

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 20 OR MORE DWELLING UNITS

THIS AGREEMENT dated the 31 day of March 2005.

by and between 9200 Rockville Pike LC (herein "Applicant") and MONTGOMERY COUNTY, MARYLAND, (herein "County").

WHEREAS, the Applicant plans to construct twenty eight (28) dwelling units (24 market and 4 MPDUs) in the subdivision known as Bethesda Crest, 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. Applicant agrees to construct 28 total dwelling units in the subdivision, including MPDUs in strict accordance with the construction schedule attached hereto and made a part hereof as Exhibit A.

2. All land owned by the Applicant in whole or in part, or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building development is shown on the Statement of Land Owned, attached hereto, and made a part hereof as Exhibit B.

3. The Applicant shall construct MPDUs along with or preceding market rate dwelling units in the subdivision, and the County agrees that compliance with the construction schedule in Exhibit A shall satisfy the MPDU staging requirement and the provisions of Section 25A (5) (e) of the Montgomery County Code, 1994, as amended.

4. The County will issue building permits as requested by the Applicant for Bethesda Crest (Subdivision Name). Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for this subdivision and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for this subdivision, and/or invoke any other of the enforcement measures authorized by Section 25A-10 of the Montgomery County Code, 1994, as amended, and Executive Regulations adopted pursuant thereto, for failure to comply with this Agreement.

5. (a) Applicant must offer MPDUs for sale or rental in accordance with the requirement of Chapter 25A of the Montgomery County Code, 1994, as amended, and in accordance with any Executive Regulations promulgated, or as may be promulgated, in the furtherance of said Chapter. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by the Department of Housing and Community Affairs. The Contract of Sale or the Lease executed by Applicant for the sale or rental of 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 of 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 Montgomery County, Maryland, all its right, title, interest and obligation to enforce the provisions of the Declaration of Covenants referred to herein during the term the Covenants are in effect; 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 said

Covenants or the provisions of Section 25A of the Montgomery County Code, 1994, as amended.

7. Applicant must provide a copy of the final Contract of Sale or Lease Agreement for each MPDU covered by the building permits issued under the Agreement to the County, as well as settlement sheets and such other documents and information as may be required by Executive Regulations.

8. The County shall be entitled to enter upon the property and/or into the subject unit or units for purposes of inspection at all reasonable times to determine compliance with the Agreement.

9. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the approved preliminary or site plan attached hereto and made a part hereof as Exhibit D.

10. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other or subsequent default of similar or different nature.

11. No failure on the part of the County to exercise, and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

12. Applicant may make written application to the Director of the Department of Housing and Community Affairs or designee for a modification of the construction schedule set forth on Exhibit A, describing the basis for such change. The Director or designee must review the application and make a final determination on the request which must be delivered to the Applicant within thirty days. Applicant may not depart from the schedule set forth on Exhibit A without the prior approval of the Director or designee.

13. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County :

Department of Housing and Community Affairs
100 Maryland Avenue, 4th Floor
Rockville, Maryland 20850

Attn: ~~Eric Larsen~~ CHRIS ANDERSON

Applicant: 9200 Rockville Pike, LC.
6820 Elm Street, Suite 200
McLean, VA 22101

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 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 and Applicant agrees to sign such documents as

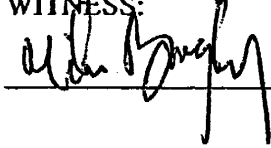
may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by

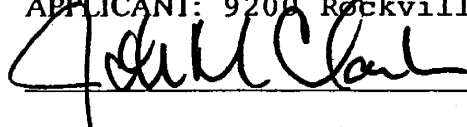
JOHN M. CLARK its, MANAGER

_____ 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.

WITNESS:

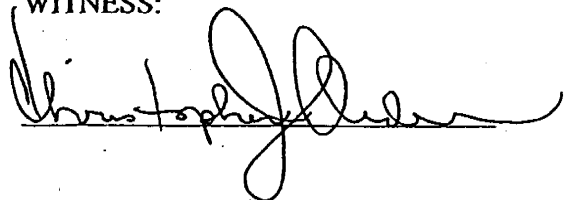


APPLICANT: 9200 Rockville Pike, L.C.

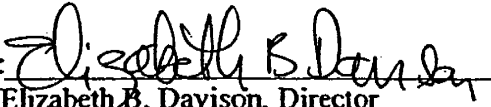



BY:

WITNESS:



MONTGOMERY COUNTY, MARYLAND

BY: 
Elizabeth B. Davison, Director
Department of Housing and Community Affairs

STAFF REVIEW BY: 

STATE OF MARYLAND
COUNTY OF MONTGOMERY

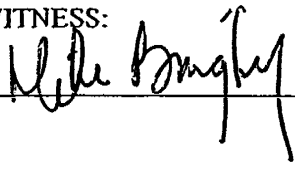
I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, attorney-in-fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

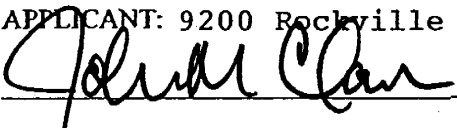
WITNESS my hand and seal this _____ day of _____, 20_____

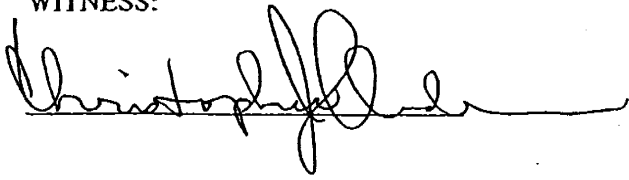
My Comm. Exp.: _____
NOTARY PUBLIC

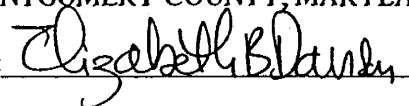
IN WITNESS WHEREOF, Applicant has caused these presents to be executed by _____ its, _____

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.

WITNESS:


APPLICANT: 9200 Rockville Pike, L.C.

BY:

WITNESS:


MONTGOMERY COUNTY, MARYLAND
BY: 

Elizabeth B. Davison, Director
 Department of Housing and Community
 Affairs

**EXHIBIT A
 CONSTRUCTION SCHEDULE**

In compliance with Chapter 25A of the Montgomery County Code, 1994, as amended, Applicant agrees that the Units in Bethesda Crest (subdivision name) will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units in this subdivision and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 1994, as amended. The MPDU staging plan must be consistent with the site plan enforcement agreement. The applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. The last building built must not contain only MPDUs.

Development Phase	No. of Market Priced Units	Mo. & Yr. Of Constr. 1/ Start Of Mkt. Priced Units	Mo. & Yr. Of Constr. 2/ Completion Of Market Priced Units	Number of MPDUs *	Mo. & Yr. Of Constr. Start Of MPDUs	Mo. & Yr. Of Constr. Completion of MPDUs
Lots 3-7	5	Dec 04	June 05	0		
Lots 8-9	2	Feb 04	Aug 05	0		
Lots 10-13	4	March 05	Oct 05	0		
Lots 14-18	5	May 05	Dec 05	0		
Lots 1 & 2	2	Sept 05	March 06	0		
Lots 19 & 20	2	Nov 05	May 06	0		
Lots 21 & 22	2	Jan 06	July 06	0		
MPDU BLDG				4	Feb 06	July 06
Lots 23 & 24	2	April 06	Nov 06			
TOTAL UNITS	24			4		

1. "Construction Start" is be defined as the date on which footings are poured for the subject units.
2. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

*Applicants submitting an MPDU agreement covering less than an entire subdivision must provide the lot and block numbers for the units to be constructed in that phase of the development covered by this agreement. This information should be provided on a separate sheet of paper and attached to the agreement as an appendix.

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 for (subdivision) Bethesda Crest 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:

[Signature]

APPLICANT: 19200 Rockville Pike, L.C.
[Signature]

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Virginia, County of Spotsylvania, by Applicant(s) this 15th day of February, 2005.

My Comm. Exp: 2-28-09

[Signature]

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.

Subdivision Name: Bethesda Crest

MODERATELY PRICED DWELLING UNITS

DECLARATION OF COVENANTS

FOR SALE SUBDIVISIONS

THIS DECLARATION OF COVENANTS, made this ____ day of _____, 20____, hereinafter set forth by 9200 Rockville Pike, L.C, owner (hereinafter referred to as "Declarant").

NOW, THEREFORE, Declarant hereby declares that all of the properties described hereinafter shall be held, sold and conveyed 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 as Exhibit A. The properties are the subject of this Declaration of Covenants, and are hereinafter referred to as the Moderately Priced Dwelling Units (MPDUs).

ARTICLE II

For a period of thirty years beginning on the date of recordation of the deed from the Declarant to the initial purchaser of an MPDU, or such other period as established by law, (the "Control Period"), the MPDUs and the improvements thereon and those that may subsequently be made to the MPDUs must not be sold or the mortgage or deed of trust note refinanced for an amount in excess of the maximum sales price established in accordance with Chapter 25A of the Montgomery County Code, 2004, as amended, and all applicable Executive Regulations. Closing costs, improvements and brokerage fees are defined and assessed in accordance with the terms of Chapter 25A and regulations adopted pursuant thereto. The resale price calculation for the MPDUs will be made in accordance with the change in the cost of living as measured by the Consumer Price Index (CPI-U for the Washington Metropolitan Area) published by the U. S. Department of Labor. If an MPDU is sold during the Control Period, the provisions contained in these covenants will be effective for an additional thirty years from the date of the subsequent sale of an MPDU; further, the thirty year Control Period will be renewed each and every time an MPDU is sold during the Control Period. MPDUs offered for resale during the Control Period must first be offered exclusively for 60 days to the Department of Housing and Community Affairs and to the Housing Opportunities Commission.

ARTICLE III

For the first sale of the MPDUs after the expiration of the Control Period referred to in Article, II, the seller of the MPDU as a condition of transferring good title, must make a payment to the Housing Initiative Fund in accordance with the provisions contained in Chapter 25A of the Montgomery County Code, 2004, as amended, and all applicable Executive Regulations. After the required payment has been received by the Montgomery County Department of Finance, the restrictions contained in these Covenants will be released. The Housing Opportunities Commission of Montgomery County and other housing development agencies or non-profit corporations approved by the County Executive are exempt from this provision of the Covenants.

ARTICLE IV

Purchasers of an MPDU must occupy the MPDU as their primary residence during the Control Period. Purchasers of an MPDU, except for the Housing Opportunities Commission and other housing development agencies or non-profit corporations approved by the County Executive, are not permitted to lease or rent their MPDU to other parties during the Control Period. This restriction may be waived by the County to allow a temporary rental of the MPDU for good and sufficient cause. The MPDU must be rented in accordance with regulations established by the County Executive and Purchasers must receive prior written permission from the County to rent their MPDU temporarily. Purchasers will be required to extend the Control Period for a time equal to the length of time the MPDU is rented.

ARTICLE V

Declarant, its heirs, assigns, and successors, hereby irrevocably assigns, transfers, and conveys unto Montgomery County, Maryland all its right, title, interest, or obligation to enforce and maintain in full force and effect, the terms, conditions, and requirements of this Declaration of Covenants.

ARTICLE VI

The Declarant or Montgomery County, Maryland may enforce these Covenants by a proceeding, at law or in equity, against any person or persons violating or attempting to violate intentionally or otherwise, any covenant or restriction herein contained, either to restrain any violation hereof or to recover damages or monies, or to proceed against the land or the MPDUs to enforce any lien or obligation created by or resulting from these Covenants

ARTICLE VII

These Covenants are binding upon the MPDUs, upon the Declarant and the MPDU Purchasers, upon the Declarant's and the MPDU Purchasers' heirs, successors, and assigns, and upon all transferees and transferors of the title to the MPDUs during the Control Period and until the fulfillment of all other provisions contained herein including the payment required to be made to the Housing Initiative Fund under Article III.

ARTICLE VIII

The original deed of conveyance from the Declarant, its heirs, assigns or successors, and all subsequent transfers, assignments, and deeds of conveyance out by subsequent Purchasers of the MPDU, must, during the term of these Covenants, be a two-party deed that contains conspicuous language specifically reciting that the MPDU is subject to these Covenants and the requirements of Chapter 25A of the Montgomery County Code, 2004, and referencing the date of recordation of these Covenants among the land records of Montgomery County, including the Liber and Folio. Notice must also be included in any contract of sale for an MPDU that fully and completely discloses the rental and resale price restrictions and controls established herein. All subsequent Purchasers of an MPDU must likewise provide such notice in contracts of sale.

ARTICLE IX

These Covenants cannot be terminated, except by the expiration of the Control Period defined in Article II, any extension of the Control Period described in Article IV, or a foreclosure sale as provided in Article X, and the Montgomery County Department of Finance's receipt of the proper payment to the Housing Initiative Fund provided in Article III. After receiving the appropriate payment for the Housing Initiative Fund, a termination statement, executed by the County Executive of Montgomery County will be recorded among the land records of Montgomery County, Maryland.

ARTICLE X

If the MPDU is sold at a foreclosure sale, the restrictions contained in the Covenants will be terminated after the County receives the payment required to be made to the Housing Initiative Fund in accordance with the provisions of Chapter 25A of the Montgomery County Code, 2004, as amended, and all applicable Executive Regulations.

ARTICLE XI

If any default occurs and is continuing, the County may apply to any state or federal court having jurisdiction for specific performance of the Declaration of Covenants, for an injunction against any violation of this Declaration of Covenants, or for such other relief at law or equity as may be appropriate and consistent with applicable requirements of the Declaration of Covenants. No remedy conferred upon or reserved to the County by this Declaration of Covenants is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and is in addition to every other remedy given under this Declaration of Covenants, existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to perform under this Article will impair any such right or power or will be construed to be a waiver thereof. If, upon or after the occurrence of any default hereunder, the County incurs expenses for the enforcement or performance or observance of any obligation or agreement on the part of others contained herein, the County must be reimbursed upon demand by the party or parties for reasonable expenses paid to third parties.

ARTICLE XII

In the event any provision of this Declaration of Covenants shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

IN WITNESS WHEREOF, Declarant 9200 Rockville Pike, L.C. has caused these presents to be executed by John M. Clarke its, Manager its corporate seal to be affixed hereto, and does appoint its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

DECLARANT:

Mike Gimpfy

John M. Clarke

STATE OF MARYLAND VIRGINIA
FAIRFAX
COUNTY OF MONTGOMERY:

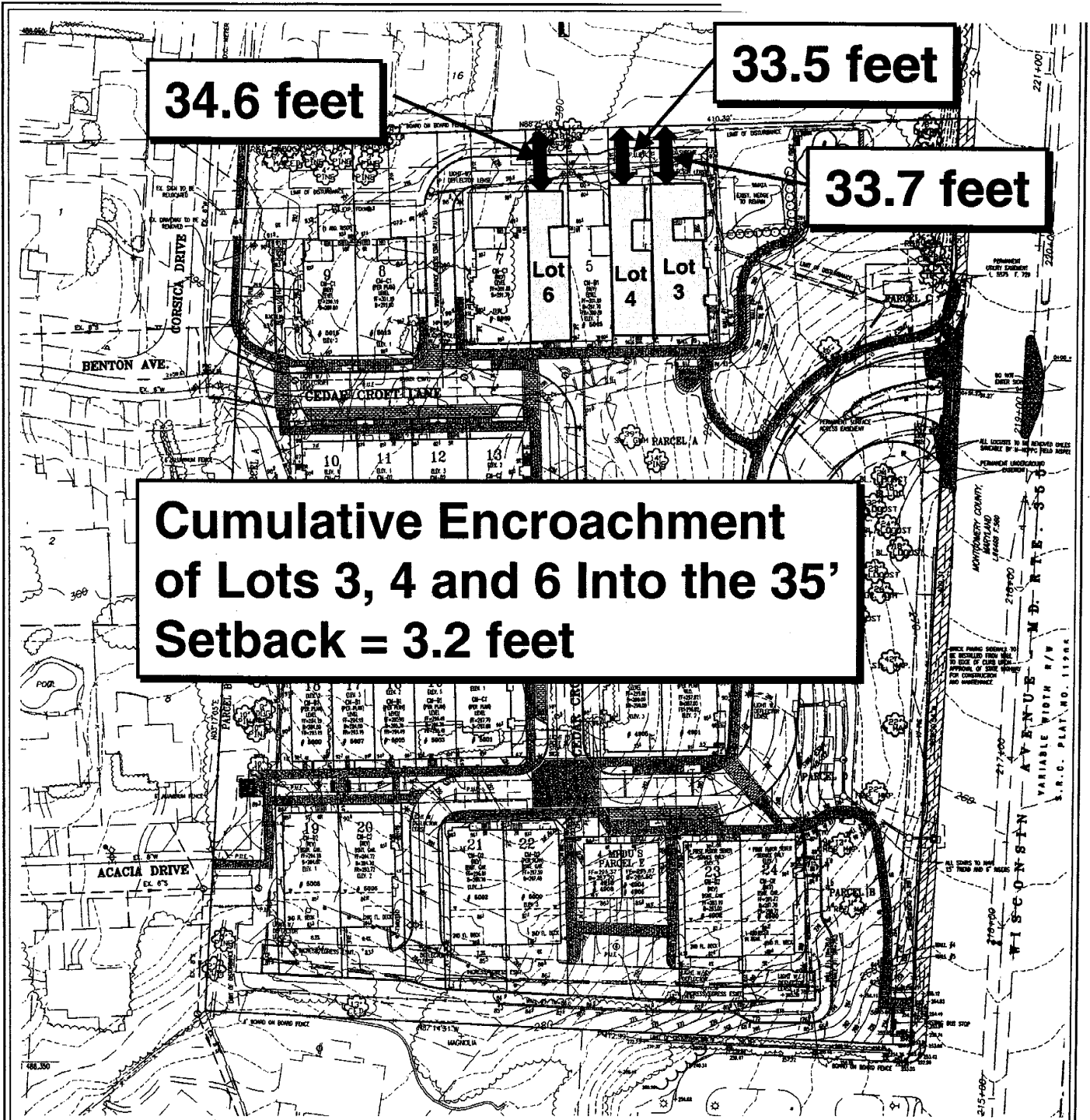
I HEREBY CERTIFY that on this 30th day of March, 2005, personally appeared John M. Clarke (name), Manager (title) of 9200 Rockville Pike L.C. (Developer name) who is personally well known to me as the person named as attorney-in-fact as aforesaid, and by virtue vested in him as aforesaid, acknowledged the same to be the act and deed of 9200 Rockville Pike L.C., the Declarant herein, for the purposes herein contained.



WITNESS my hand and seal this 30th day of March, 2005

Claude M. B. Thomas, Notary Public.

My Commission Expires: March 31, 2008



**Cumulative Encroachment
of Lots 3, 4 and 6 Into the 35'
Setback = 3.2 feet**

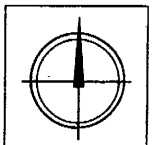
Setback Violation

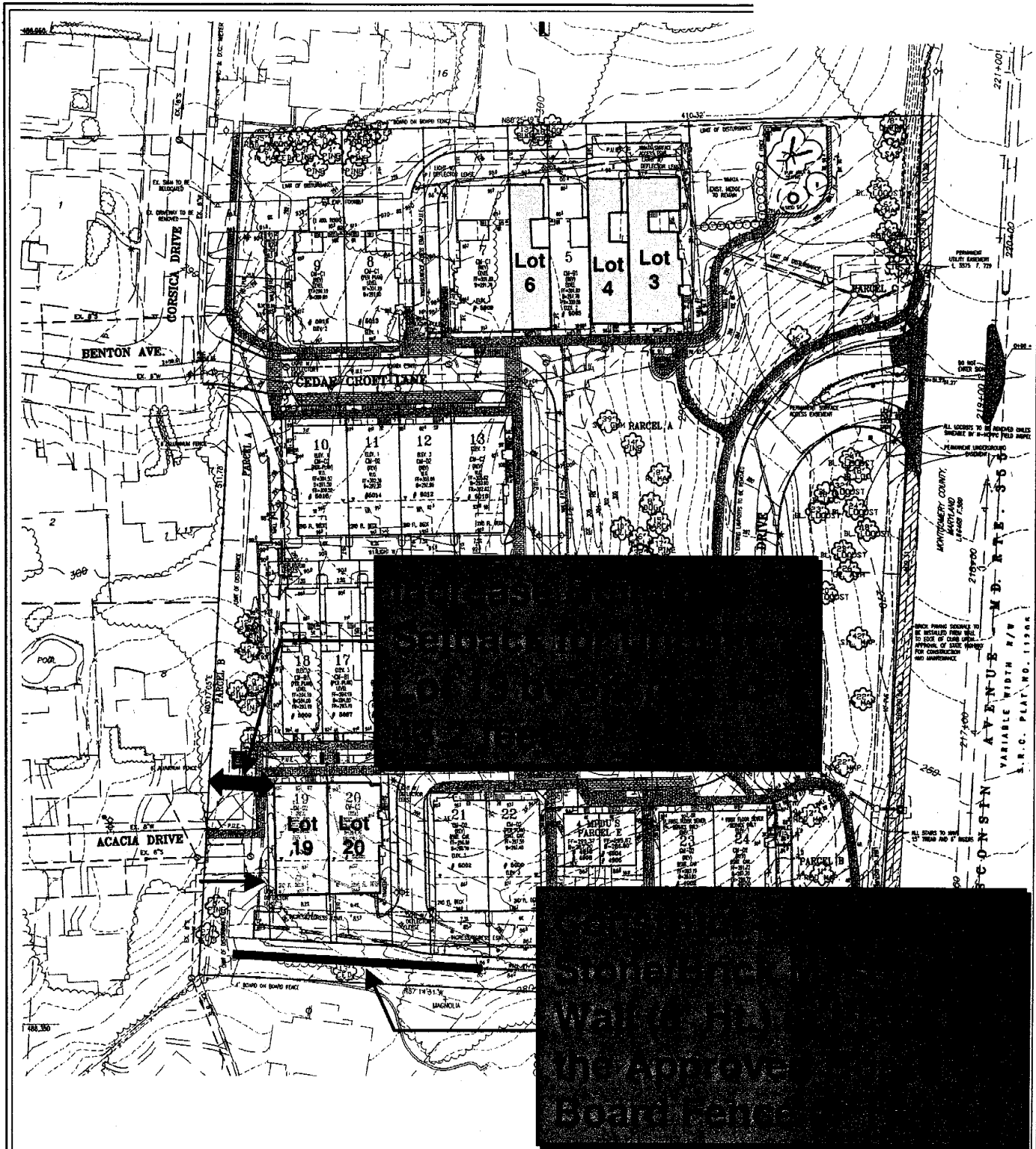
(Plan Source: Approved Signature Set, Signed 7-7-04)

November 4, 2005



BETHESDA CREST
BETHESDA, MARYLAND





Staff Recommended Compliance

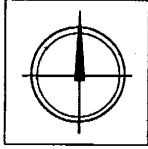
(Plan Source: Approved Signature Set, Signed 7-7-04)

November 10, 2005



BETHESDA CREST

BETHESDA, MARYLAND



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