

DECLARATION OF COVENANTS TO BE USED BY MULTIPLE FAMILY RENTAL DEVELOPMENTS

INTRODUCTION

This Declaration of Multiple Family Rental Development Covenants (the Declaration of Covenants) must be completed and recorded in the Fairfax County land records by the developer before any of the ADUs in the development are offered for rent. The ADU Notice of Availability and Offering Agreement cannot be executed until this is done. Evidence that this Declaration of Covenants has been recorded for all of the ADUs in the development must be submitted with the ADU Offering Agreement for the first ADUs to be rented in a development.

This multiple family rental development Declaration of Covenants requires two attachments to be prepared by the developer (Declarant).

- **Exhibit A** is a legal description of the property (the rental development) which is subject to the requirements of the ADU Ordinance.
- **Exhibit B** is a copy of the approved site plan for the property which must indicate the number of ADUs required as well as the type of units, size and number of bedrooms of the units designated as ADUs.

While the Declaration of Covenants must be filed prior to the first ADU being offered for rent, which can occur at any time after the building permit for the ADU is issued, the control period under this Declaration of Covenants does not begin until the first Residential Use Permit is issued for the first available ADU. Therefore, in order to specify this date, a First Rider to the Declaration of Covenants is also required to be filed by the developer.

- The form of the signature block of the Declarant at the end of the Declaration of Covenants must accurately state the organization name, the organizational type (such as corporation, limited partnership and 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.

Attachments:

- A. Declaration of Affordable Dwelling Units Covenants (Multiple Family Rental Development)
- B. First Rider to Declaration of Affordable Dwelling Units Covenants

For Multiple Family Rental Developments
Revised as of July 2, 2002
Revised as of February 28, 2006
And further revised as of March 5, 2009

**DECLARATION OF AFFORDABLE
DWELLING UNITS COVENANTS**
(Multiple Family Rental Development)

THIS DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

(“Declaration” or “Covenants”)is made as of the ____ day of_____, 20__ ,by

_____, a _____

(“Declarant”) (“GRANTOR” for indexing purposes only), the owner of certain property (“Property”) located in Fairfax County, Virginia as described on Exhibit A attached hereto and a part hereof. As provided for herein, among other things, the Declarant irrevocably transfers, conveys, and assigns to the Fairfax County Redevelopment and Housing Authority and its successors (“Authority”) (“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.

RECITALS

R-1. On December 11, 1989 the Board of Supervisors of Fairfax County, Virginia established an Affordable Dwelling Unit Program, as further amended and effective March 30, 1998, July 2, 2002, January 31, 2004, September 14, 2004, February 28, 2006 and February 28, 2007 (“Program”) to assist in providing affordable housing for persons with low and moderate income.

R-2. The Program is intended to be administered in accordance with Part 8, Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto (the ordinance and the regulations, as the same maybe amended from time to time, are collectively referred to hereinafter as the “Ordinance”).

R-3. The Ordinance requires, in pertinent part, that owners of certain land zoned to certain zoning districts and to be developed into fifty or more residential dwelling units shall provide a number of affordable dwelling units (collectively, the “Affordable Dwellings”, each individually referred to as an “Affordable Dwelling”) for sale to qualified purchasers or for rental to qualified tenants, all in accordance with and under the conditions set forth in the Ordinance.

R-4. Declarant has agreed that in consideration of benefits conferred upon Declarant under the Ordinance and in compliance with Declarant’s obligations under the Program, Declarant shall make available on the Property the number of Affordable Dwellings, with the type of units, size and number of bedrooms as designated on the approved site plan for the Property attached hereto as Exhibit B and made in part hereof, all of which shall be operated and maintained in compliance with the Ordinance.

R-5. The Ordinance establishes certain conditions, limitations and controls on the Affordable Dwellings that are to remain in effect with regard to rental and occupancy of each of the Affordable Dwellings for a period (the “Control Period”) beginning on the date the first residential use permit is issued on the first available Affordable Dwelling (such date being referred to herein as the “First RUP Date”) until 30 years thereafter; such latter date to be specified in a First Rider to be recorded on the Property after determination of such date (the “First Rider”).

R-6. The Ordinance provides that during the Control Period multiple family rental Affordable Dwellings shall be offered only at rents permitted under the Ordinance and to persons (collectively, “Qualified Tenants”, each individually a “Qualified Tenant”) who meet the income criteria established under the Ordinance.

R-7. The Ordinance further provides that for a period (the “Initial Control Period”) of 30 days after the date that the owner of the Affordable Dwellings sends notice in accordance with Section 2-811 of the Ordinance advising the Authority that a particular Affordable Dwelling is ready for rental, the Authority shall have the right to identify and certify Qualified Tenants meeting the eligibility standards provided in the Ordinance (“Certified Tenants”) in which event up to one-third (1/3) of the Affordable Dwellings shall be made available to such Certified Tenants; provided however, that if

the Authority fails to furnish to the owner of the Affordable Dwellings the name of Certified Tenants within the Initial Control Period, the owner may rent such one-third (1/3) of the Affordable Dwellings to any households with incomes up to fifty percent (50%) of the median income for the Washington Standard Metropolitan Statistical Area at rents affordable to such households (collectively, the Control Period and the Initial Control Period may be referred to herein as the "Control Periods").

R-8. The Ordinance further provides that with regard to the Property providing for Affordable Dwellings, covenants shall be recorded that will run with the land in favor of the Authority for the Control Periods specifying certain terms and conditions of the Program applicable to the Property.

R-9. In further compliance with the Ordinance under the terms of the Program, Declarant is making this Declaration and these Covenants as set forth below.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to these Covenants which touch and concern the land and improvements constituting the Property and the Affordable Dwellings as set forth in Exhibit B, that these Covenants shall run with the land, and that these Covenants shall be binding in accordance with the terms herein on Declarant and all Transferees, as such term is defined in the next sentence, of the Property until expiration of the Control Periods. For purposes of these Covenants, Transferees shall be deemed all persons and entities that may hereafter acquire any interest whatsoever in any of the Property, 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 applicable Control Periods.

ARTICLE I

PRE-GENERAL RENTAL CONTROLS

During the Initial Control Period, no rental or other Transfer of any of the Affordable Dwellings, or any part thereof, shall be made unless the Authority shall have received the notices required by, and shall have been afforded the opportunity to designate Certified

Tenants to lease up to one-third (1/3) of the Affordable Dwellings in accordance with Section 2-811 of the Ordinance.

ARTICLE II

ORDINANCE CONTROLS

A. During the Control Periods, all leases of the Affordable Dwellings (i) shall be for a minimum term of 6 months with a maximum term of 1 year to Qualified Tenants who meet the eligibility requirements established by the Authority, (ii) shall include conditions which require each Qualified Tenant to occupy the Affordable Dwellings as a principal domicile, (iii) shall prohibit subleasing, and (iv) shall require continued compliance with the eligibility criteria established by the Authority, including without limitation that each Qualified Tenant annually verify under oath his or her annual income and such other facts as the landlord may require in order to ensure that each Qualified Tenant continues to meet the eligibility criteria established by the Authority.

B. During the Control Periods, the Property shall be subject to all provisions of the Ordinance.

C. During the Control Periods, these Covenants shall be senior to all instruments securing financing with respect to the Property, and these Covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. Further, as provided for in Section 2-812(6) of the Ordinance these Covenants, being Covenants recorded on or after February 28, 2006, shall remain in full force and effect and shall not be released in the event of foreclosure by an Eligible Lender, as such term is defined in the next sentence, anything to the contrary in Article II(D) below or in Section 2-812(8)(B) of the Ordinance notwithstanding. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on the Property, a rental project, 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 rental project at the time of refinancing.

D. During the Control Periods, no sale, transfer or foreclosure of the Property shall affect the validity of these Covenants, except as expressly set forth in the provisions of the Program as set forth in the Ordinance.

E. During the Control Periods, each Eligible Lender and any other lender secured by an interest in the Property, prior to foreclosure upon the Property, shall provide the County Executive and the Authority at least ninety (90) days prior written notice thereof.

F. During the Control Periods, the financing of the Property shall comply with all of the provisions of Section 2-812(8)(B) of the Ordinance applicable to the Property, as they may be amended from time to time.

ARTICLE III

PRINCIPAL DOMICILE AND OCCUPANCY REQUIREMENTS

A. Any Qualified Tenant must occupy the Affordable Dwelling as such Qualified Tenant's principal domicile, and must not lease or rent or permit exclusive occupancy of the Affordable Dwelling to any other party or parties. Each year, the Qualified Tenant of each Affordable Dwelling shall submit to the owner thereof, on the date specified in the lease with respect thereto, or such other date as maybe established by the owner, an affidavit executed by such Qualified Tenant, on a form designated by the Authority, certifying such Qualified Tenant's continuing occupancy of the Affordable Dwelling (the "Affidavit").

B. If a renter of an Affordable Dwelling fails to provide the owner or landlord thereof with the Affidavit within thirty (30) days after a written request there for, the lease with respect to that Affordable Dwelling shall automatically terminate, become null and void and the occupant shall be obligated to vacate the Affordable Dwelling within thirty (30) days after written notice from the owner or landlord thereof.

C. If a renter of an Affordable Dwelling shall no longer meet the eligibility criteria established by the Authority, except as specifically otherwise provided in the Ordinance, the occupant must vacate such Affordable Dwelling at the end of the term of the lease.

D. If the renter of an Affordable Dwelling fails to occupy a unit of a period in excess of sixty (60) days unless such failure is approved in writing by the Authority, the lease with respect to such Affordable Dwelling shall automatically terminate, become null and void, and the occupants there of shall be obligated to vacate the Affordable Dwelling within thirty (30) days of written notice from the landlord or owner with respect thereto.

ARTICLE IV

DEED AND CONTRACT RESTRICTIONS

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

ARTICLE V

ASSIGNMENT OF RIGHTS TO AUTHORITY

Declarant, and Declarant's heirs, successors and assigns, hereby irrevocably assigns, transfers and conveys to the Authority, 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 VI
RIGHT TO ENFORCE

If the Authority shall determine that any default has occurred under these Covenants, the Authority, or its successors, may enforce these Covenants by proceeding at law, or in equity, against the persons or entities violating or attempting to violate any of the Covenants herein contained, to restrain any violation hereof, to seek specific performance of these Covenants, to 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, and/or to proceed against the Property in the enforcement of any lien or obligation created by or resulting from these Covenants as allowed under Section 2-817 of the Ordinance. No remedy conferred upon or reserved to 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 Ordinance, existing at law or in 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. Any liens filed pursuant to the Ordinance shall not relate back in time, but shall be effective as of the date recorded.

ARTICLE VII
BINDING ON ALL SUCCESSORS

These Covenants are binding upon the Property and the Affordable Dwellings, upon the Declarant and the Declarant's heirs, successors and assigns, and upon all Transferees of title to the Property for the Control Period and shall run with the land.

ARTICLE VIII
NO AMENDMENTS

These Covenants cannot be amended, or released, unless by written instrument executed by the Authority until expiration of the Control Periods.

ARTICLE X
SEVERABILITY

If any provisions of these Covenants shall be held invalid or unenforceable, such holdings shall not invalidate or make unenforceable any other provision hereof.

ARTICLE XI
HEADINGS

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

[Signature on Next Page]

[TO DECLARANT: RETYPE THIS PAGE AS NEEDED TO FULLY SET FORTH A COMPLETE AND ACCURATE: (i) SIGNATURE BLOCK FOR THE DECLARANT AND (ii) NOTARY FORM (IF NEEDED, CONSULT WITH COUNSEL). THE NOTARY FORM AND SIGNATURE MUST BE ON THE SAME PAGE AS THE DECLARANT'S SIGNATURE BLOCK AND SIGNATURE (REQUIRED BY THE RECORDING CLERK'S OFFICE).]

WITNESS THE FOLLOWING SIGNATURE AND SEAL;

WITNESS:

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

Approved Site Plan