforce dwelling unit sizes based on the number of bedrooms in the dwelling unit:

Number of Bedrooms	**Adjustment Factor**
Efficiency (0 bedroom)	70%
1 Bedroom	85%
2+ Bedrooms	100%

The result of this calculation for each size workforce dwelling unit is then divided by twelve (12), then multiplied by twenty-five (25) percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.

F. There will be a semiannual review and possible adjustment in workforce dwelling unit rental prices that will be applied to the workforce dwelling unit rental prices initially established by the County Executive, adjusted according to the percentage change in the various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that are selected by the County Executive. In setting adjusted rental prices, the County Executive may establish different rental classifications and prices that reflect the age and condition of the various rental developments within Fairfax County.

9. Term of Price Control of Workforce Dwelling Units

A. For for-sale workforce dwelling units, the price for subsequent resale shall be controlled for a period of thirty (30) years after the initial sale. However, upon any resale, conveyance, and/or transfer to a new owner of such workforce dwelling unit within the initial thirty (30) -year period of control, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) -year period commencing on the date of such resale, conveyance, and/or transfer of the workforce dwelling unit. Each initial thirty (30) -year control period and each renewable subsequent thirty (30) -year control period may be referred to as a sales price control period. For any workforce dwelling unit that is owned for an entire thirty-year control period by the same individual(s), the price control term shall expire and the first sale of the unit after such expiration shall be in accordance with the provisions of this Tysons Policy.

B. For rental workforce dwelling units, the price for subsequent rerental shall be controlled for a period of ***ninety-nine (99)*** years from the date of issuance of the RUP for each workforce

dwelling unit in the development.

C. For condominium conversion workforce dwelling units, regardless of the length of time the unit was offered as a workforce rental unit, the initial term of price control for the first sale of the unit after the conversion from a rental unit shall be for a period of thirty (30) years from the date of the initial sale. Subsequent resale of such units shall be administered under the provisions of Paragraph A, above.

10. Initial Sale and Re-Sale of Workforce Dwelling Units

A. The initial sale of a workforce dwelling unit, including the initial sale of a condominium conversion unit, shall be for a sales price that is approved by the County Executive and shall be made only to a person or household that meets the applicable income qualifications for the occupancy of a workforce dwelling unit and have been issued a Certificate of Qualification by the Director of the DHCD. It is a violation of the proffered conditions associated with a workforce dwelling unit to purchase a unit or to sell it or otherwise transfer or pledge it as security for an amount higher than the approved sales price during any period of price control.

B. The owner of each unit to be resold, conveyed, or otherwise transferred to another owner and for the conversion of rental workforce dwelling units to condominium workforce dwelling units shall provide the DHCD with written notification sent by certified mail that the workforce dwelling unit is being offered. The Board has the exclusive right to purchase such unit at a purchase price that does not exceed the control price of the unit at that time. The DHCD shall notify the owner in writing within thirty (30) days after receipt of the written notification from the owner advising whether or not the Board will enter into a contract to purchase the unit on the form approved by the DHCD and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing shall occur within ninety (90) days after receipt by the DHCD of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied.

If the Board does not elect to purchase an available for-sale workforce dwelling unit, for the first sixty (60) days thereafter that each such individual workforce dwelling unit is offered, the for-sale unit is to be first be offered exclusively through the DHCD to persons who meet the DHCD's criteria, and who have been issued a Certificate of Qualification by the DHCD. Upon the expiration of the sixty (60) day period, the unit may be offered for sale to the general public to persons who meet income requirements hereunder and at the current controlled price.

C. Units offered for sale shall not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the DHCD in accordance with applicable regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser that are paid by the seller. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the DHCD. No increase in sales price is allowed for the payment of brokerage fees associated with the sale of the unit, except that with respect to units purchased and resold by the Board, an increase of one and one half (1 1/2) percent of the resale price is allowed for

marketing and transaction costs, and with respect to resale by other owners, an increase of one and one-half (1 1/2) percent of the sales price is allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the DHCD and who serves as a dual agent for both the qualified buyer and the seller in the resale of the workforce dwelling unit in accordance with sales procedures approved by the DHCD. The one and one-half (1 1/2) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the workforce dwelling unit as part of the disbursement of settlement proceeds.

D. For the initial sale of a workforce dwelling unit after the expiration of the term of price control established for the unit, the Board has the exclusive right to purchase the unit. The owner of each such unit shall provide the DHCD with written notification sent by registered or certified mail that the unit is for sale. If the Board elects to purchase such unit, the DHCD shall so notify the owner in writing within thirty (30) days of receipt of the written notification from the owner and the all cash closing shall occur within sixty (60) days thereafter.

In all instances, whether or not the Board elects to purchase such unit, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the DHCD in accordance with applicable regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of the owner's purchase and the date of resale is to be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlements proceeds. Notice of such equity interest of the Fairfax County Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any workforce dwelling unit. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points, and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or shall be paid otherwise by the seller. In no event shall any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

11. Financing Control and Foreclosure of Workforce Dwelling Units

A. The total aggregate amount of principal and accrued interest for all financing secured by an individual for-sale workforce dwelling unit shall not exceed the owner's purchase price (as adjusted in accordance with this Tysons Policy). Any financing in excess of the owner's purchase price, as adjusted, shall not be secured by any interest in the applicable individual for-sale workforce dwelling unit.

B. The covenants required pursuant to the Tysons Policy shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers, and other successors in interest, except that the covenants may be released for an individual for-sale

workforce dwelling unit in the event of foreclosure by an Eligible Lender, as such term is defined in Paragraph C below, as and only to the extent provided for in this Policy. In the event of foreclosure of a development comprised solely of rental multiple family dwelling units, where such development contains workforce dwelling units, the covenants shall not be released.

C. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on an individual for-sale workforce dwelling unit 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 unit at the time of refinancing. An Eligible Lender shall have the right to foreclose on a rental project or a workforce dwelling unit, and the covenants on an individual workforce dwelling unit may terminate upon such foreclosure by the Eligible Lender or upon the sale of the workforce dwelling unit by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale if all the requirements set forth in this Tysons Policy, the applicable proffers, the covenants, and/or all other applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, providing the County Executive and the Board written notice of the foreclosure sale proposed and the Right to Acquire, as such term is defined in this Tysons Policy.

D. No sale, pledge of a security interest in, or other transfer or foreclosure of a workforce dwelling unit will affect the validity of the covenants, except as set forth in this Tysons Policy.

E. Each Eligible Lender and any other lender secured by an interest in the workforce dwelling unit is required to provide written notice of a foreclosure to the County Executive and the DHCD at least ninety (90) days prior. At any time during such ninety (90) day period, the Board or a nonprofit agency designated by the County Executive shall have the Right to Acquire any individual for-sale workforce dwelling unit. The Right to Acquire entitles the Board or a nonprofit agency designated by the County Executive to acquire the workforce dwelling unit(s) at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the workforce dwelling unit owed to the lender, including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price, as adjusted in accordance with this Policy, and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner, or other party, whether secured or not, having any rights to compensation under such circumstances.

F. In the event that neither the Board nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for-sale workforce dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, the remaining amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.

12. Covenants and Deed Notification

A. In developments containing workforce dwelling units, Workforce Housing covenants that are applicable to the workforce dwelling units and that run in favor of the Board and are in the specific form prescribed by the Director of the DHCD providing, among other things, that the workforce dwelling units are subject to the provisions of this Tysons Policy and/or any other

policies established through the proffered conditions, shall be recorded upon approval of the site plan and/or simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration.

B. The covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers, and other successors in interest.

C. In developments containing for-sale workforce dwelling units, at the time of the initial sale of an individual workforce dwelling unit, the owner/applicant shall provide in the sales contract for each workforce dwelling unit offered for sale a copy of the recorded covenant running with the land in favor of the Board. The owner/applicant shall include in the deed for each workforce dwelling unit sold an express statement that the workforce dwelling unit is subject to proffered conditions setting forth specific terms and conditions and the covenants recorded pursuant to this Tysons Policy with a specific reference to the deed book and the page where such covenants are recorded and such deed may also attach a copy of the covenants. At the time of the initial sale and any resale of an individual workforce dwelling unit, the owner/applicant shall also include in the deed for each workforce dwelling unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the workforce dwelling unit is limited and that other terms and conditions apply, including, but not limited to, a right for the Board or a nonprofit agency designated by the County Executive to acquire the workforce dwelling unit on certain terms in the event of a pending foreclosure sale.

D. In the case of a rental project, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any workforce dwelling units, the owner shall record a covenant running with the land in favor of the Board and which is on the specific form prescribed by the DHCD that provides that the workforce dwelling units are subject to proffered conditions setting forth specific terms and conditions, that no such unit may be rented for an amount that exceeds the limits set by the County Executive, that the covenant shall be senior to all instruments securing permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.

13. Occupancy of Workforce Dwelling Units

A. Before an individual may purchase a workforce dwelling unit, he or she must obtain a Certificate of Qualification from the Director of the DHCD. Before issuing a Certificate of Qualification, the DHCD will make the determination that the applicant meets the criteria established by the DHCD for low and moderate income persons applicable to for-sale workforce dwelling units.

B. Before an individual may rent a workforce dwelling unit, he or she must meet the eligibility criteria established by the DHCD for persons of low and moderate income. The landlord/owner is responsible for determining that the tenant meets the eligibility criteria applicable to tenants in rental workforce dwelling units.

C. Except for circumstances specifically set forth in this Tysons Policy, it is a violation of this Tysons Policy for someone to sell a workforce dwelling unit to an individual who has not been issued a Certificate of Qualification by the DHCD.

D. Except for circumstances specifically set forth in this Tysons Policy, it is a violation of this Tysons Policy for someone to rent or continue to rent a workforce dwelling unit to an individual who does not meet or fails to continue to meet the income eligibility criteria established by the DHCD.

E. Purchasers or renters of workforce dwelling units must occupy the units as their domicile and shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Owners of for-sale workforce dwelling units shall forward such affidavit to the DHCD on or before June 1 of each year that they own the unit. Renters shall provide such affidavit to their landlords/owners by the date that may be specified in their lease or that may otherwise be specified by the landlord/owner.

F. In the event the renter of a workforce dwelling unit fails to provide his or her landlord/owner with an executed affidavit as provided for in the preceding paragraph within thirty (30) days of a written request for such affidavit, then the lease will automatically terminate, become null and void, and the occupant will vacate the unit within thirty (30) days of written notice from the landlord/owner. It is a violation of this Tysons Policy for an owner of a workforce dwelling unit to fail to provide the executed affidavit required by Paragraph E above.

G. Except as specifically provided for in this Tysons Policy, in the event a renter of a workforce dwelling unit no longer meets the eligibility criteria established by the DHCD, as a result of increased income or other factors, then at the end of the lease term, the occupant will vacate the unit.

H. In the event a renter fails to occupy a workforce dwelling unit for a period in excess of sixty (60) days, unless such failure is approved in writing by the DHCD, a default shall occur. The lease shall automatically terminate, become null and void and the occupant will vacate the unit within thirty (30) days of written notice from the landlord/owner.

I. Notwithstanding the provisions of Paragraphs F, G, and H above, if the landlord/owner of a rental project shall immediately designate an additional comparable unit as a workforce dwelling unit to be leased under the controlled rental price and requirements of this Tysons Policy, the renter of such unit referenced in Paragraphs F, G, and H above may continue to lease such unit at the market value rent.

THIS BOARD POLICY for the Tysons Corner Urban Center Workforce Dwelling Unit Administrative Guidelines is effective on this _____ day of _____, 2010

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NANCY VEHRS
Clerk to the Board of Supervisors