

After recordation, return to:
Arundel Community Development Services, Inc.
2666 Riva Road, Suite 210
Annapolis, Maryland 21401

MODERATELY PRICED DWELLING UNITS
DEVELOPMENT AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS

THIS DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this “Agreement”), is made as of the _____ day of _____, 20____, by and between ANNE ARUNDEL COUNTY, MARYLAND (the “County”), ARUNDEL COMMUNITY DEVELOPMENT SERVICES, INC. (“ACDS”), and _____ (“Owner”).

WHEREAS, on October 15, 2024, the County enacted Bill 72-24, the Housing Attainability Act of 2024, to regulate and require the development of moderately priced dwelling units (“MPDUs”) when any real property being developed for residential use would result in ten or more dwelling units; and

WHEREAS, the provisions of Bill 72-24 are codified in Articles 3, 13, 17, and 18 of the Anne Arundel County Code (2005, as amended) (the “County Code”); and

WHEREAS, the Owner owns, and is in the process of developing, certain property in Anne Arundel County, as more particularly described on Exhibit A, attached hereto and incorporated by reference herein (the “Property”), as a residential development of more than ten (10) dwelling units, known or to be known as “_____” (the “Project”); and

WHEREAS, pursuant to § 17-12-104 of the County Code, an Owner who is required to provide MPDUs under Bill 72-74 shall enter into an agreement with the County or ACDS documenting the Owner’s obligations under Bill 72-24, which agreement shall impose restrictive covenants that run with the land and be recorded among the Land Records of Anne Arundel County (the “Land Records”); and

WHEREAS, this Agreement is the agreement required under § 17-12-104 of the County Code, and Owner enters into this Agreement to comply with the requirements of Bill 72-74.

NOW, THEREFORE, pursuant to Article 17, Title 12 of the County Code, the parties agree as follows:

1. Certificate of Eligibility; Waiting Lists.

(a) All households seeking to purchase or rent an MPDU during the applicable Control Period (as hereinafter defined) shall obtain a Certificate of Eligibility approved by ACDS as a condition of purchase or rent of an MPDU, such eligibility to be determined in accordance with § 17-12-

106 of the County Code. A household that receives a Certificate of Eligibility approved by ACDS is deemed an “Eligible Household”.

(b) ACDS shall establish waiting lists of Eligible Households for both For-Sale MPDUs and Rental MPDUs (each as hereinafter defined) from which Eligible Households shall be selected and notified of availability of an MPDU. If there are no Eligible Households on the waiting list, ACDS may adjust the income requirements, as set forth in § 17-12-106(d) of the County Code, for eligibility.

FOR-SALE MPDUS.

Sections 2 through 6 of this Agreement shall apply only to MPDUs intended for sale to Eligible Households (each, a “For-Sale MPDU”)

2. **For-Sale MPDU Occupancy Requirements.** Owner agrees that at least 10% of the dwelling units in the Project, as detailed on Exhibit B and Exhibit C, attached hereto and incorporated by reference herein, shall be sold to and occupied by Eligible Households with incomes that do not exceed 100% of the area median income (“AMI”) adjusted for household size for the Baltimore Metropolitan Statistical Area (“BMSA”), as defined and published annually by the United States Department of Housing and Urban Development (“HUD”).

3. Initial Sales of For-Sale MPDUs.

(a) Notice of Availability. Owner shall promptly notify ACDS when a For-Sale MPDU is initially available for sale (the “Notice of Availability”) on a form to be provided by ACDS.

(b) The initial sales price of For-Sale MPDUs shall be set semi-annually by ACDS on approximately January 1 and July 1, and may be adjusted by ACDS one additional time during that year if ACDS determines that market conditions warrant an adjustment. In establishing the sales price, ACDS shall consider the type of dwelling unit; the number of square feet in the dwelling unit; the number of bedrooms and bathrooms in the dwelling unit; and affordability based on AMI and market conditions.

(c) For a period of 90 days from the receipt of the Notice of Availability, the Owner shall offer the For-Sale MPDUs to Eligible Households in the order on the waiting list established under Section 1 hereof (the “Initial For-Sale Market Period”). If no Eligible Household has entered into a contract to purchase any For-Sale MPDU during the Initial For-Sale Market Period, ACDS shall have 30 days from the end of the Initial For-Sale Market Period to enter into a contract to purchase the For-Sale MPDU. If ACDS does not purchase the For-Sale MPDU, then the owner of the For-Sale MPDU may sell the For-Sale MPDU to a household that is not eligible provided that the household complies with the requirements of this Agreement and Bill 72-24 for the remainder of the Sales Control Period.

4. **Deeds; Contracts for Sale.** All deeds conveying For-Sale MPDUs, including the original deed of conveyance from the Owner to each initial For-Sale MPDU owner and all subsequent deeds of conveyance by the initial owner and all subsequent owners of the For-Sale MPDU must contain a conspicuous provision that the sale of the unit is subject to both the requirements of the Act and to the covenants provided for herein, along with a reference to the date and recording reference of this Agreement. All contracts of sale for a For-Sale MPDU, including the original contract of sale between the Owner and each initial For-Sale MPDU purchaser and all subsequent contracts of sale between the initial purchaser and all subsequent purchaser of the For-Sale MPDU must fully and completely disclose the rental and resale price restrictions and controls established herein. All subsequent owners of an MPDU must likewise provide such notice in contracts of sale.

5. **For-Sale MPDU Control Period.** The control period for each For-Sale MPDUs shall be twenty (20) years (the “Sales Control Period”), commencing on the date of the initial sale of such For-Sale MPDU. Any subsequent buyer of a For-Sale MPDU during the Sales Control Period shall obtain a Certificate of Eligibility from ACDS, in accordance with Section 1 of this Agreement, as a condition of sale.

6. **Resale of For-Sale MPDUs.**

(a) If a For-Sale MPDU is offered for resale during the Sales Control Period, the first option to purchase the For-Sale MPDU shall be offered to ACDS and the Housing Commission of Anne Arundel County (“HCAAC”) pursuant to § 17-12-108 of the County Code. ACDS and HCAAC shall have 30 days from receipt of a notice of resale to enter into a contract to purchase the For-Sale MPDU. If neither ACDS nor HCAAC purchases the For-Sale MPDU, then the owner of the For-Sale MPDU shall sell the For-Sale MPDU to an Eligible Household. If no Eligible Household enters into a contract to purchase the For-Sale MPDU within 30 days of the date ACDS and HCAAC decline the right of first option, the For-Sale MPDU may be sold to a household that is not eligible provided that the household complies with the requirements of this Agreement and Bill 72-24 for the remainder of the Sales Control Period.

(b) The sales price for any re-sale during the Sales Control Period shall be approved by ACDS and be equal to the prior sale price plus (i) a percentage of the For-Sale MPDU’s original sales price equal to the increase in the cost of living, calculated using the consumer price index, between the dates of ownership; (ii) the fair market value of improvements made to the For-Sale MPDU during the period of ownership, provided the improvements were previously approved by ACDS; and (iii) a reasonable sales commission, if paid by the seller. The sales price may be reduced by ACDS (i) to reflect abnormal wear and tear because of neglect, abuse, or insufficient maintenance; or (ii) if necessary, to make the For-Sale MPDU affordable to an Eligible Household; or (iii) if necessary, to enable an Eligible Household to obtain an appraisal and meet other requirements to purchase the property.

RENTAL MPDUs

Sections 7-9 of this Agreement shall apply only to MPDUs intended for rent to Eligible Households (each a “Rental MPDU”)

7. **Rental MPDU Occupancy Requirement.** Owner agrees that at least 15% of the dwelling units in the Project, as further detailed on Exhibit B and Exhibit C, attached hereto and incorporated by reference herein, shall be leased to and occupied by Eligible Households with incomes that do not exceed 75% of AMI and that have received an Certificate of Eligibility approved by ACDS as provided in Section 1 hereof.

8. **Rental Rates of Rental MPDUs.** The rental rate for a Rental MPDU shall be set annually by ACDS within 30 days of the publication of the updated information for the BMSA, and may be adjusted by ACDS one time during that year if ACDS determines that market conditions warrant an adjustment. The rental rate may not exceed the rate that a household earning 75% of the AMI adjusted for household size in the BMSA can afford. In establishing the rental rate, ACDS shall consider the type of dwelling unit; the number of square feet in the dwelling unit; and the number of bedrooms and bathrooms.

9. **Rental MPDU Control Period.**

(a) The control period for each property containing Rental MPDUs shall be forty (40) years (the “Rental Control Period”), commencing on the date of the initial lease of the first Rental MPDU. ACDS shall annually review income eligibility and rent amounts for compliance; any tenant whose income increases above 75% of AMI may continue to reside in the unit and renew its lease until the end of the lease term during which the household’s income exceeds 120% of AMI.

(b) For a period of 90 days from the beginning of the Rental Control Period, the Owner shall market and lease the Rental MPDUs solely to Eligible Households (the “Initial Rental Market Period”). At the end of the Initial Rental Market Period, any vacant Rental MPDU may be leased to a household that is not an Eligible Household provided that the next available unit of comparable bedroom size in the project is rented to an Eligible Household.

(c) For a period of 60 days following a vacancy at any Rental MPDU, including any Rental MPDU leased to an in-eligible household pursuant to section (b) above, will be offered solely for rent to an Eligible Household who has received a Certificate of Eligibility approved by ACDS in accordance with Section 1 hereof. At the end of the 60 day period, any vacant Rental MPDU may be leased to a household that is not an Eligible Household provided that the next available unit of comparable bedroom size in the project is rented to an Eligible Household.

GENERAL PROVISIONS

Sections 10 – 25 of this Agreement shall apply to all MPDU projects.

10. **Marketing.** The Owner shall advertise and market MPDUs in the same manner as the Owner advertises and markets market-rate units that are within the same development.

11. **Schedule.** Owner shall construct the MPDUs in accordance with the schedule set forth on Exhibit B.

12. **Bedrooms.** Each single-family MPDU, whether a For-Sale MPDU or a Rental MPDU, shall have two or more bedrooms.

13. **Ratio.** The number of efficiency and one-bedroom MPDUs in a development of multifamily dwelling units may not exceed the ratio that market rate efficiency and one-bedroom units, respectively, bear to the total number of market rate units in the development.

14. **Compliance with MPDU Requirements.** The number, type, location, and development plan for the MPDUs shall be as detailed on Exhibit B and Exhibit C. In addition, Owner shall provide the County and ACDS with such documentation as deemed necessary by the County and ACDS to demonstrate compliance with this Agreement and Bill 72-24 , including, but not limited to, floor plans with dimensions, square footage, and number of bedrooms; site plans showing the initial location of MPDUs on the site; a construction schedule for MPDUs; and such other documentation as may be required to evidence compliance with Bill 72-24 and this Agreement. ACDS shall determine, in its discretion not to be unreasonably withheld, if the MPDUs are architecturally similar in size as market rate units in the development, and whether exterior construction material and finishes are comparable in quality and generally indistinguishable in exterior appearance from market rate units. If ACDS determines that these standards have been met, ACDS shall provide Owner with a certification of compliance which shall be included as part of the building permit application. No building permit shall be issued without the certification of compliance from ACDS.

15. **Availability.** During construction, Owner shall construct and make available the MPDUs in the same proportion as market rate units in the Project and the MPDUs may not be the last units built in the Project.

16. **Design Standards.** All MPDUs shall meet the design standards established by ACDS as set forth on Exhibit D, attached hereto and incorporated by reference herein.

17. **Covenants.** The restrictions on the Property and the Project contained herein are covenants running with the land that shall be binding on the Owner, For-Sale MPDU owners, Rental MPDU owners, and Rental MPDU lessees, and their respective successors, and assigns, for the duration of the applicable Control Period, and shall not merge into any deed or lease conveying or leasing all or part of the Property. The Property or the Project may be subject to additional restrictions imposed by other lenders or other parties and in the event of any conflict between restrictions imposed by this Agreement and any additional restrictions imposed, the more restrictive conditions shall prevail.

18. **Enforcement.** Owner, and its successors and assigns, hereby assigns and conveys unto the County and ACDS all its right, title, and interest to enforce and maintain the restrictions contained herein. Any breach of the restrictions by the Owner, or any subsequent owner, lessor, or lessee, shall be enforced by the County and ACDS through injunctive relief or other legal remedy. Upon a breach of the occupancy restrictions for any MPDU that is not cured within 45 days after delivery (via email and USPS mailed notice to the Owner) of written notice from the

County or ACDS of a breach, all County fees or charges that were exempted, credited, or modified under the authority of Bill 72-24, including impact fees, utility fees, utility connection charges, or other exempted fees or charges, shall become immediately due and owing in the amount that would have otherwise been due at the time of development approval, and thereafter may be enforced and collected as a charge and lien upon the land pursuant to § 1-8-101 of the County Code, provided, however, that in the case of a For-Sale MPDU project, the original Owner is only liable for violations of this Agreement in connection with the initial development and initial sale of units.

19. Foreclosure.

(a) A mortgagee or other secured party who has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on the Property or a For-Sale MPDU shall notify ACDS in writing at least thirty (30) days prior to the date of the foreclosure sale. ACDS shall have the right to cure the default, at its option and on such terms as ACDS deems necessary. If the Property or a For-Sale MPDU is sold at a foreclosure sale (including a transfer by deed in lieu of foreclosure) by the secured party, the County and ACDS shall cooperate with the secured party and sign the necessary documentation to terminate these covenants as to the Property or the For-Sale MPDU, as applicable, and record such termination among the Land Records. The County reserves the right to make a claim against any surplus proceeds for payment of any charges or fees payable upon default as provided in Section 18 in this Agreement.

(b) If a For-Sale MPDU is sold at foreclosure during the Sales Control Period, the covenants imposed herein shall be released, and the amount of the foreclosure sales price that exceeds the price established under § 17-12-107 or § 17-12-108, after satisfaction of any liens recorded against the property, and reasonable expenses of foreclosure, as approved by ACDS, shall be paid to the County and deposited into the Housing Trust Special Revenue Fund.

(c) If a project consisting of Rental MPDUs is sold at foreclosure during the Rental MPDU Control Period, the covenants imposed herein shall be released and the amount of the sales price that exceeds the fair market value of the rental project on the date of the initial lease of the first Rental MPDU, after satisfaction of any liens recorded against the Property, and reasonable expenses of foreclosure, as approved by ACDS, shall be paid to the County and deposited into the Housing Trust Special Revenue Fund.

20. Access. Owner agrees that the County and ACDS shall have access to the Property during the applicable Control Period, including the interior of any MPDU, at all reasonable times, to determine that the MPDUs, the Project common areas, and the Project, in general, remain safe, habitable, sustainable, in good condition and in compliance with the Act and this Agreement.

21. Binding Agreement. This Agreement, and the covenants required hereunder, shall be binding on the lessees, agents, successors, heirs and assigns of the Owner.

22. Survival. The provisions of this Agreement shall survive execution and delivery of any deeds or leases and shall not be merged therein.

23. **Compliance.** Owner agrees to abide by and comply with all applicable laws regarding the subject matter of this Agreement, whether or not specifically referenced herein, including all the requirements for MPDUs as set forth in Bill 72-74 and the County Code, and agree to execute and deliver such additional documents as deemed necessary by the County to effectuate the intent and purpose of this Agreement.

24. **Notices.** Any notice required to be delivered under this Agreement shall be delivered to the parties by email and USPS mail according to the following contact information:

a. For Anne Arundel County:

Office of Law, 2660 Riva Road, 4th Floor, Annapolis, MD 21401

Law_All@aacounty.org

b. For Arundel Community Development Services, Inc.:

ACDS, 2666 Riva Road, Suite 210, Annapolis, MD 21401

ekarpewicz@acdsinc.org

c. For Owner:

25. **Time.** Time is of the essence for this Agreement.

26. **Release.** The term of this Agreement is three (3) years from the date hereof, provided, however, that if the Owner obtains the initial building permit within said three years, this Agreement shall remain in effect until the final certificate of occupancy is issued, or ten years from the date hereof, whichever occurs first. If Owner does not obtain the initial building permit within three years from the date hereof, this Agreement may be extended by consent of the parties, which shall be evidenced by a written amendment to that effect. The County may terminate this Agreement and revoke all issued permits upon a material breach of the terms hereof, if such failure or breach is not cured within forty-five (45) days after delivery (via email and USPS mailed notice to Owner) of written notice of said failure or breach. In the event of a termination of this Agreement by the County or the Owner, any benefits accruing to the Owner based on the development of MPDUs, such as impact fee credits, adequate public facilities vesting, utility credits, utility connection charges, or local tax credits, shall be immediately terminated and any amounts that would have been otherwise due at the time of development approval shall be due immediately from the Owner, and may be collected by the County pursuant to § 1-8-101 of the County Code.

27. **Non-Discrimination.** Owners of Rental MPDUs shall comply with Anne Arundel County law that prohibits discrimination based on source of income and shall accept applicants who have Housing Choice Vouchers. Contact the Housing Commission of Anne Arundel County at <https://www.hcaac.com/landlords> for more information. In addition, Owner shall comply with all applicable federal, State, and County laws and regulations in the owning, operating, leasing or selling units in the Project, including, without limitation, (i) the Federal Fair Housing Act, (ii) the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, (iii) Article 49B of the Maryland Annotated Code, (iv) Anne Arundel County fair housing laws, and (v) any other laws that prohibit discrimination on the grounds of age, ancestry, citizenship, color, creed, disability, familial status, gender identity or expression, marital status, national origin, occupation, race, religion, sex, sexual orientation, physical or mental disability, source of income, or any other class or characteristics protected by applicable law.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered this Agreement under seal as of the date below attested.

OWNER:

By: _____ (SEAL)

Name:

Title:

State of _____, _____ County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she has the full authority to execute and in fact executed, said Agreement for the purposes herein contained, and further acknowledged the foregoing Agreement, to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ARUNDEL COMMUNITY
DEVELOPMENT SERVICES, INC.

By: _____(SEAL)
Erin Karpewicz, Chief Executive Officer

State of Maryland, Anne Arundel County, ss:

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Erin Karpewicz, Chief Executive Officer of Arundel Community Development Services, Inc., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that she has the full authority to execute and in fact executed, said Agreement for the purposes herein contained, and further acknowledged the foregoing Agreement to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ANNE ARUNDEL COUNTY,
MARYLAND

Christine M. Anderson
Chief Administrative Officer

State of Maryland, Anne Arundel County, ss:

I HEREBY CERTIFY, that on this ___ day of _____, 20___, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Christine M. Anderson, Chief Administrative Officer for Anne Arundel County, Maryland, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that she has the full authority to execute and in fact executed, said Agreement for the purposes herein contained, and further acknowledged the foregoing Agreement to be the act of said entity.

AS WITNESS: My hand and Notarial seal.

Notary Public

My commission expires: _____

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Gregory J. Swain, County Attorney

By: _____
Anne Arundel County Office of Law
Date: _____

Exhibit A
Legal Description

Exhibit B
MPDU Designations and Development Schedule

[attach MPDU Worksheet]

Exhibit C
Project Site Plan and Building Floor Plan(s) for Rental MPDUs
(must show initial location of MPDUs)

Exhibit D Design Guidelines