City of Annapolis

Department of Planning & Zoning
145 Gorman Street, 3rd Fl
Annapolis, MD 21401-2535

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Agreement to Build
Moderately Priced Dwelling Units

This Agreement to Build Moderately Priced Dwelling Units ("Agreement") is made this _____ day of _____ 20__, by and between _____ ("Developer") and the City of Annapolis, a municipal corporation of the State of Maryland ("City").

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

Whereas,   the Developer has applied to the City for approval to construct Moderately Priced Dwelling Units ("MPDU") on the Property; and

Whereas,   Chapter 20.30 of the Code of the City of Annapolis ("Code"), as may be amended, governs and defines MPDU; and

Whereas,   the Developer is required to enter into this Agreement, along with a "Declaration of Covenants for Moderately Priced Dwelling Units" ("Declaration"), as part of the process required by Chapter 20.30 of the Code, as may be amended.

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:

ARTICLE I – CONSTRUCTION

1. The Developer shall construct on the Property the MPDUs indicated in **Exhibit A** of this Agreement, attached hereto and incorporated herein, in compliance with Section 20.30.50 of the Code, as may be amended, and in accordance with Sections 20.30.040 and 20.30.080 of the Code, as may be amended.

2. Subject to the Department's approval, the Developer shall identify all MPDUs and market rate dwelling units on 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 that are either for sale or rent are constructed at the same rate as the market rate dwelling units, and that the MPDUs are spread throughout the Property and not clustered in one (1) or more areas. The number, location and sequencing phases of each market rate dwelling unit and each MPDU to be constructed by the Developer shall be shown on the Developer's approved preliminary and final site plans and as indicated in **Exhibit B** of this Agreement, attached hereto and incorporated herein.

3. The Developer's construction of each MPDU on the Property shall comply with the construction schedule referenced in **Exhibit A** of this Agreement. The Developer shall construct each MPDU along with or preceding other market rate dwelling units to be constructed on the Property, and the Developer shall sequence the construction of the MPDUs so that construction reasonably coincides with the construction of the market rate dwelling units. The last building built on the Property shall not contain only MPDUs. The Developer's staging plan shall be consistent with the City-approved final 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 measures as authorized by Chapter 20.30 of the Code, as may be amended, or other applicable law, regulation or rule.

4. 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 such other information that the Department may require in order to review and decide on that application. The Department shall review the application for a modification and make a final determination. The Developer shall not depart from the City-approved construction schedule without the prior written approval of the Department.

5. All single family MPDUs constructed on the Property shall have at least two (2) bedrooms.

6. If the Developer constructs multi family dwelling units on the Property, the number of efficiency and one (1) bedroom MPDUs shall not exceed the ratio that market-rate efficiency and one (1) bedroom units respectively bear to the total number of market rate dwelling units on the Property.

7. Each MPDU shall be architecturally compatible and similar in general exterior appearance and scale with the market rate dwelling units to be constructed on the Property.

8. The Developer may reduce the interior amenity level of each MPDU, provided that each MPDU remains in conformity with all applicable housing and building codes, and that any reduction to the interior amenity level shall in no manner impact 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, as may be amended, and this Agreement for the occupancy period, as defined in City Code Chapter 20.30.020, as may be amended.

ARTICLE II – OFFER FOR SALE OR RENT

10. The Developer shall offer all MPDUs for sale and/or for rent in accordance with the minimum requirements of Chapter 20.30 of the Code, as may be amended, plus any other reasonable requirements or regulations as may be adopted by the Department.

11. The Developer shall offer MPDUs for sale and/or for rent by completing a "Sales Offering Agreement" ("Sales Agreement") in the form provided by the Department.

12. Any contract or lease executed by the Developer for the sale and/or rental of any MPDU shall contain language indicating the existence of this Agreement and that the requirements of Chapter 20.30 of the Code, as may be amended, shall run with each MPDU and the Property, and that this Agreement shall be binding on each MPDU purchaser or lessee and the Developer and their respective successors and assigns.

13. 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, as may be amended.

14. 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 on the Property as the City may require.

ARTICLE III – DECLARATION OF COVENANTS

15. Before the sale and/or lease of any MPDU on the Property, the Developer shall execute a Declaration in the form provided by the Department, and such Declaration shall be recorded among the land records of Anne Arundel County, Maryland at the Developer's expense. The Developer shall submit a completed Declaration to the Department for review and final approval prior to recordation.

16. The Declaration governing MPDUs shall contain a statement that it runs with the each MPDU and is binding on the successors and assigns of any purchaser or lessee of an MPDU, and that each MPDU is governed by the requirements of Chapter 20.30 of the Code, as may be amended.

17. The Declaration 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, 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 or the provisions of Chapter 20.30 of the Code, as may be amended.

18. Any contract of sale, deed, or lease for any MPDU shall have as an exhibit thereto a copy of the executed, recorded Declaration with the liber and folio numbers referenced.

ARTICLE IV – INSPECTION; BREACH OR DEFAULT

19. 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 this Agreement, Chapter 20.30 of the Code, as may be amended, and any other applicable law, regulation or rule.

20. 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.

21. 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.

22. Upon any breach or default 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 the Property or 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 the Property and any MPDUs, and invoke any other enforcement measure authorized by Chapter 20.30 of the Code, as may be amended, and any applicable regulations of the Department, and any other applicable law, regulation or rule.

ARTICLE V – MISCELLANOUS

23. The existence of this Agreement shall be noted on the final approved subdivision plat for the Property.

24. This Agreement shall be recorded among the land records of Anne Arundel County, Maryland at the expense of the Developer.

25. This Agreement shall run with the Property and is binding upon the Developer's successors and assigns.

26. This Agreement shall survive the execution and delivery of all deeds by which the Developer transfers title to the Property or to any MPDU on the Property, and to all leases by which the Developer rents any MPDU on the Property, and shall not merge therein.

27. The Developer shall indemnify, defend and hold the City, its elected officials, appointees, directors, employees, agents, and representatives 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, as may be amended, or its failure to comply with any other law, regulation or rule that governs the construction, occupancy, sale or lease of any MPDU.

28. All notices required of the parties shall be sent to _____ at _____ on behalf of the Developer and to the Department at 145 Gorman Street, 3rd Floor, Annapolis, Maryland 21401 on behalf of the City. 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 or fax notice is an acceptable alternative.

29. Nothing contained in this Agreement shall be construed to constitute the Developer as an agent, representative or employee of the City. Nor shall anything contained in this Agreement be construed in any manner to create any relationship between the Developer and the City other than what is expressly specified herein, and the Developer and the City shall not be considered partners or co-venturers for any purpose on account of this Agreement.

30. This Agreement shall be construed for all purposes in accordance with the laws of the State of Maryland. The venue for any actions pursuant to this Agreement shall be the courts of Anne Arundel County, Maryland. The parties waive trial by jury in any action brought pursuant to this Agreement.

31. This Agreement, the Declaration and the Sales Agreement set forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. This Agreement shall not be waived, amended or modified except in writing and signed by the authorized representative(s) of the parties.

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 _____, 20__, 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 _____, 20 ___ .

Notary Public _____ My Commission Expires: _____

ATTEST: City of Annapolis:

By: _____

Regina Watkins-Eldridge, City Clerk   Gavin Buckley, Mayor

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY that on this _____ day of _____ , 20__, before me, a Notary Public in and for the State and County referenced above, personally appeared Michael J. Pantelides, known to me or satisfactorily proven to be the person who has signed this Agreement, and he 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 _____, 20 ___.

Notary Public _____ My Commission Expires: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

_____
Office of Law
D. Michael Lyles, 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 City Department of Planning and Zoning are completed.

If the Developer is submitting an "Agreement to Build Moderately Priced Dwelling Units" covering less than an entire subdivision on the Property, then the Developer shall provide the City with 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.

Exhibit B

MPDUs for Sale

Lot	Block	Street Address	Tax ID Number

Market Rate Dwelling Units for Sale

Lot	Block	Street Address	Tax ID Number