

City of Fairfax, Virginia
Administrative Regulations
Concerning the Sale and Rental of
Affordable Dwelling Units

In accordance with the Provisions of the Affordable Dwelling Unit Program in the City of Fairfax Zoning Ordinance, as adopted by the City Council effective June 23, 2020



Administrative Regulations adopted by the City Council of the City of Fairfax, Virginia on June 23, 2020, pursuant to Section 3.9.2.A of the City of Fairfax Zoning Ordinance

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Affordable Dwelling Units

Section 1

Applicability

Amendments to the City of Fairfax Zoning Ordinance for the City's Affordable Dwelling Unit (ADU) Program became effective June 23, 2020. It applies to sites which are the subject of land use applications yielding 30 or more dwelling units. ADUs also may be provided in developments where they may not be required. In return for an optional increase in density, ADU developments are required to provide a specified percentage of affordable units to households whose incomes do not exceed 70% of the area median income ("AMI") for the Washington, D.C. Metropolitan Statistical Area, as adjusted for applicable household size, for ADUs available for purchase and do not exceed 60% of AMI, as adjusted for applicable household size, for ADUs for rental. The required percentages of ADUs are set forth in Section 3.9.3 of the City's Zoning Ordinance.

These regulations apply to the sale or rental of ADUs constructed in accord with the City's Zoning Ordinance. In the event of inconsistency or conflict between these Regulations and the provisions regarding ADUs in the City of Fairfax Zoning Ordinance, the City of Fairfax Zoning Ordinance shall prevail. These regulations, any forms implemented by or on behalf of the City, and the provisions of the City of Fairfax Zoning Ordinance pertaining to ADUs shall collectively be referred to herein as "the City's ADU Program."

The City may designate an agent for the purpose of administering its ADU Program. If the City designates an agent for such purposes, any reference herein to "the City" shall mean, if applicable, "the City or its agent."

Section 2

Development of ADUs and Notification Concerning Availability of ADUs for Sale or for Rent

A. Site Plans and Subdivision Plats for Developments Which Include ADUs

Section 3.9.6 of the City's Zoning Ordinance requires that certain information concerning ADUs be included on approved site plans, record subdivision plats and building plans for developments which include ADUs. In order to monitor the status of such developments and the number and types of ADUs to be provided, copies of each submission of site plans, plats or building plans to the City of Fairfax Department of Community Development and Planning shall also be submitted to the City's Zoning Administrator.

B. ADU Specifications and Sales Prices/Rents

Units constructed as ADUs must be similar, compatible, and comparable to the market-rate units in that development as required by the City's Zoning Ordinance. The sales price or rent for ADUs must be established by the City before an Offering Agreement (Notification of Availability of ADUs) can be approved.

C. ADU Covenants

The developer of property which is subject to the provisions of the City's ADU Program, either for-sale or for-rent, will be provided by the City with copies of the Declaration of Affordable Dwelling Unit Covenants (Covenants) in the form prescribed by the City that are to be recorded in the land records of Fairfax County. The Covenants describe both the developer's obligations under the City's ADU Program concerning the initial sale or rental of the ADUs and the long term controls on the sale or rental of the ADUs which govern subsequent owners or tenants.

In a for-sale ADU development, the Covenants shall describe the property subject to the ADU Program requirements as well as the property on which the ADUs will be located; the controls on the initial sale of the ADUs to qualified purchasers, the City and designated non-profit groups and the long term controls on the ADUs. The Covenants must be recorded simultaneously with, and immediately following, the recordation of the deed of subdivision and final subdivision plat or, in the case of a condominium, the recorded condominium declaration and before the first ADU in the development is offered for sale. A copy of the recorded deed of subdivision plat and ADU Covenants must be provided to the City within 10 days after recordation. Deeds that accomplish individual sales must reference the already recorded Covenants document in the deed.

In a rental ADU development the Covenants shall describe the property subject to the City's Zoning Ordinance requirements as well as the units subject to the ADU controls and the controls on the initial rental as well as subsequent rentals and occupancy of the ADUs. The City's Zoning Ordinance requires that Covenants be recorded prior to the issuance of the first Zoning Permit for any unit in the development. In practice, it must be recorded before the first ADU is offered for rent (which may occur earlier than the

issuance of the first Zoning Permit). Since the control period under the Declaration of Covenants does not begin until the first Zoning Permit for an ADU is issued, a rider to the Covenants, specifying the date the Zoning Permit is issued, must be filed when this occurs to establish the start of the control period.

D. Notification of Availability of ADUs

With respect to the Notice of Availability required by the City's Zoning Ordinance, it shall be in a form prescribed by the City and must identify each unit being offered and its number of bedrooms, floor area, amenities and accessibility features as well as the approved sales price or rent. In addition, the Notice of Availability shall include marketing materials for the unit and the development. The Notice of Availability shall be submitted by the owner to the City's agent as follows: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. The City has developed a standard Notice of Availability and Offering Agreement for sales ADUs and one for rental ADUs, which will be provided to the owner for submission of such information. The Notice will not be considered complete and effective and the time periods concerning the initial marketing of an ADU development will not begin until all information required to determine compliance with the specifications for ADUs, approval of sales prices or rents by the City, recordation of the Declaration of Covenants and issuance of building permits has been received and the agreement has been executed by the City.

Section 3

Procedures for Sales of ADUs

A. Application and Certification of Eligible Purchasers

1. Application

Those seeking to purchase an ADU must apply to the City for placement on the eligibility list maintained by the City. In accordance with Section 3.9.1 of its Zoning Ordinance, the City has established income criteria for individuals and households seeking to purchase an ADU. In order to become eligible under the City's ADU Program to purchase an ADU, an interested individual or household must have an income that is seventy percent (70%) or less of the AMI for the Washington Standard Metropolitan Statistical Area. Individuals and households are required to show proof that they have at least the minimum annual income and assets necessary to be eligible under the program to purchase an available ADU, as set forth by the City in the eligibility requirements set forth herein. This minimum limit is reviewed and revised periodically by the City. Interested individuals or households must also satisfy other criteria established by the City and described below. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the City's ADU Program. In order to verify satisfaction of these requirements, the City may request information and documentation that is appropriate including, but not limited to, copies of Federal and State Income Tax Returns, W-2 forms and copies of the most recent pay checks or pay statements.

An individual or household determined by the City to be eligible to purchase an ADU is placed on the eligibility list and issued a non-transferable Certificate of Qualification valid for one year. This Certificate is used to demonstrate eligibility for the purchase of available ADUs.

Eligibility of an applicant to receive a Certificate of Qualification requires that the individual or household must show proof of satisfaction of the following requirements:

- a. First-Time Homebuyers.** Individual and household applicants must be first-time home buyers, subject to the following exceptions and specifications:
 - i.** A person or household shall be deemed a first-time homebuyer so long as they do not presently own any residential property and have not owned any residential property in the United States or anywhere else within the last three years.
 - ii.** Any displaced homemaker shall not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if

that individual, while a homemaker, owned residential property with his or her spouse, or resided in a home owned by a spouse. A displaced homemaker is defined as an adult individual who has not worked full-time in the past three years for more than one year, but has worked primarily without remuneration to care for the home and family during that time and no longer resides in that home.

- iii. Any single parent shall not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if that individual owned residential property while married or resided in a home owned by a spouse. A person will be considered a single parent if that person is unmarried or legally separated from a spouse, has one or more minor children for whom the individual has custody or joint custody, or is pregnant.
- iv. Seniors (where all household members are 55 or older) who are seeking to purchase in age-restricted communities may have owned residential property within the past three years, but must still not have any present ownership in a home.
- v. Any disabled person will not be denied a Certificate of Qualification on the ground of not being a first-time homebuyer if that individual, owned residential property prior to becoming disabled.

b. Current Owners of Residential Property Disqualified. Regardless of the status of the applicant, no person who currently owns or has any ownership interest in residential property shall qualify to purchase an ADU under the City's ADU Program.

c. Minimum And Maximum Income Requirements. Individual and household applicants must satisfy minimum and maximum income requirements that are utilized and adopted by the City. In order to qualify for the purchase of an ADU in the City's ADU Program, an applicant cannot have an income that exceeds 70% of AMI. Minimum income, which is determined from time to time by the City, is the minimum amount of household income plus assets necessary to purchase an ADU offered for sale in the City's ADU Program. Any such applicant seeking a Certificate of Qualification must satisfy the requirements established by the City regarding minimum and maximum income requirements. In the event the City has any reasonable doubt regarding whether an applicant satisfies the minimum and/or maximum income requirements of the City, any such application may be disapproved. The City may make an exception to the minimum income requirement for senior households (where all household members are 55 or older)

that wish to purchase in active-adult age-restricted communities if the applicant provides verification from a lender that they are pre-approved for the purchase price of an ADU they wish to purchase and meet all other eligibility requirements of the City's ADU Program.

d. Conditional Pre-Approval Letter From Preferred Lender. Individual and household applicants must present to the City a pre-approval letter from a preferred lender that provides verification of individual and/or household income and assets, stable employment and a satisfactory credit rating sufficient to sustain payment on an approved loan amount. The approved loan amount and family size of the applicant shall determine which offerings a household can apply for once a Certificate of Qualification is obtained.

e. Certified Homeownership Counseling Class. All applicants seeking a Certificate of Qualification to purchase an ADU under the City's ADU Program must have completed a Certified Homeownership Counseling Class approved by the City.

f. All Other Financial Criteria. Individual and household applicants seeking to purchase an ADU shall meet all other financial criteria that may be established periodically by the City for persons and households seeking to purchase an ADU.

2. Proof Regarding Income Limits and Assets.

a. Applicants must show proof that total household income does not exceed maximum income limits required to purchase an ADU. An exception to the minimum income requirement can be made by the City for senior households approved to purchase only in age-restricted communities if their household financial situation (including, but not limited to assets and income and liabilities) indicates they can afford the unit. The maximum permitted income will be determined from the gross income received annually from all sources by all wage earners over 18 years of age (who are not full-time students) in a family or household unit. A head of household or spouse who is a full-time student will always have their wages considered in determining household income.

Sources of income considered in determining eligibility include, but are not necessarily limited to, the following:

- wages and salary (full and part-time employment)
- child support

- alimony
 - interest on savings and checking accounts
 - dividends from stocks, bonds, and certificates of deposit
 - Social Security benefits
 - VA benefits
 - overtime, commissions/tips and bonus payments
 - unemployment insurance
 - pension/retirement payment
 - disability benefits
 - any other annuities or stipends received
 - income from real estate investments
 - income from a business or partnership owned, associated with or initiated by a member of the household.
 - regular gifts or contributions from persons not residing in the dwelling as long as there is a documented two-year history.
 - net income from business operations, exclusive of amortization of capital indebtedness. Depreciation based on straight line method is an acceptable expense. Three years federal tax returns are required to document such income.
- b.** Applicants must show proof that total household assets do not exceed \$500,000. Any applicant with assets in excess of \$500,000 is not eligible to obtain an ADU under the City’s ADU program.

Assets considered in determining eligibility include, but are not necessarily limited to, the following:

- the fair market value of any interest in real estate
- bank accounts, whether checking or savings
- certificates of deposit
- investment accounts, including mutual funds and similar assets
- stocks and bonds
- interest in a business through individual ownership, a partnership, or some other ownership mechanism
- the fair market value of any interest in any jewelry
- the fair market value of any interest in any automobile and any other motor vehicle(s)
- the fair market value of any interest in any boat

3. Priority Points in Selection Process for an ADU.

If an individual or household applicant qualifies for a Certificate of Qualification, then that individual’s or applicant’s priority with respect to other applicants seeking to purchase an ADU shall be determined by a selection process according to the following:

The selection process uses priority points to determine placement of qualified applicants on the selection list for each offering of an ADU for sale. The priority points applicable to each applicant shall be verified by the City and shall be disclosed on the Certificate of Qualification given to any qualified applicant. Priority Points shall be awarded to qualifying applicants in accordance with the following criteria:

- Live and/or work in the City of Fairfax:
 - Less than one year: 1 Point
 - Between 1 year and 5 years: 2 Points
 - More than 5 years: 3 Points
- Households with a member having a disability: 3 Points
- Households with a dependent child under 18: 3 Points
- Length of time in Program: 1 Point for each year a household has received a Certificate of Qualification (max. of 3 points).

The maximum number of priority points a household can have is 9 points.

4. Eligibility to Apply to Purchase an ADU.

- a. Households that receive a Certificate of Qualification are eligible to apply to purchase an ADU that satisfies the needs of such households, provided, however, that only households in possession of a pre-approval letter to purchase a home in the price range of the Offering Agreement will be allowed to apply for that offering. All holders of a Certificate of Qualification with the requisite pre-approval letter will be notified by the City of the availability of units with sufficient bedrooms for those households. The following guidelines will be used to determine whether unit and household size are suitably matched for initial marketing purposes:

Unit Size	Preferred Household Size
One Bedroom	1 to 2 persons
Two Bedrooms	2 to 4 persons
Three Bedroom	3 to 6 persons

Note: Household size is subject to certain restrictions in the Zoning Ordinance and the Virginia Uniform Statewide Building Code. Compliance with the Virginia Uniform Statewide Building Code is mandatory for all ADUs.

- b. **Screening Preferences for ADUs that include Accessibility Features.** In the event an ADU offered for sale includes certain accessibility features specified in this Section, then households that include a person with a disability shall receive a screening preference that provides those households with priority with regard to any such ADUs in accordance with the following:

- i. Special screening preferences are referenced in the Notice of Availability and ADU Sales Offering Agreement, which is submitted by the owner and executed by the City.
- ii. The accessibility features that must be included in an ADU unit in order to be eligible for such a preference are:
 - Public use and common areas of such dwellings must be readily accessible to and usable by persons with disabilities;
 - All the doors designed to allow passage into and within all premises within such dwellings must be sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 - All premises within such dwellings must contain the following features of adaptive design:
 - An accessible route into and through the dwelling;
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - Reinforcements in bathroom walls to allow later installation of grab bars; and
 - Usable kitchens and bathrooms in which an individual in a wheelchair can maneuver.

The definition of a person with a disability for the purposes of this screening preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently in a residence without accessibility features provided in accordance with the standards listed above.

When the foregoing preference for persons with disabilities applies to a particular ADU, applicants who qualify for the preference will be ranked based on the number of priority points they have been certified to receive on their Certificate of Qualification. For those households that qualify for this preference, households with the same number of priority points will be ordered through a random selection process similar to a lottery. For example, all households with nine (9) priority points will be randomly selected to determine where each household will ultimately stand in order of priority for those having nine (9) priority points and then all households with eight (8) priority points will be randomly selected and so forth.

B. Sales Price Limits for ADUs

The sales prices for housing constructed as a requirement of the City's ADU Program must not exceed the applicable maximum sales price limits established by the City.

Sales prices include all fixtures and equipment required by the City's ADU Program. Sales prices also include provisions for builder-paid permanent mortgage placement costs and buy-down fees, certain closing costs and a marketing allowance. Any upgrades to the unit must be within the bounds of the City's ADU Program.

In addition to the maximum sales price calculated pursuant to the City's ADU Program, the final contract price for an ADU may also include pre-paid expenses such as lenders title insurance, pre-paid interest, etc. provided that the developer certifies that such charges have been paid from the seller's proceeds at settlement and provides documentation for the charges incurred.

In order to establish the maximum sales price limit, the owner of the ADU shall submit to the City a request for the approval of a proposed maximum sales price for that unit on or before the date of issuance of a Zoning Permit for use and occupancy of an ADU offered for sale.

Any such request by the owner shall be accompanied by: (1) the owner's maximum proposed sales price for the ADU in question; (2) the owner's justification and documentation supporting the affordability of the unit at the proposed maximum sales price to persons who have qualified for participation in the City's ADU Program; and (3) any other information and/or documentation requested by the City to enable it to reasonably determine the maximum price at which said unit may be offered for sale under the City's ADU Program.

All such requests shall be sent to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

C. Sale of ADUs to Eligible Purchasers with Certificates of Qualification

For-sale ADUs within a development shall be offered for sale for a 90-day period following execution of a Notice of Availability to persons who meet the income criteria established by the City and who have been issued a Certificate of Qualification, but not to the general public.

When the City receives an executed Notice of Availability, the opportunity to purchase an ADU during the first 90 days is limited to holders of Certificates of Qualification who meet all of the qualification criteria, including any applicable screening preference.

It will be the responsibility of the owner to contact the holders of Certificates of Qualification in the order in which their names are drawn to schedule negotiations for the purchase of an ADU. Those Certificate holders selected have the exclusive right to enter

into a contract for the purchase of an ADU until the date of public marketing at the end of the 90-day period.

The owner will have the purchaser sign a sales contract with the ADU Program Rider to Residential Contract of Sale provided by the City and approved by the City Attorney. This rider provides the deed provision text and the Statement of ADU Covenant Provisions, both of which must be included in the Deed conveying the property to the purchaser. By signing the rider, the purchaser and the seller acknowledge that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions as they apply to the sale of the ADU unit.

As soon as a holder of a Certificate of Qualification has signed a contract to purchase a unit, the owner will submit a copy of the sales contract, with the attached ADU Program Rider to Residential Contract of Sale, to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Within 10 days after settlement, the settlement agent will submit a copy of the signed settlement sheet (HUD-1), and the original Certificate to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

D. Purchase of ADUs by Eligible Non-Profits

After 60 days from the effective date of the Notification of Availability/Offering Agreement, ADUs which have not been placed under contract with the holder of a Certificate of Qualification may be offered for sale to non-profit housing groups, as may be designated by the City. A list of eligible non-profit organizations will be established by the City and will be provided to owners. Purchases by non-profit housing groups are subject to the established ADU sales prices and all other applicable requirements of the City's ADU Program.

The owner shall give the designated non-profit groups written notice, sent by certified or registered mail, that a particular ADU is or will be ready to purchase. The owner shall, concurrently with his/her notification to the non-profits, send a copy of this notification to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Notification to the non-profit groups should be sent immediately after the 60th day of the offering period referenced above. The non-profit groups shall have 30 days within which to commit to purchase the units beginning on the date of receipt of the written Notice of Availability. If a non-profit housing group elects to purchase a particular ADU, it shall notify the owner in writing. An all-cash closing shall occur within 30 days from the end of the 30-day period allowed for commitment to purchase, provided a Zoning Permit has been issued for the unit prior to closing. The non-profit shall notify the City when closing occurs for the unit. The City will provide to the non-profit a copy of the ADU Program Rider to Residential Contract of Sale that must be executed with the sales contract.

E. Sale of ADUs to the General Public

After the expiration of the time periods established in the City's ADU Program for purchase of ADUs by holders of Certificates of Qualification and non-profit housing groups, ADUs which have not been sold to such purchasers may be offered for sale to the general public subject to the established sales prices for these ADUs as well as the income limits and all other requirements of the ADU Program. Alternately, the owner may offer such units for rent at the allowed rents for such units and subject to the income limits for eligible renters and other requirements of the ADU Program.

The owner shall notify the City whether the units have been sold or rented and shall provide appropriate documentation of compliance with the requirements of the ADU Program. This documentation shall include income information as is required from holders of Certificates of Qualification eligible to purchase or eligible renters, evidence of the sales price (signed settlement sheet) or rent, if the ADU is rented, and a copy of the recorded Covenants for the individual unit.

F. Sale Under Other Affordable Housing Programs

ADUs developed utilizing federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be sold at prices determined in accordance with the rules and regulations of such programs (provided these sales prices shall not exceed those set pursuant to the City's ADU administrative regulations) and shall be marketed in accordance with the rules and regulations of such programs.

G. Occupancy Requirements

Purchasers must occupy the unit as their primary place of residence and must annually sign and have notarized an affidavit (in a form specified by the City) certifying to their occupancy of the unit. Affidavits must be submitted to the City's agent by June 1 of each year at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. Failure to submit an executed affidavit or submission of a false affidavit will subject the purchaser to penalties as provided in Section 8.3.7 of the City's Zoning Ordinance.

H. Prohibit Any Substantial Modification or Demolition of ADUs

Owners may not purposely remove, replace with a different structure, make uninhabitable or otherwise destroy an ADU without written permission of the City. For any structural changes, owners must obtain proper building permits and associated inspections and for substantial improvements, replacement or demolition, permission of the City. The purpose of this requirement is to protect both the homeowner's and the City's interest in both the property and program.

I. Control Period and Covenants

The price control period for the initial sale of an ADU under the City's ADU Program is thirty (30) years. For any subsequent re-sale or transfer of an ADU during the initial thirty (30) year control period, the price of an ADU shall be controlled for a new thirty (30) year period, starting on the date of re-sale or transfer. Control periods shall be similarly renewable during any control period generated by a re-sale or transfer.

Simultaneously with, and immediately following the recordation of the deed of subdivision and final subdivision plat for a development containing ADUs, the ADU Covenants in the form prescribed by the City shall be recorded by the developer. Provisions specified in the City's Zoning Ordinance shall be included in the deed. In the case of a condominium, Affordable Dwelling Unit Program covenants shall be recorded simultaneously with the condominium declaration.

The aggregate amount of any transfer or loan occurring within the covenanted control period shall not exceed the then control sales price. All such initial and any subsequent or revised Affordable Dwelling Unit Program Covenants thereafter recorded shall expressly provide all of the following:

1. The dwelling unit may not be resold during any applicable control period for an amount that exceeds the limits set by the City and, prior to offering the dwelling unit for sale, the sales price shall be approved by the City.
2. Each time the unit may be offered for resale during any applicable control period, it shall first be offered exclusively through the City for sixty (60) days.
3. For the initial sale of the affordable dwelling unit after the expiration of any control period, 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 shall be contributed to the City of Fairfax Housing Trust Fund to promote housing affordability in the City.
4. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the City's Zoning Ordinance.

J. Notice of Equity Interest

The City may record in the land records of Fairfax County for all ADU's with covenants recorded in said land records, a notice of equity interest to be contributed to the City of Fairfax Housing Trust Fund with the first sale that occurs during the period after the control period has expired (the "extended control period")

K. Resales of ADUs

1. Request for Resale Price Determination

During the control period, an owner of an ADU must notify the City in writing of the owner's intent to sell and must request a resale price determination. The owner must provide the City with receipts for any eligible items to be considered for credit in the price determination. If there are improvements to be included in the sales price, the owner must permit the City to inspect the improvements.

2. Establishment of Maximum Resale Price

The resale price will be determined by 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 plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the City 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. An allowance for payment of closing costs on behalf of the subsequent purchaser, which shall be paid by the seller, will also be included in the resale price determination. Pre-paid items are not considered closing costs. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural components are set forth in a policy statement used by the City as part of these regulations in Addendum A hereto.

Fair market value of structural improvements is defined as the actual and reasonable costs of materials, professional fees, contractor fees and permit fees associated with furnishing and installing the improvements. The fair market value of improvements does not include reimbursement for labor performed by the owner nor reimbursement for the purchase of tools and equipment used to install the improvements. Upgrades of existing house components, normal owner maintenance, and general repair work will be included in the resale price determination when they clearly add to the market value of the property. Value of the improvements will be determined by the remaining use of the improvement such as an appliance or as determined by the age and condition of the improvement such as carpet.

No increase in sales price shall be allowed for the payment of brokerage fees associated with the sales of the unit, except that with respect to re-sales by owners, an increase of one and one-half (1½) 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 City and who serves as a dual agent for both the qualified buyer and the seller in the resale of the ADU under an agreement with the City.

The one and one-half (1½) 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 ADU as part of the

disbursement of settlement proceeds. The owner will be notified in writing of the approved resale price.

3. Offering an ADU for Resale During Control Period

The owner of an ADU being re-sold shall provide the City with written notice that the owner wishes to offer the ADU for sale. This written notice must be sent by certified mail to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

Units offered for resale 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 City, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the City to be (a) substantial and appropriate replacements of 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. No increase in the sales price shall be allowed for brokerage fees associated with the sale of the unit.

The City or a designated nonprofit shall have the exclusive right to purchase such ADU at a price not in excess of the control price established at the time of offering for re-sale. The City shall notify the owner in writing within thirty (30) days to advise the owner whether or not it or a designated nonprofit will purchase the unit, using the form approved by the City, and subject to conditions such as the condition of the title and the physical condition of the unit. An all-cash closing shall occur within ninety (90) days after the City receives the sale offer from the owner, in the event all such conditions of the contract are satisfied. The City may take title to the ADU and amend the covenants to make them consistent with the current provisions of the City's Zoning Ordinance, or may assign the contract to a qualified homebuyer, with the condition that the assignment include amended and restated covenants to renew the thirty (30) year control period and otherwise comply with the City's Zoning Ordinance. ADUs acquired by the City as the result of a re-sale shall be re-sold to qualified buyers who hold a Certificate of Qualification issued by the City. The City will notify Certificate holders on the eligibility list of the availability of the resale unit. Only Certificate holders with the appropriate household size and income and assets as determined in their conditional pre-approval from a preferred lender will be able to apply through the selection process for the offering. The selection process for the resale offering will be conducted in the same manner specified for the initial sale of an ADU.

The purchaser must sign a sales contract with the ADU Program Rider to Residential Contract of Sale and the Monetary Liens and City of Fairfax Affordable Dwelling Unit Purchasers Certificate approved by the City Attorney.

By signing the rider, the purchaser acknowledges that they have read the deed provision text and the Statement of ADU Covenant Provisions that encompass the Zoning Ordinance provisions, as they apply to the resale of the ADU. Purchasers of ADU re-sales will have to show proof of obtaining and paying for a home inspection from a certified home inspector who is a member of the American Society of Home Inspectors (ASHI) before settlement.

4. Sale Following Expiration of Control Period

- a.** With respect to the initial sale of an ADU after the expiration of any control period, the homeowner must first offer the ADU to the City in accordance with the following.
 - i.** The homeowner must provide the City with written notification by registered or certified mail of the homeowner's intention to sell the ADU. The notice must (A) be signed by all owners listed on the deed to the unit, (B) include a statement that the ADU is for sale, (C) include a proposed sale price, and (D) include a list of the improvements, if any, that the homeowner believes should factor into the calculation of the City of Fairfax Housing Trust Fund Equity Share (defined below) according to Addendum A of these regulations. The notice must be mailed to the City's agent at the following address: Attention: Affordable and Workforce Housing Program Administrator—ADU Extended Control Period, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

If the homeowner does not identify any such improvements in this notice, then no improvements shall be factored into the calculation of the Housing Trust Fund Equity Share (defined below) for the unit. The City, in accordance with Addendum A to these regulations, shall make the final determination as to whether any such improvements factor into the calculation of the City of Fairfax Housing Trust Fund Equity Share (defined below).
 - ii.** The City shall be offered the exclusive right to purchase the unit and the City reserves the right to assign its exclusive right to purchase the unit to its agent or a nonprofit designated by the City. If the City, its agent or a designated nonprofit elects to purchase the unit at the owner's proposed sale price, it shall notify the owner within 30 calendar days of its receipt of owner's notification and an all-cash closing shall occur within 60 days of the City's receipt of the owner's notification.
 - iii.** If the City elects not to purchase the unit at the homeowner's proposed sale price, the homeowner may sell the ADU to a third party for no less than eighty-five percent (85%) of the sale price at which the homeowner proposed to sell the ADU to the City.

- If the owner enters into a contract to sell the ADU to a third party for at least 85% of the price offered to the City, the owner shall send another notice, also by certified or registered mail, to the City at the above address that provides the contract purchase price, the anticipated closing date, and contact information for the settlement company.
 - Using the information provided by the owner, the City shall then calculate the City of Fairfax Housing Trust Fund Equity Share (as defined below) to be paid to the City at closing and notify the owner and the settlement company of such amount.
- iv.** Before the owner may sell the ADU for less than 85% of such price, the homeowner must first offer the ADU to the City, in writing via registered or certified mail, for such lower price, and the City or its designated nonprofit may elect to purchase the unit at such lower price within 30 days of its receipt of such notice and to close within 60 days. If the City elects not to purchase the unit at such lower price, the process shall continue until the City or its designated nonprofit purchases the unit or a third party purchases the unit for no less than 85% of the price most recently declined by the City. If the owner elects to withdraw the ADU from the market, the owner cannot later sell the ADU for less than 85% of the price most recently declined by the City without first offering the ADU to the City for such lower price in accordance with these regulations.
- b.** The "initial sale" after the expiration of any control period shall not be deemed to include any of the following:
- i. The addition of the name of the new spouse to the deed upon marriage of the homeowner; or
 - ii. Upon the death of any party named on the deed to the unit, the passing of title pursuant to the will of the deceased or the laws of intestacy;

provided, however, that the subsequent owner of the ADU pursuant to any of the transactions described above shall still have the obligation to offer the ADU to the City and, upon such subsequent owner's initial sale of the unit, to pay the City of Fairfax Housing Trust Fund Equity Share (as defined below).

- c.** Upon the initial sale of an ADU after the expiration of any control period – whether to the City or a third party—the seller shall pay one-half (1/2) of the difference between the Net Sales Price and Adjusted Original Purchase Price to the Housing Trust Fund to promote affordable housing in the City of Fairfax (the "Housing Trust Fund Equity Share"). Such equity interest of the City of Fairfax Housing Trust Fund shall apply to each ADU. Notice of such equity interest of the City of Fairfax Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any ADU. All other liens, judgments, deeds of trust, and other encumbrances on the unit shall be paid from seller's remaining proceeds from such sale (after

accounting for the Housing Trust Fund Equity Share), or otherwise be paid by seller; in no event shall any such amounts required to be paid by seller reduce the amount owed to the City of Fairfax Housing Trust Fund.

- i. "Net Sales Price" shall mean the sale price paid by the purchaser at such initial sale after the expiration of any control period, minus reasonable closing costs paid by the seller (e.g., title charges, transfer charges, recording charges, commission fees, points, etc.), but excluding any seller subsidy paid to or on behalf of the purchaser.
- ii. "Adjusted Original Purchase Price" shall mean the purchase price originally paid by the seller for the ADU (or, if the seller did not acquire the ADU in an arms-length transaction, then the purchase price paid by the most recent owner in the chain of title who acquired the ADU in an arms-length transaction), plus a percentage of such original purchase price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the then-current fair market value or the actual original cost of certain improvements made and determined by the City in accordance with Addendum A hereto 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 resale date.

5. Buyout Option

The owner may request to buy out the Housing Trust Fund Equity Share by paying an amount equal to the Housing Trust Fund Equity Share (as defined above) to the City at any point during the extended control period. In the event the owner wishes to request such a buy out, the owner of an ADU must provide the City with written notification of the owner request to buy out the Housing Trust Fund Equity Share. The notice must: (A) be signed by all owners listed on the deed to the ADU; (B) include a clear statement that the owner wishes to buy out the Housing Trust Fund Equity Share; (C) include a proposed market value of the ADU, supported by at least one appraisal that includes a listing of comparable bona fide sales in the area; and (D) include a list of the improvements, if any, that the owner believes should factor into the calculation of the Housing Trust Fund Equity Share according to Addendum A of these regulations. The notice must be mailed to the City's agent at the following address: Attention: Affordable and Workforce Housing Program Administrator—ADU Extended Control Period, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

If the owner does not identify any such improvements in this notice, then no improvements shall be factored into the calculation of the Housing Trust Fund Equity Share for the ADU. The City, in accordance with Addendum A to these regulations, shall make the final determination as to whether any such improvements factor into the calculation of the Housing Trust Fund Equity Share.

Upon receipt of the owner's application to buy out the Housing Trust Fund Equity Share, the City shall evaluate the application and notify the owner of its decision on that application. The approval of any such application shall be at the sole discretion of the City. Upon the approval of any such buy out application by the City, the owner shall deliver payment of the Housing Trust Fund Equity Share to the City and the City shall endorse all necessary documents to release the ADU from its involvement in the City's ADU program.

6. Portion of Sale Proceeds to the City of Fairfax Housing Trust Fund in the Event of a Foreclosure Sale

In the event of a foreclosure sale of any ADU, the following shares of the proceeds of such foreclosure sale shall be paid to the City of Fairfax Housing Trust Fund to promote housing affordability in the City:

In the event that an individual for sale ADU is sold at a foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the City of Fairfax Housing Trust Fund as part of the disbursement of settlement proceeds.

L. Eligible Lenders for ADUs Offered for Sale.

1. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on an individual for sale ADU or a refinancing of such institutionally financed purchase money deed of trust by an institutionally 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.
2. Each Eligible Lender with respect to an individual for sale ADU shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale ADU subject to the foreclosure notice given pursuant to Paragraph 3(K)(5) above (Right to Acquire). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the City or by a nonprofit agency designated by the City in the event the City elects not to exercise its right, at any time during such ninety (90) day period after the City has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An ADU so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the City's Affordable Dwelling Unit Program and not for the conversion of the ADU to a rental unit. The Right to Acquire shall entitle the City or the nonprofit agency designated by the City to acquire the ADU at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the ADU 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 Paragraph 3(K)(4)(c)(ii) 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.

3. In the event that neither the City, its agent nor a nonprofit agency designated by the City exercises the Right to Acquire and the individual for sale ADU 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 City of Fairfax Housing Trust Fund to promote housing affordability in the City as part of the disbursement of settlement proceeds.
4. Each Eligible Lender and any other lender secured by an interest in an individual for sale ADU shall be required prior to foreclosing to provide the City at least ninety (90) days prior written notice thereof.
5. All financing documents for financing secured by an individual for sale ADU shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the City, the City's agent or by a nonprofit agency designated by the City if the City elects not to exercise its rights, at any time during the such ninety (90) day period after the City has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.

M. Adding and Removing Persons as Owners on ADU Deeds

The transfer of ownership interest in an ADU is only permitted in accordance with the following:

1. That the person proposed to be added as an owner is a member of the household and that the ADU is that person's domicile and residence and remains as the primary domicile and residence of the owner;
2. That the ADU subject to the addition of an owner does not have financing secured by such ADU in an amount in principal and accrued interest which, in the aggregate, exceeds the current control price of the unit, as calculated by the City;
3. That the property is not in default in the payment of any property owners or condominium association fee(s), is not delinquent in taxes, is not subject to any liens such as a mechanics lien, and the property has not been obligated in any way that would place a lien on the property;
4. That the owner of the ADU obtain the prior written consent of the lender(s) to add the person to the deed;

5. That the owner of the ADU and the person proposed to be added as an owner pledge to abide by all requirements of the City’s ADU program; and
6. No consideration of any kind shall be exchanged for such addition.

The change of a name of an existing owner on a deed, or removal of a party from a deed, is subject to the conditions set forth in the following chart:

Circumstance	Description	Requirements
<i>Legal Name Change of ADU Owner</i>	ADU owner seeks deed change due to a legal change in name.	Change may occur with proper official documentation evidencing name change provided to the City, such as a court order and the prior written consent of the lender.
<i>Change required due to court order or decree, including divorce</i>	1. Removal of an owner from the title or 2. Former spouse is not on the title and is being added due to a divorce.	Change may occur with proper official documentation provided to City, such as a court order, divorce decree, approved official and final settlement agreement, or other similar decree, and with the prior written consent of the lender.
<i>Removal of a Name from Title</i>	ADU owner seeks to remove a party from the deed as an owner, due to 1) an owner leaving the household; and/ or 2) mutual agreement of existing co-owners.	Deletions are permitted only if 1) the ADU does not have financing in an amount which, in the aggregate, exceeds the current control price of the unit, as calculated by the City; and 2) the lender provides prior written consent.

ADU owners wishing to add or remove parties from a deed or transfer ownership of an ADU must obtain prior written permission from the City. The request for permission must clearly state the reason the title change is requested and any required or appropriate documentation. The request must be sent to the City’s agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030.

The City will review and must approve the new deed before it is executed and recorded. The City will provide a form of deed that will include an express statement that the property is an ADU and as such is subject to the terms and conditions of the City’s ADU Program Covenants recorded with a specific reference to the Deed Book and Page Number of the land records of Fairfax County. Such deed shall also include an express statement that the total aggregate amount of indebtedness that may be secured by the ADU is limited and that other terms and conditions apply, including, but not limited to, a

right for the City or a non-profit agency designated by the City to acquire the ADU on certain terms in the event of a pending foreclosure sale, as set forth in the City's ADU Program Covenants and/or in the ADU Program set forth in the City of Fairfax Zoning Ordinance and/or these regulations.

Section 4.

Procedures for Rental of ADUs

A. Eligible Renters of ADUs

- 1. Income Limits and Priorities.** Any household seeking to rent an ADU under the City's ADU Program must have an income that is 60% or less of AMI, as adjusted for the applicable household size, and cannot have assets that exceed \$500,000, as adjusted for the applicable household size. The asset limit of \$500,000 shall be adjusted up by \$20,000 for each dependent under 18 and each dependent over 18 that has a documented disability. Thus, if a household has three dependents under 18 and one dependent over 18 with a documented disability, the adjusted asset limit for that household would be \$580,000. It is the responsibility of the individual or household applying for an ADU to demonstrate eligibility under the requirements of the City's ADU Program.
 - a. The first priority in the rental of ADUs (whether through the City or directly from the owner) in the City's ADU Program will be given to persons who live or work in the City of Fairfax. In addition, within this first priority, when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that live or work in the City of Fairfax and have one or more persons with a handicap/disability, as defined below, who request it, shall have a preference to rent the ADU.
 - b. The second priority in the rental of ADUs (whether through the City or directly from the owner) in the City's ADU Program will be given to persons who live or work in Fairfax County. In addition, within this second priority, when an ADU rental unit is built to incorporate accessibility features at least equivalent to the features described below, applicant households that live or work in Fairfax County and have one or more persons with a handicap/disability, as defined below, who request it, shall have a preference to rent the ADU.
 - c. In demonstrating that their income is 60% or less of AMI, as adjusted for the applicable household size, applicants for ADU rentals must do so using the same sources of income that are set forth in Section 3 above for the purchase of an ADU.
 - d. In demonstrating that their assets do not exceed \$500,000, or a higher amount as adjusted for dependents as set forth herein, applicants for ADU rentals must do so using the same assets that are listed in Section 3 above for the purchase of an ADU.
 - e. If a resident household leasing an ADU in the City has a household income that exceeds 80% of AMI, as adjusted herein for household size, that household will no longer qualify for participation in the City's ADU Program, but will be entitled to remain in the ADU until the end of the applicable lease ends. Under such circumstances, that household may, at the option of the landlord/owner, remain in

the unit as a market-rate tenant, with a different unit in the same development being converted to an ADU unit, or that household may be moved to a market-rate unit in the same development.

- 2. Accessibility Features.** The accessibility features that must be included in an ADU unit eligible for such a priority preference for handicapped/disabled persons are:
- a. public use and common use portions of such dwellings must be readily accessible to and usable by handicapped persons;
 - b. all the doors designed to allow passage into and within all premises within such dwellings must be sufficiently wide to allow passage by handicapped persons in wheelchairs;
 - c. all premises within such dwellings must contain the features of adaptive design listed below;
 - d. an accessible route into and through the dwelling;
 - e. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - f. reinforcements in bathroom walls to allow later installation of grab bars; and
 - g. usable kitchen and bathrooms such that an individual in a wheelchair can maneuver in the space.

The definition of a person with a handicap/disability for the purposes of this preference is a person having a physical impairment and/or traumatic brain injury that is expected to be of a long, continuing and indefinite duration that substantially impedes his or her ability to live independently without a residence with accessibility features provided in accordance with the standards above.

Such a priority preference for handicapped/disabled persons shall apply to otherwise eligible individuals or households. The City will verify the eligibility of tenants in ADUs leased by the City and will verify only the income eligibility of potential tenants referred to multifamily rental ADUs. It is the landlord's responsibility to verify the eligibility of tenants in all other ADU rental units.

B. Allowed Rents for ADUs

The rents for housing constructed as a requirement of the ADU Program must not exceed the applicable maximum limits established periodically by the City. Rents will be initially established by the City for single family detached, single family attached and multifamily dwelling units with various numbers of bedrooms.

Maximum rental rates for ADUs required by the City’s ADU Ordinance shall be established by first determining the base income figure of 60% of AMI and adjusting that base figure for different dwelling units based on the number of bedrooms in the dwelling units as follows:

Number of Bedrooms:	Adjustment of 60% of AMI
Studio/Efficiency	70%
1-Bedroom	80%
2-Bedroom	90%
3-Bedroom	100%

Once the foregoing adjustment is made, the resulting calculation shall be divided by twelve (12) and then multiplied by .30 to establish the maximum monthly rental rate for each unit, rounded to the nearest whole dollar amount. The following is an example of how the foregoing adjustment and calculation shall be made to determine the maximum rental rate for a hypothetical unit:

Assuming that 60% of AMI is \$50,000, the maximum rental rate for a one-bedroom unit will be determined as follows:

$$\$50,000 \times 80\% = \$40,000 \div 12 = \$3,333 \times .30 = \$999.99, \text{ rounded to } \$1,000 = \text{maximum monthly rental rate}$$

1. **Utilities and Fees.** The maximum monthly rental rate for any ADU shall include all utilities and fees as defined by the Federal Housing Administration.
2. **Facility and Parking Privileges.** The maximum monthly rental rate for any ADU shall also include all facility and parking privileges available to market-rate tenants, provided that such amenities shall be roughly comparable in proximity and space and size to those facility and parking privileges available to market-rate tenants and, provided further that pet fees and gym fees need not be included. Compliance with the foregoing requirement shall be determined through the exercise of reasonable discretion by the Zoning Administrator.

C. Initial Offering of ADUs for Rent

1. **City’s Option to Lease Rental ADUs.** Upon receipt of a Notice of Availability from the owner that a particular ADU is or will be available for rent, the City will determine whether the City, its agent, or a nonprofit designated by the City wishes to lease up to one-third of such units in the development pursuant to its exclusive right to lease such units during the control period. The City will notify the owner in writing within 30 days from receipt of the owner’s notice, if the City, its agent or a designated nonprofit elects to lease any units.
2. **Referral of Rental ADU Tenants by City.** Upon receipt of a Notice of Availability from the owner that an ADU is or will be available for rent, the City may refer to the

owner potential tenants of the ADUs to be rented at rents affordable to households with qualifying incomes. These households will be certified as income eligible by the City. The owner will determine whether the household meets the owner's normal rental criteria other than income. Households may not be rejected for such units if they are receiving state or local rental subsidy assistance.

3. **Direct Leasing of ADUs by Owners.** Units not leased pursuant to the provisions of Paragraph 1 or 2 above shall be offered by the owner to persons who meet the income and other criteria established by the City in the City's ADU Program. In addition to any applicable priority preference for handicapped/disabled persons, first priority for such units shall be given to persons who live or work in the City of Fairfax and second priority shall be given to persons who live or work in Fairfax County. If, after applying the foregoing priorities to the persons who have applied to lease such ADUs, any ADUs that have not been leased may be leased to members of the general public who qualify under the requirements of the City's ADU Program.

D. Occupancy of Rental ADUs

1. Tenants of rental ADUs must meet the eligibility criteria established by the City for ADUs in the City's ADU Program. In addition, the owner shall use the guidelines below to determine the household size appropriate for various size units:

Unit Size	Minimum Number of Persons	Maximum Number of Persons
Efficiency	1	1
One Bedroom	1	2
Two Bedroom	2	4
Three Bedroom	3	6

2. Tenants of ADUs must occupy the unit as their residence and domicile and must annually provide an executed affidavit (in a form specified by the City), certifying their continuing occupancy of the unit. This affidavit shall be submitted by the tenant on or before the date specified in their lease.
3. If the tenant of an ADU fails to provide an executed affidavit to their landlord/owner within thirty (30) days after a written request for such affidavit, then the lease shall automatically terminate, become null and void and the tenant must vacate the unit within thirty (30) days after written notice from the landlord/owner.
4. In the event an ADU tenant fails to occupy a unit for a period in excess of 60 days, unless approval was granted in advance and in writing by the City, the lease shall automatically terminate and the tenant must vacate the unit within thirty (30) days after written notice from the landlord/owner.
5. Notwithstanding the provisions of paragraphs 3 and 4 above, if the landlord/owner shall immediately designate an additional comparable unit as an

ADU to be leased under the controlled rental price and the requirements of the City's ADU Program, the tenant of such unit referenced in paragraphs 3 and 4 above may continue to lease such unit at the market rate.

6. If an Applicant Household that qualifies for participation in the City's ADU Program leases a residential unit through the City's ADU Program, and the income of that household remains at or below 80% of AMI as adjusted herein for household size, that household will be entitled to remain in that ADU so long as the members of that household designated for ADU qualification purposes remain as members of that household and continue to satisfy all other qualification criteria under which that household secured its residence. If any such household occupying an ADU complies with the foregoing criteria and remains in compliance with any applicable lease or other applicable agreement, that household shall be entitled to continue leasing said affordable residential unit.

E. Control Period and Covenants

1. **General.** For all rental ADUs, prior to offering ADUs for rent but no later than the issuance of the first Zoning Permit for a rental development which includes ADUs, the owner shall record Covenants running with the land in favor of the City. The Covenants shall subsequently have specified in them the date of issuance of the first Zoning Permit for an ADU and shall include the provisions of the City's Zoning Ordinance including restrictions on the rental of the ADUs during the thirty (30) year control period. The Covenants shall be senior to all instruments securing permanent financing and shall be binding on assignees, mortgagees, purchasers and other successors in interest.

For initial and revised covenants, the covenants shall remain in full force and effect in the event of a foreclosure sale of a rental project by an eligible lender.

The City will provide the owner with standard Covenants for rental ADUs to be recorded in the land records.

2. **Multifamily Rental Developments.** For multifamily dwelling re-rentals, a 30-year control period shall apply.

F. Lease Restrictions

1. **Length of Lease.** Any rental ADU shall be leased for a minimum of six (6) months with a maximum lease term of one (1) year for tenants who meet the eligibility criteria.
2. **Terms of Lease.** The lease agreement for any such unit shall include the following provisions:
 - a. Minimum lease term is six (6) months and the maximum lease term is one (1) year.

- b. The tenant must occupy the unit as their domicile and residence.
- c. Subleasing of the unit is prohibited.
- d. The tenant must continue to comply with the eligibility criteria.
- e. The tenant must annually verify under oath, on a form approved by the City that the tenant continues to meet the income and other eligibility criteria established by the City.
- f. The lease will be automatically terminated if there is any false certification or failure to provide the executed affidavit of continued occupancy or failure to occupy the unit for a period greater than 60 days unless such failure is approved in advance and in writing by the City.

G. Landlord/Owner Responsibilities

1. **Income Certification.** The landlord/owner of a development containing rental ADUs shall be responsible for obtaining from renters of ADUs (other than the City) an annual income certification that certifies the income eligibility of that household and other facts in order to insure the tenant continues to meet the eligibility criteria established by the City.
2. **Third Party Verification of Income.** The landlord/owner will also be responsible for obtaining third party verification of the income of tenant households.
3. **Landlord's Statement.** By the end of each quarter, the landlord/owner shall provide the City with a statement verified under oath which certifies the following:
 - a. The address and name of the development and the name of the landlord/owner.
 - b. The number of affordable dwelling units by bedroom count, other than those leased to the City, which are vacant.
 - c. The number of affordable dwelling units by bedroom count which are leased to residents other than the City. For each unit the statement shall have the following information:
 - d. That, to the best of the landlord's/owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the City.
 - e. The landlord/owner shall provide the City with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.
 - i. The unit address and bedroom count.
 - ii. The tenant's name and household composition.

- iii. The effective date of the lease.
 - iv. The tenant's household income as of the date of the lease.
 - v. The current monthly rent.
- f. That, to the best of the landlord's/owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the City.
 - g. The landlord/owner shall provide the City with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.

H. Rental Under Other Affordable Housing Programs

ADUs developed using federal, state or local programs which are subject to terms and restrictions equivalent to the City's ADU Program shall be rented at rents determined in accordance with the rules and regulations of such programs (provided that the rents do not exceed those set pursuant to the City's ADU Program) and shall be marketed in accordance with the rules and regulations of such programs.

I. Eligible Lenders for Rental ADUs

- A. An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or a refinancing of such institutionally financed purchase money deed of trust by an institutionally 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.
- B. An Eligible Lender shall have the right to foreclose on a rental project or an ADU and the covenants on the rental project or ADU shall terminate upon such foreclosure by the Eligible Lender in the event that the rental project or the ADU 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 herein, 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 ADU having provided the City written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as those terms are defined in Paragraph 3(L)(2) above.
- C. An Eligible Lender with respect to a rental project shall not be required to provide the Right to Cure and the Right to Acquire.
- D. Each Eligible Lender and any other lender secured by an interest in a rental ADU shall be required prior to foreclosing to provide the City at least ninety (90) days prior written notice thereof.

J. ADUs in Condominiums; Rental ADUs in Condominium Conversions

- 1. ADU Designations on Condominium Declaration.** If a development is initially built as a condominium and such development is subject to the requirements of the City's ADU Program, then the ADUs required pursuant to the Ordinance shall be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.
- 2. Provisions of Condominium Conversions.** If a development initially built as a rental project under single ownership is subject to the requirements of the City's ADU Program and then subsequently converts to a condominium:

 - a.** The provisions of the City's ADU Program shall apply to such condominium developments.
 - b.** The ADUs required pursuant to the City's ADU Program shall be specifically identified by unit number as part of the recorded condominium declaration.
 - c.** The sales price for such ADUs being converted shall be established by the City pursuant to the City's ADU Program. If the owner of such condominium conversion elects to renovate the ADUs, the City shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into any decision of the City to establish permissible sales prices for such renovated ADUs.
 - d.** For any condominium conversion development, ADUs 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 ADUs located within a condominium conversion development shall be for a period of thirty (30) years and the units shall be priced in accordance with the provisions of the City's ADU Program. However, upon any resale and/or transfer to a new owner of such ADU within the initial thirty (30) year period of sales price control, the sales prices for each subsequent resale and/or transfer for each such ADU 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 ADU. 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, the ADUs may be retained as rental units within the

development. The condominium declaration and an amended covenant associated with the ADUs shall specifically set forth:

- i.** All rental ADUs within the development shall be transferred to the same entity or individual.
 - ii.** The ADUs shall be rented in accordance with the rental provisions of the City's 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 ADUs.
 - iii.** Parking for the ADUs shall be provided in accordance with the applicable provisions of the City's Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.
 - iv.** The ADUs shall be provided in substantially the same bedroom mix as the market rate units in the development.
 - v.** The tenants of the rental ADUs shall have access to all the site amenities that were provided when the ADUs were originally established in the development.
 - vi.** All other covenants set forth in the original covenants and all applicable regulations set forth in the City's Zoning Ordinance shall remain in full force and effect.
- f.** The rental tenant occupants of ADUs subject to a condominium conversion shall have the right to purchase the dwelling unit they occupy at the sales price established by the City pursuant to the terms of the City's ADU Program. Subsequently, the City shall have the right to purchase any or all of the ADUs that are not purchased by such rental tenant occupants at the sales price established for such units by the City pursuant to the City's ADU Program. Such units shall be offered to the City and purchased by it, its agent, or its designated nonprofit in accordance with the terms and provisions of the City's ADU Program. The owner shall notify the City prior to filing for condominium conversion, and request pricing for any ADUs subject to the condominium conversion. Such notice shall be submitted by the owner to the City's agent at the following address: Affordable and Workforce Housing Program Administrator, Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030. The City shall establish the prices for such units, which will be included in the 120-day formal notice to tenants in the ADUs subject to the conversion. The tenant's first right to purchase, as provided for in Title 55 of the Code of Virginia, shall be for the first sixty (60) days of the 120-day formal notice period. Thereafter, as stated above, the City shall have the exclusive right

to purchase any or all of the units not purchased by the rental tenants, at the sale price established by the City.

ADDENDUM A

First-Time Homebuyers Program Approved Replacements and Improvements Resale Credit Policy

Purpose:

To provide a resale credit to increase the allowable sale price of ADU units by the lower of the actual original cost or value of major repairs or items which are required to make the unit safe, sanitary, energy efficient and marketable, while maintaining the price of the unit within the range of affordability for First-Time Homebuyers Program participants as referenced in Section Three of the Fairfax City ADU Administrative Regulations. Resale credit will only be given as in accord with the City's ADU Program and as follows:

- A. All replacements and improvements are required to be performed or purchased from licensed contractors with a Class A or Class B contractor license to do business in the state of Virginia at the time that the work is completed. The owner must provide valid dated receipts. The item must be in the home at the time of settlement and occupancy by the new purchaser.
- B. Owners seeking resale credit must provide proof that all applicable Fairfax City codes and Homeowners Association or Condominium Association restrictions and regulations are met.
- C. No resale credit will be given for items that were paid for or reimbursed from other sources, such as insurance claims; for removable fixtures such as ceiling fans; and for upgrades to carpeting, cabinets, appliances, or any other fixtures that were purchased and/or installed before the date of the original sale.
- D. No resale credit shall be given for the cost of normal maintenance and upkeep, including but not limited to, items such as power washing, seasonal maintenance, landscaping, cleaning, or sealing any surface, for eradication of insects or other pests, for moving expenses, or the removal of trash or debris.
- E. No resale credit shall be given for any items installed or work done outside of the period of ownership of the owner seeking resale credit.
- F. Resale credit will be given for the following items:
 1. Appliances: Resale credit shall be given for appliances that meet all of the following criteria:
 - a. were purchased by the owner requesting credit;
 - b. remain in the unit;
 - c. are less than five years old; and
 - d. are of a similar type and quality of appliance that came with the unit at the time of the original purchase.

Appliances include: range or cook top and oven; refrigerator/freezer; dishwasher; hot water heater; garbage disposal. The credit shall be no greater than the owner's actual cost and shall be reduced by 20% per year for each such appliance. No owner shall receive resale credit for more than one of the same type of appliance.

2. Permanent structural additions such as finished basements and added bathrooms. The credit for permanent improvements will be the lesser of the amount of the increase in the fair market value as a result of the improvement or the owner's actual cost.
 3. Decks, patios and fences less than ten (10) years old. The credit shall be at the owner's actual cost and shall be reduced by 10% per year.
 4. Major structural repairs necessary to comply with state and local codes. The credit shall be at the owner's actual cost. The code violation remedied by the repair must be documented by the contractor.
 5. Minor structural improvements (windows, doors, walls) necessary to comply with state and local codes or necessary to maintain health and safety or improve energy efficiency shall receive resale credit at the owner's actual cost. Any code violation or increase in health, safety or efficiency must be documented by the contractor.
 6. Replacement of major HVAC system components necessary to comply with state and local codes, or necessary to maintain health and safety or improve energy efficiency. The resale credit shall be at the owner's actual cost for such items and shall be reduced by 10% per year.
 7. Energy conservation improvements for the following items that remain with the property such as storm doors or windows, water saving improvements, weather stripping (as it relates to making other energy improvements), and additional insulation. The resale credit shall be the owner's actual cost.
 9. Major plumbing repairs necessary to meet state or local codes as documented by a licensed plumbing contractor, or associated with an approved permanent improvement such as an added bathroom. The resale credit shall be the owner's actual cost.
 10. Replacement of major roof components. The resale credit for all components shall be amortized over the period of the manufacturer's or contractor's guarantee.
 11. Exterior painting done within one (1) year of the resale that remains in good condition at the time of the resale shall receive resale credit at the owner's actual cost.
 12. Flooring installed within two (2) years of the resale. The resale credit shall be at the owner's actual cost and shall be reduced by 5% per month.
- G. The maximum total amount of resale credit for all replacements and improvements that will be allowed under this First-Time Homebuyers Program Approved

Replacements and Improvement Resale Credit Policy for any home shall not increase the allowable resale price of the home to be in excess of the maximum amount affordable to First-Time Homebuyers Program participants at the time of the resale offering of the unit.