DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS FOR SALE

THIS DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS FOR SALE ("Declaration") is made on this date November 12th, 20 21, by Stanley Martin Homes, LLC, a Delaware limited liability company ("**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, 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 sale (collectively, the "**Affordable Dwelling Units**" or "**ADUs**", each individually referred to as an "**Affordable Dwelling Unit**" or "**ADU**"); and

[**WHEREAS**, the Board, pursuant to approved rezoning application, ZMAP 2014-0003 and ZCPA 2019-0009 ("**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 ADUs for sale 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 sale 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, the Property, together with all improvements thereon, shall be designated as Affordable Dwelling Unit(s) subject to this Declaration and the covenants set forth in this Declaration ("**ADU Covenants**"), and the Ordinance; and

WHEREAS, the Ordinance established certain notices, terms, conditions, limitations and controls on ADUs applicable during the initial sale of ADUs ("ADU Initial Control Period"); and

WHEREAS, the Ordinance establishes certain notices, terms, conditions, limitations and controls on ADUs that are to remain in effect with regard to resale, non-judicial foreclosure sale, and occupancy of ADUs for a period of fifteen years after recordation of the deed from the initial sale of such ADU ("ADU Fifteen-Year Control Period"); and

WHEREAS, the Ordinance establishes certain notices, terms, conditions, limitations and controls on ADUs that are to remain in effect with regard to resale, non-judicial foreclosure sale, and occupancy of ADUs for a period beginning upon expiration of the ADU Fifteen-Year Control Period, but prior to the expiration of fifty years after recordation of the deed from the initial sale of such ADU ("ADU Extended Control Period"); and

WHEREAS, the "ADU Initial Control Period", the "ADU Fifteen-Year Control Period" and the "ADU Extended Control Period" shall be herein collectively referred to as the "ADU Control Periods"); and

WHEREAS, the Ordinance further provides that at the time of the initial sale of an ADU, the owner shall provide in the sales contract and shall record, prior to the deed for the initial sale of the ADU, a declaration of ADU covenants running with the land in favor of the County within the ADU Control Periods; and

WHEREAS, in further compliance with 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 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 shall be subject to this Declaration and the ADU Covenants. For purposes of this Declaration, in accordance with the Ordinance, these terms are defined as follows:

a. "Adjusted ADU Sale Control Price" refers to the ADU sale control price determined by the ADUAB as adjusted in accordance with section 1450.08(a)(3) of Chapter 1450 of the Codified Ordinances of Loudoun County;
b. "ADU Sale Control Price" refers to the County-wide sale control price of ADUs established initially and semiannually thereafter by the ADUAB;
c. "ADUAB" refers to the Affordable Dwelling Unit Advisory Board;
d. "Affordable Dwelling Unit" or "ADU" refers to those units provided in accordance with Article 7 of the County Zoning Ordinance, as amended, for which the initial and subsequent sale/resale price is regulated by the Ordinance, as amended, including the Property;
e. "Board" refers to the Loudoun County Board of Supervisors, Virginia;
f. "Certified Purchaser" 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;
g. "County" refers to the County of Loudoun, Virginia;
h. "Department" refers to the Department of Family Services, Housing and Community Development Division, or such other department of division as the Board may hereafter designate;
i. "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;

j. "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;

k. "Property" refers to the property described on Exhibit A attached hereto, which may include one or more real properties, each an Affordable Dwelling Unit, subject to this Declaration and the Ordinance. When one real property, Property refers to such real property; when more than one real property, Property refers to each real property/dwelling unit described in Exhibit A;

l. "Qualified Nonprofit" refers to a nonprofit entity whose purpose is to further the provision of affordable housing in the County, which has Internal Revenue Code 501(C)(3) status, adequate cash flow/reserves to purchase property, expertise in property management, and is so designated by the Board;

m. "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;

n. "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 ADU Control Periods.

ARTICLE I
INITIAL SALE OF AFFORDABLE DWELLING UNITS

During the ADU Initial Control Period, the Property shall not be initially offered for sale to the general public until the date on which all of the time periods referenced in the Ordinance for the initial sale of ADUs have expired and the requirements therein have been fulfilled regarding the notices and right to acquire the Property at the ADU Sale Control Price

conferred by the Ordinance on (i) the Board or its designee, which may include Qualified Nonprofits; (ii) Certified Purchasers; and (iii) Qualified Nonprofits. After expiration of the ADU Initial Control Period, the Property, if not sold, can be sold as market rate unit(s) provided that the difference between the actual sales price and the ADU Sale Control Price shall be divided equally between the seller and the County of Loudoun Housing Trust. Any amount payable to the County of Loudoun Housing Trust that remains unpaid shall automatically become a lien on the Property, with priority over any other lien recorded on such Property after this Declaration, and shall attach to any proceeds from the Resale or the Non-Judicial Foreclosure Sale of the Property.

ARTICLE II
ORDINANCE CONTROLS

A. During the ADU Control Periods, the Property shall be subject to this Declaration and all provisions of the Ordinance.

B. During the ADU Fifteen-Year Control Period, the Property shall not be the subject of a Resale for an amount that exceeds the Adjusted ADU Sale Control Price. At least forty-five (45) days prior to the Property being offered for Resale, it shall first be offered exclusively to Certified Purchasers through the Board, and then to the Board or its designee, which may include a Qualified Non-Profit, at Board's discretion. Upon the expiration of the 45-day period, if neither a Certified Purchaser nor the Board or its designee has elected to purchase the Property, it may be offered to members of the general public at fair market value, provided that the difference between the actual Resale price and the Adjusted ADU Sale Control Price shall be divided equally between the seller and the County of Loudoun Housing Trust.

C. During the ADU Extended Control Period, at least forty-five (45) days prior to the Property being offered for Resale, it shall be offered at fair market value exclusively to the Board or its designee. Upon the expiration of the 45-day period, if the Board or its designee has elected not to purchase the Property, it may be offered to members of the general public at fair market value, provided that the difference between the actual Resale price and the Adjusted ADU Sale Control Price shall be divided equally between the seller and the County of Loudoun Housing

Trust.

D. Any amount owed to the County of Loudoun Housing Trust pursuant to paragraphs B and C of this Article II that remains unpaid after the Resale of the Property shall automatically become a lien on the Property with priority over any lien recorded after this Declaration, with the exception of the deed of trust that financed the Certified Purchaser, owner of the Property, who is reselling the Property, up to the amount secured by the Property in accordance with this Declaration and the Ordinance. Such lien shall also attach to any proceeds from the Resale of the Property, with same priority as provided herein. Should the proceeds from the Resale of the Property be insufficient to pay the amount owed to the County of Loudoun Housing Trust, the lien for the unpaid balance shall remain on the Property.

E. Non-Judicial Foreclosure Sale of the Property may be conducted at fair market value. Prior to the expiration of the ADU Extended Control Period and at least forty-five (45) days prior to an ADU being sold at a Non-Judicial Foreclosure Sale, the lender, lien holder, or trustee, as applicable, shall provide to the Board or its designee written notice that the Property will be subject to a Non-Judicial Foreclosure Sale. For a forty-five (45) day period after receipt of such notice, the Property may first be offered by its owner at fair market value exclusively to the Board or its designee. The Board or its designee may bid on the Property at any Non-Judicial Foreclosure Sale. The trustee foreclosing on the Property may use the proceeds from the Non-Judicial Foreclosure Sale to pay the costs and expenses of such foreclosure and to satisfy the deed(s) of trust that encumber the Property up to the secured amount permitted by this Declaration and the Ordinance. Thereafter, out of the surplus funds, an amount equal to half of the difference between the actual Non-Judicial Foreclosure Sale price and the Adjusted ADU Sale Control Price as adjusted as of the date of the Non-Judicial Foreclosure Sale shall be paid by the foreclosing trustee to the County of Loudoun Housing Trust. Any amount owed to the County of Loudoun Housing Trust that remains unpaid shall automatically become a lien on the Property, which shall attach to the surplus funds from the Non-Judicial Foreclosure Sale of such Property, with priority over any lien recorded after this Declaration. Should the surplus funds be insufficient to pay the County of Loudoun Housing Trust, the trustee shall pay the entirety of the surplus funds to the County of Loudoun Housing Trust, and no lien shall remain on the Property for the balance. Upon the Non-Judicial Foreclosure Sale of the Property, all restrictions imposed by this Declaration and the

ADU Covenants will automatically and permanently terminate with respect to the foreclosed Property.

F. During the ADU Control Periods, any lender, lien holder, or trustee, as applicable, shall provide to the Board or its designee 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 a default, although the Board shall have no obligation to cure the default ("Right to Cure").

G. During the ADU Control Periods, the total aggregate amount of principal of all financing instruments secured by the Property shall not exceed its Adjusted ADU Sale Control Price. Any financing in excess of such Adjusted ADU Sale Control Price shall not be secured by any interest in the Property.

H. This Declaration and the ADU Covenants, and any lien imposed on the Property in favor of the County pursuant to this Declaration and the Ordinance, 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 subordinate to this Declaration and the ADU Covenants including, without limitation, restrictions on the use and occupancy of the Property, income eligibility requirements, and the rights of the County and the Board as set forth herein.

ARTICLE III
PRINCIPAL DOMICILE REQUIREMENTS, VIOLATIONS AND PENALTIES

During the ADU Control Periods, and except in cases where the owner of the Property is transferred because of U.S. military or Foreign Service temporary tours of duty, hardship tours, or in time of war, such owner must occupy the Property as his/her primary domicile. On or before June 1st of each year that they own the Property, its owner must provide an annual executed affidavit certifying their continuing occupancy of the Property. Owner who do not occupy the Property as his/her primary domicile shall be subject to injunction or other suit, action or

proceeding to require such owner to either sell the Property to someone who meets the eligibility requirements established pursuant to this Declaration and the Ordinance or to occupy the Property as his/her primary domicile.

Violation of the Ordinance, this Declaration and the ADU Covenants herein shall carry penalties and liens on the Property as set forth in the Ordinance and this Declaration.

ARTICLE IV
DEED AND CONTRACT RESTRICTIONS

During the ADU Control Periods, all deeds conveying any interest in the Property shall contain language specifically reciting that the Property is subject to this Declaration and the ADU Covenants. Contracts pertaining to the transfer of the Property during the ADU Control Periods also shall contain a complete and full disclosure of the price restrictions and controls established by this Declaration and the Ordinance.

ARTICLE V
ASSIGNMENT OF RIGHTS TO COUNTY

Declarant, in its capacity as declarant of the ADU 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 Covenants.

ARTICLE VI
RIGHTS TO ENFORCE

If the County shall determine that any default has occurred under this Declaration and the ADU 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 Covenants to (i) restrain any violation hereof, (ii) to proceed against the Property in the enforcement of any lien or obligation created by or resulting from this Declaration and the ADU 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 Covenants shall run with the land in favor of the County and be binding upon the Property and (i) Declarant and its successors-in-interest and assigns, and their successors-in-interest and assigns; and (ii) 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 applicable ADU Control Periods.

ARTICLE VIII
NO AMENDMENTS

This Declaration and the ADU Covenants herein cannot be amended or released, unless by written instrument executed by the County, until expiration of the ADU Control Periods.

ARTICLE IX
SEVERABILITY

If any provision of this Declaration and the ADU Covenants herein 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 to the Property's owner(s) shall be deemed effective upon delivery by U.S. mail or other means of actual delivery to the Property's mailing address.

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 Stanley Martin Homes, LLC has caused the foregoing Declaration of Affordable Dwelling Unit Covenants for Sale to be executed by J. Truett Young as Vice President of Land, of Stanley Martin Homes, LLC under seal by its duly authorized representative.

DECLARANT:

By: _____ (SEAL)

Name: J. Truett Young

Title: Vice President of Land

COMMONWEALTH OF VIRGINIA

COUNTY OF LOUDOUN, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that J. Truett Young, as Vice President of Land of Stanley Martin Homes, LLC, whose name is signed to the foregoing Declaration of Affordable Dwelling Unit Covenants for Sale, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

_____

Notary Public

My Commission Expires: 4/30/2025

Notary Registration #: 7920251

TIMOTHY FRANCIS SHRINER
NOTARY PUBLIC
REG #7920251
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 4/30/25

EXHIBIT A

Lot 1 (PIN: 129-40-2210), Lot 3 (PIN: 129-40-1305), Lot 35 (PIN: 129-49-4489), Lot 40 (PIN: 129-49-5499), Lot 66 (PIN: 129-49-9107), and Lot 73 (PIN: 129-49-9824), Poland Hill as duly dedicated, platted and recorded by instrument and plat recorded as Instrument Number 20200804-0064929.

This Property was acquired by Declarant by deed recorded among the Land Records as Instrument Number 20200804-0064929. This Property is being developed pursuant to subdivision application SBRD 2018-0005.

The lots designated hereby as Affordable Dwelling Units are shown on exhibit B attached hereto.