

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 Multiple Family Rental Developments. 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.

Prior to renting any Workforce Dwelling Unit (“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 approved site plan for the property which must indicate the number of WDUs required as well as the type of units, size and number of bedrooms of the units designated as WDUs.
- **Exhibit C** is a copy of the Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines, as applicable.
- **Exhibit D** is a copy of the Applicable Proffer(s).

The Declaration of Covenants may be filed any time after the building permit for the project is issued. The control period under the Declaration of Covenants, however, does not begin until the first Residential Use Permit (RUP) is issued for the first available WDU. Therefore, in order to specify the date on which the control period starts, a First Rider to the Declaration of Covenants is also required to be filed by the developer.

Attachments:

- A. Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer
- B. First Rider to Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer
- C. Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines

**DECLARATION OF WORKFORCE DWELLING UNIT COVENANTS and
NOTICE OF WORKFORCE DWELLING UNIT PROFFER**
(Multiple Family Rental Development)

Tax Map Number: _____
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 **Exhibit A** attached hereto and made a part hereof. As provided for herein, among other things, the Declarant irrevocably transfers, conveys, and assigns to the **Board of Supervisors of Fairfax County, Virginia** and its successors (the “Board”) (“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. In connection with [**Rezoning Name** _____ **and Rezoning Number** _____], approved by 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 established with respect thereto, as the same may be amended from time to time, Declarant proffered certain conditions of development for a multi-family residential apartment building on the Property to be known as [“ _____ ”] (the “Project”).

R-2. On June 22, 2010, the Board of Supervisors of Fairfax County, Virginia established the Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines (the “WDU Policy”), to assist in providing affordable housing opportunities for various

household income levels up to one hundred twenty percent (120%) of Area Median Income for the Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development (“AMI”) or as otherwise provided for in the applicable proffer.

The WDU Policy is attached to this Declaration as **Exhibit C**.

R-3. Proffer [___], “as set forth in **Rezoning Number**”, as may be amended from time to time (the “**Applicable Proffer**”), which is attached to this Declaration as **Exhibit D**, requires Declarant to provide workforce dwelling units (collectively, “**WDUs**”; each individually a “**WDU**”) on the Property in conformance with the WDU Policy in an amount whereby the total number of affordable housing units provided, inclusive of Affordable Dwelling Units (ADU) and WDUs, will be not less than 20 percent of the total residential units constructed on the Property. WDUs required under the Applicable Proffer will be administered in accordance with the WDU Policy and any applicable regulations established with respect thereto.

R-4. Declarant has agreed that in consideration of benefits conferred upon Declarant under the rezoning and the Policy and in compliance with Declarant’s obligations under the Applicable Proffer, Declarant will make available on the Property [___] WDUs, with the unit types, size and number of bedrooms as designated on the approved site plan for the Property, which site plan is attached hereto as **Exhibit B**, all of which will be operated and maintained in compliance with the WDU Policy.

R-5. The WDU Policy establishes certain conditions, limitations, and controls on the WDUs that remain in effect with regard to rental and occupancy for a period (the “**Control Period**”) beginning on the date the first Residential Use Permit (“**RUP**”) is issued on the first available WDU until fifty (50) years thereafter; such latter date to be specified in a First Rider to Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer to be recorded against the Property after determination of such date (the “**First Rider**”). If at any time during the Control Period the Project converts to condominium, the WDUs will be offered for sale under the WDU Policy and a new control period of thirty (30) years will be recorded at the time of the initial sale. Subsequent resale of WDUs shall be controlled for a new thirty (30) year control period.

R-6. The WDU Policy provides that during the Control Period, WDUs will be offered only at rents permitted under the WDU Policy and to persons (collectively, “Eligible Tenants”, each individually an “Eligible Tenant”) who meet the income criteria established under the WDU Policy and Applicable Proffer. Nothing provided herein will preclude the Declarant from providing a higher percentage of WDUs for households in the lower income tiers.

R-7. The WDU Policy further provides the Board with certain rights to lease a portion of the WDUs prior to the lease of such units to Eligible Tenants, as set forth more fully below.

R-8. The WDU Policy further provides that these Covenants be recorded and run with the land in favor of the Board for the Control Period.

R-9. In further compliance with and under the terms of the WDU Policy, Declarant is making this Declaration as set forth below.

NOW, THEREFORE, Declarant hereby declares that the Property is subject to these Covenants which touch and concern the land and improvements constituting the Property, that these Covenants will run with the land, and that these Covenants will be binding in accordance with the terms herein on Declarant and all Transferees, as such term is defined in the next sentence, until expiration of the Control Period. For purposes of these Covenants, Transferees is defined as all persons and entities that may hereafter acquire any interest whatsoever in 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”), during the Control Period.

ARTICLE I **RENTAL CONTROLS**

A. Pursuant to the WDU Policy, the Board has certain rights to lease a portion of the WDUs prior to the lease of such units to Eligible Tenants, as follows:

(1) Prior to the issuance of the first RUP for any dwelling unit within the Project, the Declarant will submit to the Fairfax County Department of Housing and Community Development (“DHCD”) and DHCD will execute a Notice of Availability and Rental

Offering Agreement (the “Notice of Availability”), in a form as prescribed by DHCD. The Notice of Availability may be submitted by the Declarant at any time after the issuance of a building permit for the Project. The Notice of Availability will advise DHCD that a particular WDU or WDUs are or will be completed and ready for rental, as well as state the number of bedrooms, floor area, amenities, and rent for each WDU.

(2) Beginning on the date that the Notice of Availability is executed by DHCD and for 30 days thereafter (the “Initial Notice Period”), the Board or its designee has an exclusive right to lease up to one-third (1/3) of the WDUs that are the subject of the Notice of Availability. If the Board elects to lease a particular WDU(s), DHCD on behalf of the Board will notify the Declarant in writing within the Initial Notice Period. The remaining two-thirds (2/3) of the WDUs and any WDUs not leased by the Board or its designee pursuant to this Paragraph A(2) are to be offered to Eligible Tenants. At the Declarant’s option, the Board (or its designee) may lease additional rental units at the WDU rent or market rent as appropriate.

B. No later than the last day of each month, Declarant will provide DHCD with a Monthly Report, verifying under oath that the Declarant and the Eligible Tenants meet the requirements of the WDU Policy and Applicable Proffer.

C. Countywide rental prices will be established by the County Executive such that rental workforce housing is affordable to households in the income tiers as set forth in the WDU Policy and the Applicable Proffer.

ARTICLE II **FINANCING CONTROLS**

A. During the Control Period, these Covenants will be senior to all instruments securing financing, and these Covenants will be binding upon all assignees, mortgagees, purchasers, and other successors in interest. In the event of foreclosure of the Project, the Covenants will not be released.

B. No sale, pledge of a security interest in, or other transfer or foreclosure of a WDU will affect the validity of these Covenants.

C. During the Control Period, the financing of the Property will comply with all of the provisions of the WDU Policy applicable to the Property, as it may be amended from time to time.

ARTICLE III
OCCUPANCY CONTROLS

A. During the Control Period, except for those WDUs leased by the Board, all WDU leases must (i) be with Eligible Tenants for a minimum lease term of six (6) months and a maximum renewable term of one (1) year, (ii) include language requiring the tenant to occupy the unit as his or her domicile, (iii) prohibit subleasing of the unit, and (iv) require continued compliance with the applicable eligibility criteria.

B. Eligible Tenants must continue to meet the income criteria established by DHCD in order to continue occupancy of the WDU. However, a tenant who no longer meets such eligibility criteria due to increased income or other factors may continue to occupy a WDU until the end of the lease term, and then must vacate the unit.

C. The Owner must obtain annually from each Eligible Tenant a Rental WDU Income Certification Affidavit, in the form approved by DHCD, verifying under oath his or her annual income and such other facts and documents that the Owner may require in order to substantiate and ensure that the tenant continues to meet the applicable eligibility criteria. The Owner must provide DHCD with a copy of each new or revised Rental WDU Income Certification affidavit on an annual basis. If a WDU tenant fails to provide the Owner with such executed affidavit within thirty (30) days of a written request, 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 Owner.

D. If a WDU tenant fails to occupy the WDU for a period in excess of sixty (60) days, unless such failure is approved in writing by DHCD, default will occur. 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.

E. Notwithstanding the provisions of Paragraphs B, C, and D above, if the Owner immediately designates an additional comparable unit as a WDU to be leased under the

controlled rental price and requirements of the WDU Policy and this Declaration, the tenant who is no longer an Eligible Tenant may continue to lease such unit at the market value rent.

ARTICLE IV
DEED AND CONTRACT RESTRICTIONS

All deeds conveying any interest in any of the Property during the Control Period will 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 will contain a complete and full disclosure of the restrictions and controls established by the Policy.

ARTICLE V
ASSIGNMENT OF RIGHTS TO THE BOARD

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

ARTICLE VI
RIGHT TO ENFORCE

If the Board determines that a default has occurred under these Covenants, the Board, 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 the Policy. No remedy conferred upon or reserved to the Board 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 in equity.

No delay or omission to exercise any right or power conferred under the WDU Policy or hereunder, will impair any such right or power or will be construed to be a waiver thereof. Any liens filed pursuant to the WDU Policy will not relate back in time, but will be effective as of the date recorded.

ARTICLE VII
BINDING ON ALL SUCCESSORS

These Covenants are binding upon the Property and the WDUs, 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 will run with the land.

ARTICLE VIII
NO AMENDMENTS

During the Control Period, these Covenants cannot be amended or released unless by written instrument executed by the Board

ARTICLE IX
SEVERABILITY

If any provision of these Covenants is held invalid or unenforceable, such holding will not invalidate or make unenforceable any other provision hereof.

ARTICLE X
MISCELLANEOUS

- A. The headings herein are for reference purposes only and will not affect the meaning or interpretation of the terms and conditions hereof.
- B. The Recitals and the Exhibits referenced in this Declaration are hereby fully incorporated into this Declaration as if fully set forth and restated herein.
- C. Declarant acknowledges that it and its counsel have reviewed and revised this Declaration and that the normal rule of construction to the effect that any ambiguities are to

be resolved against the drafting party shall not be employed in the interpretation of this Declaration or any exhibits or amendments thereto.

[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

Approved Site Plan

EXHIBIT C

**Board of Supervisors' Tysons Corner Urban Center Workforce Dwelling
Unit Administrative Policy Guidelines**

Adopted On June 22, 2010

EXHIBIT D

Applicable Proffer