

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.

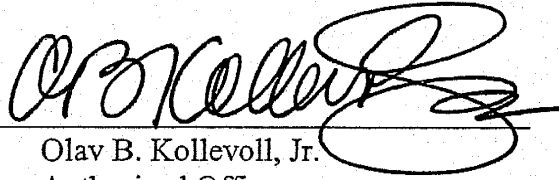
IN WITNESS WHEREOF, Applicant has caused these presents to be executed by Olav B. Kollevoll, Jr., authorized officer, and its corporate seal to be affixed, and does hereby appoint Olav B. Kollevoll, Jr. its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County,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

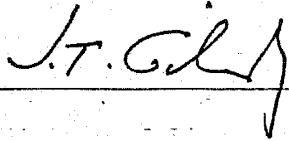
By: \_\_\_\_\_



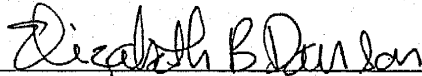
Olav B. Kollevoll, Jr.  
Authorized Officer

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 Georges

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. 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: 2/09/08

Janice 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.

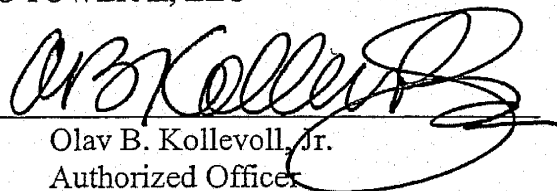
Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

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

**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 RETAIL, 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 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 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 revised phases identified above; and

WHEREAS, Camalier/Davis has assigned the right to develop Revised Phase III 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 this Agreement, and the mutual promises, conditions, and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct approximately 426 total residential units in two locations in Revised Phase III, as generally shown on the plan attached hereto as Exhibit "A-1", 107 of which units will be constructed as rental MPDUs in strict accordance with the terms of this Agreement, and the construction schedule attached hereto and made a part hereof as Exhibit "A-2" shall be completed by Applicant prior to the release of building permits for Revised Phase III for structures that contain the rental MPDUs.

2. The control period for 64 of the 107 on-site MPDUs (32 units previously attributable to Phase I and 32 units to Phase II) shall be 30 years pursuant to Section 25A-9 of the Code. At the time a building permit is issued for the residential structures containing the rental MPDUs in Revised Phase III, any bond, letter of credit, or other such security that has been posted with the County under a Separate Agreement for Revised Phase I or Revised Phase II to ensure the construction of these 64 MPDUs in Revised Phase III as required in the Amended Alternative Agreement, shall be immediately canceled and released and returned to the Applicant, its successors or assigns, who posted such security under such Separate Agreement.

3. 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 "B".

4. The County will issue building permits as requested by the Applicant for Revised Phase III. 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.

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 for the sale or rental of an MPDU unit 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, its 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 the sale or rental of each MPDU covered by the building permits issued under the Applicant's Agreement with 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 and final location and development phases of the MPDUs to be constructed by Applicant in Revised Phase III is addressed in Exhibit "D", which will be supplemented by Applicant as indicated on Exhibit "D" when the Revised Phase III Site Plan is complete.

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

11. 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.

12. 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.

13. 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 required by Paragraph 1 above, 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 30 days. Applicant may not depart from the schedule set forth on Exhibit "A-2" without the prior approval of the Director or designee.

14. 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 copies to:

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

And to:

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

15. 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.

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

17. 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 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 Revised Phase III 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.

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

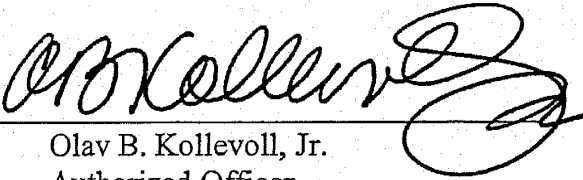
IN WITNESS WHEREOF, Applicant has caused these presents to be executed by Olav B. Kollevoll, Jr., authorized officer, and its corporate seal to be affixed, and does hereby appoint Olav B. Kollevoll, Jr. its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County,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

[SIGNATURE PAGE FOLLOWS]

WITNESS:

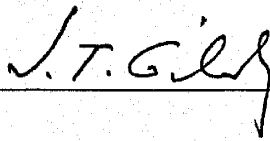
APPLICANT:

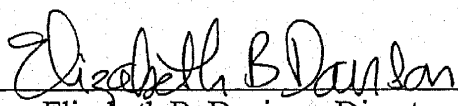
RSC RETAIL, LLC

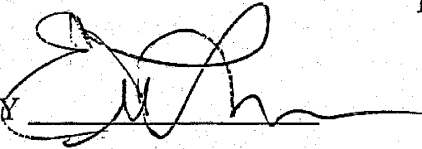
By:   
Olav B. Kollevoll, Jr.  
Authorized Officer

WITNESS

MONTGOMERY COUNTY, MARYLAND



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

STAFF REVIEW BY 

*Prince George's*  
STATE OF MARYLAND  
COUNTY OF MONTGOMERY

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 11th day of January, 2005.

My Comm. Exp: 9-1-07

  
NOTARY PUBLIC

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

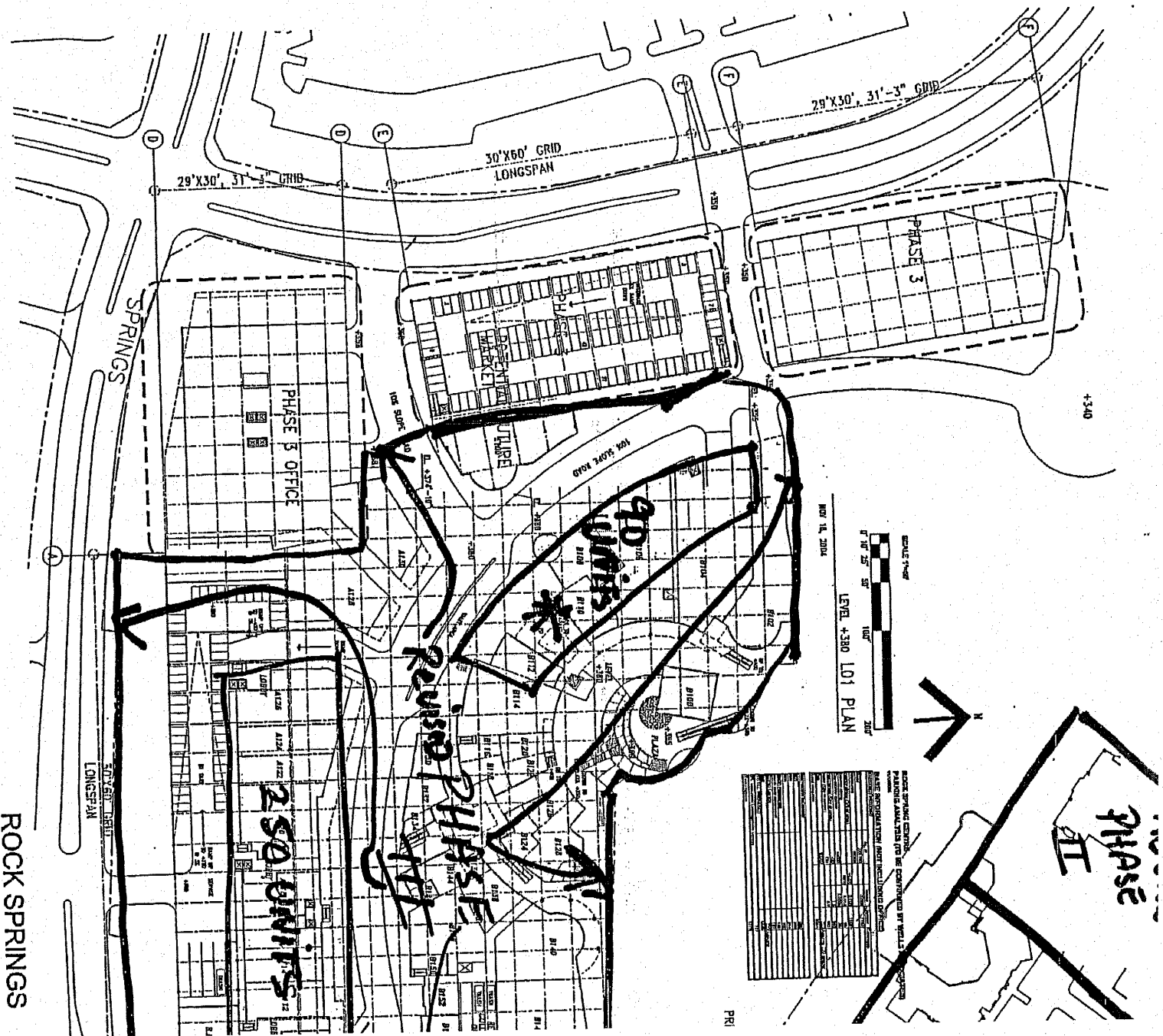
I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Elizabeth B. Davison, attorney-in-fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in her, executed 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

*Juanes Capobianco*  
NOTARY PUBLIC

Final Exhibit to Agreement

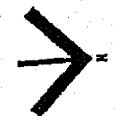


SCALE 1/8" = 1'-0"

1" = 25' 30"

LEVEL +380 LOT PLAN

NOV. 14, 2014



NO.	DESCRIPTION	DATE	BY
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ROCK SPRINGS



EXHIBIT "A-2"

CONSTRUCTION SCHEDULE

In compliance with Chapter 25A of the Montgomery County Code, 1994, as amended, Applicant agrees that the Units in Revised Phase III of the Rock Spring Center will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit, or subdivision plan associated with this project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 1994, as amended.

Development Phases and Total Number of Units	Number of MPDUs <sup>1</sup>	Month and Year of Construction Start of MPDUs <sup>2</sup>	Month and Year of Construction Completion of MPDUs <sup>3</sup>
1	Hotel and Spa (None)		
2 (426 units)	107	TBD	TBD

1. The number of MPDUs shall be 107, unless the total number of units approved at the time of site plan for Revised Phase III is adjusted downward from 426 units, in which case the 107 MPDUs will be proportionally reduced.
2. "Construction Start" is defined as the date on which footings are poured for the subject units.
3. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.
4. The Development Phases may be combined, separated or built in any order based on Applicant's final construction program.

Note:

As provided in the Agreement, this schedule will be completed by Applicant prior to issuance of building permits for Phase III for the residential structures containing the rental MPDUs.

EXHIBIT "B"

**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 permits and, as necessary, permits for footings, foundation and garage, affirms that said Schedule A includes all property as described above for which:

1. A preliminary subdivision plan has been filed or for which a building permit application will be 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 RETAIL, 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 \_\_\_\_\_ day of January, 2005.

My Comm. Exp: \_\_\_\_\_

\_\_\_\_\_  
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 RETAIL, LLC.
2. See Phase III area as shown on Exhibit "A-1".
3. The Property consists of approximately 48.35 acres, located on the north side of Rock Spring 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.

EXHIBIT "C"

**ROCK SPRING CENTER REVISED PHASE III  
MODERATELY PRICED DWELLING UNITS  
DECLARATION OF COVENANTS FOR RENTAL SUBDIVISIONS**

THIS DECLARATION, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, hereinafter set forth by RSC RETAIL, LLC (the "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 or lessee for all of the property set forth and described in the list attached hereto and made a part hereof as Schedule "A-1" to Exhibit "B" and as Exhibit "D" to the Agreement dated January \_\_\_\_\_, 2005, attached hereto to this Declaration, which property is the subject of the within Declaration of Covenants and hereinafter referred to as the "Property."

ARTICLE II

For a period not to exceed 20 years beginning on the date of first rental of the Property, or such shorter period as established by law ("Control Period"), the moderately priced dwelling units ("MPDUs") on the Property as described in Exhibit "D" 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. Notwithstanding anything contained in this Article II to the contrary, 64 MPDUs shall be subject to a Control Period of 30 years.

ARTICLE III

In the event the Property is ever subjected to a condominium regime, the MPDU portion of 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. This requirement is for a period not to exceed 20 years or such shorter period as established by law, from the date of the first rental of the Property.

ARTICLE IV

Declarant, its 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 V

Enforcement of these Covenants by Declarant or Montgomery County, Maryland must be 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 property herein described in the enforcement of any lien or obligation created by or resulting from these Covenants.

#### ARTICLE VI

These Covenants are binding upon the Property, upon the Declarant and its successors and assigns, and upon all transferees and transferors of the title to the Property for the period of time stated and until fulfillment of all other provisions contained herein.

#### ARTICLE VII

The original deed of conveyance out of Declarant, its assigns or successors, and all subsequent transfers, assignments of deeds of conveyance out of subsequent owners of the captioned property, must during the terms of these Covenants, contain conspicuous language specifically subjecting the Property to these Covenants and to the date of recordation of these Covenants and Liber and Folio reference of these Covenants as recorded among the Land Records of Montgomery County, Maryland.

#### ARTICLE VIII

These Covenants cannot be amended or released, except by the expiration of the control period stated herein, without the prior written consent of Montgomery County, Maryland.

#### ARTICLE IX

This Declaration of Covenants will be terminated automatically on the day following the expiration of the period of time stated in Articles II and III herein.

#### ARTICLE X

If the Property is sold at a foreclosure proceeding the County will release the restrictive covenants after a payment to the Housing Initiative Fund has been received by the 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 has caused these presents to be executed by Olav B. Kollevoll, Jr. and does appoint Olav B. Kollevoll, Jr. its true and lawful attorney-in-fact to acknowledge and deliver these presents.

WITNESS:

DECLARANT:

RSC RETAIL, LLC

\_\_\_\_\_

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

Olav B. Kollevoll, Jr.  
Authorized Officer

STATE OF MARYLAND

to wit:

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this \_\_\_\_ day of January, 2005, personally appeared Olav B. Kollevoll, Jr., 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 the Declarant therein, for the purposes therein contained.

WITNESS my hand and seal this \_\_\_\_\_ day of January, 2005.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_.

## EXHIBIT "D"

The Property: The Property consists of approximately 20 acres, located on the north side of Rock Spring Drive, as generally shown on Exhibit "A-1". 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.

The Project is proposed to be developed as a mixed-use project containing 426 dwelling units in multiple phases, including 107 Moderately Priced Dwelling Units at two locations as generally shown on Exhibit "A-1".

The Project is proposed to include 107 MPDUs consisting of efficiencies, one-bedroom, one-bedroom and den, and two-bedroom apartments, as per the site plan to be provided by Applicant when the Revised Site Plan is complete.