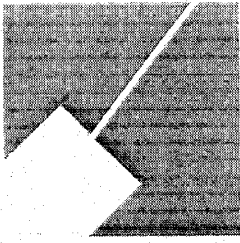


M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

## MONTGOMERY COUNTY PLANNING BOARD

## OPINION

**DATE MAILED:** March 1, 2004

**SITE PLAN REVIEW #:** 8-04017

**PROJECT NAME:** Rock Spring Center –Residential Tower II

*Action: Approval subject to conditions. Motion was made by Commissioner Perdue, seconded by Commissioner Bryant, with a vote of 5-0, Commissioners Perdue, Bryant, Robinson, Berlage, and Wellington voting for.*

The date of this written opinion is March 1, 2004, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before April 1, 2004 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-98092 is valid, as provided in Section 59-D-3.8.

On February 26, 2004, Site Plan Review #8-04017 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with approved development plan DPA 99-1;*
2. *The Site Plan meets all of the requirement of the MXPB zone;*
3. *The location of the buildings and structures, the open spaces, the landscaping, and the pedestrians and vehicular circulation systems are adequate, safe, and efficient;*
4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*

Therefore, the Montgomery County Planning Board **APPROVES** Site Plan #8-04017, which consists of 352 multi-family dwelling units including 32 on-site moderately priced dwelling units (MPDUs) with the following conditions:

1. Transportation

The applicant shall provide one bicycle rack or locker per 20 automobile parking spaces not to exceed 20 bicycle racks or lockers for the subject development in accordance with Section 59-E-2.3 of the Zoning Ordinance. The applicant shall coordinate with M-NCPPC Transportation Planning staff regarding the location and type of the bicycle rack or locker prior to signature set approval.

2. Environmental Planning

The proposed development shall comply with all conditions for final forest conservation plan approval. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (DPS) issuance of sediment and erosion control permits.

- a. Submittal of financial security to M-NCPPC for afforestation prior to clearing or grading.
- b. Record plat to show Category one forest conservation easement. Any amended language from the standard easement must be approved by M-NCPPC staff prior to recording plats.
- c. Maintenance agreement to be reviewed and approved by M-NCPPC staff prior to first inspection of planted areas.
- d. Certification from an acoustical engineer that the building shell of impacted buildings has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. Certification shall be provided prior to signature set approval of the site plan, with the builder's commitment to be enforced through the site plan enforcement agreement. The builder shall construct these units in accord with these acoustical design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

3. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated May 22, 2003.

4. Moderately Priced Dwelling Units (MPDUs)

The proposed development (Rock Spring Apartment Towers I and II) shall provide 63 MPDUs in accordance with the letter from the Department of Housing and Community Affairs to Chairman Berlage dated November 20, 2003.

5. Pedestrian Circulation

- a. Provide pedestrian crosswalks using special paving at the proposed driveway entrance on Rock Forest Drive.
- b. Provide a minimum 5-foot clearance for the internal pedestrian pathway system to ensure safe and convenient pedestrian circulation.
- c. Extend the proposed sidewalk along the west boundary of the site southwards and connect the sidewalk with the proposed future pathway located within the central green open space of the Center.

6. Community Center

The site plan for the remaining portion of Rock Spring Center shall provide a site for the required community center in accordance with the approved Development Plan of G-713.

7. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement including Development Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:

Development Program to include a phasing schedule as follows:

- a. Street tree planting shall progress as street improvement is completed, but no later than six months after completion of the proposed building.
  - b. Community-wide pedestrian pathways and recreation facilities shall be completed prior to seventy percent occupancy of each phase of the development.
  - c. Landscaping and outdoor lighting shall be completed as construction of the facility is completed.
  - d. The required bus shelters and proposed sidewalk to Old Georgetown Road shall be installed prior to occupancy of the first unit of the subject apartment tower unless otherwise approved by M-NCPPC staff or amended by the site plan approval for the remaining portion of Rock Spring Center.
  - e. Clearing and grading to correspond to the construction phasing, to minimize soil erosion and forest loss.
  - f. Coordination of each section of the development and roads.
  - g. Phasing of stormwater management, sediment/erosion control, recreation, forestation, community paths, or other features.
8. Clearing and Grading  
No clearing or grading prior to M-NCPPC approval of signature set of plans.

9. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Limits of disturbance.
- b. Methods and locations of tree protection per recommendations of an ISA certified arborist.
- c. Forest Conservation easement areas.
- d. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- e. The development program inspection schedule and Site Plan Opinion.
- f. Additional plant materials between the proposed retaining walls and the southern boundary of the site to screen the view of the walls.
- g. Provide crosswalks and sidewalk connections between the proposed sidewalk along the Rock Forest Drive frontage and the existing sidewalk on the north side of the street.
- h. Show bus stop locations and provide bus shelters on Rock Ledge Drive and Rock Spring Drive as required by the Montgomery County Department of Public Works and Transportation.
- i. Grading information.
- j. Coordinate the proposed streetscape, including streetlights, along the Rock Forest Drive frontage with the existing streetscape on the opposite side of the street.
- k. Provide sidewalk lighting along the west side of the proposed high-rise building.
- l. Revise lighting plan to achieve average max/min ratio of 5:1.
- m. Bike racks location and details.



## DEPARTMENT OF PERMITTING SERVICES

March 21, 2006

Robert C. Hubbard  
DirectorDouglas M. Duncan  
County ExecutiveMr. Tim McDonald  
RSC Tower II, LLC  
8330 Boone Blvd.  
Suite 460  
Vienna, Virginia 22182Re: Height Measurement for Rock Spring Centre – Tower II – Proposed Amendment – Site  
Plan No. 8-04017 (the “Plan”)

Dear Mr. McDonald:

This letter will confirm our discussion on March 16, 2006 concerning the height measurement of the proposed Tower II multi-family building at Rock Spring Centre in North Bethesda. The property contains approximately 1.9560 acres (“Property”) and is located on the south side of Rock Forest Drive, a private street, approximately 800 feet east of the intersection of Rock Forest Drive and Rockledge Drive. As we discussed, the building, as proposed in an amendment to the Plan to be filed with the Montgomery County Planning Board for review and approval, includes a parking garage that partially projects above ground and is set back approximately 30’ from Rock Forest Drive. Therefore, under the definition of “Height of Building” found at Section 59-A-2.1 of the Montgomery County Code (“Code”) for selecting the point of measurement, the Department of Permitting Services (“DPS”) will measure the height of your building from the elevation of the approved street grade opposite the middle of the front of the building. Further, the Plan shows a sloped (hip) roof for the building and, therefore, the height measurement will be to the mid-point of the hip. These points of measurement are considered by DPS to be in full compliance with the law

Please contact me if you have any additional questions.

Very truly yours,

MONTGOMERY COUNTY DEPARTMENT OF  
PERMITTING SERVICES

David Niblock  
Permitting Specialistcc: Mr. Mark Gregg  
Mr. Ole Kollevol

L&amp;B 585234v1/01425.0106

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 11<sup>th</sup> day of January, 2005, by and between RSC TOWER II, LLC, a Maryland Limited Liability Company (herein "Applicant"), and MONTGOMERY COUNTY, MARYLAND (herein "County").

WHEREAS, Applicant plans to construct 35 or more dwelling units in the subdivision known as Rock Spring Center, 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, as a function of Rock Spring Center's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Pursuant to Preliminary Plan No. 1-98092, Avalon at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs. Therefore, 155 MPDUs are required as part of the development of the remaining 860 residential units; and

WHEREAS, pursuant to an Alternative Agreement under Section 25A dated May 25, 2004 (the "Original Alternative Agreement"), the property owners, Camalier Limited Partnership and Davis Brothers Limited Partnership ("Camalier/Davis"), their successors and assigns, agreed to provide 107 MPDUs on site (consisting of 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase I ("Phase I"), 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase II ("Phase II"), and 43 MPDUs in the mixed-use building containing approximately 158 residential units comprising Phase III ("Phase III"), and to make an alternative payment of \$33,000 per unit ("Alternative Payment") for the remaining 48 MPDUs to the Montgomery Housing Incentive Fund ("HIF"); and

WHEREAS, the Montgomery County Planning Board ("Planning Board") approved Site Plan No. 8-03036 for Phase II on February 8, 2004; and

WHEREAS, the revised phasing plan for the project calls for the remaining residential development to be built in three phases: phase one to consist of a highrise building containing approximately 217 condominium units ("Revised Phase I"), phase two to consist of a second high-rise building with approximately 217 condominium units ("Revised Phase II"), and phase three to consist of mixed-use buildings with approximately 426 units ("Revised Phase III") (collectively, Revised Phase I, Revised Phase II and Revised Phase III called the "Revised Project"); and

WHEREAS, pursuant to an Amended Alternative Agreement dated January 11, 2005 ("Amended Alternative Agreement") Camalier/Davis, their successors and assigns, are required to provide 107 rental MPDUs on site in Revised Phase III, and make the Alternative Payment (\$33,000 per unit) for the remaining 48 MPDUs to the HIF; and

WHEREAS, the Amended Alternative Agreement further provides that the time at which the Alternative Payment for the 48 MPDUs not constructed on-site shall be paid and the form of the security and timing for posing the security to ensure the construction of the 107 on-site MPDUs to be constructed in Phase III shall be addressed in separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreements") to be executed by Camalier/Davis, their successors and assigns, for each of the three phases in the Revised Project as identified above; and

WHEREAS, Camalier/Davis has assigned the right to develop Revised Phase II to the Applicant; and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in the Amended Alternative Agreement, pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, and pursuant to Separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreements") to be executed by Camalier/Davis, their successors or assigns, for each of the three phases identified above.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which shall be considered a substantive part of the Agreement, and the mutual promises, conditions, and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct approximately 217 total residential units in Revised Phase II, none of which units will be required to be constructed as MPDUs, in strict accordance with the terms of this Agreement.
2. The Alternative Payment required pursuant to the Amended Alternative Agreement for 24 of the 48 MPDUs not constructed on-site shall be paid by Applicant to the HIF when the occupancy permits for all Revised Phase II units are issued by Montgomery County.
3. The County has agreed that 32 of the required 107 on-site MPDUs formerly attributable to Phase II and now considered attributable to Revised Phase II, will be transferred to Revised Phase III to be constructed as rental units at a later date, and agrees to this transfer as long as a bond, letter of credit or other such security as is satisfactory to DHCA is provided by Applicant, in an amount equal to the Alternative Payment calculated for each of the MPDUs not constructed on-site multiplied by 32, which amount is One Million, Fifty-Six Thousand Dollars (\$1,056,000), to ensure the provision of these MPDUs in Revised Phase III, such guarantee to be posted with DHCA in full when occupancy permits for all Revised Phase II units are issued by Montgomery County.

4. All land owned or leased by the Applicant, in whole or in part, in Montgomery County, Maryland, which is available for residential building development, is shown on the Statement of Land Owned or Leased, attached hereto, and made a part hereof, as Exhibit "A".

5. The County will issue building permits as requested by the Applicant for Revised Phase II. Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for the 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.

6. Default by Camalier/ Davis, their successors or assigns, under the Amended Alternative Agreement, or Separate Agreements for Revised Phases I and III shall not render the Applicant for Revised Phase II in default of any provisions of this Agreement.

7. 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 subsequent default of similar or different nature.

8. 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.

9. 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, MD 20850

Applicant:

Mark W. Gregg  
The Penrose Group  
8330 Boone Boulevard  
Suite 460  
Vienna, VA 22182

With a copy to:

Olav B. Kollevoll, Jr., Esq.  
The Penrose Group  
8330 Boone Boulevard  
Suite 460  
Vienna, VA 22182

Camalier/Davis:

Camalier Limited Partnership  
6500 Rock Spring Drive  
Suite 600  
Bethesda, MD 20814

And

Davis Brothers Montgomery Farm Limited Partnership  
Floyd E. Davis Company  
1629 K Street, N.W., Suite 900  
Washington, DC 20006  
Attention: John Davis and Floyd E. Davis III

With a copy to:

Charles A. Camalier III  
c/o Wilkes Artis, Chartered  
1150 – 18<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20036

10. 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.

11. This Agreement is binding upon and inures to the benefit of the agents, successors, heirs, and assigns of the Applicant.

12. This Agreement is contingent on a determination by Applicant, their successors or assigns, as determined in their sole discretion, to proceed with the Revised Project pursuant to the Amended Alternative Agreement. If the Applicant, their successors or assigns, determine not to proceed with the Revised Project pursuant to the Amended Alternative Agreement, then an Amended Agreement to Build Moderately Priced Dwelling Units for a Permit of 35 or More Dwellings for Phase II shall be executed by the County and Applicant, its successors or assigns, pursuant to the Original Alternative Agreement and this Agreement shall terminate and be null and void.

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



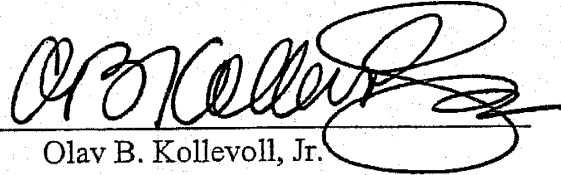
IN WITNESS WHEREOF, Applicant has caused these presents to be executed by Olav B. Kollevoll, Jr., authorized officer, and its corporate seal to be affixed, and does hereby appoint Olav B. Kollevoll, Jr. its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, 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:

RSC TOWER II, LLC

By: \_\_\_\_\_

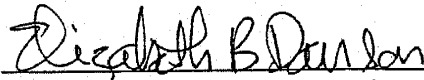


Olav B. Kollevoll, Jr.  
Authorized Officer

WITNESS

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_



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

AFF REVIEW BY \_\_\_\_\_

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 Olav B. Kollevoll, Jr., 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 11<sup>th</sup> day of January, 2005

My Comm. Exp: 9-1-07

*Cynthia L. Patterson*  
NOTARY PUBLIC

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, 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 her, 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 24<sup>th</sup> day of January, 2005.

My Comm. Exp: 2/04/08

*Juanne Capobianco*  
NOTARY PUBLIC

EXHIBIT A

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

Pursuant to Article 25-A-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 or leased 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 required building permits, including any required footings, foundation and garage permits, for Revised Phase II affirms that 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.

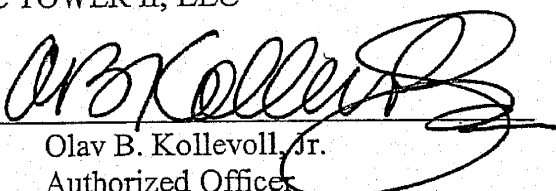
Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

WITNESS:

APPLICANT:

RSC TOWER II, LLC

By: \_\_\_\_\_

  
Olav B. Kollevoll, Jr.  
Authorized Officer

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of ~~Montgomery~~, by Applicant(s) this 11th day of January, 2005.

My Comm. Exp: 9-1-07

  
Cynthia L. Patterson  
NOTARY PUBLIC

\*For any Building Permit Application subsequent to the initial application subject to these requirements, Applicant need 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, and Liber and folio references of latest deeds and Plat Book references.

SCHEDULE "A"

1. Property at RSC TOWER II, LLC.
2. Parcel 21, "ROCK SPRING PARK," recorded at Plat No. 23058 among the Land Records of Montgomery County, Maryland.
3. The Property consists of 1.9560 acres, located on the south side of Rock Forest Drive, approximately 445 feet east of Rockledge Drive. The Property is part of a larger 53.4-acre tract known as Rock Spring Center. The Center is bounded by the I-270 east spur to the north, Rockledge Drive to the west, Rock Spring Drive to the south, and Old Georgetown Road to the east.

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

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

THIS AMENDED AGREEMENT TO BUILD, dated the 11<sup>th</sup> day of January, 2005, by and between RSC TOWER I, LLC, a Maryland Limited Liability Company (herein "Applicant"); and MONTGOMERY COUNTY, MARYLAND (herein "County").

WHEREAS, Applicant plans to construct 35 or more dwelling units in the subdivision known as Rock Spring Center, 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, as a function of Rock Spring Center's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Pursuant to Preliminary Plan No. 1-98092, Avalon at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs. Therefore, 155 MPDUs are required as part of the development of the remaining 860 residential units; and

WHEREAS, pursuant to an Alternative Agreement under Section 25A dated May 25, 2004 (the "Original Alternative Agreement"), the property owners, Camalier Limited Partnership and Davis Brothers Limited Partnership ("Camalier/Davis"), their successors and assigns, agreed to provide 107 MPDUs on site (consisting of 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase I ("Phase I"), 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase II ("Phase II"), and 43 MPDUs in the mixed-use building containing approximately 158 residential units comprising Phase III ("Phase III"), and to make an alternative payment of \$33,000 per unit ("Alternative Payment") for the remaining 48 MPDUs to the Montgomery Housing Incentive Fund ("HIF"); and

WHEREAS, the Montgomery County Planning Board ("Planning Board") approved Site Plan No. 8-03036 for Phase I on November 20, 2003; and

WHEREAS, Camalier/Davis assigned the right to develop Phase I to Applicant; and

WHEREAS, on May 25, 2004, Applicant entered into an Agreement to Build Moderately Priced Dwelling Units for a permit of 35 or more Dwellings for Phase I (the "Original Agreement to Build"); and

WHEREAS, the revised phasing plan for the project calls for the remaining residential development to be built in three phases: phase one to consist of a highrise building containing

approximately 217 condominium units ("Revised Phase I"), phase two to consist of a second high-rise building with approximately 217 condominium units ("Revised Phase II"), and phase three to consist of mixed-use buildings with approximately 426 units ("Revised Phase III") (collectively, Revised Phase I, Revised Phase II, and Revised Phase III called the "Revised Projects"); and

WHEREAS, pursuant to an Amended Alternative Agreement dated January 11, 2005 ("Amended Alternative Agreement"), Camalier/Davis, their successors and assigns, are required to provide 107 rental MPDUs on site in Revised Phase III, and make the Alternative Payment (\$33,000 per unit) for the remaining 48 MPDUs to the HIF; and

WHEREAS, the Amended Alternative Agreement further provides that the time at which the Alternative Payment for the 48 MPDUs not constructed on-site shall be paid and the form of the security and timing for posing the security to ensure the construction of the 107 on-site MPDUs to be constructed in Revised Phase III shall be addressed in separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreements") to be executed by Camalier/Davis, their successors and assigns, for each of the three phases in the Revised Project identified above; and

WHEREAS, Camalier/Davis has assigned Applicant the right to develop Revised Phase I; and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in the Amended Alternative Agreement, pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, and pursuant to Separate Agreements to Build Moderately Priced Dwelling Units ("Separate Agreements") to be executed by Camalier/Davis, their successors or assigns, for each of the three revised phases identified above.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which shall be considered a substantive part of this Agreement and the mutual promises, conditions, and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct approximately 217 total residential units in Revised Phase I, none of which units will be required to be constructed as MPDUs, in strict accordance with the terms of this Amended Agreement to Build.
2. The Alternative Payment required pursuant to the Amended Alternative Agreement for 24 of the 48 MPDUs not constructed on-site shall be paid by Applicant to the HIF when the occupancy permits for all Revised Phase I units are issued by Montgomery County.
3. The County has agreed that 32 of the required 107 on-site MPDUs formerly attributable to Phase I and now considered attributable to Revised Phase I will be transferred to Revised Phase III to be constructed as rental units at a later date, and agrees to this transfer as long as a bond, letter of credit or other such security as is satisfactory to DHCA is provided by Applicant, in an amount equal to the Alternative Payment calculated for each of the MPDUs not

constructed on-site multiplied by 32, which amount is One Million Fifty-Six Thousand Dollars (\$1,056,000), to ensure the provision of these MPDUs in Revised Phase III, such guarantee to be posted with DHCA in full when the occupancy permits for all Revised Phase I units are issued by Montgomery County.

4. All land owned or leased by the Applicant, in whole or in part, in Montgomery County, Maryland, which is available for residential building development, is shown on the Statement of Land Owned or Leased, attached hereto, and made a part hereof, as Exhibit "A".

5. The County will issue building permits as requested by the Applicant for Revised Phase I. Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for the 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.

6. Default by Camalier/ Davis, their successors or assigns, under the Amended Alternative Agreement, or Separate Agreements for Revised Phases II and III shall not render the Applicant for Revised Phase I in default of any provisions of this Amended Agreement to Build.

7. 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 subsequent default of similar or different nature.

8. 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 Amended Agreement to Build will operate as a waiver thereof.

9. Any notices sent pursuant to this Amended Agreement to Build must be delivered in writing to:

Montgomery County:

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

Applicant:

Mark W. Gregg  
The Penrose Group  
8330 Boone Boulevard  
Suite 460  
Vienna, VA 22182

With a copy to:

Olav B. Kollevoll, Jr., Esq.  
The Penrose Group  
8330 Boone Boulevard  
Suite 460  
Vienna, VA 22182

Camalier/Davis:

Camalier Limited Partnership  
6500 Rock Spring Drive  
Suite 600  
Bethesda, MD 20814

And

Davis Brothers Montgomery Farm Limited Partnership  
Floyd E. Davis Company  
1629 K Street, N.W., Suite 900  
Washington, DC 20006  
Attention: John Davis and Floyd E. Davis III

With a copy to:

Charles A. Camalier III  
c/o Wilkes Artis, Chartered  
1150 – 18<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20036

10. 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 Amended Agreement to Build during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Amended Agreement to Build. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

11. This Amended Agreement to Build is binding upon and inures to the benefit of the agents, successors, heirs, and assigns of the Applicant.

12. This Amended Agreement to Build is contingent on a determination by the Applicant, their successors or assigns, as determined in their sole discretion, to proceed to construct the Revised Project pursuant to the Amended Alternative Agreement. If the Applicant, their successors or assigns, determine not to proceed with the Revised Project pursuant to the Amended Alternative Agreement, then the Original Agreement to Build shall remain in full force



and effect without modification. Upon receipt by the County of written notice by the Applicant, their successors or assigns, that a determination has been made by the Applicant, their successors or assigns, to proceed to construct the Revised Project, the Original Agreement to Build shall be automatically terminated and considered null and void.

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

[SIGNATURE PAGES FOLLOW]

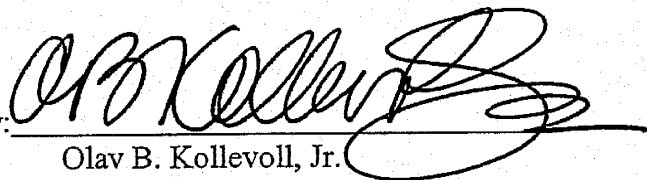
IN WITNESS WHEREOF, Applicant has caused these presents to be executed by Olav B. Kollevoll, Jr., authorized officer, and its corporate seal to be affixed, and does hereby appoint Olav B. Kollevoll, Jr. its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, 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:

RSC TOWER I, LLC

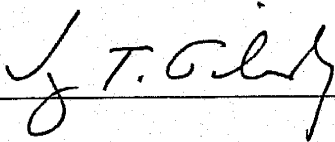
By: \_\_\_\_\_



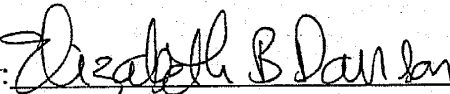
Olav B. Kollevoll, Jr.  
Authorized Officer

WITNESS

MONTGOMERY COUNTY, MARYLAND

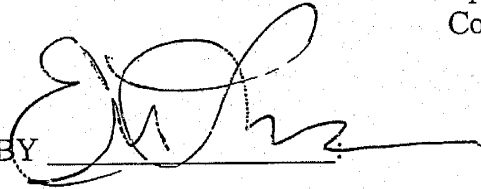
\_\_\_\_\_ 

By: \_\_\_\_\_



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

STAFF REVIEW BY \_\_\_\_\_



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 Olav B. Kollevoll, Jr., 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 11<sup>th</sup> day of January, 2005.

My Comm. Exp: 9-1-07

*Cynthia R. Addison*  
NOTARY PUBLIC

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, 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 her, 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 24<sup>th</sup> day of January, 2005.

My Comm. Exp: 2/04/08

*Jeanne Capotriccio*  
NOTARY PUBLIC

EXHIBIT A

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

Pursuant to Article 25-A-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 or leased 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 Nos. 334267 (Tower), 334274 (Clubhouse), and 334256 (Footings, Foundation and Garage), affirms that 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.

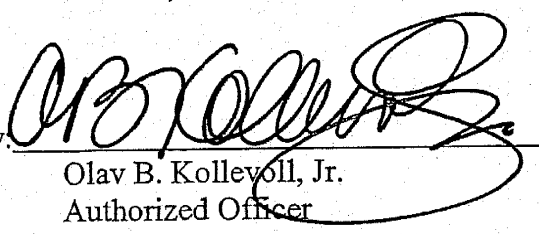
Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

WITNESS:

APPLICANT:

RSC TOWER I, LLC

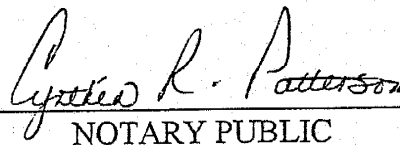
By: \_\_\_\_\_

  
Olav B. Kollevoll, Jr.  
Authorized Officer

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of Montgomery, by Applicant(s) this 11th day of January, 2005.

Prince Georges

My Comm. Exp: 9-1-07

  
\_\_\_\_\_  
NOTARY PUBLIC

\*For any Building Permit Application subsequent to the initial application subject to these requirements, Applicant need 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, and Liber and folio references of latest deeds and Plat Book references.

SCHEDULE "A"

1. Property of RSC TOWER I, LLC.
2. Parcel 20, "ROCK SPRING PARK," recorded at Plat No. 22854 among the Land Records of Montgomery County, Maryland.
3. The Property consists of 3.09 acres, located on the south side of Rock Forest Drive, approximately 690 feet east of Rockledge Drive. The Property is part of a larger 53.4-acre tract known as Rock Spring Center. The Center is bounded by the I-270 east spur to the north, Rockledge Drive to the west, Rock Spring Drive to the south, and Old Georgetown Road to the east.

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 11<sup>th</sup> day of January, 2005, by and between RSC TOWER II, LLC, a Maryland Limited Liability Company (herein "Applicant"), and MONTGOMERY COUNTY, MARYLAND (herein "County").

WHEREAS, Applicant plans to construct 35 or more dwelling units in the subdivision known as Rock Spring Center, 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, as a function of Rock Spring Center's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Pursuant to Preliminary Plan No. 1-98092, Avalon at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs. Therefore, 155 MPDUs are required as part of the development of the remaining 860 residential units; and

WHEREAS, pursuant to an Alternative Agreement under Section 25A dated May 25, 2004 (the "Original Alternative Agreement"), the property owners, Camalier Limited Partnership and Davis Brothers Limited Partnership ("Camalier/Davis"), their successors and assigns, agreed to provide 107 MPDUs on site (consisting of 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase I ("Phase I"), 32 MPDUs in the approximately 351-unit high-rise residential building comprising Phase II ("Phase II"), and 43 MPDUs in the mixed-use building containing approximately 158 residential units comprising Phase III ("Phase III"), and to make an alternative payment of \$33,000 per unit ("Alternative Payment") for the remaining 48 MPDUs to the Montgomery Housing Incentive Fund ("HIF"); and

WHEREAS, the Montgomery County Planning Board ("Planning Board") approved Site Plan No. 8-03036 for Phase II on February 8, 2004; and

WHEREAS, the revised phasing plan for the project calls for the remaining residential development to be built in three phases: phase one to consist of a highrise building containing approximately 217 condominium units ("Revised Phase I"), phase two to consist of a second high-rise building with approximately 217 condominium units ("Revised Phase II"), and phase three to consist of mixed-use buildings with approximately 426 units ("Revised Phase III") (collectively, Revised Phase I, Revised Phase II and Revised Phase III called the "Revised Project"); and