

**WORKFORCE DWELLING UNIT  
NOTICE OF AVAILABILITY AND FOR-SALE OFFERING AGREEMENT  
INSTRUCTIONS**

Attached to this cover sheet is the Fairfax County form Workforce Dwelling Unit Notice of Availability and For-Sale Offering Agreement (the “Offering Agreement”), to be used in for-sale developments. The Applicant must fill in all blanks and choose the applicable version of the WDU Policy in Recital 2, deleting the other. In addition, the signature block must accurately state the Applicant’s legal name, the organizational type (such as corporation, limited partnership or limited liability company), the state in which the entity is organized, and contain accurate identification of authorized signing officers, partners, or members, whether entities or individuals.

Prior to the issuance of the Residential Use Permit for the first WDU and before any WDU in the Development may be sold, an Offering Agreement must be completed and submitted for each WDU or group of WDUs. The Offering Agreement must be approved by the Fairfax County Department of Housing and Community Development (“DHCD”) prior to its execution.

The Offering Agreement requires the following seven exhibits:

- Exhibit A      General Development Information
- Exhibit B      General WDU Information
- Exhibit C      WDU Certification of Conformance
- Exhibit D      Floor plans for each unit type
- Exhibit E      Approved subdivision record plat that specifically identifies the WDUs
- Exhibit F      Approved site plan that specifically identifies the WDUs
- Exhibit G      Copy of recorded Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer

NOTE: If Applicant has submitted documents in Exhibits D, E, F, and G with an earlier Offering Agreement for the Development, then these documents do not need to be submitted again. However, the Applicant must attach a statement notifying DHCD.

The WDU Policy provides that the Offering Agreement may be submitted at any time after the issuance of a building permit(s) for the WDU(s) being offered. It is recommended that the Offering Agreement be submitted to DHCD for review at least 90 days prior to the issuance of the RUP for the first WDU. Please direct questions about the Offering Agreement or any of the required attachments to the DHCD Program Administrator at 703-246-6626.

**WORKFORCE DWELLING UNIT NOTICE OF AVAILABILITY and  
FOR-SALE OFFERING AGREEMENT**

This Workforce Dwelling Unit Notice of Availability and For-Sale Offering Agreement (the “Offering Agreement”), is made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (the “Applicant”) and the Fairfax County Redevelopment and Housing Authority (the “Authority”).

**RECITALS**

**R-1.** In connection with [insert Rezoning Name and Rezoning Number], approved by the Board of Supervisors of Fairfax County, Virginia (the “Board”) on [insert date of BOS approval of the rezoning/proffer application], and pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County, and all applicable regulations, all as may be amended from time to time, Applicant agreed to certain proffered conditions for a for-sale development on the Property to be known as [ \_\_\_\_\_ ] (the “Development”).

**R-2. [Version 1 for Building Construction Type 5 (combustible materials)]** On October 15, 2007, the Board established the Workforce Dwelling Unit Administrative Policy Guidelines (the “WDU Policy”), to assist in providing affordable housing opportunities for various household income levels up to 100 percent of Area Median Income for the Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development (“AMI”).

**[Version 2 for all other construction types]** On October 15, 2007, the Board established the Workforce Dwelling Unit Administrative Policy Guidelines (the “WDU Policy”), to assist in providing affordable housing opportunities for various household income levels up to 120 percent of Area Median Income for the Washington Standard Metropolitan Statistical Area as specified annually by the Department of Housing and Urban Development (“AMI”).

**R-3.** On October 30, 2018, the Board delegated its authority to administer, regulate, and acquire WDUs to the Authority.

**R-4.** Proffer [\_\_\_\_], as may be amended from time to time, requires Applicant to provide workforce dwelling units on the Property in conformance with the WDU Policy.

**R-5.** The WDU Policy requires that Applicant enter into this Offering Agreement.

## AGREEMENT

**1. Notice of Availability.** In consideration of benefits granted to Applicant under the rezoning and in compliance with the WDU Policy and the applicable proffer, Declarant must make available for sale in the Development [\_\_\_\_\_] workforce dwelling units, of which [all or \_\_\_\_\_] are being offered under this Offering Agreement (collectively, the “WDUs”, and each individually, a “WDU”). The unit types and size and number of bedrooms are designated on the approved site plan and subdivision plat for the Property, which are attached to this Offering Agreement as Exhibit E and Exhibit F. Building Permits have been issued for the WDUs and the Declaration of Workforce Dwelling Unit Covenants and Notice of Workforce Dwelling Unit Proffer (the “Declaration of Covenants”) for this Development has been recorded in the Fairfax County land records.

**2. Physical Description of Each WDU.** Applicant represents and warrants that it has reviewed the WDU Policy, as in effect as of the date of site plan approval for the Development, and that each WDU will conform, at the time of delivery by Applicant, to the WDU Policy. The Authority has the right to inspect the WDUs to determine if Applicant has complied with the WDU Policy. The WDUs are further identified on the following exhibits:

- (a) Exhibit A provides general information about the Development.
- (b) Exhibit B provides general information about the WDUs, by unit type.
- (c) Exhibit C is the WDU Certification of Conformance.

**3. Price.** The purchase price for each WDU is the amount set by the County Executive in effect at the time of the acceptance of this Offering Agreement by the Authority. The price established for each WDU may be adjusted downward by the County Executive, if, in the County Executive’s sole discretion, the minimum specifications for items identified on Exhibit C and required for each WDU have not been supplied, completed, or complied with by the Applicant.

**4. Delivery.** The WDUs must be available for occupancy and determined to be in compliance with Fairfax County building code requirements, as evidenced by the issuance of a Residential Use Permit (RUP) for each WDU, within 365 days from the date this Offering Agreement is executed by the Authority. Time is of the essence with respect to the time period provided for in this Section 4.

**5. Preferential Offerings.**

(a) **The Authority.** The Authority has the exclusive right to purchase one-third of the WDUs for a period of 90 days beginning on the date this Offering Agreement is executed by the Authority (the “90-Day Period”). Execution of this Offering Agreement by the Authority is considered notice to the Board.

(b) **Qualified Purchasers.** The remaining two-thirds of the WDUs and any WDUs that the Authority does not elect to purchase under subsection (a) above must be offered for sale during the 90-Day Period only to persons who meet the income criteria established by the Fairfax County Department of Housing and Community Development (“DHCD”) and who have been issued a Certificate of Qualification by DHCD. DHCD 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 a WDU. Prospective purchasers must turn in their eligibility certificates to the Applicant at the time of contracting for the purchase of the WDU. Additionally, after the first 30 days of the 90-Day Period, the Authority may elect to purchase up to one-half of the remaining WDUs then available. The Authority will designate in writing the units it wishes to purchase.

(c) **Non-Profit Organizations.** During the final 30 days of the 90-Day Period, any WDUs not committed to the Authority or eligible purchasers with Certificates of Qualification must be offered for sale to non-profit housing groups designated by the County Executive. DHCD will provide a list of such organizations to the Applicant. The Applicant must provide notice by registered or certified mail to the non-profit organizations on the list regarding any WDUs remaining for sale. The notice may be sent at any time during the 90-Day Period, and must include the information provided in this Agreement regarding the number of bedrooms, floor area, and amenities of each remaining WDU and the approved sales price of each WDU. A non-profit housing organization has 30 days from receipt of the notice to notify the Applicant in writing of its desire to purchase a WDU and 30 days from the end of the 90-Day Period to close on the WDU, provided that a RUP has been issued.

(d) **General Public.** After the expiration of the time period(s) referenced in Paragraphs 5 a, b and c above, the WDUs not sold may be offered to the general public as for-sale units subject to established WDU prices and the requirements of the proffered conditions.

**6. Documents.** Within 10 days from the date of execution of a sales agreement for each WDU, the Applicant must provide DHCD copies of the sales agreement and original

Certificate of Eligibility of the contract purchaser. The sales agreement must include the Rider to Residential Contract of Sale/WDU Program, which states, among other things, that the unit is part of the WDU program and is subject to the restrictions of the WDU Policy and the Declaration of Covenants. DHCD will provide the form of the Contract Rider to Applicant. Within 14 days after settlement for each WDU, the Applicant must provide DHCD with copies of the final executed Settlement Statement, the recorded Deed, and the recorded Monetary Lien and Fairfax County WDU Program Purchaser Certificate. The Deed must contain specific language, as particularly stated in the Contract Rider, and must indicate the Deed Book and Page reference of the recorded Declaration of Covenants.

**7. Declaration of Covenants.** The recorded Declaration of Covenants is attached as Exhibit G. The legal description attached to the Declaration of Covenants identifies all of the WDUs. The Applicant and its agents, heirs, successors, and assigns irrevocably assign to the Authority all of their right, title, interest, and obligation to enforce the Declaration of Covenants; to institute any proceeding in law or equity with regard to the Declaration of Covenants; and to enjoin any violation or attempted violation of the Declaration or Covenants or the applicable provisions of the Fairfax County Zoning Ordinance.

**8. Notices.** Any notice, demand, or other communication sent under this Offering Agreement must be in writing and sent by (i) personal delivery or (ii) a nationally-recognized, next-day courier service. A notice will be effective upon receipt or refusal by the party to which it is given. For convenience, notices may be sent via email; however, an email notice will not be considered effective until the original notice is received using one of the delivery methods described above. Either Party may change its notice address from time to time by informing the other Party in writing of the new address. Current notice addresses are as follows:

If to the Board, the Authority, or DHCD:

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

If to Applicant:

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

**9. Miscellaneous.**

(a) **Binding Effect.** This Offering Agreement is binding upon and benefits the Board, the Authority, and Applicant and their respective successors and assigns.

(b) **Waiver.** No waiver of any breach of this Offering Agreement will be deemed a waiver of any preceding or succeeding breach. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.

(c) **Survival.** The terms of this Offering Agreement survive the execution and delivery of any deeds or leases and do not merge therein.

(d) **Applicable Laws and Regulations.** Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Offering Agreement, whether or not such laws or regulations are specifically enumerated or referred to in this Offering Agreement.

(e) **Choice of Law.** This Offering Agreement and any dispute, controversy, or proceeding arising out of or relating to this Offering Agreement (whether in contract, tort, common or statutory law, equity, or otherwise) is governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than those of Virginia.

(f) **Venue.** All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia or U.S. District Court for the Eastern District of Virginia, Alexandria Division.

(g) **Headings.** The section headings of this Offering Agreement are for reference only and do not describe the intent of this Offering Agreement or otherwise alter its terms.

(h) **Rules of Construction.**

(1) When a reference is made in this Offering Agreement to a Section or an Exhibit, the reference is to a Section of or an Exhibit to this Offering Agreement.

(2) Whenever the words “include,” “includes,” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation.”

(3) The definitions in this Offering Agreement are applicable to the singular as well as to the plural forms of the terms and to the masculine, feminine, and gender neutral of the terms.

(i) **Severability.** If any provision of this Offering Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Offering Agreement will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

(j) **Counterparts and Distribution.** This Offering Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

(k) **Business Days.** If any date in this Offering Agreement for the performance of any obligations by either party or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with the obligations or delivery will be deemed acceptable on the next business day following the Saturday, Sunday, Legal Holiday, or closing. The term “Legal Holiday” means any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

[REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURES FOLLOW ON NEXT PAGE]

APPLICANT:

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name of Applicant]

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

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



FAIRFAX COUNTY REDEVELOPMENT AND  
HOUSING AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

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

**EXHIBIT A**  
**GENERAL DEVELOPMENT INFORMATION**  
(For-Sale Development)

1. Development Name: \_\_\_\_\_
2. Location (City/Town/Area): \_\_\_\_\_
3. Developer Name: \_\_\_\_\_  
Developer Address: \_\_\_\_\_  
\_\_\_\_\_
4. Zoning Case Number: \_\_\_\_\_
5. Site Plan Number: \_\_\_\_\_
6. What are the fees associated with the WDUs being offered?  
Condominium fees:            Amount: \_\_\_\_\_            Per: \_\_\_\_\_  
Homeowner fees:            Amount: \_\_\_\_\_            Per: \_\_\_\_\_  
Other fees:                    Amount: \_\_\_\_\_            Per: \_\_\_\_\_
7. Are you offering mortgage financing to WDU purchasers?    Yes \_\_\_\_\_    No \_\_\_\_\_  
If yes, what are the terms of this financing? \_\_\_\_\_  
\_\_\_\_\_
8. If all of the WDUs you are required to build in this project are not being offered at this time, what is the anticipated date of the next WDU offering? \_\_\_\_\_
9. How many WDUs do you expect to have in your next offering? \_\_\_\_\_

**EXHIBIT B**  
**GENERAL WDU INFORMATION**  
(For-Sale Development)

1. Development Name: \_\_\_\_\_

2. WDU Structure Type:

Single-family attached

Multiple family

3. In the descriptions below, group the WDUs according to unit type (floor plan type, interior unit or end unit) and price. For example: Three bedroom and one and a half bathroom, interior unit, named the Colonial priced at \$200,000.

**Unit Type #1**

Description \_\_\_\_\_

Price: \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Lot/ 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 #2**

Description \_\_\_\_\_

Price: \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Lot/ 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 #3**

Description \_\_\_\_\_

Price: \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Lot/ 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 #4**

Description \_\_\_\_\_

Price: \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Lot/ 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 #5;**

Description \_\_\_\_\_

Price: \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Lot/ 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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[Continue on additional pages as needed]

**EXHIBIT C**  
**WDU CERTIFICATION OF CONFORMANCE**  
(For-Sale Development)

I hereby certify that the Workforce Dwelling Units described in the pages attached to this Certification will be constructed in accordance with the WDU Policy.

Signature \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

State of \_\_\_\_\_

City/County of \_\_\_\_\_

This WDU Certification of Conformance was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), in his/her capacity as \_\_\_\_\_ (title) of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Notary registration number: \_\_\_\_\_

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

[This form must be completed for each WDU listed in Exhibit B]

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

Lot/Unit Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

1. Finished Floor Area: \_\_\_\_\_ sq. ft.

2. Number of Bedrooms: \_\_\_\_\_

3. Number of Bathrooms: \_\_\_\_\_  
Full Half

4. Basement: \_\_\_\_\_ Basement Floor Area: \_\_\_\_\_ sq. ft.  
Yes No

5. Included appliances:

Dishwasher: \_\_\_\_\_  
Yes No

Microwave: \_\_\_\_\_  
Yes No

Washer: \_\_\_\_\_  
Yes No

Dryer: \_\_\_\_\_  
Yes No

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Other Features: \_\_\_\_\_  
(e.g. garage, patio, deck, privacy fencing, special landscaping, etc.)

7. Development Amenities: \_\_\_\_\_  
(e.g. tot lot, pool, tennis court, etc.)

**EXHIBIT D**  
**FLOOR PLANS FOR EACH UNIT TYPE**  
(For-Sale Development)

**EXHIBIT E**  
**SUBDIVISION RECORD PLAT**  
(For-Sale Development)



**EXHIBIT F**  
**APPROVED SITE PLAN**  
(For-Sale Development)

**EXHIBIT G**  
**RECORDED DECLARATION OF WORKFORCE DWELLING UNIT COVENANTS**  
**AND NOTICE OF WORKFORCE DWELLING UNIT PROFFER**  
(For-Sale Development)