

THIS DOCUMENT IS BEING RE-RECORDED TO INSERT RECORDING INFORMATION ON EXHIBIT A

11/17/2011 034-30-2448
034-39-8861
034-39-9485
034-40-3610

Return to: Odlin, Feldman & Pittleman, P.C.
9302 Lee Highway, Suite 1100 (B0X60)
Fairfax, VA 22031
Attn: JSB/JAB

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

THIS DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

("Declaration") is made as of the 20th day of July, 2011, by LOUDOUN RESERVE L.C., a Virginia limited liability company ("Declarant"), the owner of certain property ("Property") located in Loudoun County, Virginia, as described on Exhibit A attached hereto and made a part hereof.

20111117-0072107	
Electronic Recording	Pages: 7
Loudoun County Recorder, VA	11/17/2011 11:14:44AM
Gary M. Clemens, Clerk	

RECITALS

WHEREAS, on June 16, 1993 the Board of Supervisors of Loudoun County, Virginia ("Board" or "County") established an Affordable Dwelling Unit Program ("Program") to assist in providing affordable housing for persons with moderate income when it adopted a new Zoning Ordinance; and

WHEREAS, the Program is intended to be administered in accordance with Article 7 of the Loudoun County Zoning Ordinance, Chapter 1450 of the Loudoun County Codified Ordinance and the regulations established with respect thereto (the ordinances and the regulations, as the same may be amended from time to time, are collectively referred to hereinafter as the "Ordinance"); and

WHEREAS, the Ordinance requires, in pertinent part, that owners of certain land seeking a rezoning or special exception or subdivision for development of projects included in the Program provide a number of affordable dwelling units (collectively, the "Affordable Dwellings", each individually referred to as an "Affordable Dwelling") for sale or rent to qualified individuals, all in accordance with and under the conditions set forth in the Ordinance; and

WHEREAS, Declarant has agreed that in consideration of benefits conferred upon Declarant under the Ordinance and in compliance with Declarant's obligations under the Program, the land described on Exhibit A attached hereto and made a part hereof, together with all improvements thereon (collectively, the "ADUs", each individually referred to as an "ADU"), shall be designated as the Affordable Dwellings on the Property in compliance with the Ordinance and shall be for sale to Certified Purchasers, as hereinafter defined; and

WHEREAS, the Ordinance provides that no ADUs shall be offered for sale to the general public until the date ("Availability Date") on which all of the time periods referenced in the Ordinance have expired and the requirements therein have been fulfilled regarding the right to acquire Affordable Dwellings conferred by the Ordinance on (i) the County or its successor in interest; (ii) persons who met the income criteria established by the County and have received a Certificate of Qualification from the County ("Certified Purchasers") in accordance with the Ordinance; (iii) any qualified non-profit housing groups ("Non-Profit Groups") designated in writing by the County. (The period from the date hereof until the Availability Date is referred to herein as the "Initial Control Period"); and



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Loudoun County, VA Pgs: 7
08/23/2011 3:55:02PM
Gary M. Clemens, Clerk

WHEREAS, The Ordinance establishes certain conditions, limitations and controls on these ADUs that are to remain in effect with regard to resale and occupancy of each of the Affordable Dwellings for a period (the "Resale Control Period") beginning on the date the deed of conveyance from Declarant to the first purchaser of each of the Affordable Dwellings is recorded until fifteen (15) years thereafter. In addition, the Ordinance establishes certain conditions regarding the distribution of proceeds from the resale of each ADU, and certain procedures with regard to the right of the County to acquire each of the Affordable Dwellings, for a period beginning upon expiration of the Resale Control Period until thirty-five (35) years thereafter (the "Extended Control Period"). (The "Initial Control Period", the "Resale Control Period" and the "Extended Control Period" shall be herein collectively referred to as the "Control Periods"); and

WHEREAS, the Ordinance further provides that with regard to each of the Affordable Dwellings, covenants shall be recorded that will run with the land in favor of the County for the Control Periods specifying certain terms and conditions of the Program applicable to each of the Affordable Dwellings; and

WHEREAS, the Ordinance requires that the covenants include provisions prohibiting the total aggregate amount of principal and accrued interest for all financing secured by an ADU from exceeding the purchase price (as adjusted in accord with the Ordinance, using the restrictions applicable during the Resale Control Period); and

WHEREAS, In further compliance with the Ordinance under the terms of the Program, Declarant is making this Declaration as set forth below.

NOW, THEREFORE, Declarant hereby declares that the ADUs shall be subject to the covenants set forth herein ("Covenants") which shall be binding in accordance with the terms herein on Declarant and all Transferees of the ADUs until expiration of the applicable Control Periods. For purposes herein, Transferees shall be deemed all persons and entities that may hereafter acquire any interest whatsoever in any of the ADUs, 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 SALE CONTROLS

During the Initial Control Period, no Transfer of any of the ADUs, or any part thereof, shall be made unless the County, the Certified Purchasers and the Non-Profit Groups shall have received the notices required by, and shall have been afforded the opportunity to purchase the ADUs in accordance with, the Ordinance.

ARTICLE II

ORDINANCE CONTROLS

A. During the Resale Control Period, no Transfer of any of the ADUs, or any part thereof, shall be made at a sales price in excess of the maximum sales price permitted pursuant to the Ordinance.

B. During the Resale Control Period, no Transfer of any of the ADUs, or any part thereof, shall be made except in compliance with all other requirements of the Ordinance, including, without limitation, the obligation to offer each of the ADUs exclusively through the County for sixty (60) days (with an additional 30 days in which to close) each time any ADU is offered for sale, and the County shall have waived its option to acquire the ADU or the time period with respect thereto shall have expired, before offering such ADU for resale to any other party.

C. During the Control Periods, each of the ADUs shall be subject to all provisions of the Ordinance.

D. During the Control Periods, all lenders or other parties who have or may seek to place a lien on any of the ADUs shall provide to the County, or their successors, written notice of any delinquency or default under any mortgage, deed of trust, or other instrument or agreement that may permit a lien to be filed against any of the ADUs, and shall offer the County at least sixty (60) days in which to cure any such delinquency or default ("Right to Cure").

E. During the Control Periods, these Covenants shall be senior to all instruments subsequently recorded on the Property or any of the ADUs, and shall be binding upon all Transferees; provided, however, that if any ADU is sold to a bona fide purchaser for value at a foreclosure sale, or if a lender accepts a deed in lieu of foreclosure, the restrictions contained in these Covenants with regard to such ADU shall terminate if all requirements of the Ordinance have been satisfied, including the obligation of the secured lender benefited by the foreclosure to provide the County with the Right to Cure.

F. During the Extended Control Period, no Transfer of any of the ADUs, or any part thereof, shall be made unless the County shall have been given the right of first refusal to acquire the ADU in accordance with the Ordinance.

G. During the Extended Control Period the owner of an ADU may offer the ADU for sale at fair market value, provided that the difference between the actual sales price and that price allowed pursuant to the Ordinance shall be divided equally between the owner and the County of Loudoun Housing Trust Fund. For purposes of this section G, the "price allowed pursuant to the Ordinance" shall mean the price as calculated using the restrictions applicable during the Resale Control Period.

H. During the Control Periods the total aggregate amount of principal and interest for all financing secured by an ADU shall not exceed the owner's purchase price (as adjusted in accord

with the Ordinance, using the restrictions applicable during the Resale Control Period). Any financing in excess of the owner's purchase price (as adjusted in accordance with the Ordinance, using the restrictions applicable during the Resale Control Period) shall not be secured by any interest in the applicable ADU.

ARTICLE III

PRINCIPAL DOMICILE REQUIREMENTS

Any Transferee of an ADU, except for the County and any non-profit housing development agencies or corporations approved expressly in writing by the County, must occupy the ADU as such Transferee's principal domicile, and must not lease or rent or permit exclusive occupancy of the ADU to any other party or parties. Each year, on or within thirty (30) days prior to June 1, the owner of each ADU shall submit to the County, without notice or demand therefor, an affidavit executed by such owner, on a form designated by the County, certifying such owner's continuing occupancy of the ADU.

ARTICLE IV

DEED AND CONTRACT RESTRICTIONS

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

ARTICLE V

ASSIGNMENT OF RIGHTS TO COUNTY

Declarant, and Declarant's heirs, successors and assigns, 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 these Covenants.

ARTICLE VI

RIGHTS TO ENFORCE

If the County shall determine that any default has occurred under these Covenants, the County, 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, either to restrain any violation hereof or to recover damages, including attorneys' fees and the costs of collection, or to proceed against the applicable ADU in the enforcement of any lien or obligation

created by or resulting from these Covenants as allowed under the Ordinance. No remedy 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 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. 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 any of the ADUs. 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 ADU, upon the Declarant and the Declarant's heirs, successors and assigns, and upon all Transferees of title to each of the ADUs for the applicable Control Periods and shall run with the land.

ARTICLE VIII

NO AMENDMENTS

These Covenants cannot be amended, or released, unless by written instrument executed by the County, until expiration of the Control Periods, except with respect to a foreclosure conducted in accordance with the Ordinance.

ARTICLE IX

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 X

HEADINGS

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

IN WITNESS THEREOF, Declarant LOUDOUN RESERVE L.C., a Virginia limited liability company, has caused these presents to be executed by Steven B. Peterson, its ~~_____~~, its corporate seal affixed hereto, and does hereby appoint ~~_____~~, its true and lawful attorney in fact to acknowledge and deliver these presents.

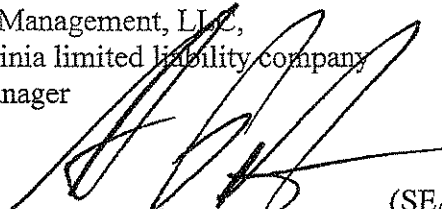
Witness:

Beth A. Bennett

DECLARANT

LOUDOUN RESERVE L.C.

By: MVP Management, LLC,
a Virginia limited liability company
Its Manager

By:  (SEAL)
Name: Steven B. Peterson
Title: Manager

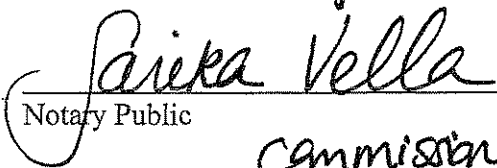
COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Steven B. Peterson, as Manager of MVP Management, LLC, the Manager of LOUDOUN RESERVE L.C., whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 20th day of July, 2011.

My commission expires:

8/31/12


Notary Public

*Commissioned as
Sarika Desai*

Notary Registration No.: 7175658

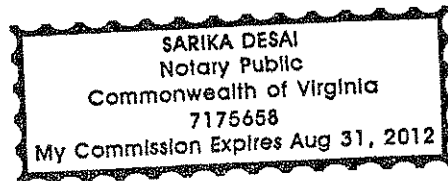


EXHIBIT A

Lots Twenty-eight (28), Thirty (30), Thirty-four (34), Thirty-six (36), Forty (40), Forty-four (44) and Forty-eight (48), as shown on Plat titled "Record Plat Section 1 TOWNES AT AUTUMN OAKS Instrument No. 200706290049225 Instrument No. 201003170015224", prepared by J2 Engineers, Inc. of Manassas, Virginia, dated August 10, 2009, and revised through ~~August~~ ^{July} 18, 2011, recorded heretofore among the land records of Loudoun County, Virginia, as Instrument No. 2011 0823-0051409