

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS
FOR RENT

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

RECITALS

WHEREAS, the Affordable Dwelling Unit Program ("ADU Program") is the Program established by Article 7 of the Loudoun County Zoning Ordinance and regulated by Chapter 1450 of the Codified Ordinances of Loudoun County, to assist in the provision of affordable housing to persons of moderate income (the ordinances, as the same may be amended from time to time, are collectively referred to hereinafter as the "Ordinance"); and

WHEREAS, in accordance with and under the conditions set forth in the Ordinance, owners of certain land seeking a rezoning, special exception, site plan, or subdivision provide a number of affordable dwelling units for rent (collectively, the "**Affordable Dwelling Units**" or "**ADUs**", each individually referred to as an "**Affordable Dwelling Unit**" or "**ADU**") to Certified Tenants, as defined below; and

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

WHEREAS, according to the Proffers the owner(s) of the Property shall provide a number of Rental ADUs as defined below in accordance with the Proffers and the Ordinance; and]

WHEREAS, the Board, as defined below, has designated the Department, as defined below, to administer the Affordable Dwelling Units for rent subject to the ADU Program; and

WHEREAS, Declarant has agreed that in consideration of benefits conferred upon Declarant pursuant to the Ordinance and in compliance with Declarant's obligations under the [Proffers and the] ADU Program [as applicable,] regarding the provision of ADUs for rent, the Rental ADUs described in **Exhibit A** and all ADUs substituted for such units (collectively the "**Rental ADUs**" and each a "**Rental ADU**") shall be subject to this Declaration and the covenants set forth in this Declaration ("**ADU Rental Covenants**"), and the Ordinance; 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 Declarant further intend by this Declaration to establish a process by which the Declarant and the Board or its designee, subsequent to the recordation of this Declaration, may agree, in writing, at the sole discretion of the Board or its designee, without the need to record an amendment to this Declaration, to the substitution of other dwelling units within the Property in place of the Rental ADUs described in Exhibit A; and

WHEREAS, the Property has been approved for _____ [multi-family, single family attached or detached, as applicable] dwelling units, _____ of which shall be established, administered, and maintained as Rental ADUs, for rent to Certified Tenants; and

WHEREAS, the Ordinance further provides that, prior to approval of a record plat for single family detached or attached units containing ADUs for rent, or site plans for multi-family rental buildings containing ADUs for rent, the owner shall record a declaration of ADU covenants running with the land in favor of the County; and

WHEREAS, the Ordinance [and the Proffers] establish[es] certain conditions, limitations and controls on the Property and/or the Rental ADUs, as applicable, that are to remain in effect with regard to occupancy and rent restrictions on each of the Rental ADUs for a period of twenty years after execution of the initial lease agreement for the respective Rental ADU within the Property (the "**Twenty-Year Control Period**"); and

WHEREAS, in further compliance with [the Proffers and] the Ordinance, 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 Property and each of the Rental ADUs, as applicable, shall be subject to this Declaration and the ADU Rental Covenants. For purposes of this Declaration, in accordance with the Ordinance, these terms are defined as follows:

- a. "ADU Rental Control Price" refers to the County-wide rental control price of ADUs established initially and semiannually thereafter by the ADUAB;
- b. "ADUAB" refers to the Affordable Dwelling Unit Advisory Board;
- c. "Board" refers to the Loudoun County Board of Supervisors, Virginia;
- d. "Certified Tenant" refers to a person who has met the income criteria established by Article 7 of the County Zoning Ordinance and has received a certificate of qualification from the Department;
- e. "County" refers to the County of Loudoun, Virginia;
- f. "Department" refers to the Department of Housing and Community Development, or such other department as the Board may hereafter designate;
- g. "Judicial Sale" refers to the sale of the Property under the authority and supervision of a federal or state court with jurisdiction in the County;
- h. "Non-Judicial Foreclosure Sale" refers to the sale of the Property pursuant to the foreclosure of a lien secured by a deed of trust, a deed-in-lieu of foreclosure, a foreclosure sale performed by a trustee, or an assignment of the insured mortgage to the United States Department of Housing and Urban Development or to the Virginia Housing Development Authority (currently Virginia Housing);
- i. "Property" refers to the property described on Exhibit A attached hereto, which may include one or more single-family detached, single-family attached, or multifamily units with one or more dwelling units as Rental ADUs subject to this Declaration and the Ordinance. When single-family detached or attached units, Property refers to each real property/dwelling unit described on Exhibit A;

- j. “Resale” refers to the sale of the Property after its initial sale and refers to the voluntary sale of the Property by its owner subsequent to the initial purchase of the Property and the judicial sale of the Property;
- k. “Transfer” refers to the sale, resale or non-judicial foreclosure sale of the Property, and any other form of acquisition of ownership over the Property within the Twenty-Year Control Period.

ARTICLE I

INITIAL RENT OF AFFORDABLE DWELLING UNITS

The initial lease of each Rental ADU within the Property shall be solely to Certified Tenants for a minimum period of six months and a maximum term of twelve months. Following the initial lease, subsequent rents may be done on an annual, bi-annual or monthly basis, in accordance with this Declaration and the Ordinance, and additional terms required by the Property owner.

ARTICLE II

ORDINANCE CONTROLS

A. During the Twenty-Year Control Period, each of the Rental ADUs described on Exhibit A and the Property, as applicable, shall be subject to this Declaration and all provisions of the Ordinance.

B. During the Twenty-Year Control Period, neither the Rental ADUs nor the Property, as applicable, may be offered or rented except in compliance with this Declaration and the Ordinance, including that no Rental ADUs may be rented to a person who is not a Certified Tenant or for an amount that exceeds the ADU Rental Control Price and that each Rental ADU must be offered and rented exclusively through the County to Certified Tenants.

C. During the Twenty-Year Control Period, this Declaration and the ADU Rental Covenants shall be senior to all covenants, liens, mortgages, deeds of trust, or other financing instruments secured by the Property that may be recorded after this Declaration. All lenders or other parties who have or may seek to place a lien on the Property shall be subordinated to the Declaration and the ADU Covenants including, without limitation, restrictions on the use and

occupancy of the Rental ADUs and their income eligibility requirements, and the rights of the County and the Board as set forth herein.

D. During the Twenty-Year Control Period, tenants of Rental ADUs shall continue to meet the income eligibility criteria for Certified Tenants in order to continue occupying the Rental ADU. Income eligibility of tenants of Rental ADUs shall be verified prior to lease renewal. Tenants shall provide an annual certification of household annual income to the Department and comply with other requirements of the Property owner's eligibility criteria. Tenants who no longer meet the income eligibility criteria may continue to occupy the Rental ADU until the end of the lease term. If a comparable unit has been authorized by the Department as a Substitute Rental ADU in accordance with paragraph H) below, such tenant may continue to rent a Substitute Rental ADU at market rent rate.

E. Within the Twenty-Year Control Period, any lender, lien holder, or trustee, as applicable, shall provide to the Board written notice of any delinquency or other event of default under a mortgage, lien, deed of trust or any other financing instrument secured by the Property. For a forty-five day period after receipt of such notice, the Board or its designee shall have the right to cure such default, although the Board shall have no obligation to cure the default ("Right to Cure").

F. Within the Twenty-Year Control Period, and at least forty-five days prior to the Property being offered for sale at a Judicial Sale or a Non-Judicial Foreclosure Sale, the Property shall first be offered exclusively to the Board or its designee.

G. Within the Twenty-Year Control Period, the sale or Judicial Sale of the Property does not terminate the restrictions imposed on the Property or the Rental ADUs by the Ordinance or this Declaration, which shall apply to the Property and the Rental ADUs for the Twenty-Year Control Period. Upon the Non-Judicial Foreclosure Sale of the Property, all restrictions imposed by the Ordinance or this Declaration will automatically and permanently terminate with respect to the Property.

H. Within the Twenty-Year Control Period, the substitution of a Rental ADU with a comparable dwelling unit within the Property may be permitted by a written agreement between the Declarant, its successors-in-interest or assigns, and the Board or its designee, provided that such substitute dwelling unit ("Substitute Rental ADU") become subject to this Declaration and the ADU Rental Covenants, and is comparable, as determined at the sole discretion of the Board or its designee, to the Rental ADU to be substituted; provided further that in any event and at all times the number of

ADUs administered and maintained as Rental ADUs within the Property shall be no less than the number of such rental affordable dwelling units required by the Ordinance [and/or the Proffers], and no less than the number of units listed in Exhibit A. The calculation of the Twenty-Year Control Period for any such Substitute Rental ADU shall be based upon the execution of the initial lease agreement for the original Rental ADU that such Substitute Rental ADU is substituting. The determination as to whether a proposed Substitute Rental ADU is comparable to the original Rental ADU for which it is to be substituted shall be at the sole discretion of the Board or its designee, based upon a comparison of the original Rental ADU with the proposed Substitute Rental ADU with respect to such features as number of bedrooms, number of bathrooms, living space square footage, floor plan, and dispersal within the Property. Any such written agreement for the substitution of a Rental ADU shall be kept on file with the Department, and any subsequent owner of the Property shall be obligated to verify with the Department which rental dwelling units are currently designated as Rental ADUs.

ARTICLE III

PRINCIPAL DOMICILE REQUIREMENTS.

VIOLATIONS AND PENALTIES

During the Twenty-Year Control Period, and except in cases where the Certified Tenant is transferred because of U.S. military or Foreign Service temporary tours of duty, hardship tours, or in time of war, Certified Tenants must occupy their Rental ADU as their primary domicile.

Violation of the Ordinance, this Declaration and the ADU Rental Covenants shall carry penalties as set forth in the Ordinance.

ARTICLE IV

DEED AND CONTRACT RESTRICTIONS

During the Twenty-Year Control Period, all deeds conveying any interest in the Property shall contain language specifically reciting that the Property and the Rental ADUs are subject to this Declaration and the ADU Rental Covenants. Contracts pertaining to a lease of a Rental ADU or Transfer of the Property, or any part thereof, during the Twenty-Year Control Period shall also contain

a complete and full disclosure of the rental restrictions and controls established by the Ordinance and this Declaration.

ARTICLE V
ASSIGNMENT OF RIGHTS TO COUNTY

Declarant, in its capacity as declarant of the ADU Rental Covenants, for itself and on behalf of Declarant's successors and assigns, in consideration of benefits conferred upon Declarant under the Ordinance and in compliance with Declarant's obligations under the Ordinance and the ADU Program, hereby grants this Declaration for the benefit of the County, and hereby irrevocably assigns, transfers and conveys to the County, and any successors thereto, all right, title and interest to enforce and maintain in full force and effect, the terms, conditions, and requirements of this Declaration and the ADU Rental Covenants.

ARTICLE VI
RIGHTS TO ENFORCE

If the County shall determine that any default has occurred under this Declaration and the ADU Rental Covenants, or the Ordinance, the County, or its successors, may enforce them by proceeding at law or in equity against the Property or the persons or entities violating or attempting to violate the Ordinance, this Declaration and the ADU Rental Covenants to (i) restrain any violation hereof; (ii) proceed against the Property in the enforcement of any lien or obligation created by or resulting from this Declaration and the ADU Rental Covenants and/or the Ordinance; and (iii) recover damages, including attorneys' fees and the costs of collection. 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 this Declaration and the Ordinance. No delay or omission to exercise any right or power conferred under the Ordinance or hereunder will impair any such right or power 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 the Property.

ARTICLE VII
BINDING ON ALL SUCCESSORS

This Declaration and the ADU Rental Covenants shall run with the land in favor of the County and be binding upon the Property and the Rental ADUs and upon (i) Declarant and its successors-in-interest and assigns, and their successors-in-interest and assigns; (ii) all tenants of Rental ADUs; and (iii) all persons and entities that may hereafter acquire an interest in the Property, or any part thereof, from Declarant or any successor-in-interest or assigns of Declarant, or their successors-in-interest and assigns, or any other party, whether by sale, resale, lease, assignment, mortgage, deed of trust, lien or any other means, until expiration of the Twenty-Year Control Period.

ARTICLE VIII
NO AMENDMENTS

This Declaration and the ADU Rental Covenants cannot be amended or released, unless by written instrument executed by the County, until expiration of the Twenty-Year Control Period.

ARTICLE IX
SEVERABILITY

If any provision of this Declaration and the ADU Rental 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 X
NOTICES

All notices related to the Property or the Rental ADUs, as applicable, shall be deemed effective upon delivery by U.S. mail, or other means of actual delivery, to the Property's or Rental ADU's mailing address, respectively.

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.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant _____ has caused the foregoing Declaration of Affordable Dwelling Unit Covenants for Rent to be executed by _____ as _____, of _____, under seal by its duly authorized representative.

DECLARANT:

By: _____ (SEAL)
[Signature]

Name: _____
[Type or print]

Title: _____
[Type or print]

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to-wit:

On this _____ day of _____, 20__ before me, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, in the above instrument, and that being authorized to do so executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

EXHIBIT A

[Identify lot(s) by number, or condominium unit(s) by unit number(s) and Phase number, as applicable, by plat title, and by deed book and page reference. When recorded along with the Deed of Subdivision, so that Deed Book and Page reference have not been established, it is acceptable to state "recorded immediately prior hereto". If plat is included with Declaration, then Exhibit A should contain a reference to such plat as Exhibit B, in lieu of Deed Book and Page reference.)

This Property was acquired by Declarant by deed recorded among the Land Records (in Deed Book _____, at Page _____ or as Instrument Number _____ - _____). This Property, and the rental affordable dwelling units referenced in this Declaration, are being developed pursuant to Site Plan application (STPL) _____.]

Parcel Identification Number:

The following listed rental dwelling units located within the above described real property located in Loudoun County, Virginia (the “**Property**”) 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 Declaration of Affordable Dwelling Units Covenants for Rental set forth in the attached Declaration (the "**Rental ADUs**").

	<u>ADU Address</u>	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Footage)	<u>Anticipated Initial Lease Agreement Date</u>
1					
2					
3					

4					
5					
6					