

INTRODUCTION

This standard form of Notice of Availability and ADU Sales Offering Agreement (Notice) is to be completed by the developer and submitted to the Department of Housing and Community Development (DHCD) for each ADU or group of ADUs which the developer is ready to offer for sale to eligible purchasers.

The ADU Ordinance provides that this Notice may be submitted any time after the issuance of a building permit(s) for the ADU(s) being offered. In practice, in order to begin the process of offering units for sale, other conditions must also be met. To offer ADUs for sale, the Declaration of Affordable Dwelling Unit Covenants must have been recorded and sales prices for the ADUs being offered must have been approved by the County Executive (See the documents, “Declaration of Affordable Dwelling Unit Covenants - For Sale Developments” and “ADU Sales Prices” for details concerning these processes.) Evidence that each of these conditions has been met must be provided as part of the Notice. Copies of approved site plans and/or recorded subdivision plats with notations identifying the ADU lots or units must also be submitted with this Notice.

Units offered must be completed and Residential Use Permits issued within 365 days of the date this Notice is approved. In practice, it has been found that units which will not be ready for occupancy for many months do not sell quickly. However, developers should not wait until ADUs are complete to submit the Notice as it takes time to review and approve the offering, notify potential purchasers on the waiting list, conduct a lottery among potential purchasers, have purchasers select a unit, qualify for financing and go to settlement.

Questions about this Notice or any of the required attachments should be directed to the Affordable and Workforce Housing Program Administrator at 246-5095.

Attachments:

Affordable Dwelling Unit Program Notice of Availability and Offering Agreement (For-Sale Units)

Name of Development: _____

**AFFORDABLE DWELLING UNIT PROGRAM
NOTICE OF AVAILABILITY
AND
ADU SALES OFFERING AGREEMENT
(Revised form April 30, 2007)**

This AGREEMENT is made this _____ day of _____, 20____, by
and between _____, a _____
(Applicant) and the Fairfax County Redevelopment and Housing Authority (the Authority).

WHEREAS, Applicant wishes to offer for sale as Affordable Dwelling Units (ADUs) certain dwelling units described in Schedules A and B, attached hereto, pursuant to the provisions and requirements of Chapter 112.1 (the Zoning Ordinance of Fairfax County, Virginia), Article 5, Sections 5101-5101.12 of the Fairfax County Code, as amended (the ADU Ordinance), and the Regulations concerning the Sale and Rental of Affordable Dwelling Units adopted by the Authority (the Regulations).

NOW, THEREFORE, in consideration of the mutual promises, conditions and obligations provided for herein, the parties agree as follows:

1. Notice of Availability: Applicant hereby offers for sale _____ Affordable Dwelling Units (ADUs) located in _____ (development name), as shown in Site Plan/Subdivision Plat # _____ (Attachments F & G). These properties are more particularly described by lot or unit and subdivision in Schedule A, attached hereto, and made a part hereof. Applicant affirms that Building Permits have been issued for each of these units and that the Declaration of Affordable Dwelling Unit Covenants (Declaration of Covenants) (referenced in Section 9 hereof) for this development has been recorded in the land records of Fairfax County. This notice shall not be considered effective until all information required to establish sales prices for the ADUs in conformance with the Regulations has been submitted by the Applicant and the sales prices have been agreed upon in writing.

2. Physical Description of Individual Units: The physical description of each unit being offered as an ADU, along with the items contained in each unit, is listed in Schedule C, attached hereto, and made a part hereof. Applicant warrants and guarantees that each unit conforms, or will conform at time of delivery by Applicant, to the minimum specifications for Affordable Dwelling Units as required by the Authority.

3. Price:

A. The purchase price of each dwelling unit, as listed in Schedule C, must include those settlement costs listed in the Regulations and the procedures issued by the County Executive for establishing sales prices for ADUs.

B. The base sales price for each dwelling unit is that amount as determined by procedures in effect at the time of the acceptance of this offering agreement.

C. Applicant must construct each ADU listed in Schedule A in accordance with the minimum specifications required by the Authority. Applicant acknowledges having had the opportunity of reviewing these specifications prior to signing this Agreement. The price established for each unit may be adjusted downward by the County Executive, if, in his sole discretion, the minimum specifications for items identified on Schedule C and required for each unit have not been supplied, completed or complied with by the Applicant.

4. Delivery: The units described in Schedule A must be available for occupancy, as determined in compliance with County building code requirements, by the issuance of a Residential Use Permit (RUP), within three hundred sixty-five (365) days from the date of acceptance of this agreement by the Authority. Time is of the essence with respect to the time period provided for in this paragraph.

5. Preferential Offering: For a period of 90 days from the date of final acceptance of this Agreement by all parties, there is a preferential ADU offering period during which the Applicant must make the ADUs offered (other than those which the Authority elects to purchase pursuant to paragraph 6 below) available to persons on the Authority's Affordable Dwelling Unit eligibility list who have Certificates of Qualification. The Authority will provide the Applicant with a list of persons who have Certificates of Qualification, noting the order in which they are to be offered an opportunity to contract to purchase an ADU. Those who contract for an ADU are required to turn in their eligibility certificates to the Applicant or his agent at the time of contracting for the purchase of the property.

6. Notice to Authority: Applicant acknowledges that Authority has the right to purchase up to one-third of the ADUs in any subdivision for a ninety-day period following final acceptance of this Agreement by all parties. Submission of this Agreement shall constitute the required Notice to the Authority of the availability of the ADUs. Additionally, the Authority, after the first 30 days of the 90-day Preferential Offering to those with Certificates of Qualification, may elect to purchase up to one-half of the remaining ADUs then available. The Authority must designate the units which it wishes to purchase in writing. After notification by the Authority of its intent to purchase or not to purchase any of the units, the Applicant may begin negotiating sales of any ADUs which the Authority does not elect to purchase to eligible purchasers. During the 90-day Preferential Offering period, units which the Authority does not elect to purchase shall be offered only to persons holding Certificates of Qualification or to non-profit housing organizations, as described below. The Authority has 30 days from the end of the 90-day period to settle on the units it elects to purchase, provided that RUPs for those units have been issued.

7. Notice to Non-Profit Housing Organizations: After the expiration of 60 days of the 90-day period, any ADUs not committed to the Authority or eligible purchasers with Certificates of Qualification shall be offered for sale to non-profit housing groups designated by the County Executive. The Applicant will be provided a list of such organizations. Applicant acknowledges that the Applicant is required to provide notice by registered or certified mail to the non-profit organizations on this list regarding any ADUs remaining for sale on the 60th day of the 90-day preferential offering period. The Notice shall include the information provided in this Agreement regarding the number of bedrooms, floor area and amenities of each remaining ADU and the approved base sales price of each ADU. The non-profit housing organizations have 30 days from the date of receipt of the notice from the Applicant to commit to purchase the units by so notifying the Applicant in writing and 30 days from the end of the 30-day period to close on the unit provided that a RUP has been issued.

8. Documents: The developer will review the income for all purchasers to ensure the income criteria for the program is met. Within 10 days from the date of execution of a sales agreement for each ADU covered by this Agreement, the Applicant must provide the Authority with copies of the following items: sales contract and original Certificate of Eligibility of the purchaser. Income documentation must also be provided for all purchasers not referred to the developer by the Authority. Proof of income includes a copy of the most recent pay check stub(s) and federal income tax return.

Within 14 days after settlement for each ADU, the Applicant must provide the Authority with copies of both the purchaser's and seller's settlement sheets, as well as a copy of the Deed and the Declaration of Covenants and the completed Monetary Liens and Fairfax County Affordable Dwelling Unit Program Purchaser Certificate for the unit sold evidencing their recordation in the land records of Fairfax County.

9. Declaration of Covenants: The Authority will give the Applicant the form of the Declaration of Covenants, to run with the land, which, among other things, applies to the ADUs which are subject to the requirements of the ADU Ordinance and establishes covenants, restrictions and requirements as set forth in the Declaration of Covenants. The Declaration of Covenants must be completed, including attachment of all necessary legal descriptions, be signed by the Applicant, and be notarized in the form required for recording in the land Records of Fairfax County. The Declaration of Covenants covers the property subject to the ADU Ordinance and specifically identifies all of the ADUs in the development that are to be offered. It must be recorded before the first ADU in the development is offered for sale. A copy of the duly recorded Declaration of Covenants must be provided at or before the time of the execution of this Agreement by the Applicant.

The sales contract for each ADU shall state, among other things, that the unit is part of the Affordable Dwelling Unit program, and is subject to the restrictions of the ADU Ordinance and the Declaration of Covenants running with the land. These provisions are contained in a Rider to Residential Contract of Sale Affordable Dwelling Unit (ADU) Program (Contract Rider) that must be made a part of each ADU sales contract. The form of the Contract Rider will be provided to Applicant by the Authority. The recorded Deed shall contain specific language, as particularly stated in a provision of the Contract Rider, in conspicuous form, and shall indicate the Deed Book and Page reference of the duly recorded Declaration of Covenants.

The Applicant, his agents, heirs, assigns or successors hereby irrevocably assigns to Fairfax County, Virginia and the Authority all its right, title, interest and obligations to enforce the provisions of the Declaration of Covenants referred to herein during the term the Declaration of Covenants is in effect; to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law; or to enjoin any violation or attempted violation of the Declaration of Covenants or the provisions of the ADU Ordinance.

10. Attachments: Attached hereto and made a part here of are the following documents and/or schedules:

- A. Project Information and ADUs: Addresses, lot and/or unit, tax map and building permit numbers of the ADUs being offered (See Schedule A, attached).
- B. General Information Sheet (See Schedule B, attached).
- C. ADU Certification Form (See Schedule C, attached)
- D. Base sales price calculation sheets for each unit type.
- E. Floor plans for each unit type.
- F. Two copies of the approved subdivision record plat identifying the ADUs.
- G. Two copies of the approved site plan that specifically identify the ADUs.
- H. Executed Declaration of Covenants with evidence of recordation.

NOTE: If the Applicant has submitted exhibits D and E at an earlier date and sales prices have been established based on this submission, and if exhibits F, G and H have been submitted with an earlier Offering Agreement for this development, then these exhibits need not be submitted again. However, the Applicant must attach a statement affirming that none of the information provided has changed.

11. Binding Effect: This Agreement is binding upon the Applicant, the Applicant's agents, successors, assigns, personal representatives, and heirs.

12. Waivers: A waiver by the Authority of a specific requirement or default in this Agreement or on the unit must be in writing; such a waiver is not a waiver of any other or subsequent default of similar or different nature.

13. Notices and Liaison: The Authority's liaison to this and any notices sent pursuant to this agreement must be delivered in writing to:

Fairfax County Department of Housing and Community Development
Affordable Housing Development Division
3700 Pender Drive, Suite 300
Fairfax, Virginia 22030
Attention: Affordable and Workforce Housing Program Administrator

Notices to the Applicant shall be sent to: **(Insert notice name and address)**

14. Survival: The terms of the Agreement survive the execution and delivery of any deeds or leases and do not merge therein.

15. Applicable Laws and Regulations: Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement whether or not such laws or regulations are herein specifically enumerated or referred to.

16. Severability: If any part, portion or provision of this Agreement is found to be null, void, illegal, or unenforceable for any reason by any court or governmental regulation or ruling, then only such part, portion, or provision is affected thereby, and the remainder of this agreement will remain in full force and effect.

[signatures begin on next page]

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

WITNESS:

APPLICANT (Insert name below):

By: _____ (SEAL)

Print Name: _____

Title: _____

STATE OF _____,
COUNTY OF _____, to wit:

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, who executed the above instrument, in his/her capacity as _____ of _____ for the uses and purposes herein contained.

WITNESS my hand and seal this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

[signatures continue on next page]

WITNESS:

AUTHORITY:
FAIRFAX COUNTY REDEVELOPMENT
AND HOUSING AUTHORITY

By: _____

Print Name: _____

Title: Assistant Secretary

The 90-day preferential offering period will begin on _____.
(The above date will be determined by the Authority)

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to wit:

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, Assistant Secretary of the Fairfax County Redevelopment and Housing Authority, who executed the foregoing instrument in the name and on behalf of the Authority for the uses and purposes herein contained.

WITNESS my hand and seal this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

SCHEDULE A

**ADU PROJECT INFORMATION
AND
ADUS BEING OFFERED**

Project Information

- 1. Development Name: _____
Is this the legal name of the Subdivision? Yes _____ No _____
If not, what is the legal name? _____
- 2. ADU Structure Type (Single Family Detached/Attached, Multi-Family, per Zoning Ord.):

- 3. Location: _____
- 4. Developer Name: _____
Developer Address: _____
- 5. Zoning Case No: _____
- 6. Site Plan/Subdivision Plat No.: _____

ADUs Being Offered

List individually according to unit type and price category, e.g., three bedroom, 1 and 1/2 bath, interior unit, name of unit, if any, price - \$100,000. Attach approved price calculation sheets for each unit type as Attachment E to this Agreement.

Unit Type # __; **Description:** _____; **Price:** _____

Number of Units: _____

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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SCHEDULE A

Continued (Use as many pages as needed to list by all unit types)

ADUs Being Offered

Unit Type # __; Description: _____; Price: _____

Number of Units: _____

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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Unit Type # __; Description: _____; Price: _____

Number of Units: _____

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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Unit Type # __; Description: _____; Price: _____

Number of Units: _____

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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Unit Type # __; Description: _____; Price: _____

Number of Units: _____

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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**SCHEDULE B
GENERAL INFORMATION SHEET**

1. Contact person for _____
Project Name

Name: _____ Title: _____

Address: _____

Phone Number: _____ Email: _____

2. List appliances included:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. List the association fees:

Condominium Association fees: Amount: _____ Per _____

Homeowner Association fees: Amount: _____ Per _____

Other: Amount: _____ Per _____

4. Are you offering mortgage financing to ADU purchasers? Yes ___ No ___

If yes, what are the terms of this financing? _____

5. If you are constructing ADUs in multiple offerings, when is the anticipated date of the next ADU offering? _____

6. How many ADUs in your next offering? _____

**SCHEDULE C
INDIVIDUAL ADU
CERTIFICATION OF CONFORMANCE**

This form must be completed and notarized for each ADU.

1. Project Name: (From Schedule A) _____

2. Unit Being Offered:(From Schedule A)

Lot/Unit #: _____

Address: _____

Unit Type #/Name: _____ Structure Type _____

Price: _____

3. Finished Floor Area: _____ sq. ft.

4. Number of Bedrooms _____

5. Number of Bathrooms _____ Rough-in Baths _____
Full Half Full Half

6. Basement: Yes _____ No _____ Floor Area: _____ sq. ft.

7. Other Features: _____
(e.g. garage, patio, deck, heat source, privacy fencing, special landscaping, etc.)

8. Amenities: _____
(e.g. tot lot, pool, tennis court, etc.)

In compliance with Article 5, Sections 5101-5101.12 of the Zoning Ordinance of Fairfax County, I hereby certify that the Affordable Dwelling Unit, referenced above, shall be constructed in accordance with the **Specifications for Prototype ADUs** as approved by the Fairfax County Redevelopment and Housing Authority on January 31, 2019 and the Affordable Dwelling Unit Advisory Board on January 10, 2019 and as shall be amended from time to time. In addition, I certify that the approved price reflects actual quotes or contracts for this construction. Failure to comply with the specifications shall be subject to the enforcement provisions of Section 5101.8.F of the Zoning Ordinance.

Signature: _____

Name: _____ Title _____

State of _____,

County of _____, to wit:

The foregoing instrument was acknowledged before me, a notary public in the State and County aforesaid, this ___ day of _____, 20___, by _____ (name), in his/her capacity as _____ (title) of _____.

Notary Public

My Commission Expires: _____

SCHEDULE D
BASE SALES PRICE CALCULATION SHEET

**SCHEDULE E
FLOOR PLANS**

**SCHEDULE F
SUBDIVISION RECORD PLAT**

SCHEDULE G
SITE PLAN

**SCHEDULE H
DECLARATION OF COVENANTS**