

**AGREEMENT REGARDING CASE NO. 18708 BEFORE
THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

This Agreement, dated effective November 5, 2014, is between Mr. Amir Motlagh (the "Applicant") and the Foxhall Crescents Homeowners Association and related combined opposition parties including Godley, Sharkey, and Wong individually and collectively (the "Opposition Parties"), wherein

- (1) The Applicant agrees that the proposed one-family detached dwelling he proposes to build at 4509 Foxhall Crescents Drive, N.W. (the "Site") will have a footprint no larger than that of the house originally designed by Arthur Cotton Moore to be built on that site in conformity with the Foxhall Crescent 1 development, more specifically, a "Type 6" design including window and door locations, as shown on the original Arthur Cotton Moore Site Plan attached hereto as Appendix A. The Applicant shall submit the reduced house plan, pursuant to the above, to the BZA as part of the Application prior to the issuance of the BZA Order.
- (2) The Applicant agrees to subject the Site / Property to and comply with all DDOE standards for soil disturbance over 5,000 square feet, as stated in the 2013 Stormwater Management Rule and Guidebook and Soil erosion and Sediment Control Regulations, also known 21 DCMR §§ 516-534 and 21 DCMR §§ 540-547 (the "DDOE Requirements") and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e). Any updates to the plans required to comply with the modified obligations shall be submitted to the BZA as part of the record prior to a BZA Order being issued. The Applicant also agrees to request that the BZA adopt these requirements as a condition of approval in the Order.
- (3) (a) In addition, the Opposition Party shall have an independent civil engineer, to be identified by the Opposition Party at a later date ("FCHOA Engineer"), conduct a review of the Applicant's current proposal. Within sixty (60) days after the Applicant has provided to the Opposition Party the applicable stormwater management permit application plans (the "Plans"), the FCHOA Engineer shall provide to the Applicant a report opining on the compliance of those plans with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e). If the FCHOA Engineer is of the opinion that the Plans are not in compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e), then the FCHOA Engineer shall provide specific comments within his or her report detailing the reason for such noncompliance and actions which the Applicant should undertake to obtain such level of compliance, including, if applicable, any recommended alternative measures needed to obtain compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e).

- (b) If the FCHOA Engineer determines that the Plans are not in compliance with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e), then the Applicant's civil engineer will respond in writing within

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twenty (20) days to each itemized point, accepting the recommendation or challenging the recommendation. All accepted items shall be memorialized in updated or revised plans within fifteen (15) days of the Applicant's response letter. Those items which the Applicant challenges shall be done so with an explanation in writing, and the Applicant and the Opposition Parties shall then engage in good faith discussions to attempt to resolve any remaining discrepancies.

(c) If the Applicant and the Opposition Parties cannot come to agreement on remaining discrepancies, the Applicant and the Opposition Parties shall, within fifteen days after the Applicant's response letter, jointly engage a mutually agreeable third-party engineer ("Engineer"), at Applicant's expense, to examine the Applicant's challenged items. The third Engineer shall review the Plans, conduct a site visit, review reports and studies and make final and binding decision on the challenged items and whether or not the Plans comply with the DDOE Requirements and Bylaws of Foxhall Crescent Homeowners Association, Inc., Article V Section 7(e) and if not, what revisions are necessary to bring the Plans into such compliance.

(d) The Engineer's final decision shall be submitted in writing and provided to all parties within 45 days from the Applicant's response letter. If the Engineer fails to submit this report within the 45 days, then it shall be deemed to be an approval of the Applicant's position. The Applicant and Opposition Parties will be obligated to accept all decisions of the Engineer as final and the Applicant shall make the required modifications to the plans or conduct the required tests within 20 days.

(4) The Opposition Parties agree to withdraw their opposition to Mr. Motlagh's application filed with the Board of Zoning Adjustment ("BZA"), District of Columbia, in Case No 18708, conditioned upon satisfaction of the terms and conditions of this Agreement. Accordingly, the Applicant and Opposition Parties respectfully request that any order issued by the BZA on the Applicant's application be conditioned upon the parties' satisfaction of the terms and conditions of this Agreement.

(5) Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered, delivered by overnight courier (with receipt acknowledged), or telecopies (and promptly confirmed in writing hand-delivered or delivered by overnight courier) to the parties at their respective addresses set forth below, or at such other addresses of which either party shall notify the other party in accordance with this Section, and shall be deemed given as of the time of receipt or refusal of receipt.

If to Amir Motlagh:

Amir Motlagh
201 Berry Street, SE
Vienna, VA 22180

w/ copy to counsel

Marty Sullivan
Sullivan and Barros

1990 M Street NW, Suite 200
Washington, DC 20036
msullivan@sullivanbarros.com

If to Opposition Parties Foxhall Crescent Homeowners Association
c/o Gene Godley
4513 Foxhall Crescent
Washington, DC 20007

w/ copy to counsel Meredith H. Moldenhauer
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, NW
Washington, DC 20036
mmoldenhauer@washlaw.com

(6) Any disputes between Applicant and Opposition Parties, concerning the subject matter of this Agreement that are incapable of informal resolution shall be submitted to binding arbitration before three (3) arbitrators chosen by mutual agreement of the parties. Any such arbitration shall be conducted in accordance with the applicable rules and procedures of the American Arbitration Association, subject to any special modifications thereof to which the parties shall mutually agree. As part of any award resulting from such arbitration, the prevailing party shall be entitled to receive the payment of its costs and reasonable attorneys' fees from the non-prevailing party.

(7) This Agreement may be executed in one or more counterparts, by original or facsimile signature, and when executed by all parties shall constitute one and the same instrument

(8) This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all prior agreements and understandings relating to the subject matter of this Agreement. The parties acknowledge that this agreement does not address or waive any rights the HOA may have to review and approve the project in accordance with the Foxhall Crescent Bylaws and Covenants.

(9) Time is of the essence in connection with this Agreement

(10) This Agreement shall inure to the benefit and obligation of, and be binding on, Applicant's successors and assigns, including but not limited to Mr. Edward Jacobsen. If and when the Applicant transfers the Property to another owner, that subsequent owner shall be bound by this agreement and shall record this agreement as a Memorandum of Understanding against the Property in the District of Columbia Recorder of Deeds at the time of transfer.

(11) Modification, waivers and consents regarding this Agreement shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced

Amir Motlagh 11/5/14

Amir Motlagh

Date

Don Gandy, President, HOA Nov 5, 2014

HOA, authorized representative

Date

Robert & Rhonda Shanks Nov. 5, 2014

Opposition Party

Date

Adrian Wong Nov 5/2014

Opposition Party

Date

Patricia Godley Nov. 5, 2014

Opposition Party

Date