



APPENDIX D

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan
County Executive

Elizabeth B. Davison
Director

August 26, 2005

Mr. Herschel Blumberg
Mr. Christopher Hanessian
Arcola Investments Associates
c/o Cylburn, Inc., General Partner
6525 Belcrest Road, Suite 300
Hyattsville, Maryland 20872

RE: Moderately Priced Dwelling Units (MPDUs) for Kings Crossing

Dear Messrs. Blumberg and Hanessian:

This letter serves to notify you that Arcola Investment Associates (Arcola) is in breach of its "Agreement to Build Moderately Priced Dwelling Units for a Permit of 35 or More Dwellings" with Montgomery County dated January 23, 2004 (Agreement).

Specifically, under Paragraph 9 of the Agreement, Arcola was required to begin construction of a total of 102 MPDUs for Kings Crossing by no later than June 2005; or, alternatively, if the construction of the MPDUs was not feasible because of market conditions, Arcola was required upon the execution of the Agreement to "submit to the Maryland-National Park and Planning Commission and diligently pursue, an amendment to [Arcola's] approved plan [for MPDUs]. . . that reflects a new layout of townhouses and two over two units. . ."

Arcola has neither commenced construction nor diligently pursued an amendment to Arcola's approved plan for the MPDUs. We have had some discussions with Kevin Smart about pricing of the units. Our formula for pricing the units may not provide him with the economic ability to construct the units, given the costs he has shared with us. Also, his desire to change the configuration of the buildings to midrise construction would require Planning Board action.

Therefore, please be advised that Arcola has 90 days from the date of this letter to both obtain approval for a revised plan for the MPDUs from Park and Planning and to execute an amended Agreement with this Department for the construction of the MPDUs, or move ahead with the currently approved plan and begin construction. Arcola's failure to meet this 90 day deadline will result in this matter being referred to the Office of the County Attorney for enforcement action. Enforcement action includes, but is not limited to, issuing daily citations with \$500 fines for each MPDU that Arcola fails to construct in accordance with the Agreement and pursuing an action in Circuit Court for injunctive relief to require Arcola's performance under the Agreement.

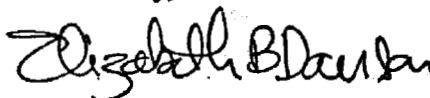


Office of the Director

Mr. Herschel Blumberg
Mr. Christopher Hanessian
August 26, 2006
Page 2

I look forward to Arcola's compliance with its MPDU obligation and to receiving a status report on the construction of the MPDUs.

Sincerely,



Elizabeth B. Davison
Director

cc: Steve A. Robins, Esq.
Lerch, Early & Brewer

Office of the County Attorney for Montgomery County, Maryland

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MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AGREEMENT TO BUILD MODERATELY PRICED DWELLING
UNITS FOR A PERMIT OF 35 OR MORE DWELLINGS

THIS AGREEMENT dated the 23rd day of January, 2004,

by and between ARCOLA INVESTMENT ASSOCIATES (herein "Applicant") and
MONTGOMERY COUNTY, MARYLAND, (herein "County").

WHEREAS, the Applicant plans to construct 35 or more dwelling units in the subdivision known as Kings Crossing, located in Montgomery County, Maryland and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, require that a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in this Agreement and pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended.

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

1. The Applicant, its successors or assigns, agrees to construct 816 total dwelling units in the subdivision, including MPDUs in accordance with the construction schedule attached hereto and made a part hereof as Exhibit "A".

any MPDU must contain language imposing a covenant running with the land invoking the requirements of Chapter 25A. This provision is not to be construed as granting the rental option to those Applicants who are not eligible to rent their MPDUs according to the provisions of Chapter 25A.

(b) Applicant must, at the time a Contract of Sale or Rental Agreement is executed or otherwise agreed to, or entered into, by Applicant, whether written or oral, or at such other time as may be requested by the County, execute a separate Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirement of Chapter 25A, Montgomery County Code, 1994, as amended.

(c) The Contract of Sale, Deed, Lease and the separate Declaration of Covenants must contain language as contained in Exhibit "C" attached hereto, and made a part hereof. (In addition, the duly recorded Deed or executed Lease Agreement must contain specific language, in conspicuous form, subjecting the herein referred property to the Declaration of Covenants, which language shall contain the date of recordation and the Liber and Folio reference of the said duly recorded Declaration of Covenants.)

(d) The Declaration of Covenants contained in Exhibit "C" must be fully executed by the Applicant and must contain the necessary jurat for either individual or corporate signatures, as the case may be, in such form as may be required to properly record said Declaration of Covenants among the Land Records of Montgomery County, Maryland. Said Declaration of Covenants must be returned to Montgomery County for approval, execution and recordation by Montgomery County among the Land Records.

6. Applicant, his agents, heirs, assigns or successors, hereby irrevocably assigns to

as Exhibit "D". The County and the Applicant agree that the MPDUs shall be constructed pursuant to Amended Plan as reflected on Exhibit "D" (identified as Phases 12A and 12B) and that the construction schedule attached hereto as Exhibit "A" may need to be revised to reflect any changes to the phasing schedule for the MPDUs. Notwithstanding the foregoing, the parties hereto acknowledge that development on the Property is subject to a maximum allowable amount of new impervious construction to be built on the Property (the "Impervious Cap"). Phase 12A may be constructed without exceeding the currently approved Impervious Cap. Phase 12B may be constructed after either the Impervious Cap is increased to accommodate Phase 12B or after the Department of Permitting Services and the Montgomery County Planning Board determine that Phase 12B will not exceed the Impervious Cap and issue building permits. The parties agree that, if a situation should arise where the Montgomery County Planning Board approves Phase 12A of the Amended Plan and does not approve a waiver request by the Applicant from Chapter 25A to provide for the MPDUs on the Property that cannot be accommodated because of the Impervious Cap, then the Applicant shall deed that portion of the Property that remains undeveloped in Phase 12 to the County or to the Maryland-National Capital Park & Planning Commission if approved by the Planning Board and the property shall be incorporated into the adjacent park. This conveyance shall serve as the Alternative Compliance mechanism pursuant to Section 25A-5 of the Code to satisfy the Applicant's MPDU obligation. The Director agrees to support the Applicant's request for the above referenced waiver if all of the MPDUs cannot be accommodated on site in the proposed configuration (as depicted on the Amended Plan) as a result of the Impervious Cap.

10. A waiver by the County of a specific default must be in writing from the County, and

14. No member, officer or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

15. This Agreement may be assigned by the Applicant and is binding upon the agents, successors, heirs and assigns of the Applicant.

16. The terms of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

17. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to, including those amendments described in Montgomery County Council Bill No. 25-88, if applicable, and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by Christopher Hanessian, the Senior Vice President of its General Partner and its corporate seal to be affixed, and does hereby appoint its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year hereinabove written caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

STATE OF MARYLAND
COUNTY OF ~~MONTGOMERY~~
PRINCE GEORGE'S

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Christopher Hanessian, Senior Vice President, Cylburn, Inc., the General Partner of Arcola Investment Associates., attorney in fact for Applicant who is personally well known to me as the person named as attorney-on-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 19th day of December, 2003.

My Commission Expires: 3-1-07 *Gloria M. Tucker*
Notary Public
GLORIA M. TUCKER
* * *

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared ELIZABETH B. DAVISON, Director, Department of Housing and Community Affairs, attorney-in-fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 23rd day of JANUARY, 2004.

My Commission Expires: 8-1-05 *Janet P. Lado*
JANET P. LADO

EXHIBIT B

STATEMENT OF LAND OWNED FOR COMPLIANCE WITH THE MODERATELY PRICED HOUSING LAW

Pursuant to Article 25A-5 (h) of the Montgomery County Code, 1994, as amended, Applicant hereby provides a list* which is attached hereto as Schedule A,** describing all land owned in whole or in part, or which is under contract to, the Applicant, in Montgomery County, Maryland, which is available for residential development. Applicant, in consideration for the issuance of Building Permit Application No. _____ affirms that the said Schedule A includes all property as described above for which:

- 1. A preliminary subdivision plan or development plan has been filed or for which a building permit application has been filed; and
2. Public water and sewer will be utilized; and
3. The optional zoning provisions of the Moderately Priced Dwelling Unit Law and/or Zoning Ordinance, are applicable, Article 25A.

Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

WITNESS:

[Handwritten signature of witness]

APPLICANT:

ARCOLA INVESTMENT ASSOCIATES BY: CYLBURN, INC., GENERAL PARTNER

[Handwritten signature of applicant]

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of Montgomery, by Applicant(s) this 19th day of December, 2003.

My Comm. Exp: 3-1-07

[Handwritten signature of notary] NOTARY PUBLIC

* For any Building Permit Application subsequent to the initial application subject to these requirement, Applicant needs only submit changes to the list of property holdings.

** Schedule A shall contain information stating the owner's name, location and size of parcels, subdivision name, Liber and folio references of latest deeds and Plat Book references.

EXHIBIT "C"

Subdivision Name: Kingsview Crossing

MODERATELY PRICED DWELLING UNITS

DECLARATION OF COVENANTS

FOR RENTAL SUBDIVISIONS

THIS DECLARATION, made this ____ day of _____, 2004, hereinafter set forth by Arcola Investment Associates, by Cylburn, Inc., General Partner, owner (hereinafter referred to as "Declarant").

NOW THEREFORE, Declarant hereby declares that all of the properties described hereinafter must be held, sold and conveyed and/or leased or rented, subject to the following covenants, conditions, and restrictions:

ARTICLE I

Declarant is the owner of all of the property set forth and described in the list attached hereto and made a part hereof, which moderately priced dwelling unit properties ("MPDUs") are the subject of the within Declaration of Covenants, and are hereinafter referred to as "The Property" or "MPDUs."

ARTICLE II

For a period of 20 years beginning on the date of first rental of The Property, or such other period as established by law, the improvements hereon and those that may subsequently be made to The Property must not be rented for an amount in excess of the maximum rental price established from time to time by Executive Regulation and in accordance with Section 25A-9(d) of the Montgomery County Code, 1994, as amended, and any applicable Executive Regulations.

ARTICLE III

For a period of 20 years from the date of the first rental of The Property, or such other shorter period as established by law, the Property must not be sold for a price greater than that determined and approved by the County Executive prior to such sale and in accordance with Section 25A-7 and Section 25A-9 of the Montgomery County Code, 1994, as amended, and appropriate Executive Regulations.

Montgomery County Department of Finance in accordance with Section 25A-9(e) of the Montgomery County code 1994, as amended and applicable Executive Regulations after which the provisions of the covenants will terminate. This provision will not apply to a foreclosure sale made during the control period if the units are rented at the approved Moderately Priced Dwelling Unit (MPDU) rents for the remainder of the control period stated in Article II.

IN WITNESS WHEREOF, Declarant Arcola Investment Associates, by Cylburn, Inc., its general partner has caused these presents to be executed by Christopher Hanessian, Senior Vice President of Cylburn, Inc., and does appoint Christopher Hanessian its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

APPLICANT:

BY: ARCOLA INVESTMENT ASSOCIATES

BY: CYLBURN, INC., GENERAL PARTNER

BY: _____

Christopher Hanessian
Senior Vice President

Property Description

THE PROPERTY: Kingsview Crossing

This property was acquired by Arcola Investment Associates on _____.

The Deed is recorded at Liber 18588 at Folio 607.

Identify the MPDUs by LOT, BLOCK, PLAT NUMBER, PLAT BOOK, STREET ADDRESS, and TAX ACCOUNT NUMBER or PARCEL IDENTIFYING NUMBER.

LOT	BLOCK	PLAT BOOK	PLAT NUMBER	STREET ADDRESS FOR MPDUs	TAX NUMBER

G:\Dept\RE\SAR\PG Metro Plaza\MPDU Declaration of Cov Exhibit.doc

Suite 300
Hyattsville, MD 20782
CRH@utcmail.net
djefferson@winsnetworks.com

RE: Vistas MPDU Agreement

Dear Addressees:

I have reviewed the proposed MPDU Agreement and discussed it with the clients I represent. I am advised by the clients I represent that the MPDU Agreement would be acceptable subject to the additions outlined below. I understand it to be everybody's intent and desire that this be a senior development. I also understand that there are a significant number of people on the MPDU waiting list. My recollection is that we were told the number is in excess of 1,300. Given this large residual pool of purchasers there would be no problem marketing the units once opened to the general pool.

The changes I am requesting are that the second 90-day period be extended for 60-days. At the end of these two periods if at least 50% of the units have ben sold, then the exclusive senior period will be extended for 60 days. This is a total senior time period availability of 10 months. Given the large available pool of MPDU buyers, 2 additional months will be ample time to get contracts.

The above changes would be contained in paragraph 11d of the proposed MPDU Agreement and would read as follows:

"The county shall begin offering MPDU's to Seniors with income levels of 70% of the median income twelve months prior to the Applicant substantially completing the construction of each building. If all of the units are not sold to income eligible Seniors within 90 day of such offering, the County shall offer the remaining MPDU's to those Seniors with income levels of 80% of

the median income for another 90 150 day period. Provided 50% or more of the units have been sold by the end of this second period, this second period will be extended for an additional 60 days. If there still are MPDU's remaining, the County shall then offer these MPDU's to income qualified individuals without regard to an age restriction for another 90 day period. If MPDU's continue to remain available, the County shall then offer the balance of the MPDU's to those Seniors without regard to income eligibility levels."

Please advise as the acceptability of these changes so that this matter can be finally resolved.

Sincerely,

Ellis J. Koch

EJK: emi