

DECLARATION OF WORKFORCE HOUSING COVENANTS, CONDITIONS AND RESTRICTIONS

Rental

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (herein "Declaration") is dated as of the ____ day of _____ 20____, by and between _____, its successors and assigns (herein, the "Declarant"), Anne Arundel County, Maryland (herein, the "County"), and Arundel Community Development Services, Inc. (herein, "ACDS").

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in Anne Arundel County which is more particularly described on Exhibit A attached hereto and incorporated herein by reference (herein, the "Property"); and

WHEREAS, pursuant to §18-10-175 of the Anne Arundel County Code (2005, as amended) (the "County Code"), the County has established a Workforce Housing Conditional Use ("Workforce Housing Conditional Use") which requires that at least sixty percent (60%) of the rental units in a Workforce Housing project must be occupied by households whose incomes that do not exceed sixty percent (60%) of the area median income adjusted for household size for the Baltimore-Columbia-Towson MD Metropolitan Statistical Area, as defined and published annually by the United States Department of Housing and Urban Development ("AMI"); and

WHEREAS, Declarant proposes to construct a rental community on the Property pursuant to the Workforce Housing Conditional Use, known as _____ (the "Project"), consisting of ____ units of which ____ units will be available to households whose incomes do not exceed sixty percent (60%) of the AMI. This Declaration is intended to set forth the Declarant's agreement regarding how the Workforce Housing Conditional Use requirements will be satisfied and pursuant to which the dwelling units to be constructed upon the Property will be maintained as Workforce Housing; and

WHEREAS, this Declaration shall apply to and be enforceable by the County or its designee, including ACDS, against Declarant, its successors and assigns, and all current and future owners of the Property during the term of this Declaration, and shall restrict the sale, resale, and use of the Property as provided herein.

NOW THEREFORE, Declarant does hereby publish and declare that the Property shall be held, conveyed, encumbered, used, occupied and transferred, subject to the following covenants, conditions, restrictions and obligations, all of which are declared to be in the furtherance of a common plan for the improvement, enjoyment and use of the Property, and all of which shall run with the land and shall be binding on any person or entity acquiring or owning any interest in the Property, and their personal representatives, heirs, successors and assigns for the term stated herein.

I. DEFINITIONS

1. *ACDS* shall mean Arundel Community Development Services, Inc., a Maryland nonprofit corporation created by the County to oversee and manage the County's housing and community development activities, and its successors.
2. *Declarant* shall mean the Declarant as identified herein and all successors and assigns of the Declarant.
3. *Eligible Household* shall mean a household whose income does not exceed sixty percent (60%) of AMI.
4. *Rent Limits* shall mean the rent limits for the Workforce Housing Units, which must be equal to, or less than the rents published on an annual basis for the Low-Income Housing Tax Credit ("LIHTC") Program by the State of Maryland Department of Housing and Community Development for households with income at sixty percent (60%) AMI by bedroom size.
5. *Workforce Housing Units* shall mean the rental units that are required to be occupied by Eligible Households pursuant to the Workforce Housing Conditional Use.

II. COVENANTS RUNNING WITH THE LAND

The Declarant declares that the Property shall be held, owned, leased, or otherwise conveyed, transferred, developed, rehabilitated, improved, built up, occupied, or otherwise used, subject to the covenants, conditions and restrictions set forth in this Declaration. The Property may be subject to additional restrictions imposed by other lenders or other parties and, in the event of any conflict between the restrictions imposed by this Declaration and any additional restrictions imposed, the more restrictive conditions shall prevail. During the term of this Declaration, as set forth in Section III below, this Declaration shall be deemed a covenant running with the land and shall pass to and be binding upon all heirs, assigns and successors in title to the Property.

This Declaration shall be recorded among the Land Records of Anne Arundel County prior to the conveyance of any Workforce Housing Unit. Any lease or deed conveying a Workforce Housing Unit during the duration of this Declaration shall contain conspicuous language reciting that the unit is subject to this Declaration and include the date and recording reference of this Declaration.

III. DURATION; RELEASE

- A. The covenants, conditions and restrictions set forth in this Declaration shall continue and remain in full force and effect at all times with respect to the Property for thirty (30) years, commencing on the date of receipt of a certificate of occupancy for the Project.

- B. The Property may be released from the restrictions of this Declaration at any time if the Anne Arundel County Office of Planning and Zoning verifies in writing that all permits, plan applications and approvals related to the Project have expired without completion, have been terminated, or are otherwise void. Release of this Declaration shall be effective upon the recordation among the Land Records of Anne Arundel County of a release that includes a copy of the written verification from the Office of Planning and Zoning.

IV. OCCUPANCY

During the term of this Declaration, the Declarant shall rent ____ one-bedroom units, ____ two-bedroom units, and ____ three-bedroom units, to Eligible Households. Upon taking an application from a prospective Eligible Household, the Declarant shall determine and document the annual income of the household in a manner and in such form as ACDS shall from time to time prescribe. Alternately, if the Property is financed through the LIHTC program, the Declarant shall be responsible for certifying tenant incomes in compliance with applicable Internal Revenue Service and LIHTC requirements and ACDS shall not require additional income certification, provided that ACDS shall have the right to monitor compliance in a LIHTC development at any time during the term of this Declaration.

V. CHANGING HOUSEHOLD INCOME AND MARKET TURNOVER

In the event the income of an Eligible Household increases above sixty percent (60%) of AMI, the household may continue to reside in the unit and Declarant shall make the next available non-Workforce Housing Unit of the same bedroom size available to an Eligible Household. In the event that turnover results in a reduction in the number of Eligible Households below the number required herein, the Declarant shall make available the next vacant non-Workforce Housing Unit to an Eligible Household until the requirements are again met.

VI. RENT ROLLS

The Declarant shall maintain monthly rent rolls. The rent rolls shall include all units including the Workforce Housing Units that are occupied by Eligible Households, with the tenant name, unit number, bedroom size, tenant household income, utility allowance and the amount of rent paid by the tenant. The rent roll shall also identify any vacant units. Upon request, the Declarant shall allow ACDS access to the rent roll to verify occupancy and rents of the Workforce Housing Units.

VII. SUBORDINATION

A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on the Property or a Workforce Housing Unit shall notify ACDS in writing at least thirty (30) days prior to the date of the foreclosure sale. If the Property or a Workforce Housing Unit is sold at a foreclosure sale (including a transfer by deed in lieu of foreclosure) by the secured party, the County and ACDS shall cooperate with the secured party and sign the necessary documentation to terminate these covenants as to

the Property or the Workforce Housing Unit and record such termination among the Land Records. The County reserves the right to make a claim against any surplus proceeds for payment of any charges or fees payable upon default as provided in Article VIII(A) of this Declaration.

VIII. ENFORCEMENT

- A. The rights hereby granted include the right of the County, or the County's designee, including ACDS, to enforce this Declaration against the Declarant, or any successors in title, independently by appropriate legal proceedings and to obtain injunction and other appropriate relief against any violations and shall be in addition to, and not in limitation of, any other rights and remedies available to the County or the Declarant.
- B. Without limitation of any other rights or remedies of the County, in the event of any occupancy of the Workforce Housing Units in violation of the provisions of this Declaration, the County shall be entitled to the following remedies, after notice and an opportunity to cure within forty-five (45) days, which remedies shall be cumulative and not mutually exclusive:
 - 1. Damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Household; and
 - 2. If the Property, or any part of it, received a full or partial waiver of any County charges or fees, including impact fees, utility fees, utility connection charges, or other exempted fees or charges, as a result of including the Workforce Housing Units, the County is entitled to recoupment and payment of any such charges in full, in the amount that would have been due at the time the development was approved, as if the Property did not include Workforce Housing Units, which charges shall be a lien upon the Property in the full amount of the charges and fees waived, plus annual interest to accrue at the rate for overdue property taxes as set forth in § 4-1-103 of the County Code, all of which shall be collectable and enforceable in the same manner as property taxes in accordance with §1-8-101 of the County Code.
- C. Declarant grants the County or its designee, including ACDS, the right to enter upon the Property upon reasonable advance notice for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Property, which the County may determine to be necessary or appropriate, to prevent, remedy or abate any violation of this Declaration, including by court order.
- D. In addition to the foregoing, in the event of a violation of the provisions of this Declaration, the County may take appropriate enforcement action against the Declarant, including, without limitation, legal action to compel the Declarant to comply with the requirements of this Declaration. The Declarant shall pay all fees and expenses including legal fees of the County in the event the County prevails in such legal action.

IX. SEVERABILITY

If any provision of this Declaration is held invalid, the remainder of this Declaration shall not be affected thereby and all other parts of this Declaration shall nevertheless be in full force and effect.

X. WAIVER

One or more waivers by the County of any covenants or conditions or of any breach of same shall not be construed as a waiver of any subsequent breach of the same or other covenant or condition; and the consent and approval of the County to any act by Declarant requiring the County's consent or approval shall not be deemed to be a waiver and shall still render necessary the County's consent or approval to any subsequent or similar act by Declarant.

XI. GOVERNING LAW FORUM

This Declaration shall be construed according to the laws of the State of Maryland without regard to those principles governing choice or conflicts of law. Any litigation arising from the application, interpretation or enforcement of rights under this Declaration shall be brought in the State courts located in Anne Arundel County, which shall have subject matter and personal jurisdiction, and, to the extent permitted by law; the parties waive removal of any such action to the federal courts.

XII. NOTICE

Any notice required to be delivered under this Declaration shall be delivered to the parties by email and USPS mail according to the following contact information:

Declarant:

ACDS: Arundel Community Development Services, Inc.
2666 Riva Road, Suite 210
Annapolis, MD 21401
Attn: Erin Karpewicz
ekarpewicz@acdsinc.org

County: Anne Arundel County Office of Law
2660 Riva Road, 4th Floor
Annapolis, MD 21401
Attn: County Attorney
gregory.swain@aacounty.org

XIII. TIME OF ESSENCE

Time is of the essence in this Declaration.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered this Declaration under seal as of the date first written above.

ATTEST:

DECLARANT:

By: _____(SEAL)

Name: _____

Title: _____

State of _____, _____ County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared [**Name, Title, Organization**], known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she has full authority to execute and in fact executed, said Declaration for the purposes herein contained, and further acknowledged the foregoing Declaration to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public: _____

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ATTEST:

ARUNDEL COMMUNITY DEVELOPMENT
SERVICES, INC.

By: _____(SEAL)
Erin Karpewicz, Chief Executive Officer

State of Maryland, Anne Arundel County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Erin Karpewicz, Chief Executive Officer of Arundel Community Development Services, Inc., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that she has full authority to execute and in fact executed, said Declaration for the purposes herein contained, and further acknowledged the foregoing Declaration to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ANNE ARUNDEL COUNTY, MARYLAND

Christine M. Anderson
Chief Administrative Officer

State of Maryland, Anne Arundel County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Christine M. Anderson, Chief Administrative Officer for Anne Arundel County, Maryland, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that she has full authority to execute and in fact executed, said Declaration for the purposes herein contained, and further acknowledged the foregoing Declaration to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Gregory J. Swain, County Attorney

By: _____
Gregory J. Swain, County Attorney

Date: _____

EXHIBIT A

Property Description