Subdivision or Development Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Also known as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

MONTGOMERY COUNTY, MARYLAND

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

1401 Rockville Pike, 4th Floor, Rockville, Maryland 20852

**MODERATELY PRICED DWELLING UNITS**

**DECLARATION OF COVENANTS**

**FOR RENTAL SUBDIVISIONS**

**THIS DECLARATION OF COVENANTS**, made this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, hereinafter set forth by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, owner (hereinafter referred to as **Declarant**).

**NOW, THEREFORE**, Declarant hereby declares that all of the apartment rental units listed on Exhibit 1 attached hereto and hereinafter described as the Moderately Priced Dwelling Units (**MPDUs**) must be held, conveyed, leased and/or rented subject to the following covenants, conditions, and restrictions:

**ARTICLE I**

Declarant is the owner of all of the MPDUs set forth and described in Exhibit 1 which MPDUs are the subject of this Declaration of Covenants (**Covenants**).

**ARTICLE II**

For a period of 99 years beginning on the date that the first MPDU is available for rental, or such other period as established by law (the **Control Period**), the MPDUs must not be rented for an amount in excess of the maximum monthly rental price established from time to time in accordance with Chapter 25A of the Montgomery County Code, 2014, as amended, and all applicable Executive Regulations (**Chapter 25A** or **County Code**). The MPDU Rents for the MPDUs during the control period are set in accordance with Executive Regulation and are subject to adjustment from time to time.

**ARTICLE III**

During the Control Period, the MPDUs must not be conveyed or sold for a price greater than that determined and approved by the County Executive prior to such sale and in accordance with Chapter 25A.

**ARTICLE IV**

Declarant, its assigns and successors, hereby irrevocably grants unto Montgomery County, Maryland (the **County**) all rights, to enforce and maintain the terms, conditions and requirements of this Declaration of Covenants, in accordance with Article V below.

**ARTICLE V**

The Declarant or the County may enforce these Covenants by a proceeding, at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction herein contained, to restrain any violation hereof or to recover damages or monies or to proceed against the land or property herein described to enforce any lien or obligation created by or resulting from these Covenants.

**ARTICLE VI**

These Covenants are binding upon the MPDUs, upon the Declarant and its successors and assigns, and upon all transferees and transferors of the title to the MPDUs for the term of these Covenants. Notwithstanding the foregoing sentence, these Covenants are not binding upon the tenants and lessees of the MPDUs.

**ARTICLE VII**

During the term of these Covenants, any sales contract, any deed of conveyance by the Declarant or its assigns or successors, any subsequent deed or transfer, or an assignment of a deed of conveyance by any successor subsequent owner of the MPDUs, must contain conspicuous language specifically reciting that the MPDUs are subject to these Covenants and the requirements of Chapter 25A, and referencing the date of recordation of these Covenants among the land records (**Land Records**) of Montgomery County, including the Book and Page.

**ARTICLE VIII**

During the Control Period, the Covenants cannot be amended without the prior written consent of the County.

**ARTICLE IX**

These Covenants will terminate automatically on the day following the expiration of the Control Period.

**ARTICLE X**

A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on an MPDU must notify the Department of Housing and Community Affairs in writing at least thirty (30) days prior to the date of the foreclosure sale. If the MPDUs are sold at a foreclosure (including by a deed in lieu of foreclosure) by the lender, the County shall cooperate with the lender and sign the necessary documentation to terminate the Covenants and record such termination among the Land Records. The County reserves the right to make a claim for payment to the County’s Housing Initiative Fund from any surplus proceeds resulting from such transfer in accordance with Chapter 25A. No such payment will be required in the event the MPDUs are rented at the approved MPDU Rents for the remainder of the Control Period.

**ARTICLE XI**

The Declarant or the County may enforce these Covenants by a proceeding at law or in equity against any person or persons violating or attempting to violate intentionally or otherwise, any covenant or restriction herein contained, either to restrain any violation hereof or to recover damages or monies, or to proceed against the MPDU that is the subject of the violation to enforce any lien or obligation created by or resulting from these Covenants. No remedy conferred upon or reserved to the County by these Covenants is intended to be exclusive of any other remedy or remedies available at law or in equity, but each and every such remedy is cumulative and is in addition to every other remedy given under these Covenants. No delay or omission by the County in exercising any right or power accruing upon any failure to perform under this Article will impair any such right or power or will be construed to be a waiver thereof.

**ARTICLE XII**

The County acknowledges and agrees that to the extent that the Property receives financing through the Low Income Housing Tax Credit Program in accordance with Section 42 of the Internal Revenue Code of 1986 as amended,, the MPDUs shall be governed by the financing’s programmatic requirements and the requirements set forth in the regulatory agreement recorded against the Property in connection with the Low Income Housing Tax Credits (the **Regulatory Agreement**) during the use period set forth in the Regulatory Agreement (the **Use Period**), provided that this financing requires at least 30% of the housing units to be affordable at or below the MPDU level. Upon expiration of the Use Period, which may be extended with additional or successive Use Period or Periods, this Declaration of Covenants shall govern for the years remaining in the Control Period. At that time, the Declarant must amend these Covenants to designate the MPDUs for the years remaining in the Control Period in accordance with the requirements of Chapter 25A and these Covenants, with review and approval by DHCA.

**OR**

The County acknowledges and agrees that to the extent that the Project receives permanent financing that is funded through the issuance of tax-exempt bonds or is insured by the Federal Housing Administration (**FHA**), the MPDUs shall be governed by the financing’s programmatic requirements and the requirements set forth in the regulatory agreement recorded against the Project property in connection with such tax-exempt bond or FHA-insured financing (the **Regulatory Agreement**) during the use period set forth in the Regulatory Agreement (the **Use Period**), provided that this financing requires at least 12.5% of the housing units to be affordable at or below the MPDU level. Upon expiration of the Use Period, these Covenants shall govern for the years remaining in the Control Period. At that time, the Declarant must amend these Covenants to designate the MPDUs for the years remaining in the Control Period in accordance with the requirements of Chapter 25A and these Covenants, with review and approval by DHCA.

**ARTICLE XIII**

The County acknowledges and agrees that the MPDUs shall not be fixed units during the Use Period, and that any unit in the Property that (a) is rented to a household with a qualifying annual income within the permissible income limit, (b) meets the MPDU program unit mix requirements as it relates to bedroom size and/or square footage, (c) is rented with a Lease that complies with the MPDU requirements, and (d) is included and addressed in the reports to the County required hereunder may be counted towards satisfying the MPDU requirement of the Site Plan. If a unit initially designated as an MPDU becomes vacant and the last occupant was a qualified household, it will continue to be designated as an MPDU if it is rented to another qualified household. Otherwise, that vacant unit shall continue to be considered an MPDU until the next available unit in the property of comparable size and/or bedroom count (the **Next Available Comparable Unit**) is rented to a qualified household, at which point the Next Available Comparable Unit will replace the vacant unit as the MPDU. If the annual income of a household occupying a unit then-designated as an MPDU increases such that it exceeds the permissible income limits of an MPDU, the Declarant shall not be deemed to be non- compliant with this Declaration of Covenants with respect to such unit so long as the Declarant either (i) leases the Next Available Comparable Unit to a qualified household, or (ii) promptly designates another unit in the Property of comparable size and/or bedroom count that is currently occupied by a qualifying household pursuant to a Lease that that complies with the MPDU requirements as an alternate MPDU. The number of MPDUs must not fall below the percentage required by Chapter 25A at any time, and the bedroom distribution of the MPDUs must meet the requirements of Chapter 25A and these Covenants at all times.

**ARTICLE XIV**

In the event any provision of these Covenants shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of these Covenants.

**JURATS APPEAR ON FOLLOWING PAGE**

**IN WITNESS WHEREOF,** Declarant has caused these presents to be executed by (name) its (title), and does appoint (name) its authorized agent to acknowledge and deliver these presents.

**DECLARANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert typed name of business entity)

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**STATE OF** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **)**

**)ss:**

**COUNTY OF** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **)**

**I HEREBY CERTIFY** that on this day of , 20 , before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared

(name), (title) of

(Declarant) and that he/she did acknowledge that he/she executed the foregoing instrument on behalf of (Declarant) for the purposes therein contained, and further acknowledged the foregoing instrument to be the act of (Declarant).

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

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTARY PUBLIC**

**Exhibit 1**

**Property Description**

Subdivision or Development Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Also known as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

This property was acquired by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Deed is recorded at Book \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Page \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Record Plat is recorded in Plat Book \_\_\_\_\_\_\_\_\_\_\_\_\_ at Plat Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Property Tax Identification Number(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LIST OF MPDUs**

|  |  |  |  |
| --- | --- | --- | --- |
| **Street Address/Building Designation** | **Unit**  **No.** | **No. of Bedrooms** | **No. of Baths** |
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