Joint Public Hearing
December 15, 2008
6:00 p.m.

A Joint Public Hearing of the Elkton Town Council was held to receive comments to consider a request from Mark-Dana Corporation, contract purchaser, through the Town of Elkton for the following:

1) To rezone the real estate currently owned by the Town of Elkton consisting of one parcel totaling 16.1 acres +/- from Planned Unit Development District R-8 to High Density Residential District R-6. The property is located along the north eastern side of Mt. Pleasant Road (State Route 623) and is further described as tax map no. 131-(A)-L22 and a portion of tax map no. 131-(A)-L179.

2) A Special Exception Permit to construct a multi-family senior dwelling containing 60 units in one building on the above-described property.

3) A Special Exception Permit to allow 30 of the 90 required off-street parking spaces for the multi-family senior dwelling to be finished with a gravel surface.

The Joint Public Hearing was held at 6:00 p.m. on December 15, 2008, at the Elkton Area Community Center. Mayor Wayne E. Printz presided. The following Council members and Planning Commission Members were present:

PRESENT	PLANNING COMMISSION
M. Dearing	Daniel Talbot
M. Isom	Richard McGregor
D. Kite	Harry Armbruster
M. O'Neill	Cathy Morrison
S. Sigafoose	
T. Pence	

Town Attorney Lauri A. N. Sigler, Treasurer Clairen Sipe, EACC Administrator Allison Morris, Recreation Director Diane Johnson and Clerk of Council Denise R. Monger were also present.

(A copy of the Notice is appended to these minutes and marked as "Appendix A".)

Vice Mayor Dearing stated the hearing was properly advertised.

Barry Eckroyd, 17155 Mt. Pleasant Road, Elkton, stated he was not opposed to the project. He questioned if the proposed project was the best use of the property. He made reference to a previous proposal presented to Council which was not acted upon. He stated that proposal involved a part of the Kite property with no water and sewer

expense. He questioned how water and sewer would be provided to the current proposed property being sold. He further spoke of an entrance, road proposal and visibility issue regarding the area in which the project would be located.

Randell Snow, 121 Clover Lane, Elkton, stated that he concurred with most of Mr. Eckroyd's comments. He noted his opposition to the sale of the Kite property in parcels. He noted that Council was advised to sell the Kite property as a whole and he agreed with that concept. He spoke briefly of same proposed project as Mr. Eckroyd. He stated he was opposed to the sale of the property for the purpose presented. He noted his contact with the Virginia Department of Transportation regarding the impact to Route 623. He noted that an impact study would be needed.

Timothy Matter, 18655 Mt. Pleasant Road, Elkton, stated his concerns regarding the volume of people that would be seeking employment. He questioned how a tax subsidized housing development would economically benefit the Town. He questioned if some of the residents would have special needs and require additional services such as hospitals or clinics. He noted an area with better access to those services might be advisable.

Mayor Printz noted that the project was age restricted.

As there was no additional business, the public hearing was closed.

MARK-DANA CORPORATION
19 SILVERSTRAND PLACE
THE WOODLANDS, TEXAS 77381
281-363-4210 Fax. :281-419-1991

MEMO

TO : CHAIRMAN, PLANNING COMMISSION, TOWN OF ELKTON

FROM: DAVID M. KOOGLER DATE: 11/26/08

SUBJECT: Zoning Permit

Attached is our application for a special exception zoning permit.

Ms Lauri Sigler will be bringing the several attachments.

Thanks, very much, for your help.

Dave

Attachment to Zoning Permit No. ZP_____

Applicant: Mark-Dana Corporation

Special Exception Permits are requested for a Multi-family senior dwelling to be constructed on 5 acres of Phase I per attached plans in the R-6 district:

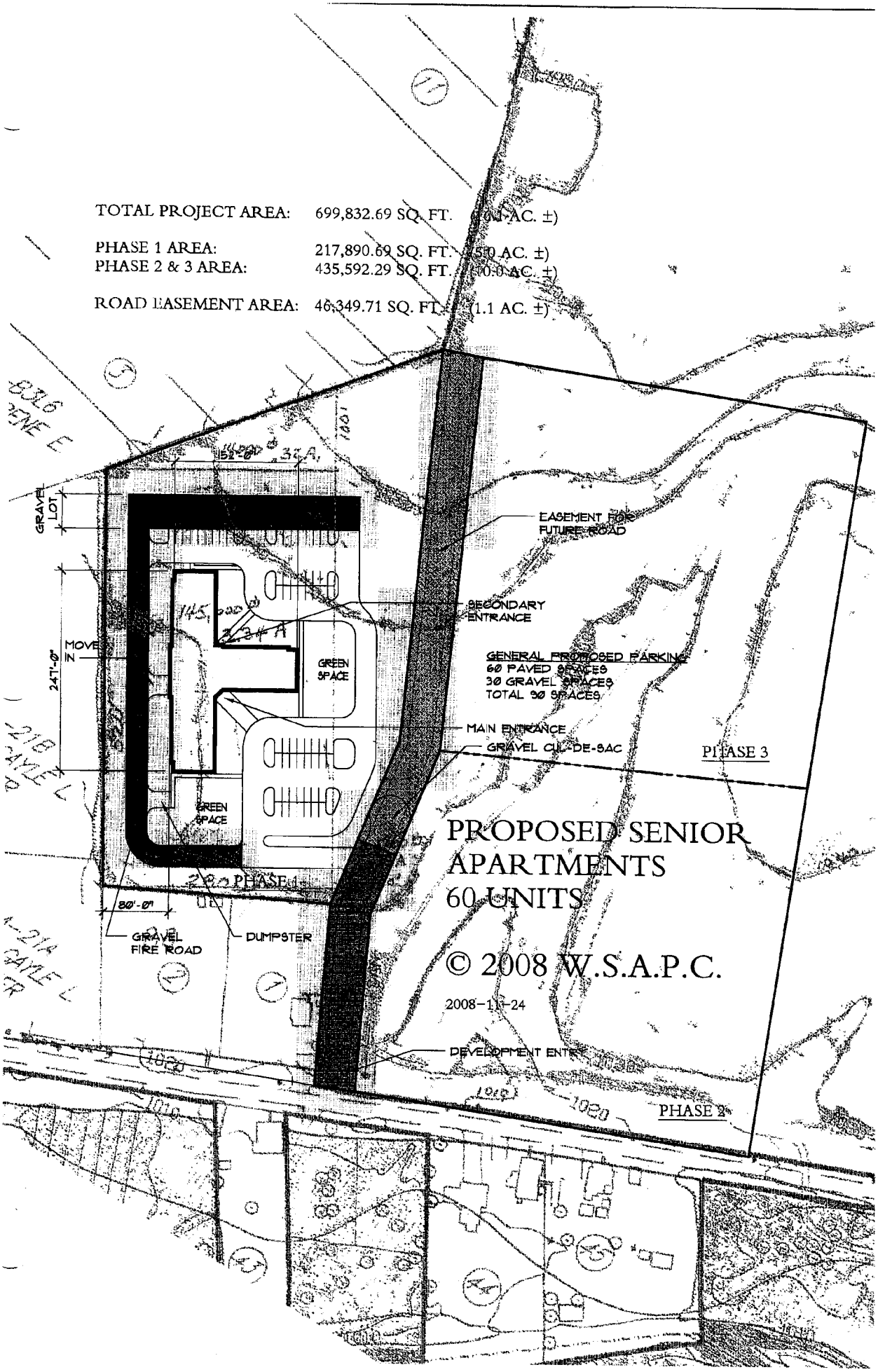
1.) To construct one multi-family senior dwelling with a total of 60 units.

2.) To allow 30 of the 90 required off-street parking spaces to be finished in a gravel surface.

TOTAL PROJECT AREA: 699,832.69 SQ. FT. (16.1 AC. ±)

PHASE 1 AREA: 217,890.69 SQ. FT. (5.0 AC. ±)
PHASE 2 & 3 AREA: 435,592.29 SQ. FT. (10.0 AC. ±)

ROAD EASEMENT AREA: 46,349.71 SQ. FT. (1.1 AC. ±)



PROPOSED SENIOR APARTMENTS
60 UNITS

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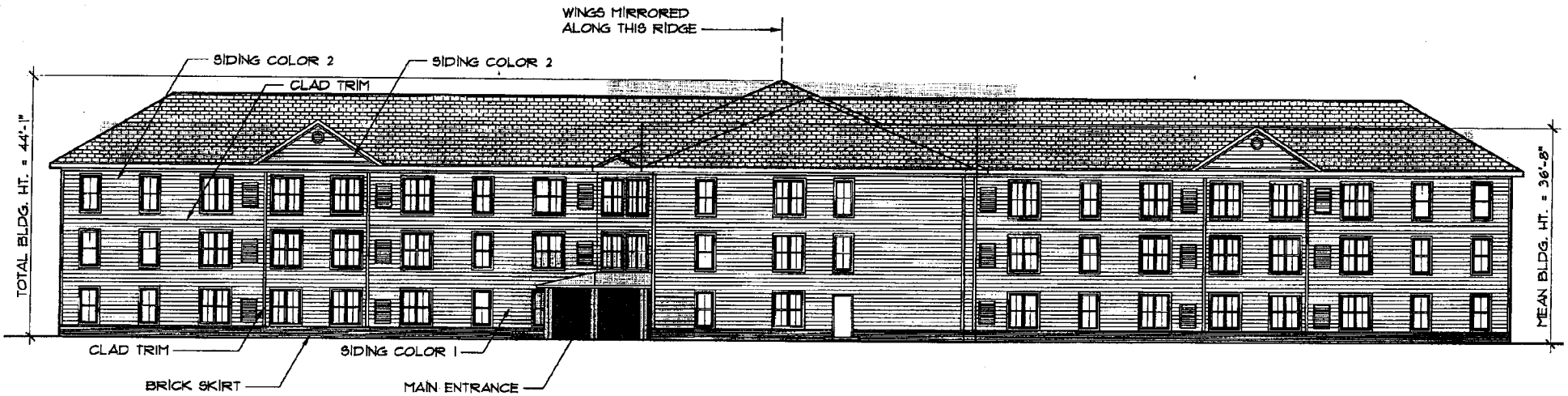
2008-11-24



ELEVATION

ELKLAND SENIOR APARTMENTS

11/26/08

© 2008 WINKS SNOWA ARCHITECTS – WSA PROJ. # 08–233

From VHDA QAP & Applic.

PART II

RULES AND REGULATIONS FOR ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS

13VAC10-180

13VAC10-180-10. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units which are defined as "low income units" under §42 of the IRC.

"Low-income jurisdiction" means any city and county in the Commonwealth with an area median income at or below the Virginia non-metro area median income established by the U. S. Department of Housing and Urban Development ("HUD").

"Principal" shall mean any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development, will own or participate in the ownership of the proposed development or (ii) with respect to an existing multi-family rental project, has owned or participated in the ownership of such project, all as more fully described hereinbelow. The person who is the owner of the proposed development or multi-family rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership which is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25 percent or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25 percent or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits which is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the Authority for submission and meets all minimum scoring requirements.

C. Amenities

1. Specify the average size per unit type: **(Including pro rata share of heated common area)**

Assisted Lvg	0.00 SF	1Bdrm Eld	742.41 SF	3-Bdrm Gar	0.00 SF
1-Sty-Eff-Eld	0.00 SF	2Bdrm Eld	949.72 SF	4-Bdrm Gar	0.00 SF
1-Sty 1BR-Eld	0.00 SF	Eff-Gar	0.00 SF	2-Bdrm TH	0.00 SF
1-Sty 2BR-Eld	0.00 SF	1-Bdrm Gar	0.00 SF	3-Bdrm TH	0.00 SF
Eff-Eld	0.00 SF	2-Bdrm Gar	0.00 SF	4-Bdrm TH	0.00 SF

2. Total gross usable, heated square feet for the entire project less nonresidential commercial area:

69,719 (Sq. ft.) ☑ Documentation attached (TAB F) **Mandatory**

3. Check the following items which apply to the proposed project:

☑ Documentation attached (TAB F) **Mandatory**

Required for any New or Adaptive Reuse project: (Non-point items)

WARNING: The following items are REQUIRED for the proposed development

☑ a. All units will have a dishwasher

☑ b. All units will have a garbage disposal

☑ c. The development will have a laundry room (unless washers and dryers are provided in all units)

☑ d. All windows will have insulating glass (excluding historic adaptive reuse developments)

☑ e. Insulation has a minimum R=30 for ceilings below roofs

☑ f. All refrigerators will be frost free, a minimum size of 14 cubic feet, and provide separate doors for freezer and refrigerator compartments

☑ g. All exterior doors exposed to weather will be metal or fiberglass and entrances will be covered

☑ h. All kitchen cabinets comply with VHDA minimum guidelines

Required for any project serving elderly and/or physically disabled tenants: (Non-point items)

WARNING: The following items are REQUIRED for the proposed development

☑ a. All corridors will have a handrail on one side

☑ b. All bathrooms will have grab bars that exceed 15 inches and slip resistant bottoms for bathtubs

Required for any rehabilitation project: (Non-point items)

☐ a. All bathrooms, including ones with windows, will have exhaust fans ducted out

☐ b. All units will have a minimum of one electric smoke detector with battery backup

☐ c. All bathrooms will have ground fault interrupter electrical receptacles

☐ d. All buildings will a minimum insulation of R=30 for attics and R=19 for crawl spaces

☐ e. All public areas, such a community rooms, laundry rooms and rental office will be accessible to persons in wheelchairs

For any project, upon completion of construction/rehabilitation: (Point items)

100% a(1) Percentage of 2-bedroom units that have 1.5 bathrooms

0% a(2) Percentage of 3 or more bedroom units that have 2 bathrooms

☑ b. If a community/meeting room with a minimum of 800 square feet is provided

7% c. Percentage of exterior walls covered by brick (excluding gable ends, doors and windows)

☑ d. If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements

☑ e. If all windows meet the EPA's Energy Star qualified program requirements

☑ f. If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 9.0 or more (for elderly housing only, through-the-wall heat pump equipment that has an EER rating of 12.0 or more), or (ii) air conditioning units with a SEER rating of 14.0 or more, combined with gas furnaces with an AFUE rating of 90% or more

☑ g. If the development has a minimum STC rating of 52 for floor construction between units

☐ h. If the water expense is sub-metered (the tenant will pay monthly or bi-monthly bill)

☑ i. If each bathroom consists only of low-flow faucets (2.2 gpm maximum) and showerheads (2.5gpm maximum)

For all projects exclusively serving elderly and/or handicapped tenants, upon completion of construction/rehabilitation: (Point items)

- ☑ a. All cooking ranges will have front controls
- ☑ b. All units will have an emergency call system
- ☑ c. All bathrooms will have an independent or supplemental heat source
- ☑ d. All entrance doors have two eye viewers, one at 48" and the other at standard height

For all rehabilitation and adaptive reuse projects, upon completion of construction or or rehabilitation: (Point items)

- ☐ a. All existing single-glazed windows in good condition will have storm windows, and all windows in poor condition will be replaced with new windows with integral storm sash or insulating glass with at least a ten-year warranty against breakage of the seal.
- ☐ b. The structure is listed individually in the National Register of Historic Places or is located in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits

☐ Yes ☐ No ☑ N/A The market-rate units' amenities are substantially equivalent to those of the low-income units. If no, explain differences: _____

D. Market:

1. The primary market area for this project is: Accomack & Northampton Counties, surrounding area.

2. List other projects (especially other LIHTC developments) in the primary market area which would reasonably compete with the proposed development: Attach additional sheets if necessary. See Appendix B in the Application Manual for a list of existing tax credit properties.

Project Name: Accomack Senior Village (Tax Credit, Elderly, 33 units)
Address: 4 Boundary Avenue, Onancock, Va 23417

Project Name: Onancock Apartments (40 units)
Address: 4 Pennewell Street, Onancock, Va. 23417

Project Name: Pine Street Apartments (30 units)
Address: 6 Carter Street, Onancock, Va. 23417

Project Name: Exmore Village I & II (Tax Credit Elderly 101 units)
Address: 12374 Rue Court, Exmore, Va. 23350

2005 07331

EXTENDED USE REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS O PRDA 00000600

THIS AGREEMENT AND DECLARATION dated as of the 15th day of July, 2005, by and between ACCOMACK MANOR, LLC, a Virginia limited partnership, its successors and assigns (the "Owner"), and the VIRGINIA HOUSING DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia ("VHDA"), made in order to satisfy a condition to the allocation by VHDA to the Owner of federal low-income housing tax credits (the "Credits") available under § 42 of the Internal Revenue Code of 1986, as amended, hereby recites and provides as follows:

WITNESSETH:

WHEREAS, the Owner owns or has a leasehold interest in certain real property located in the County of Accomack, Virginia (the "Property") which Property is described in Exhibit A attached hereto, upon which a multi-family housing development is, or is proposed to be, located (which development, including the Property and all assets of whatsoever nature situate, owned or used in or arising out of or otherwise relating to the construction and/or rehabilitation and the ownership or operation of the development, is hereinafter referred to as the "Development"); and

WHEREAS, VHDA has been designated by executive order of the Governor of the Commonwealth, pursuant to § 42 of the Internal Revenue Code of 1986, as amended, as the housing credit agency responsible for allocating the Credits; and

WHEREAS, the Owner has applied to VHDA for a Reservation (hereinafter defined) of Credits to be allocated with respect to the Development and has made in its application (the "Application") certain representations to VHDA about the Development, upon which representations VHDA relied in considering the Application for such Reservation of Credits; and

WHEREAS, based upon such representations, VHDA has agreed to reserve for allocation to the Owner $670,880 of Credits with respect to the Development provided that, as conditions precedent to any such Allocation (hereinafter defined) of Credits, the Owner must, among other things, (1) enter into this Agreement and Declaration, pursuant to which certain requirements of § 42 (hereinafter defined), certain of the representations made in the Application and certain other restrictions and requirements relative to the Development shall be enforceable and then (2) must duly record this Agreement and Declaration in the land records of the jurisdiction in which the Property is located.

NOW THEREFORE, the parties do hereby agree as follows:

1. Definitions.

A. "Section 42" shall hereinafter mean § 42 of the Internal Revenue Code of 1986, as amended, and any successor provision and all applicable regulations, rulings, pronouncements or other official communications issued from time to time with respect thereto by the Internal Revenue Service, the U.S. Department of the Treasury or the U.S. Department of Housing and Urban Development.

B. "Allocation" shall hereinafter mean an allocation of Credits made by VHDA to the Owner with respect to the Development and evidenced, in the case of a building which has already been placed in service at the time of such Allocation, by the issuance by VHDA to the Owner of an IRS Form 8609 executed by VHDA for such building and, in the case of a building (or all buildings within a development) which has not been placed in service but which meets the requirements of subsection (h)(1)(E) of § 42, by the issuance by VHDA to the Owner of a carryforward allocation document executed by VHDA for such building or development.

C. "Beneficial Party" or "Beneficial Parties" shall hereinafter mean VHDA and/or one or more individuals (whether prospective, present or former occupants of any building of the Development) who meet the income limitations applicable to such building under subsection (g) of § 42.

D. "Reservation" shall hereinafter mean the binding commitment issued by VHDA to the Owner specifying the conditions to be met by the Owner in order to obtain from VHDA an Allocation of Credits in the amount either specified therein or to be determined in accordance therewith.

E. "Rules and Regulations" shall hereinafter mean the rules and regulations, as amended from time to time, of VHDA governing the allocation of the Credits.

F. "Low-Income Unit" shall mean, with respect to the Development, each residential unit therein which is occupied by tenants meeting the income restrictions set forth in Section 5.A. below and is Rent Restricted (as defined in subsection (g)(2) of § 42).

2. Covenants to Run With the Land. The Owner intends, declares and covenants, on behalf of itself and its successors and assigns, that throughout the term of this Agreement and Declaration, all of the covenants and restrictions set forth herein shall constitute restrictive covenants encumbering the Development and running with the land, are not merely personal covenants of the Owner, and shall be binding on the Owner and all its successors and assigns, all as provided by and in accordance with § 36-55.34:2 of the Code of Virginia of 1950, as amended.

3. Title. The Owner covenants that it has good and marketable title to the Property free and clear of any liens and encumbrances other than those specifically approved by VHDA.

4. General Covenants. The Owner covenants that it will take or cause to be taken all reasonably necessary lawful actions in order to ensure compliance with all of the requirements, terms, provisions, covenants and restrictions of § 42 (including the requirement that each building of the Development be or become a Qualified Low-Income Building as defined in subsection (c)(2) of § 42), this Agreement and Declaration, the Allocation and the Rules and Regulations and that it will not take nor permit to be taken any action that would result in a violation of, any of such requirements, terms, provisions, covenants or restrictions; provided, however, that in the event that compliance with any provision of this Agreement and Declaration, the Allocation or the Rules and Regulations would preclude the possibility of compliance with any applicable provision of § 42, the Owner shall be required to comply with the provision of § 42 (it being expressly understood that in no event shall the imposition of any restrictions or requirements by VHDA be deemed to preclude compliance with the restrictions of requirements of § 42).

5. Occupancy Restrictions. The Owner represents, warrants and covenants that, commencing on the applicable dates specified below and continuing for each taxable year thereafter until the end of the Extended Use Period (defined below) for each building:

A. Commencing with respect to each building in the Development not later than the close of the first year of the Credit Period (as defined in subsection (f)(1) of § 42) for such building, the Applicable Fraction (as defined in subsection (c)(1) of § 42), expressed as a percentage, for such building shall be not less than 100%; and, by way of clarification and not of limitation or amendment, each unit upon which the Owner relies in order to satisfy the foregoing requirement of this subsection A, but in no event less than 100% of the units in each building of the Development (or such higher percentage as may be necessary in order to satisfy the Floor Space Fraction requirement of subsection (c)(1)(D) of § 42), shall be subject to the income limitation applicable under subsection (g)(1) of § 42; in this case, the maximum percentage of Area Median Gross Income (as described in § 142(d)(2)(B) of the Internal Revenue Code of 1986, as amended) applicable under the income limitation provisions of such subsection (g)(1) shall be 60%.

B. Commencing on the date hereof, each unit upon which the Owner relies in order to meet the income restriction described in the preceding subsection A shall also be Rent Restricted. Notwithstanding that the applicable income limitation in the preceding subsection A, 100% of the units in the Development must be Rent Restricted as if the applicable income limitation shall be 50% of Area Median Gross Income.

C. Commencing on the date thereof, each Low-Income Unit in the Development shall be occupied by elderly households as defined by the United States Fair Housing Act.

D. Commencing on the date hereof, preference shall be given to applicants for occupancy in the Low-Income Units of the Development whose names are set forth on the waiting list for housing maintained by the public housing authority or section 8 waiting list maintained by the local or nearest section 8 administrator serving the jurisdiction in which the Development is located.

E. Commencing on the date hereof, there shall be no eviction or termination of tenancy (other than for good cause) of an existing tenant of any Low-Income Unit.

F. Commencing on the date hereof, no applicant for occupancy in the Development can be denied occupancy because the applicant holds a voucher or certificate under § 8 of the Housing Act of 1937.

6. Extended Use Period/Term of Agreement.

A. The Extended Use Period (as defined in subsection (h)(6)(D) of § 42) shall, with respect to each building in the Development, commence on the first day in the Compliance Period (as defined in subsection (i)(1) of § 42) on which such building is part of a Qualified Low-Income Housing Project (as defined in subsection (g)(1) of § 42) and, except for those provisions set forth in subsection 6.D. below, shall end on the Termination Date (defined below) of this Agreement and Declaration.

B. The term of this Agreement and Declaration commences, with respect to each building of the Development, on the date hereof.

C. The term of this Agreement and Declaration shall, with respect to each building in the Development, terminate on the date (the "Termination Date") which is fifteen (15) years after the close of the Compliance Period; provided, however, that notwithstanding the foregoing, this Agreement and Declaration shall, with respect to each building in the Development, terminate prior to such date in accordance with subsection (h)(6)(E) of § 42:

(1) on the date such building is acquired by foreclosure or instrument in lieu thereof, unless a determination is made pursuant to subsection (h)(6)(E)(i)(I) of § 42 that such acquisition is part of an agreement with the taxpayer, a purpose of which is to terminate the Extended Use Period; or

(2) on the last day of the one-year period beginning on the date (after the fourteenth (14th) year after the commencement of the Compliance Period) that the Owner submits a written request to VHDA to find a person to present a Qualified Contract (as defined in subsection (h)(6)(F) of § 42) to acquire the Owner's interest in the Low-Income Portion (as defined in subsection (h)(6)(H) of § 42) of such building, provided that VHDA has not complied with such request by such date.

D. For a period of three (3) years after (i) the Termination Date or (ii) the date this Agreement and Declaration is terminated with respect to a building prior to the Termination Date for such building pursuant to subsection C(1) or C(2) hereof, the following restrictions shall apply to each Low-Income Unit (as defined in subsection (i)(3) of § 42) in the Development or in any such building subject to early termination:

(1) there shall be no eviction or termination of tenancy (other than for good cause) of an existing tenant of any Low-Income Unit; and

(2) the gross rent with respect to any such Low-Income Unit shall not be increased to an amount in excess of the then current maximum rent limits applicable under § 42 to such Low-Income Unit.

E. Notwithstanding the foregoing, if the Property is acquired by foreclosure or instrument in lieu thereof at a time when no buildings of the Development have been constructed on the Property, this Agreement and Declaration (and all of the covenants thereof) shall, upon the Owner and VHDA entering into an agreement for the return of the Credits to VHDA, (i) terminate in all respects as to the Owner and to the Property and (ii) no longer encumber and run with the Property. In such an event, VHDA hereby agrees to enter into enter into an agreement with the Owner for the return of the Credits.

7. [Reserved.]

8. Books/Records/Inspections. The books, contracts, records, computerized data, documents and other papers relating to (i) compliance by the Owner, with respect to the Property and the Development, with § 42 and with this Agreement and Declaration, (ii) to the eligibility of the Owner to claim Credits with respect to the Property and the Development and (iii) to any transfers of all or any part of the Development or of any ownership interest in the Owner shall at all times be maintained at the Development (or such other place as VHDA shall approve) in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by VHDA or its authorized agents. VHDA shall also have the right to enter onto and make inspection of the Property and all improvements thereon constituting the Development. It is understood and agreed that any such inspections by VHDA shall be for the sole benefit and protection of VHDA, and neither the Owner nor any other party shall be entitled to rely upon such inspection or the results therefrom for any purpose whatsoever, including without limitation the assertion of (a) any claim or defense with respect to any failure by the Owner to perform in accordance with the terms of this Agreement and Declaration or (b) any waiver or other modification of the rights of VHDA or the obligations of the Owner hereunder.

9. Reports/Forms. The Owner shall promptly prepare and deliver to VHDA, in a format acceptable to VHDA, (i) such information as VHDA shall from time to time request with respect to the Development's physical, operational and financial condition and its compliance with all of the terms and provisions hereof and (ii) renewals of IRS Form 8821, Tax Information Authorization, at such times required by VHDA.

10. Transfers.

A. The Owner shall notify VHDA, in advance, of any sale, assignment, transfer or exchange of all or any part of the Development or of any ownership interest in the Owner (other than limited partnership interests).

B. Notwithstanding anything herein to the contrary, with respect to each building of the Development, no disposition of any portion of any such building may be made to any entity unless all of such building is so transferred to such entity, as required by subsection (h)(6)(B)(iii) of § 42.

11. Event of Default. A violation of any provision of this Agreement and Declaration shall constitute a default hereunder.

12. Enforcement of Terms. The benefits of all of the covenants and restrictions hereof shall inure to the Beneficial Parties hereto, including VHDA. In the event of a default, any Beneficial Party or Parties shall have the right, in addition to all other remedies provided by law or in equity, to apply to any court of competent jurisdiction within the Commonwealth of Virginia to enforce specific performance by the Owner of its obligations hereunder, or to obtain an injunction against any violations hereof, or to obtain such other relief as may be appropriate.

13. Waiver and Forbearance by VHDA. VHDA shall, to the extent permitted by § 42, have the right to waive at its option, any of the rights granted to it hereunder to enforce the terms hereof, provided that VHDA's election not to pursue a particular remedy in the event of a default shall not be construed to preclude or be a waiver of VHDA's right to pursue any of the other remedies with respect to the violation for which such remedy was pursued or with respect to any other violation prior or subsequent thereto. In addition, any forbearance by VHDA in exercising any of its rights hereunder shall not constitute a waiver or preclude the exercise of such rights.

14. Monitoring/Fees.

A. Upon the request of VHDA, the Owner shall submit to VHDA each year following a year in the Extended Use Period for each building in the Development, a written certification with respect to each such building which states that the applicable fraction during the previous year was not less than that required by subsection 5.A. hereof. Such certification shall, at the option of VHDA, also contain such other information and certifications as VHDA shall, by notice to the Owner, require in order to confirm compliance by the Owner and the Development with § 42.

B. The Owner agrees to take or cause to be taken all other and further actions required of the Owner by VHDA in order to monitor the compliance by the Owner or the Development with the requirements of § 42, which actions shall be designated in writing by VHDA to the Owner not less than ten (10) days (or such other period as may be required by law) prior to the date by which such actions must first be taken. In addition, the Owner agrees to pay to VHDA such fees in such amounts and at such times as VHDA shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse VHDA for the costs of such monitoring.

15. Severability. The invalidity of any clause, part or provision of this Agreement and Declaration shall not affect the validity of the remaining portions hereof.

16. Notices. All notices to be given pursuant to this Agreement and Declaration shall be in writing and shall be deemed given when mailed by first class mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO VHDA: Virginia Housing Development Authority
601 South Belvidere Street
Richmond, VA 23220

ATTN: Multi-Family Development Division
Re: Tax Credits

TO THE OWNER: Accomack Manor, LLC
19 Silverstrand Place
The Woodlands, TX 77381

ATTN: Mr. David Koogler

VHDA and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.

17. Amendment. This Agreement and Declaration may not be altered, modified or amended except in writing signed on behalf of the Owner and VHDA; provided, however, that the Owner agrees that it will take all actions necessary to effect amendment of this Agreement and Declaration as VHDA may determine to be necessary to comply with § 42.

18. Governing Law. This Agreement and Declaration shall be governed by the laws of the Commonwealth of Virginia and, as applicable, the laws of the United States of America.

19. Survival of Obligations. The obligations of the Owner as set forth herein shall survive the Allocation and shall not be deemed to merge with or be terminated by the making of such Allocation.

IN WITNESS WHEREOF, the Owner and VHDA have caused this Agreement and Declaration to be signed by their duly authorized representatives as of the day and year first written above.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY
("VHDA")

By: _____
Its: Authorized Officer

ACCOMACK MANOR, LLC
(the "Owner")
By: MARK-DANA CORPORATION
MANAGING MEMBER

By: _____
Its: PRESIDENT

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, To-Wit:

The foregoing instrument was acknowledged before me this 12th day of July, 2005, by James M. Chandler, the Authorized Officer of the Virginia Housing Development Authority.

My commission expires: June 30, 2009

Bonnie R.C. McRae
Notary Public

STATE OF TEXAS
~~COMMONWEALTH OF VIRGINIA~~
~~CITY~~/COUNTY OF MONTGOMERY, To-Wit:

The foregoing instrument was acknowledged before me this 30th day of July, 2005, by DAVID M. KOCHER, PRESIDENT OF, the MARK-DANA CORP, MANAGING MEMBER, of ACCOMACK MANOR, L.LP, the Owner.

My commission expires: Aug. 7. 2007

_____
Notary Public

LAURIE SPENCER
Notary Public, State of Texas
My Commission Expires
AUGUST 7, 2007

EXHIBIT A

ACCOMACK MANOR, LLC

PROPERTY DESCRIPTION

Metes and bounds description of a parcel of land located near Zion Church, Metompkin District, Accomack County, Virginia.

Beginning for the same at a pipe, said pipe being the southern most corner of the land of the Trustees of Zion Baptist Church, said pipe also being in the northwest right-of-way line of S.R. 679 (Metompkin Road), thence leaving said right-of-way line in a northerly and westerly direction along the land of the Trustees of Zion Baptist Church, the following bearings and distances: N14°-51'-06"E 140.95' to a pipe, thence N75°-08'-54"W 423.45' to a pipe, thence by a line of division with the remaining land of Accomack Manor, L.L.C. in a northerly direction, N 17°-59'-53"E 857.81' to a pipe, thence in a southeasterly direction along the land of Mercedes Wharton and Southwest Street (unimproved) S62°-43'-03"E 464.', more or less, to the run of the branch, thence in a southeasterly direction with the run of the branch separating the herein described parcel of land from the land of Mercedes Wharton to a point, thence leaving said run of the branch in a southwesterly direction by a line of division with the remaining land of Accomack Manor, L.L.C., S49°-36'-39"W 750.15', more or less, to a pipe set in the northwest right-of-way line of S.R. 679 (Metompkin Road), thence in a northwesterly direction with said right-of-way line, N76°-28'-50"W 181.47' to a point, thence N75°-08'-54"W 111.56' to a pipe, the point of beginning.

Containing 16.0 Ac.

INSTRUMENT #200507331
RECORDED IN THE CLERK'S OFFICE OF
ACCOMACK COUNTY ON
NOVEMBER 3, 2005 AT 03:24PM
SAMUEL H. COOPER, CLERK

RECORDED BY: NJR

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

CONTRACT TO ENFORCE REPRESENTATIONS
REGARDING LOW-INCOME HOUSING TAX CREDIT DEVELOPMENT

THIS CONTRACT, made this 15th day of July, 2005, by and between ACCOMACK MANOR, LLC (the "Owner") and the VIRGINIA HOUSING DEVELOPMENT AUTHORITY ("VHDA"), hereby recites and provides as follows:

WITNESSETH:

WHEREAS, pursuant to § 42 of the Internal Revenue Code of 1986, as amended (the "Code"), the Owner has submitted to VHDA an application (the "Application") for a reservation ("Reservation") of low-income housing tax credits ("Credits") from VHDA's Credit Program to be allocated with respect to the building(s) comprising that certain residential rental housing development known as Accomack Manor (the "Development"); and

WHEREAS, the Owner has made in its Application (which Application is incorporated herein by reference) certain representations to VHDA upon which VHDA relied in considering the Application for a Reservation of Credits; and

WHEREAS, based upon such representations, VHDA has agreed to reserve for Allocation (as defined in § 42(h) of the Code) to the Owner an aggregate annual amount of $670,880 of Credits with respect to the Development provided that, as a condition precedent to any such Allocation, the Owner must, among other things, enter into this Contract, pursuant to which certain of the representations made by the Owner in its Application and certain other requirements imposed by VHDA shall be enforceable.

NOW THEREFORE, the parties do hereby agree as follows:

1. Representations.

(a) In the case of a building which receives a carryforward allocation of Credits pursuant to § 42(h)(1)(E) of the Code, the Owner shall provide to VHDA at the time it requests from VHDA an IRS Form 8609 for each building in the Development an executed Request for IRS Forms 8609 with respect to the buildings in the Development in the form required by VHDA (which Request form shall be included with the carryforward allocation document issued by VHDA to the Owner) in which the Owner shall, among other things, certify as to the reasonable, ordinary and necessary costs and expenses incurred by the Owner in the construction or rehabilitation and, if applicable, the acquisition of the Development. The Owner shall submit such request in accordance with the carryforward allocation document issued by VHDA to the Owner no later than the earlier of (i) six months after the last building in the Development is placed in service or (ii) April 30, 2007. If the Development has not been completed by the deadline for such submission, the Owner shall include in such certification its reasonable estimates of all costs and expenses necessary to complete the Development. All costs and expenses as certified shall be subject to review, adjustment and approval by VHDA.

(b) Not later than the last day of the first year of the Credit Period (as defined in § 42(f) of the Code) for the last building of the Development which is placed in service, (i) the Development shall contain all of the amenities, building materials and energy efficient features, if any, described in the Application, (ii) the Development shall contain not fewer than the number of Low-Income units and bedrooms set forth in the Application and (iii) the percentage of new units (or, as applicable, units adapted for housing from another use) in the Development shall be not less than that specified in the Application.

2. Requests for Information. The Owner shall promptly prepare and deliver to VHDA, in a format acceptable to VHDA, such information as VHDA shall from time to time request with respect to its compliance with the terms hereof.

3. IRS Form 8821. The Owner shall, at the request of the VHDA, execute and deliver to VHDA a valid IRS Form 8821, Tax Information Authorization, naming VHDA as the appointee to receive tax information. The Owner also agrees to provide VHDA with an additional IRS Form 8821 upon the expiration of any previous IRS Form 8821 during the Extended Use Period of the Development.

4. Records and Inspections. The book, contracts, records, documents, plans and other materials relating to compliance with the terms hereof shall at all times be maintained at the Development (or such other place as VHDA shall approve) in reasonable condition for inspection and shall be subject to inspection and copying at any reasonable time by VHDA or its authorized agents. VHDA shall also have the right to enter upon and make inspections of the property and all improvements thereon constituting the Development.

It is understood and agreed that any such inspection by VHDA shall be for the sole benefit and protection of VHDA, and neither the Owner nor any other party shall be entitled to rely upon such inspection or the results therefrom for any purpose whatsoever, including without limitation the assertion of (a) any claim or defense with respect to any failure by the Owner to perform in accordance with the terms of this Contract or (b) any waiver or other modification of the rights of VHDA or the obligations of the Owner hereunder.

5. Event of Default. A violation of any provision of this Contract shall constitute a default hereunder.

6. Enforcement of Terms.

(a) In the event of a violation of the provisions of subsection 1.a hereof, no IRS Forms 8609 shall be issued by VHDA with respect to the applicable buildings of the Development and VHDA shall reclaim the Credits allocated to the Development. VHDA may, however, extend the deadline in subsection 1.a if the Owner can prove to the satisfaction of VHDA that the Development will be placed in service within the time limits required by § 42 of the Code. A fee may be assessed by VHDA in connection with any extension of the deadline in subsection 1.

(b) In the event of a violation of any other provision hereof, VHDA shall have the right, in addition to all other remedies provided by law or in equity, to apply to any court of competent jurisdiction within the Commonwealth of Virginia to enforce specific performance by the Owner of its obligations hereunder, or to obtain an injunction against any violations hereof, or to obtain such other relief as may be appropriate. In the alternative or, in the event of any additional violation of the provisions hereof, VHDA may, at its sole option, require the payment by the Owner of an amount equal to 10% of the Total Development Cost (as set forth in the Application) of the Development as liquidated damages for such violation.

(c) In addition, in all cases of default, the Owner shall be responsible for the payment of any and all costs, fees and expenses paid by VHDA in connection with the enforcement of the terms hereof.

(d) VHDA's election to pursue any one or more of the above remedies shall not be construed to preclude or be a waiver of VHDA's right to pursue any of the other remedies with respect to the violation for which such remedy was pursued or with respect to any other violation prior or subsequent thereto. In addition, any forbearance by VHDA in exercising its rights hereunder shall not constitute a waiver or preclude the exercise of such rights.

7. Severability. The invalidity of any clause, part or provision of this Contract shall not affect the validity of the remaining portions thereof.

8. Amendment. This Contract may not be altered, modified or amended except in writing signed on behalf of the Owner and VHDA.

9. Binding on Successors. This Contract is binding on VHDA, the Owner and any successors in interest to the Owner.

10. Assignment. This Contract may not be assigned by the Owner without the prior consent of VHDA.

11. Governing Law. This Contract shall be governed by the laws of the Commonwealth of Virginia and, as applicable, the laws of the United States of America.

12. Survival of Obligations. The obligations of the Owner as set forth herein shall survive the Allocation and shall not be deemed to merge with or be terminated by the making of such Allocation.

IN WITNESS WHEREOF, the Owner and VHDA have caused this Contract to be signed by their duly authorized representatives as of the day and year first written above.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY
("VHDA")

By: _____
Its: Authorized Officer

ACCOMACK MANOR, LLC
(the "Owner")
By: MARK-DANA CORPORATION
MANAGING MEMBER

By: _____
Its: PRESIDENT

STATE OF TEXAS
~~COMMONWEALTH OF VIRGINIA~~
~~CITY~~COUNTY OF MONTGOMERY, To-Wit:

The foregoing instrument was acknowledged before me this 30TH day of JULY, 2005, by DAVID M. KOOGLER, the PRESIDENT, of MARK-DANA CORP. MANAGING MEMBER OF ACCOMACK MANOR, LLC, the Owner.

My commission expires: 8.7.2007.

_____
Notary Public

LAURIE SPENCER
Notary Public, State of Texas
w/my Commission Expires
AUGUST 7, 2007