Subdivision or Development Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Also known as: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

MONTGOMERY COUNTY, MARYLAND

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

1401 Rockville Pike, 4th Floor, Rockville, Maryland 20852

**AGREEMENT TO BUILD MODERATELY PRICED DWELLING**

**UNITS FOR A PERMIT OF 20 OR MORE DWELLING UNITS**

**THIS AGREEMENT,** by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**Applicant)** and MONTGOMERY COUNTY, MARYLAND (**County**).

RECITALS

**WHEREAS**, the Applicant plans to [convert a nonresidential use to a residential use and then will] construct twenty (20) or more dwelling units in the subdivision or development known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a site plan number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**Site Plan**), located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (town and zip code) in Montgomery County, Maryland (**Property**), and may receive additional density allowance based on the percentage of MPDUs provided on the Property, in accordance with the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended; and

**WHEREAS**, the provisions of Chapter 25A of the Montgomery County Code, 2014, as amended, and all applicable Executive Regulations (**Chapter 25A** or **Code**), require that a percentage of the total number of dwelling units in a residential development project containing 20 or more units be moderately priced dwelling units (**MPDUs**); and

**WHEREAS**, Section 25A-5 of the Code requires, among other things, that a written MPDU Agreement accompany the Applicant’s application for a building permit; and

**WHEREAS**, the County is willing to issue building permits for the construction of the Property under the terms stated in this Agreement and pursuant to the provisions of Chapter 25A provided that the first building permit is issued within three years of the **Effective Date** (as defined below) of this Agreement; and

**WHEREAS, if the first building permit has not been issued pursuant to the provisions of this Agreement within three years of the Effective Date, this Agreement is of no further force or effect, and no building permits may be obtained without entering into a new Agreement.**

**NOW, THEREFORE**, the parties hereto agree that this Agreement is not contractual but is an administrative document for the purpose of meeting the requirements of Section 25A-5 of the Code, assisting the County’s Department of Housing and Community Affairs (**DHCA**) in administering the requirements of Chapter 25A and ensuring the Applicant’s compliance with the requirements of Chapter 25A:

1. CONSTRUCTION. Applicant agrees to construct \_\_\_\_\_\_\_ total dwelling units on the Property, including \_\_\_\_\_\_\_ MPDUs (\_\_\_% of the total dwelling units, with the MPDU number rounded up), in strict accordance with the construction schedule attached hereto and made a part hereof as **Exhibit A**.
2. CONSTRUCTION SCHEDULE. The Applicant must construct MPDUs along with or preceding market rate dwelling units on the Property, and the County agrees that compliance with the construction schedule in **Exhibit A** shall satisfy the MPDU staging requirement and the provisions of Section 25A-5(k) of the Code. The Applicant agrees that, at the request of DHCA from time to time, the Applicant must provide a report to DHCA, in a form acceptable to DHCA, on the progress of the construction of the MPDUs in relation to the construction of the market rate units.
3. AVAILABLE FOR BUILDING DEVELOPMENT AT ONE LOCATION. All land owned by the Applicant in whole or in part, or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building development, and which is abutting or confronting the Property is shown on the Statement of Land Owned, attached hereto, and made a part hereof as **Exhibit B**.
4. BUILDING PERMITS. The County will issue building permits as requested by the Applicant for the individual units listed in **Exhibit C** located on the Property. Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for this Property, and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for this subdivision or development, and/or invoke any other of the enforcement measures authorized by Chapter 25A, for failure to comply with this Agreement.
5. DOCUMENTS. The Applicant agrees to enter into and record, if necessary, the following documents as specified:
   1. Applicant must offer MPDUs for sale or rent in accordance with the requirements of Chapter 25A. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by DHCA. Applicant must obtain FHA approval for condominium developments before the Offering Agreement is approved.
   2. Applicant must, at the time that the first Contract of Sale or Lease Agreement is executed, or otherwise agreed to or entered into by the Applicant, or at such other time as may be requested by the County, execute a Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirements of Chapter 25A.
   3. The executed Declaration of Covenants must contain language set out in **Exhibit D** (the unexecuted Declaration of Covenants form) attached hereto and made a part hereof. The Declaration of Covenants must be executed and recorded among the land records prior to MPDUs being offered for sale or rent. **The duly recorded two-party Deeds or executed Lease Agreements for all MPDUs must contain specific language, in conspicuous form, subjecting the Property to the Declaration of Covenants, which language shall contain the recordation information for the Declaration of Covenants, including the date of recordation and the Book and Page reference.**
6. EXHIBITS. Attached hereto and made a part hereof are the following Exhibits:
   1. Construction Schedule (**Exhibit A**).
   2. Statement of Land Owned for Compliance with the Moderately Priced Housing Law (**Exhibit B**) and attachments (Schedules A and B).
   3. Specific Listing of MPDUs and Market Rate Units, including development phase, lot, block, street address, number of bedrooms, property tax identification number, and (for multi-family units) building designation and unit number (**Exhibit C**).
   4. Unexecuted and unrecorded Declaration of Covenants (sale or rental) (**Exhibit D**) (the Declaration of Covenants must be recorded at the Offering Agreement stage. At that time, Exhibit 1 to the Declaration of Covenants must contain a final MPDU list, including but not limited to: address, unit number and property tax identification number. For purposes of this Agreement to Build, Exhibit 1 should include as much information as currently known.).
   5. Certified Site Plan (or approved preliminary plan if no site plan is required) – (**Exhibit E**).
   6. Floor Plans and Summary Chart – for single family dwellings (including townhouses), a floor plan of each MPDU type with dimensions and square footage. For garden and high-rise buildings, 1) a floor plan of each MPDU type with dimensions and square footage and demonstrating furniture layout required to meet MPDU livability requirements, and 2) a typical floor plan of the building(s) showing locations of MPDUs and market rate units on each floor, with a summary chart of location and bedroom composition of MPDUs and market rate units. (**Exhibit F**).

Applicant must execute such additional documents as may be necessary or required to effectuate the intent and purpose of this Agreement and Chapter 25A.

1. MPDU COVENANTS. Applicant, its agents, heirs, assigns or successors, hereby irrevocably assigns to the County: 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 at law or in equity for the collection of such sums as may be in excess of those allowed by law; and to enjoin any violation or attempted violation of the Covenants or the provisions of Chapter 25A.
2. RENTAL AND SALES DOCUMENTS. For rental units, Applicant must provide to the County a copy of the Renter’s Agreement and signed Lease Addendum and any other documentation or agreement as may be required by Chapter 25A. For sales units, Applicant must provide to the County a copy of the final Contract of Sale and two-party Deed or the Lease Agreement for each MPDU covered by the building permits issued under this Agreement to the County, as well as settlement sheets and such other documents and information as may be required by Chapter 25A.
3. ENFORCEMENT. Until such time as the MPDU is sold or rented to an eligible household, the County shall be entitled to enter upon the Property and/or into the MPDUs for purposes of inspection at all reasonable times to determine the Applicant’s compliance with this Agreement.
4. COMPLIANCE WITH SITE PLAN. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the certified site plan (or approved preliminary plan if no site plan is required) attached hereto and made a part hereof as **Exhibit E**. By executing this Agreement, the Applicant certifies that:
5. in single-family dwelling unit subdivisions, each MPDU must have 3 or more bedrooms unless waived by the Director in a subdivision with only two-bedroom market rate units; or

b) in multi-family unit subdivisions, the [*For any application or amendment of an application that was accepted as complete* ***before*** *October 31, 2018, use this language for b and do not include c:* number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.] [*For any application or amendment of an application that was accepted as completed* ***after*** *October 31, 2018, use this language for b and c:* bedroom mix of the MPDUs match the bedroom mix of the market-rate units in the subdivision; and

c) in subdivisions with both single-family and multi-family dwelling units, the ratio of single-family MPDUs to total MPDUs is not less than the ratio of market-rate single-family units to total market-rate units in the subdivision.]

1. WAIVER. A waiver by the County of a specific default must be in writing from the County, and any written waiver shall not be a waiver of any other or subsequent default of similar or different nature. 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.
2. MODIFICATION OF CONSTRUCTION SCHEDULE. Applicant may make written application to the County for a modification of the construction schedule set forth in **Exhibit A**, describing the basis for such change. Applicant may not depart from the schedule set forth in **Exhibit A** without the prior written approval of the County. Failure to meet the MPDU construction deadlines contained in **Exhibit A** constitutes a violation of this Agreement and Chapter 25A.
3. NOTICES. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs

1401 Rockville Pike, 4th Floor

Rockville, Maryland 20852

Attn: MPDU Manager, Affordable Housing Programs Section

With a copy to:

Office of the County Attorney

101 Monroe Street, 3rd Floor

Rockville, Maryland 20850

Applicant: (please provide contact information)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. BINDING. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant.
2. SURVIVAL. The provisions of Chapter 25A will survive the execution and delivery of any deeds or leases and shall not merge therein.
3. APPLICABLE LAWS AND REGULATIONS. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.
4. TERM OF AGREEMENT. The term of this Agreement is three (3) years from the Effective Date, as defined in Paragraph 18, below. Notwithstanding the preceding sentence, so long as the Applicant has obtained the first building permit within the three (3) year term, and so long as DHCA determines that the Applicant is in substantial ongoing compliance with the Construction Schedule contained in Exhibit A, the Agreement shall remain in effect until the construction completion date in Exhibit A. Additionally, DHCA shall notify the Applicant in writing of any unacceptable variation or delays from the Construction Schedule, and the Applicant shall be given an opportunity to correct the deficiency within 90 days (which may include executing an amendment to this Agreement). Should DHCA determine that the Applicant has failed to adequately correct the deficiency, this Agreement shall be of no further force or effect. No additional building permits may be obtained until DHCA and the Applicant enter into a new Agreement, and the County may suspend or revoke any or all building or occupancy permits issued to the Applicant for the Property, and/or invoke any other of the enforcement measures authorized by Chapter 25A.
5. EFFECTIVE DATE. The Effective Date of this Agreement is the date of the signature of the Director of DHCA, or his authorized designee.

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name), its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (title), and does hereby appoint the said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name) its authorized agent to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year written below caused these presents to be signed by Aseem K. Nigam, Director of the Department of Housing and Community Affairs on behalf of the County, and does hereby appoint the said Aseem K. Nigam its authorized agent to acknowledge and deliver these presents.

**WITNESS: APPLICANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert typed name of business entity)

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS: MONTGOMERY COUNTY, MARYLAND:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Aseem K. Nigam, Director

Department of Housing and Community Affairs

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to Form and Legality

Office of County Attorney

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

**Construction Schedule**

In compliance with Chapter 25A, Applicant agrees that the units in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Subdivision or Development Name) will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units on the Property and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A. The MPDU staging plan must be consistent with the certified site plan. The Applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. The last building built must not contain only MPDUs.

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| **Development**  **Phase** | **No. of**  **Market**  **Priced**  **Units** | **Mo. & Yr.**  **Of Constr.**  **Start1 Of**  **Market**  **Priced Units** | **Mo. & Yr.**  **Of Constr.**  **Completion2**  **Of Market**  **Priced Units** | **% of**  **Market**  **Priced**  **Units**  **Completed**  **(Cumulative)** | **No. Of**  **MPDUs\*** | **Mo. & Yr.**  **Of Constr.**  **Start Of**  **MPDUs** | **Mo. & Yr.**  **Of Constr.**  **Completion**  **Of MPDUs** | **% of**  **MPDUs**  **Completed**  **(Cumulative)** |
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| **TOTAL** |  |  |  |  |  |  |  |  |

1. "Construction Start" is defined as the date on which footings are poured for the subject units.

2. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

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

EXHIBIT B

**Statement of Land Owned for Compliance with**

**the Moderately Priced Housing Law**

Pursuant to Section 25A-5 (c) of the Code, the Property includes all land at one location available for building development under common ownership or control by the Applicant. Applicant hereby provides two lists which are attached hereto. Exhibit B, Schedule A identifies all individuals and separate business entities in which any stockholder or family of the stockholder owns 10% or more of stock in the Applicant’s business. Exhibit B, Schedule B, describes all land owned in whole or in part, or which is under contract to, the Applicant and all entities listed in Schedule A, in Montgomery County, Maryland, which is available for residential development and is either the subject Property or abutting or confronting the Property.

Applicant, in consideration for the issuance of Building Permit Application for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Subdivision or Development Name) affirms that said Schedule A includes all relevant entities, family, and stockholders owning 10% or more of the stock of the Applicant entity, if applicable.

Applicant also affirms the said Schedule B includes the subject property and all property abutting or confronting \_\_\_\_\_\_\_\_\_ (Subdivision or Development Name) as described above which:

1. Is owned by, or under contract to, the Applicant and any individual or business entity owning 10% or more of the Applicant business;
2. Is or will be served by public water and sewer; and
3. Is zoned for any type of residential development to which optional density bonus applies.

Applicant affirms that the attached Schedule B includes all such property in Montgomery County,

Maryland and not solely that property as defined herein as the subject Property which is the subject of

this Building Permit Application.

**WITNESS: APPLICANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert typed name of business entity)

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT B

Schedule A

**Individuals and business entities owning 10% or more of stock in Applicant entity**

|  |  |
| --- | --- |
| **Individual or Business Entity Name** | **Mailing Address** |
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\*List Applicant first

EXHIBIT B

Schedule B

**Land Holdings in Montgomery County, Maryland\***

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| --- | --- | --- | --- | --- | --- |
| **Owner’s Name** | **Location (intersection, town, and zip code)** | **Parcel Size** | **Subdivision Name** | **Book and Page** | **Plat Ref.** |
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\*List Subject Property first and all other relevant abutting or confronting property following

EXHIBIT C

**Specific Listing of MPDUs and Market Rate Units**

**For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Subdivision or Development Name)**

*(Identify and list MPDUs first and include additional rows and pages as necessary)*

**For Single Family Units**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **PHASE** | **LOT** | **BLOCK** | **STREET ADDRESS** | **NO. OF**  **BEDROOMS** | **NO. OF BATHS** | **PROPERTY TAX ID NO.\*** |
| MPDUS | | | | | | |
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| MARKET-RATE UNITS | | | | | | |
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**For Multi-Family Units: For Sale  For Rent  (check one)**

**Lot or Parcel: \_\_\_\_\_ Block:\_\_\_\_\_**

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| **PHASE** | **STREET ADDRESS/**  **BUILDING DESIGNATION** | **UNIT NO.** | **NO. OF**  **BEDROOMS** | **NO. OF BATHS** | **PROPERTY TAX ID NO.\*** |
| MPDUs | | | | | |
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| MARKET-RATE UNITS | | | | | |
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\*If the property tax identification number has not been assigned at the time this Agreement is submitted, the agreement may be executed with the understanding that the required information will be submitted to DHCA within 30 days after it is available to the Applicant.

EXHIBIT D

**Declaration of Covenants**

Attach applicable unexecuted MPDU covenants form (for sale or rental as applicable)

EXHIBIT E

**Certified Site Plan (or Approved Preliminary Plan if no Site Plan is Required)**

Attach certified site plan sheets relevant to MPDU approval (cover sheet, tabulations sheet, applicable plans)

EXHIBIT F

**Floor Plans and Summary Chart**

For single family dwellings (including townhouses), attach a floor plan of each MPDU type with dimensions and square footage. For garden and high-rise buildings, attach a floor plan of each MPDU type with dimensions and square footage, and a typical floor plan of the building(s) showing locations of MPDUs and market rate units on each floor, with the appropriate summary chart (below) of location and bedroom composition of MPDUs and market rate units. (Please add additional rows and pages if necessary.)



