

AGREEMENT TO BUILD MODERATELY PRICED DWELLING UNITS

This Agreement is made this _____ day of _____ 2012, by and between _____ ("Developer") and the City of Annapolis, a municipal corporation of the State of Maryland ("City").

Whereas, The Developer owns property located at in the City of Annapolis, which Property is described in a deed dated _____ recorded among the land records of Anne Arundel County, Maryland, in liber _____, page _____ ("Property");

Whereas, The Developer has applied to the City for approval to construct Moderately Priced Dwelling Units within the Property;

Whereas, [Chapter 20.30](#) of the Code of the City of Annapolis governs Moderately Priced Dwelling Units ("MPDU");

Whereas, The Developer is required to enter into this Declaration of Covenants for Moderately Priced Dwelling Units ("Declaration") as part of the process required by [Chapter 20.30](#) of the Code of the City of Annapolis.

Now, therefore, in consideration of these premises and the terms set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties agree as follows:

1. The Developer shall construct within the Property the Moderately Priced Dwelling Units ("MPDU") indicated in Schedule A of this Agreement.
2. Construction of each MPDU shall comply with the construction schedule referenced in Exhibit A of this Agreement. Each MPDU shall be constructed along with or preceding other market rate dwelling units to be constructed within the Property. The Developer shall sequence the construction of MPDUs so that construction reasonably coincides with the construction of the market rate dwelling units. The last building built within the Property shall not contain only MPDUs. The Developer's staging plan shall be consistent with the site plan governing the Property. Failure to comply with the construction schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the Property, or such other enforcement measure authorized by [Chapter 20.30](#) of the Code of the City of Annapolis.
3. The Developer may apply in writing to the City's Department of Planning and Zoning ("Department") for a modification of the construction schedule, describing the reasons and basis for such modification and providing other information the Department requires in order to review and decide the application. The Department shall review the application and make a final determination. The Developer may not depart from the construction schedule without the prior approval of the Department.
4. All single family MPDUs constructed within the Property shall have at least two bedrooms.
5. If the Developer constructs multi family dwelling units within the Property, the number of efficiency and one bedroom MPDUs shall not exceed the ratio that market rate efficiency and one-bedroom units respectively bear to the total number of market rate dwelling units within the Property.
6. Subject to the Department's approval, the Developer shall identify all MPDUs and market rate dwelling units within the Property and establish the number, location and a construction sequencing plan for all market rate dwelling units and MPDUs to insure that the number of MPDUs which are either for sale or rent are constructed at the same rate as the market rate dwelling units and that MPDUs are spread throughout the Property and not clustered in one or more areas. The number, location and sequencing phases of each market rate dwelling unit and MPDU to be constructed by the Developer shall be shown on the Developer's approved preliminary and final site plan and are indicated in Exhibit B of this Agreement.
7. Each MPDU shall be architecturally compatible and similar in general exterior appearance and scale with market rate dwelling units to be constructed within the Property.

8. The Developer may reduce the interior amenity level of each MPDU provided that each MPDU remains in conformity with applicable housing and building codes and that any reduction in amenity level in no manner impacts energy efficiency, including but not limited to mechanical equipment, plumbing, insulation, windows and heating and cooling systems.
9. The Developer shall in all respects comply with the requirements of [Chapter 20.30](#) of the Code of the City of Annapolis and this Agreement for the occupancy period as defined in City Code [Chapter 20.30.020](#).
10. This Agreement shall run with the Property for the entire each occupancy period as defined in City Code [Chapter 20.30.020](#)
11. The existence of this Agreement shall be noted on the final approved subdivision plat for the Property.
12. This Agreement shall be recorded among the land records of Anne Arundel County, Maryland at the expense of the Developer.
13. The Developer shall offer all MPDUs for sale or for rent in accordance with the minimum requirements of [Chapter 20.30](#) of the Code of the City of Annapolis, plus any other reasonable requirements or regulations adopted by the Department.
14. The Developer shall offer MPDUs for sale or for rent by completing an Offering Agreement form provided by the Department.
15. Any contract or lease executed by the Developer for the sale or rental of any MPDU shall contain language indicating the existence of this Agreement and that that the requirements of [Chapter 20.30](#) of the Code of the City of Annapolis shall run with each MPDU and the Property and be binding on each MPDU owner or lessee and the Developer and their successors and assigns.
16. This Agreement shall not be construed to mean that a rental option shall be granted to those Developers who are not eligible to rent their MPDU in accordance with the provisions of [Chapter 20.30](#) of the Code of the City of Annapolis Code.
17. Before the sale or lease of any MPDU within the Property, the Developer shall execute a Declaration of Covenants governing MPDUs and record it among the land records of Anne Arundel County, Maryland. The Developer shall submit a proposed Declaration of Covenants to the Department for review and final approval prior to execution and recordation.
18. The Declaration of Covenants governing MPDUs shall contain a statement that it runs with the each MPDU and is binding on the successors and assigns of any owner or lessee of an MPDU, and that each MPDU is governed by the requirements of [Chapter 20.30](#) of the Code of the City of Annapolis.
19. The Declaration of Covenants governing MPDUs shall contain a statement that the Developer, without further action or consent required of the Developer, irrevocably grants and assigns to the City the right to enforce the Declaration of Covenants, to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law or to enjoin any violation or attempted violation of the Declaration of Covenants or the provisions of [Chapter 20.30](#) of the Code of the City of Annapolis.
20. Any contract of sale, deed, or lease for any MPDU shall have as an exhibit thereto a copy of the executed, recorded Declaration of Covenants with liber and folio number referenced.
21. The Developer shall provide to the Department a copy of all contracts of sale, settlement statements, deeds, and leases applicable to each MPDU, and such other documents and information regarding the sale or lease of all MPDUs as the City may require.
22. The City shall be entitled to enter upon the Property and into the each MPDU for purposes of inspection, at reasonable times and in a reasonable manner and with reasonable notice, to determine compliance with the Agreement, [Chapter 20.30](#) of the Code of the City of Annapolis, and any other applicable law, regulation or rule.

23. No waiver by the City of a specific breach or default of this Agreement shall be enforceable unless the waiver is in writing and signed by a person with authority to make the waiver, and any such waiver shall not constitute a waiver of any other or subsequent breach or default of this Agreement of the same or similar or different nature.
24. No failure by the City to exercise, and no delay in exercising any right or remedy permitted by law or pursuant to this Agreement shall operate as a waiver of such right or remedy.
25. Upon any breach of this Agreement by the Developer, the City shall have authority to issue stop work orders, suspend or revoke any or all building, grading, use and occupancy permits, or any other permits, issued to the Developer for any offending MPDU, and to deny the issuance of all subsequent permits or approvals, or suspend or revoke subsequent permits or approvals issued in connection with MPDUs, and invoke any other enforcement measure authorized by [Chapter 20.30](#) of the Code of the City of Annapolis and any applicable regulations of the Director.
26. This Agreement shall run with the Property and is binding upon the Developer's successors and assigns.
27. This Agreement shall survive the execution and delivery of all deeds by which the Developer transfers title to the Property or to any MPDU within the Property, and to all leases by which the Developer rents any MPDU within the Property, and shall not merge therein.
28. All modifications and amendments of this Agreement shall be in writing executed by the parties and notarized.
29. All notices required of the parties shall be sent to _____ on behalf of the Developer and to the Department of Planning and Zoning at 145 Gorman Street, 3rd Floor, Annapolis, Maryland 21401 on behalf of the City.
30. Except for any notice required to be given by law in another manner, the parties shall give notice to each other for any matters having to do with this Agreement by sending such notice by regular or certified mail or by delivering it in person to the address each has designated above, or such other address as they may designate to the other. The parties may mutually agree that e-mail notice is an acceptable alternative.
31. This Agreement shall be construed for all purposes in accordance with the laws of the State of Maryland.
32. The venue for any actions pursuant to this Agreement shall be the courts of Anne Arundel County, Maryland.
33. The parties waive trial by jury in any action brought pursuant to this Agreement.
34. The Developer shall indemnify, defend and hold the City, its Mayor, City Council members, employees, contractors and other agents harmless from all liability that may result from the Developer's breach of this Agreement or its failure to conform to the requirements of [Chapter 20.30](#) of the Code of the City of Annapolis, or its failure to comply with any other law, regulation or rule that governs the construction, sale or rental of any unit within the Planned Residential Development.
35. This Agreement is the final and entire agreement of the parties with respect to the requirements of [Chapter 20.30](#) of the Code of the City of Annapolis and all matters related thereto, and there are no oral or written understandings between them other than as stated herein.

Witness the signatures and seal of the parties.

Witness:

Developer:

_____ By: _____
Name: _____

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 2012, before me, a Notary Public in and for the State and County referenced above, personally appeared _____, known to me or satisfactorily proven to be the person who has signed this Agreement, and he/she has signed this Agreement in my presence and acknowledged that he/she is _____ of _____ and that he/she is authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is his/her free and voluntary act and the free and voluntary act of _____ made for the purposes set forth therein.

WITNESS my signature and Notary seal this _____ day of _____, 2012.

Notary Public _____ My Commission Expires: _____

ATTEST:

City of Annapolis:

_____ By: _____
Regina Watkins-Eldridge, City Clerk Joshua J. Cohen, Mayor

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY that on this _____ day of _____, 2012, before me, a Notary Public in and for the State and County referenced above, personally appeared Joshua J. Cohen, known to me or satisfactorily proven to be the person who has signed this Agreement, and he/she has signed this Agreement in my presence and acknowledged that he is Mayor of the City of Annapolis and is authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is his free and voluntary act and the free and voluntary act of the City of Annapolis made for the purposes set forth therein.

WITNESS my signature and Notary seal this _____ day of _____, 2012.

Notary Public _____ My Commission Expires: _____

Approved for legal sufficiency:

Gary M. Elson, Assistant City Attorney _____

EXHIBIT A

CONSTRUCTION SCHEDULE

Subdivision Phase	No. of Market Priced Units	Mo. & Yr. of Constr.1 / Start of Mkt. Priced Units	Mo. & Yr. of Constr.2 / Completion of Mkt. Priced Units	Number of MPDUs*	Mo. & Yr. of Constr.1 / Start of MPDUs	Mo. & Yr. of Construction completion of MPDUs
Total Units						

1. "Construction Start" shall mean the date on which footings are poured for dwelling subject units.
2. "Construction Completion" shall mean the date that final inspections by the Department of Neighborhood and Environmental Programs are completed.

* Developers submitting an MPDU Agreement covering less than an entire subdivision shall provide the lot and block numbers for the dwelling units to be constructed in the phase applicable to this Agreement. This information shall be set forth in a separate document attached to the Agreement as an appendix.

