

**ADOPTION OF AN AMENDMENT TO CHAPTER 112  
(ZONING) OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium, Lobby Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia, on Monday, February 27, 2006, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 112 (Zoning) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA:**

Amend Chapter 112 (Zoning Ordinance), as follows:

**Amend Article 2, General Regulations, Part 8, Affordable Dwelling Unit Program,  
as follows:**

- **Amend Sect. 2-807, Condominium Developments, by revising Par. 2 to read as follows:**
  - 2. If a development is initially built as a rental project under single ownership and such development was subject to the requirements of this Part and then should subsequently convert to a condominium, then:
    - A. The provisions of Sect. 804 above shall apply to such condominium development.
    - B. The affordable dwelling units required pursuant to this Part shall be specifically identified by unit number as part of the recorded condominium declaration.
    - C. The sales price for such affordable dwelling units being converted shall be established by the County Executive pursuant to this Part. If the owner of such condominium conversion elects to renovate the affordable dwelling units, the Affordable Dwelling Unit Advisory Board shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into the Advisory Board's recommendation to the County Executive respecting the permissible sales prices for such renovated affordable dwelling units.
    - D. For any condominium conversion development for which an application for registration of a condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, after February 28, 2006, the affordable dwelling units may not be retained as rental units within a condominium conversion development if such units are also subject to condominium conversion. The term of sales price control for affordable dwelling units located within a condominium conversion development for which the initial sale of individual units occurred on or after February 28, 2006, shall be for a period of thirty (30) years and the units shall be priced in accordance with the provisions of this Part. However, upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year period of sales price control, the sales prices for each subsequent resale and/or transfer for each such affordable dwelling unit to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial thirty (30) year control period and each subsequent thirty (30) year control period may be referred to as the renewable sale price control period or control period.
    - E. For any condominium conversion development for which an application for registration of the condominium conversion was filed with the Virginia Real

Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, on or before February 28, 2006, the affordable dwelling units may be retained as rental units within the development. The condominium declaration and an amended covenant associated with the affordable dwelling units shall specifically set forth:

- (1) The term of sales price control for affordable dwelling units located within a condominium conversion development for which the initial sale of individual units occurred before February 28, 2006, shall be for a period of twenty (20) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required for the development.
  - (2) All rental affordable dwelling units within the development shall be transferred to the same entity or individual.
  - (3) The affordable dwelling units shall be rented in accordance with the rental provisions of the ADU Program, including but not limited to, pricing and monthly reporting, and no additional condominium or homeowner association fees shall be assessed to the tenants of the affordable dwelling units.
  - (4) Parking for the affordable dwelling units shall be provided in accordance with the applicable provisions of the Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.
  - (5) The affordable dwelling units shall be provided in substantially the same bedroom mix as the market rate units in the development.
  - (6) The tenants of the rental affordable dwelling units shall have access to all the site amenities that were provided when the affordable dwelling units were originally established in the development.
  - (7) All other covenants set forth in the original covenants and all regulations set forth in the Zoning Ordinance shall remain in full force and effect.
- F. The rental tenant occupants of the affordable dwelling units subject to the condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive pursuant to this Part. Subsequently, the Fairfax County Redevelopment and Housing Authority shall have the right to purchase any or all of the affordable dwelling units that are not purchased by such rental tenant occupants at the sales price established for such units by the County Executive pursuant to this Part. Such units shall be offered to the Fairfax County Redevelopment and Housing Authority and purchased by it in accordance with the provisions of Par 2B of Sect. 812 below.

- **Amend Sect. 2-812, Covenant, Price and Financing Control of Affordable Dwelling Units, to read as follows:**

1. Except as qualified by this Section, subsequent price control of affordable dwelling units shall be as follows:
  - A. For affordable dwelling units for which the initial sale and/or rental occurred prior to March 31, 1998, the prices for subsequent resales and rerentals shall be controlled for a period of fifty (50) years after the initial sale and/or rental transaction for the respective affordable dwelling unit, provided that the control period may be amended upon recordation of a revised covenant in accordance with Par. 2 below; or
  - B. For affordable dwelling units for which the initial sale/rental occurred on or after March 31, 1998, and before February 28, 2006, the prices for subsequent resales shall be controlled for a period of fifteen (15) years and rerentals shall be controlled for a period of twenty (20) years after the initial sale and/or rental transaction for the respective affordable dwelling unit; or
  - C. For affordable dwelling units for which the initial sale occurred on or after February 28, 2006, the price for subsequent resales shall be controlled for a period of thirty (30) years after the initial sale. However, upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year period of control, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial thirty (30) year control period and each renewable subsequent thirty (30) year control period may be referred to as a sales price control period. For any affordable dwelling unit that is owned for an entire 30 year control period by the same individual(s), the price control term shall expire and the first sale of the unit after such expiration shall be in accordance with Par. 5 below; or
  - D. For affordable dwelling units for which the initial rental occurred on or after February 28, 2006, the prices for subsequent rental shall be controlled for a period of thirty (30) years after the initial rental.
2. In developments containing affordable dwelling units offered for sale, Affordable Dwelling Unit Program covenants, which are applicable to the affordable dwelling units and which run in favor of and are in the form prescribed by the Fairfax County Redevelopment and Housing Authority, shall be recorded simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. All such initial and any subsequent or revised Affordable Dwelling Unit Program covenants thereafter recorded shall expressly provide all of the following:

- A. The dwelling unit may not be resold during any sales price control period set forth herein for an amount that exceeds the limits set by the County Executive and, prior to offering the dwelling unit for sale, the sales price shall be approved by the Department of Housing and Community Development.
- B. Each time the unit may be offered for resale during any sales price control period set forth herein it shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority. The owner of each such unit to be resold shall provide the Fairfax County Redevelopment and Housing Authority with written notification sent by certified mail that the affordable dwelling unit is being offered for sale. The Fairfax County Redevelopment and Housing Authority shall have the exclusive right to purchase such unit at a purchase price that shall not exceed the control price of the unit at that time as established in accordance with this Part. The Fairfax County Redevelopment and Housing Authority shall notify the owner in writing within thirty (30) days after receipt of the written notification from the owner advising whether or not the Fairfax County Redevelopment and Housing Authority will enter into a contract to purchase the unit on the form approved by the Fairfax County Redevelopment and Housing Authority and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing shall occur within ninety (90) days after receipt by the Fairfax County Redevelopment and Housing Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied. The Fairfax County Redevelopment and Housing Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this Part or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale. Affordable dwelling units so acquired/contracted for purchase by the Fairfax County Redevelopment and Housing Authority shall be resold to qualified homebuyers in accordance with the Affordable Dwelling Unit Program.
- C. For the initial sale of an affordable dwelling unit after the expiration of any sales price control period set forth herein, it shall first be offered exclusively to the Fairfax County Redevelopment and Housing Authority for sixty (60) days. In all instances, whether or not the Housing Authority purchases the unit, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price (as adjusted in accordance with Par. 4 below) shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County.
- D. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
- E. For the initial and revised covenants recorded before July 2, 2002:

- (1) the covenants shall be senior to all instruments securing permanent financing, and that the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.
  - (2) the covenants shall state that any or all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.
- F. For any individual affordable dwelling unit initially conveyed between July 2, 2002 and February 28, 2006 and the resale of any individual affordable dwelling unit conveyed between July 2, 2002 and February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded between July 2, 2002 and February 28, 2006:
- (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in Par. 8B below, as and only to the extent provided for in Par. 8B below.
  - (2) the covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
  - (3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in this Part.
  - (4) each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

- (5) the covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B below and shall state those provisions.
  - (6) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 below). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 below) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- G. For any individual affordable dwelling unit initially conveyed on or after February 28, 2006, the resale during the sales price control period of any individual affordable dwelling unit conveyed on or after February 28, 2006 and for the conversion of rental affordable dwelling units to condominiums on or after February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to February 28, 2006, and for initial and revised covenants recorded on or after February 28, 2006:
- (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in Par. 8B below, as and only to the extent provided for in Par. 8B below.
  - (2) the covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
  - (3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
  - (4) each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide

the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

- (5) the covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B below and shall state those provisions.
- (6) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 below). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 below) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (7) the covenants shall specifically state that upon any resale and/or transfer to a new owner of such affordable dwelling unit within the initial thirty (30) year control period, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale or transfer of the affordable dwelling unit.

At the time of the initial sale of an individual affordable dwelling unit, which sale occurs on or after March 31, 1998, the owner/applicant shall provide in the sales contract for each affordable dwelling unit offered for sale a copy of the recorded covenant running with the land in favor of the Redevelopment and Housing Authority. The owner/applicant shall include in the deed for each affordable dwelling unit sold an express statement that the affordable dwelling unit is subject to the terms and conditions of the Affordable Dwelling Unit Program covenants recorded pursuant to this Part with a specific reference to the deed book and page where such covenants are recorded. At the time of the initial sale and any resale of an individual affordable dwelling unit, which sale or resale occurs on or after July 2, 2002, the owner/applicant shall also include in the deed for each affordable dwelling unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the affordable dwelling unit is limited and that other terms and conditions apply, including, but not limited to, a right for the Fairfax County Redevelopment and Housing Authority or a nonprofit agency designated by the County Executive to acquire the affordable dwelling unit on certain terms in the event of a pending foreclosure sale, as set forth in the Affordable Dwelling Unit Program covenants and/or in the Affordable Dwelling Unit Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

For individual affordable dwelling units conveyed prior to 12:01 AM March 31, 1998, the owner may modify the existing covenant recorded with such conveyance by recording a revised covenant in the form prescribed by the Redevelopment and Housing Authority. If the recordation of such modified covenant occurs prior to February 28, 2006, the fifteen (15) year control period with respect to for sale units and the twenty (20) year control period with respect to



rental units shall be deemed to have commenced on March 31, 1998. If the recordation of such modified covenant occurs on or after February 28, 2006, the renewable sales price control period of thirty (30) years shall apply with respect to for sale units and the thirty (30) year control period with respect to rental units shall apply and shall be deemed to have commenced on March 31, 1998. Any revised covenants hereafter recorded that reduce the control period from fifty (50) years shall expressly provide that the terms and conditions of other previously recorded covenants shall continue to apply, as amended to provide that the terms thereof shall set forth terms and conditions in accordance with the terms herein.

3. The owner of each such unit to be resold during any sales price control period and, subject to the provisions of Par. 2E of Sect. 807 above, for the conversion of rental affordable dwelling units to condominium affordable dwelling units shall provide the Fairfax County Redevelopment and Housing Authority with written notification sent by certified mail that the affordable dwelling unit is being offered for sale. The Fairfax County Redevelopment and Housing Authority shall have the exclusive right to purchase such unit at a purchase price that shall not exceed the control price of the unit at that time as established in accordance with this Part and such owner shall sell the unit to the Fairfax County Redevelopment and Housing Authority. The Fairfax County Redevelopment and Housing Authority shall notify the owner in writing within thirty (30) days after receipt of the written notification from the owner advising whether or not the Fairfax County Redevelopment and Housing Authority will enter into a contract to purchase the unit on the form approved by the Fairfax County Redevelopment and Housing Authority and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing shall occur within ninety (90) days after receipt by the Housing Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied. The Fairfax County Redevelopment and Housing Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this Part or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale. Affordable dwelling units so acquired/contracted for purchase by the Fairfax County Redevelopment and Housing Authority shall be resold to qualified homebuyers in accordance with its Affordable Dwelling Unit Program.

If the Fairfax County Redevelopment and Housing Authority does not elect to purchase an available affordable dwelling unit, for the first sixty (60) days individual affordable dwelling units are offered for resale, the units shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority to persons who meet the Redevelopment and Housing Authority's criteria, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. Upon the expiration of the sixty (60) day period, the unit may be offered for sale to the general public to persons who meet income requirements hereunder and at the current controlled price as set pursuant to Sect. 810 above.

4. Units offered for sale during any control period shall not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser which shall be paid by the seller. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the Fairfax County Redevelopment and Housing Authority. No increase in sales price shall be allowed for the payment of brokerage fees associated with the sale of the unit, except that with respect to units purchased and resold by the Fairfax County Redevelopment and Housing Authority, an increase of one and one half (1 1/2) percent of the resale price shall be allowed for marketing and transaction costs, and with respect to resales by other owners, an increase of one and one-half (1 1/2) percent of the sales price shall be allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the Redevelopment and Housing Authority and who serves as a dual agent for both the qualified buyer and the seller in the resale of the affordable dwelling unit in accordance with sales procedures approved by the Housing Authority. The one and one-half (1 1/2) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the affordable dwelling unit as part of the disbursement of settlement proceeds.
5. For the initial sale of an affordable dwelling unit after the expiration of any control period, the Fairfax County Redevelopment and Housing Authority shall be offered the exclusive right to purchase the unit. The owner of each such unit shall provide the Redevelopment and Housing Authority with written notification sent by registered or certified mail that the unit is for sale. If the Redevelopment and Housing Authority elects to purchase such unit, the Authority shall so notify the owner in writing within thirty (30) days of receipt of the written notification from the owner and the all cash closing shall occur within sixty (60) days thereafter.

In all instances, whether or not the Redevelopment and Housing Authority elects to purchase such unit, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by

the Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of the owner's purchase and the date of resale shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlements proceeds. Such equity interest of the Fairfax County Housing Trust Fund shall apply to each affordable dwelling unit. Notice of such equity interest of the Fairfax County Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia encumbering any affordable dwelling unit. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or shall be paid otherwise by the seller. In no event shall any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

6. In the case of a rental project having received zoning approval before February 28, 2006, where such approval includes a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this Part, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for twenty (20) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this Part, which date shall be subsequently specified in the covenant, that no such unit may be rented for an amount which exceeds the limits set by the County Executive, that the project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, that the covenant shall be senior to all instruments securing permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.

In the case of a rental project that receives zoning approval on or after February 28, 2006, or received zoning approval before February 28, 2006 where such approval does not include a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this Part, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for thirty (30) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this Part, which date shall be subsequently specified in the covenant, that no such unit may be rented for an amount which exceeds the limits set by the County Executive, that the project is subject to the provisions of the Affordable Dwelling Unit Program as set

forth in the Fairfax County Zoning Ordinance, that the covenant shall be senior to all instruments securing permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.

For initial and revised covenants recorded before July 2, 2002, the covenants shall provide that in the event of foreclosure, the covenants shall be released. For initial and revised covenants recorded between July 2, 2002 and February 27, 2006, the covenants shall terminate in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with Par. 8B below. For initial and revised covenants recorded on or after February 28, 2006, the covenants shall remain in full force and effect in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with Par. 8B below. Additionally, prior to the issuance of the first Residential Use Permit for any of the dwelling units within the development, the owner shall provide the Notice of Availability and Offering Agreement required by Par. 1 above.

7. Rentals subsequent to the initial rental during the twenty (20) or thirty (30) year control period, as applicable, shall not exceed the rental rate established by the County Executive pursuant to Par. 8 of Sect. 811 above.
8. The financing of affordable dwelling units provided pursuant to this Part shall comply with the following:
  - A. For initial and revised covenants recorded before July 2, 2002:
    - (1) the covenant shall be senior to all instruments securing permanent financing, and the covenant shall be binding upon all assignees, mortgages, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.
    - (2) the covenants shall state that all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.
    - (3) any and all financing documents shall provide that, in the event of foreclosure of projects and units subject to the requirements of this Part that are comprised of rental or for sale affordable dwelling units, the lender shall give written notice to the Fairfax County Redevelopment and Housing Authority of the foreclosure sale at least thirty (30) days prior thereto and in the case of individual for sale affordable dwelling units, the Housing Authority shall have the right to cure the default.
  - B. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on

or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002:

- (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenant shall be released in the event of foreclosure by an Eligible Lender, as and only to the extent provided for in Par. 8B(5) below.
- (2) all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
- (3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in this Part.
- (4) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling unit shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 above). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 above) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (5) an Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or on an individual for sale affordable dwelling unit or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing. An Eligible Lender shall have the right to foreclose on a rental project or an affordable dwelling unit and the covenants on the rental project or affordable dwelling unit shall terminate upon such foreclosure by the Eligible Lender in the event that the rental project or the affordable dwelling unit is sold by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program as set forth in this Part, the covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with

respect to an individual for sale affordable dwelling unit having provided the County Executive and the Redevelopment and Housing Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as such terms are defined in Par. 8B(6) below. An Eligible Lender with respect to a rental project shall not be required to provide the Right to Cure and the Right to Acquire.

- (6) each Eligible Lender with respect to an individual for sale affordable dwelling unit shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale affordable dwelling unit subject to the foreclosure notice given pursuant to Par. 8B(8) below (Right to Acquire). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Redevelopment and Housing Authority elects not to exercise its right, at any time during such ninety (90) day period after the Redevelopment and Housing Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An affordable dwelling unit so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the Affordable Dwelling Unit Program and not for conversion of the affordable dwelling unit to a rental unit. The Right to Acquire shall entitle the Redevelopment and Housing Authority or the nonprofit agency designated by the County Executive to acquire the affordable dwelling unit at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the affordable dwelling unit owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price (as adjusted in accordance with Par. 4 above), and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.
- (7) in the event that neither the Fairfax County Redevelopment and Housing Authority nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for sale affordable dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.
- (8) each Eligible Lender and any other lender secured by an interest in a rental project or an individual for sale affordable dwelling unit shall be required prior to foreclosing to provide the County Executive and the

Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.

- (9) all financing documents for financing secured by an individual for sale affordable dwelling unit shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Fairfax County Redevelopment and Housing Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Fairfax County Redevelopment and Housing Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.
9. Notwithstanding the above, for multiple family dwelling rentals that were initially rented before February 28, 2006, all of the relevant provisions of this Part shall apply for the 20 year control period except that after the initial 10 years and after provision of 120 day written notice to the Housing Authority and the tenants of the affordable dwelling units, the owner may elect to file a rezoning application and comply with whatever requirements result there from, or may elect to pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all bonus and affordable dwelling units and provide relocation assistance to the tenants of the affordable dwelling units in accordance with the requirements of Article 4 of Chapter 12 of The Code. Thereupon, the units previously controlled by this Part as affordable dwelling units shall be released fully. For multiple family dwelling rentals that were initially rented on or after February 28, 2006, all of the relevant provisions of this Part shall apply for the thirty (30) year control period; provided, however, that the provision for an early release of the covenants after the initial ten (10) years set forth above in this paragraph shall not apply.
10. The provisions set forth in Paragraphs 2F and 8B above shall apply and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.
11. In the event of a foreclosure sale of any affordable dwelling unit after September 14, 2004 the following shares of the proceeds of such foreclosure sale shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County:
  - A. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and any individual affordable dwelling unit resold and conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such

initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002, in the event that the individual for sale affordable dwelling unit is sold at the foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined in Par. 8B(6) above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.

- B. For all other individual affordable dwelling units, in all instances, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the foreclosed owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (1) substantial and appropriate replacements or improvements of existing housing components and/or (2) structural improvements made to the unit between the date of the foreclosed owner's purchase and the date of resale (the "Housing Trust Fund Share") shall be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid out of proceeds of the foreclosure sale that are not the Housing Trust Fund Share, as determined in accordance with this paragraph, or shall be otherwise paid by the foreclosed owner. In no event shall any such amounts required to be paid by the foreclosed owner reduce the Housing Trust Fund Share, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

- **Amend Sect. 2-814, Affordable Dwelling Unit Advisory Board, by adding a new Par. 4H, to read as follows:**

- 4. The ADU Advisory Board shall be authorized to hear and make final determinations or grant requests for modifications of the requirements of the Affordable Dwelling Unit Program, except that the ADU Advisory Board shall not have the authority to:
  - H. modify the provisions of Paragraphs 2D and 2E of Sect. 807 above regarding the conversion of rental developments to condominium and the establishment of new condominium developments.



**Article 6, Planned Development District Regulations, Part 4, PRM Planned Residential Mixed Use District, Sect. 6-408, Bulk Regulations, by revising Par. 2 to read as follows:**

2. Maximum floor area ratio: 3.0, provided the maximum floor area ratio permitted by this Part shall exclude the floor area for affordable and bonus market rate units provided in accordance with Part 8 of Article 2.

**This amendment shall become effective on February 28, 2006 at 12:01 a.m.**

**GIVEN under my hand this 27<sup>th</sup> day of February, 2006.**

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**NANCY VEHR**  
**Clerk to the Board of Supervisors**