



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of January 21, 2012

SUPPLEMENTAL REPORT Revised Site Plan Conditions

DATE: January 20, 2012

- SUBJECTS:** B. Certification of Transferrable Development Rights to be considered for transfer from 2825 Wilson Boulevard (“Sending Site”) to SP #418 – Penzance Clarendon Assemblage, LLC (“Receiving Site”), as described below, for the purpose of historic preservation. The Sending Site is approximately 40,656 square feet located on the block generally bounded by Franklin Road to the north, North Edgewood Street to the east, Wilson Boulevard to the south, and North Fillmore Street to the west. Proposed density to be certified is 69,464 square feet of commercial GFA (RPC# 15-065-001, 15-065-011, 15-065-012, 15-065-013, 15-065-016, 15-065-017).
- C. Certification of Transferrable Development Rights to be considered for transfer from 2901 Wilson Boulevard (“Sending Site”) to SP #418 – Penzance Clarendon Assemblage, LLC (“Receiving Site”), as described below, for the purpose of historic preservation. The Sending Site is approximately 15,390 square feet located on the block generally bounded by Franklin Road to the north, North Fillmore Street to the east, Wilson Boulevard to the south, and North Garfield Street to the west. Proposed density to be certified is 74,747 square feet of commercial GFA (RPC# 15-066-019).
- D. Transfer of Development Rights from 2825 Wilson Boulevard (“Sending Site”), consisting of 69,464 square feet of commercial GFA, to SP #418 – Penzance Clarendon Assemblage, LLC (“Receiving Site”) by site plan

County Manager:

BMD/GA

County Attorney:

[Signature]

Staff: Aaron Shriber, DCPHD, Planning
Melanie Jesick, DES, Transportation
Rebecca Ballo, DCPHD, Neighborhood Services

41. B., C., D., E., F.

under Section 36.H.5.b of the Zoning Ordinance. The Sending Site is approximately 40,656 square feet located on the block generally bounded by Franklin Road to the north, North Edgewood Street to the east, Wilson Boulevard to the south, and North Fillmore Street to the west (RPC# 15-065-001, 15-065-011, 15-065-012, 15-065-013, 15-065-016, 15-065-017). The Receiving Site is approximately 49,295 square feet located on the block generally bounded by 11th Street North to the north, North Garfield Street to the east, Washington Boulevard to the south, and North Highland Street (RPC# 18-026-001, 18-026-002, 18-026-003, 18-026-004, 18-026-008, 18-026-009, 18-026-010), and North Garfield Street right of way.

- E. Transfer of Development Rights from 2901 Wilson Boulevard (“Sending Site”), consisting of 74,747 square feet of commercial GFA, to SP #418 – Penzance Clarendon Assemblage, LLC (“Receiving Site”) by site plan under Section 36.H.5.b of the Zoning Ordinance. The Sending Site is approximately 15,390 square feet located on the block generally bounded by Franklin Road to the north, North Fillmore Street to the east, Wilson Boulevard to the south, and North Garfield Street to the west (RPC# 15-066-019). The Receiving Site is approximately 49,295 square feet located on the block generally bounded by 11th Street North to the north, North Garfield Street to the east, Washington Boulevard to the south, and North Highland Street (RPC# 18-026-001, 18-026-002, 18-026-003, 18-026-004, 18-026-008, 18-026-009, 18-026-010), and North Garfield Street right of way.
- F. SP# 418 SITE PLAN: Penzance Clarendon Assemblage, LLC, for the construction of a 306,492 square foot commercial building with 284,012 square feet of office space and 22,479 square feet of ground floor retail in the C-3 zoning district under Sections 27.D.2 and 36.H. The proposed density is 6.22 FAR. Modifications of zoning ordinance requirements include: parking ratio, bonus density for LEED silver certification and other modifications as necessary to achieve the proposed development plan (RPC# 18-026-001, 18-026-002, 18-026-003, 18-026-004, 18-026-008, 18-026-009, 18-026-010).

APPLICANT:

Penzance Clarendon Assemblage, LLC
2400 N Street NW, Suite 600
Washington, D.C. 20037

BY:

Jonathan C. Kinney
Bean, Kinney & Korman, P.C.
2300 Wilson Boulevard, 7th Floor
Arlington, Virginia 22201

3001 Washington Boulevard (Penzance) Site Plan #418
Certification & Transfer of Development Rights
PLA-6081

C. M. RECOMMENDATIONS:

- B. Approve the attached resolution certifying 69,464 square feet of commercial GFA, as transferable development rights from 2825 Wilson Boulevard (“Sending Site”) for the purpose of historic preservation.
- C. Approve the attached resolution certifying 74,747 square feet of commercial GFA, as transferable development rights from 2901 Wilson Boulevard (Sending Site”) for the purpose of historic preservation.
- D. Approve the attached resolution transferring 69,464 square feet of commercial GFA from 2825 Wilson Boulevard (“Sending Site”) to SP #418 (“Receiving Site”).
- E. Approve the attached resolution transferring 74,747 square feet of commercial GFA from 2901 Wilson Boulevard (“Sending Site”) to SP #418 (“Receiving Site”).
- F. Adopt the attached ordinance to approve a site plan for the construction of a 306,492 square foot commercial building with 284,012 square feet of office space and 22,479 square feet of ground floor retail with modifications of zoning ordinance regulations for parking ratio, bonus density for LEED and other modifications as necessary to achieve the proposed development plan, subject to the conditions of the ordinance.

DISCUSSION: As requested by the Planning Commission at their January 12, 2012 meeting, the Historical Affairs and Landmark Review Board (HALRB) reviewed the optional elevation treatments for the building as contained within the revised plans dated December 7, 2011 and the building preservation easements for the two TDR Sending Sites. The HALRB recommended that the curvilinear design of the two-story façade treatment that serves as a transition between the preserved historic frontage and the new construction, as provided on Sheet A292E of the revised plans, be pursued. In addition, the HALRB recommended that the stair tower treatment with mullions spaced close together, as provided on Sheet A500A of the revised plans, be incorporated. Condition#30 has been revised to require that these architectural treatments be depicted on all post County Board approval documents and constructed accordingly.

Further, the HALRB supported the draft version of the preservation easement for the TDR Sending Sites. Conditions #82A and 82B have been revised to address this language; the draft versions of these preservation easements are included as Attachments C and D to the conditions.

The HALRB also made a recommendation that the space along North Highland Street between the building frontage preservation area and the two-story transition element be eliminated. At this stage, the applicant is unable to accommodate this revision without increasing the density of the project. However, the applicant has indicated a willingness to study this area and may be able to accommodate this recommendation in the post County Board approval process without increasing the density of the project. An additional motion by the HALRB regarding the inclusion of canopies along the two-story transition element does not require further action by the applicant as Sheet A290B already depicts these elements.

Additional revisions to other conditions have been made since the printing of the original staff report. All conditions have been resubmitted as part of this supplemental report, with revisions shown with double underline or double strikethrough, and highlighted. These revisions were made in response to additional community comments and staff analysis and are as follows:

- Condition #18 has been revised to require the submission of mylar plans following completion of construction to provide the locations of the sanitary, storm sewer and water main improvements associated with the project.
- Condition #19b has been revised to require the applicant to improve the curb nub at the northwest corner of the intersection of North Highland Street and Washington Boulevard.
- Condition #21 has been revised to reference an exhibit provided as an attachment to the conditions that details the streetscape improvement adjacent to the historic building frontage along 11th Street North.
- Condition #25 has been revised to clearly indicate the revisions to the standard condition regarding the replacement of damaged existing curb, gutter and sidewalk.
- Condition #51 has been revised to provide details of the employment of a parking management system during standard office hours.
- Condition #65 has been revised to explain the operations of the garage for public use on weeknights and weekends, including a parking management system, extended hours of operation and reduced parking rates for the first three years of the building.

Certification of Transferrable Development Rights Resolution

Whereas, the County Board finds that certain density existing on property owned by 2825 Wilson LLC and located on the block generally bounded by Franklin Road to the north, North Edgewood Street to the east, Wilson Boulevard to the south, and North Fillmore Street to the west – 2825 Wilson Boulevard (RPC: 15-065-001, 15-065-011, 15-065-012, 15-065-013, 15-065-016, 15-065-017), is appropriate for the transfer to another site.

Whereas, a certified survey plat dated October 11, 2011 and completed by Bowman Consulting Group, Ltd. concludes that the Walgreens/Kenyon Peck site is 40,619 square feet and is subject to the requirements set forth in the “R-6” One-Family Dwelling Districts and “C-2” Service Commercial-Community Business Districts of the Arlington County Zoning Ordinance.

Whereas, the *Clarendon Sector Plan* identifies the Walgreens/Kenyon Peck building for Full Building Preservation in recognition of its historic significance to Arlington County.

Whereas, the unused site plan density on the Walgreens/Kenyon Peck site has been calculated based on the certified survey plat dated October 11, 2011 completed by Bowman Consulting Group, Ltd, and the limits and requirements set forth in the Arlington County Zoning Ordinance and the *Clarendon Sector Plan* as 69,464 square feet of gross floor area (GFA).

Whereas, the County Board finds that the historic preservation of the Walgreens/Kenyon Peck building for the Transfer of Development Rights would be initiated and expanded consistent with Section 36.H.5.b. of the Arlington County Zoning Ordinance.

Now therefore, the County Board hereby certifies that the Walgreens/Kenyon Peck site is an eligible Sending Site for historic preservation purposes, to transfer by site plan, 69,464 square feet of commercial GFA, upon fulfilling the requirements set forth in Condition #82A – 83A of the 3001 Washington Boulevard Site Plan (SP #418) for the historic preservation of the subject properties.

Certification of Transferrable Development Rights Resolution

Whereas, the County Board finds that certain density existing on property owned by C.P. Master Associates, L.P. and located on the block generally bounded by Franklin Road to the north, North Fillmore Street to the east, Wilson Boulevard to the south, and North Garfield Street to the west – 2901 Wilson Boulevard (RPC: 15-066-019), is appropriate for the transfer to another site.

Whereas, a certified survey plat dated October 11, 2011 and completed by Bowman Consulting Group, Ltd. concludes that the Boulevard Woodgrill/Faccia Luna site is 15,390 square feet and is subject to the requirements set forth in the “C-3” General Commercial Districts of the Arlington County Zoning Ordinance.

Whereas, the *Clarendon Sector Plan* identifies the Boulevard Woodgrill/Faccia Luna building for Full Building Preservation in recognition of its historic significance to Arlington County.

Whereas, the unused site plan density on the Boulevard Woodgrill/Faccia Luna site has been calculated based on the certified survey plat dated October 11, 2011 completed by Bowman Consulting Group, Ltd, and the limits and requirements set forth in the Arlington County Zoning Ordinance and the *Clarendon Sector Plan* as 74,747 square feet of gross floor area (GFA).

Whereas, the County Board finds that the historic preservation of the Boulevard Woodgrill/Faccia Luna building for the Transfer of Development Rights would be initiated and expanded consistent with Section 36.H.5.b. of the Arlington County Zoning Ordinance.

Now therefore, the County Board hereby certifies that the Boulevard Woodgrill/Faccia Luna site is an eligible Sending Site for historic preservation purposes, to transfer by site plan, 74,747 square feet of commercial GFA, upon fulfilling the requirements set forth in Condition #82B – 83B of the 3001 Washington Boulevard Site Plan (SP #418) for the historic preservation of the subject properties.

Transfer of Development Rights Resolution

Whereas, the County Board certified that certain property owned by the 2825 Wilson LLC, identified as the Walgreens/Kenyon Peck site and located on the block generally bounded by Franklin Road to the north, North Edgewood Street to the east, Wilson Boulevard to the south, and North Fillmore Street to the west, is an eligible Sending Site.

Whereas, the County Board certified that the Sending Site contains 69,464 square feet of unused commercial GFA that may be transferred under Section 36.H.5.b of the Arlington County Zoning Ordinance and in accordance with the *Clarendon Sector Plan* to an eligible Receiving Site.

Whereas the County Board finds that Site Plan #418, 3001 Washington Boulevard submitted by Penzance Clarendon Assemblage, LLC located at the 3000 Block of Washington Boulevard between North Garfield Street to the east and North Highland Street to the west, is an eligible Receiving Site under Section 36.H.5.b. of the Zoning Ordinance.

Whereas, the County Board finds that the transfer of development rights from the Sending Site to the Receiving Site would further the County goal of historic preservation consistent with Section 36.H.5.b. of the Arlington County Zoning Ordinance and the recommendations of the *Clarendon Sector Plan*.

Whereas, the County Board finds that use of the additional density from the Sending Site on the Receiving Site is appropriate and that the dedication of development rights transferred would be consistent with the Zoning Ordinance as modified, approved policies and plans and public health safety and welfare, generally.

Now therefore, the County Board hereby transfers, from the Walgreens/Kenyon Peck site, 69,464 square feet of commercial GFA to Site Plan #418, 3001 Washington Boulevard.

Transfer of Development Rights Resolution

Whereas, the County Board certified that certain property owned by the C.P. Master Associates, L.P., identified as the Boulevard Woodgrill/Faccia Luna building located on the block generally bounded by Franklin Road to the north, North Fillmore Street to the east, Wilson Boulevard to the south, and North Garfield Street to the west, is an eligible Sending Site.

Whereas, the County Board certified that the Sending Site contains 74,747 square feet of unused commercial GFA that may be transferred under Section 36.H.5.b of the Arlington County Zoning Ordinance and in accordance with the *Clarendon Sector Plan* to an eligible Receiving Site.

Whereas the County Board finds that Site Plan #418, 3001 Washington Boulevard submitted by Penzance Clarendon Assemblage, LLC located at the 3000 Block of Washington Boulevard between North Garfield Street to the east and North Highland Street to the west, is an eligible Receiving Site under Section 36.H.5.b. of the Zoning Ordinance.

Whereas, the County Board finds that the transfer of development rights from the sending site to the Receiving Site would further the County goal of historic preservation consistent with Section 36.H.5.b. of the Arlington County Zoning Ordinance and the recommendations of the *Clarendon Sector Plan*.

Whereas, the County Board finds that use of the additional density from the Sending Site on the Receiving Site is appropriate and that the dedication of development rights transferred would be consistent with the Zoning Ordinance as modified, approved policies and plans and public health safety and welfare, generally.

Now therefore, the County Board hereby transfers, from the Walgreens/Kenyon Peck site, 74,747 square feet of commercial GFA to Site Plan #418, 3001 Washington Boulevard.

Site Plan Ordinance

WHEREAS, an application for a Site Plan dated June 22, 2011, for Site Plan # 418, was filed with the Office of the Zoning Administrator; and

WHEREAS, as indicated in Staff Report[s] provided to the County Board for its January 21, 2011 meeting, and through comments made at the public hearing before the County Board, the County Manager recommends that the County Board approve the Site Plan subject to numerous conditions as set forth in the Staff Report[s]; and

WHEREAS, the County Board held a duly-advertised public hearing on that Site Plan on January 21, 2011 and finds, based on thorough consideration of the public testimony and all materials presented to it and/or on file in the Office of the Zoning Administrator, that the improvements and/or development proposed by the Site Plan as amended:

- Substantially complies with the character of master plans, officially approved neighborhood or area development plans, and with the uses permitted and use regulations of the district as set forth in the Zoning Ordinance and modified as follows:

Modify the parking ratio to 1 space per 780 square feet of gross floor area of office use;

Permit bonus density for LEED Silver certification.

Exclude fitness and locker room facilities from the density calculation.

Increase the penthouse height to 23 feet.

Locate the loading and parking garage entrances from 11th Street North.

Decrease the step-back above the building frontage preservation area to ten (10) feet.

- Functionally relates to other structures permitted in the district and will not be injurious or detrimental to the property or improvements in the neighborhood; and
- Is so designed and located that the public health, safety and welfare will be promoted and protected.

NOW THEREFORE, BE IT ORDAINED that, as originally requested by an application dated June 22, 2011 for Site Plan # 418, and as such application has been modified, revised, or amended to include the drawings, documents, conditions and other elements designated in Condition 1 below and dated December 7, 2011 (which drawings, etc... are hereafter collectively referred to as "Revised Site Plan Application"), for a Site Plan for Penzance Clarendon Assemblage, LLC to permit the construction of two buildings consisting of a total of 306,492 square feet of commercial development comprised of 284,012 square feet of office space and

22,479 square feet of ground-floor retail use, for the parcels of real property known as RPC# 18-026-001, 18-026-002, 18-026-003, 18-026-004, 18-026-008, 18-026-009, 18-026-010, approval is granted and the parcels so described shall be used according to the Revised Site Plan Application, subject to the following conditions:

_Note: Where a particular County office is specified in these conditions, the specified office includes any functional successor to that office. Where the County Manager is specified in these conditions, “County Manager” includes the County Manager’s designee. Whenever, under these conditions, anything is required to be done or approved by the County Manager, the language is understood to include the County Manager.

- **The following Conditions of site plan approval (#1 through #14) are valid for the life of the site plan and must be met by the developer before issuance of the Clearing, Grading and Demolition Permit, unless otherwise stated in the Condition.**

1. **Site Plan Term**

The developer (as used in these conditions, the term “developer” shall mean the owner, the applicant and all successors and assigns) agrees to comply with the standard conditions set forth below and as referenced in Administrative Regulation 4.1 and the revised plans dated December 7, 2011 and reviewed and approved by the County Board and made a part of the public record on January 21, 2012, including all renderings, drawings, and presentation boards presented during public hearings, together with any modifications proposed by the developer and accepted by the County Board or vice versa.

This site plan approval expires three (3) years after the date of County Board approval if a building permit has not been issued for the first building to be constructed pursuant to the approved plan. Extension of this approval shall be at the sole discretion of the County Board. The owner agrees that this discretion shall include a review of this site plan and its conditions for their compliance with then current County policies for land use, zoning and special exception uses. Extension of the site plan is subject to, among other things, inclusion of amended or additional site plan conditions necessary to bring the plan into compliance with then current County policies and standards together with any modifications proposed by the owner and accepted by the County Board or vice versa.

2. **Pre-Construction Meeting**

The developer agrees to request and attend a pre-construction meeting coordinated by County staff in a County office building prior to the issuance of any permits for the site plan. The meeting participants shall include the developer and its construction team, and relevant County staff. Relevant County staff will include the following personnel and division representatives: DCPHD Site Planner, Arlington County Police, Code Enforcement, Department of Environmental Services (DES) Transportation Planner, Department of Parks, Recreation and Community Resources (DPRCR) site plan liaison, Landscape Plan team, Arlington Economic Development (AED), green building staff contact, WalkArlington staff, Housing Division, and other departments as determined by the County Manager. The purpose of the pre-construction meeting is to discuss the requirements of the site plan conditions.

3. **Tree Protection and Replacement**

- a. The developer agrees to complete a tree survey, which shows existing conditions of the site and locates and identifies all trees which are four (4) inches in diameter or greater. The survey shall include any tree on adjacent sites whose dripline extends onto the subject site.
- b. The developer agrees to file and implement a tree protection plan which will designate any trees proposed to be saved by the developer. Trees designated to be saved on the tree protection plan, or those specified to be saved by the approved site plan and shown on any filing in connection with this case, will be protected. This plan shall include any tree on adjacent sites whose dripline extends onto the subject site. The tree protection plan shall be developed by a certified arborist or other horticultural professional with a demonstrated expertise in tree protection techniques on urban sites and shall be submitted and approved, and found by the County Manager to meet the requirements of this site plan, before the issuance of the Clearing and Grading or Demolition Permit.
- c. Upon approval of the tree protection plan the developer agrees to submit to the Department of Parks, Recreation, and Cultural Resources (DPRCR) a performance bond estimate for the trees to be saved. Upon approval of the performance bond estimate by the DPRCR, the developer agrees to submit to the DPRCR a performance bond, in the approved amount of the estimate, and the approved tree protection plan, which bond shall be executed by the developer in favor of the County before the issuance of the Final Building Permit. Prior to the release of the public improvement bond, the developer agrees to submit to the DPRCR as-built drawings showing the location of all saved trees.
- d. The Developer agrees that any tree proposed to be saved on the tree protection plan or other filing shall be saved. At a minimum, this plan shall include:
 - (1) A site grading plan at two (2) foot intervals, including the location of all proposed improvements and utilities.
 - (2) Detailed specifications for any tree walls or wells proposed.
 - (3) A description of how and where building materials and equipment will be stored during construction to ensure that no compaction occurs within the critical root zone of the trees to be saved.
 - (4) Identification of tree protection measures and delineation of placement of tree protection.
 - (5) Any tree required to be saved pursuant to this condition, which dies (any tree which is 30% or more dead as determined by the County's Urban Forester shall be considered to have died) prior to, or within ten (10) years of, the issuance of the Master Certificate of Occupancy shall be removed and replaced by the developer at his expense with the number of major

deciduous and evergreen trees consistent with the Tree Replacement Guidelines and which meet the minimum size and other requirements of Condition #15 below, provided, however, that replacement as specified in this subparagraph (3.d.5) does not relieve the developer of any violation resulting from the failure to save identified trees.

- (6) The location of all construction trailers shall be approved either by Administrative Change approval or be shown on the Tree Protection Plan, with the construction staging's location and travel routes shown on a map approved as part of that plan. All trailers proposed to be located in the public right-of-way shall require approval by DES and Zoning staff, and the site plan's Arlington County Police representative shall receive a copy of the aforementioned map.
- e. In addition to saving identified trees, the developer also agrees to replace all trees shown on the Tree Survey that are removed as a result of the new construction in accordance with the Arlington County Tree Replacement Guidelines. The developer agrees to submit tree replacement calculations and a tree replacement plan in accordance with the Arlington County Tree Replacement Guidelines. The tree replacement calculations shall be developed by a certified arborist or other horticultural professional with a demonstrated expertise in assessing the condition of trees. Any replacement trees shall conform to the standards and specifications set forth in Condition #15a below and any replacement trees that cannot be accommodated on site will be provided in a monetary amount to the Tree Canopy Fund coordinated with Arlington County's Department of Parks and Recreation. The developer agrees to submit and obtain approval of this plan by the County Manager as part of the final landscape plan.
- f. Per Condition #3.e above, the developer agrees to make a contribution to the County's Tree Canopy Fund of at least \$2,400.00 per tree, or a greater amount specified by the County Board, for every tree that cannot be planted on site. The contribution shall be required when tree planting requirements cannot be met on the property. The payment shall be delivered to the Department of Parks and Recreation Office prior to the issuance of the Excavation/Sheeting and Shoring Permit, and evidence of compliance with this condition shall be provided to the Zoning Administrator in the form of a letter at the time of payment.

4. **Photographic Record of Development**

The developer agrees to produce and submit to the Zoning Administrator a photographic record of development, starting with a record of the site as it appears before demolition is begun, including photographic records during construction, and ending with a photographic record of the development as it appears after completion of construction. These photographs shall comply with the following specifications:

All photographic records shall be taken using black and white film. Submission of a photo contact sheet and 8" x 10" prints on photographic paper shall be the minimum

acceptable standard. Color photographs on compact disc must be submitted in addition to black and white photographs and the photo contact sheet at the end of the project prior to the issuance of the Master Certificate of Occupancy.

The photographic record shall include photos taken at the following points in construction, and photos shall be submitted as taken:

- a. Before Clearing, Grading and Demolition of the site (shall be submitted before issuance of the Clearing, Grading and Demolition Permit)–Views of north, south, east and west facades, as location permits, of buildings to be demolished, as well as at least one photo of the site before any clearing or grading including the existing physical relationship with adjacent buildings and streets. The photographic record shall also include all historic aspects of the facades of the building to be demolished, consistent with the requirements described in Condition #5477 below.
- b. Site Clearance (shall be submitted before issuance of the Footing to Grade Permit)–Views of cleared site facing north, south, east and west, as location permits, with adjacent buildings and streets included.
- c. Construction Phase (shall be submitted before issuance of the Shell and Core Certificate of Occupancy Permit)–At a minimum, views of the site: during excavation, upon completion of the first floor above grade, at topping out, and during the exterior cladding phase.
- d. Site Completion (shall be submitted before issuance of the Master Certificate of Occupancy)–North, south, east and west facades of completed building or buildings, as well as at least one view of completed project in context of adjacent buildings and streets.

The photographic records for which no time is specified above, including the completed compact disc with the entire photographic history, shall be delivered to the Zoning Administrator, before the issuance of a Master Certificate of Occupancy for placement in the County archives.

Utility Fund Contribution

5. In addition to funding and constructing the utility undergrounding work, the developer agrees to contribute in the amount specified in Site Plan conditions to the County utility fund before the issuance of the Building Permit or prorated consistent with an approved phasing plan for the development. The total utility fund contribution for this site is \$56,500 (\$50,000 x 1.13 acres). These funds may, but need not, be used by the County for the purpose of providing the undergrounding of utilities along the properties which are not redeveloping in this undergrounding district. If the area of the site plan is subdivided, the contribution to be made by each owner shall be based proportionally on the amount of site area allocated to each subdivided parcel. The contribution, if not obligated by the County to pay for utility undergrounding projects within 10 years from

the date of payment, will be refunded without any accrued interest to the development owners of record at the time of any refund.

Plan for Temporary Circulation During Construction

6. The developer agrees to develop and implement (after approval) a plan for temporary pedestrian and vehicular circulation during construction. This plan shall identify temporary sidewalks, interim lighting, fencing around the site, construction vehicle routes, and any other feature necessary to ensure safe pedestrian and vehicular travel around the site during construction. Exceptions may be made only during an emergency as defined below, during actual demolition, and for such limited periods as are unavoidable for utility upgrades. The developer agrees to submit this plan to, and obtain approval of the plan from, the County Manager as meeting these standards, before the issuance of the Clearing, Grading and Demolition Permit. The developer agrees to provide a copy of the approved plan to the appropriate civic associations. The County Manager may approve subsequent amendments to the plan, if consistent with this approval.

The developer agrees, during the hours of construction, to provide “flagmen” to assist in the direction of traffic along or around a street any time that any driving lane of such a street is partially or fully blocked due to temporary construction activities. In addition, the developer agrees to notify the appropriate civic associations and all abutting property owners in writing (or, by mutual agreement, by e-mail) at least seven calendar days in advance of any street closure, except in the case of an emergency, of more than one hour duration on any street. “Emergency” street closures may include, but not be limited to, those relating to rupture or potential rupture of a water or gas main, insecure building façade, or similar unforeseeable public danger. “Emergency” street closures shall not include closures for setting up or dismantling of a crane, exterior building construction, materials deliveries, or utilities work, or similar situations.

During construction the Developer agrees to provide adequate temporary lighting for roadway users, including pedestrian walkways. The temporary lighting plan shall be submitted, approved and implemented prior to the issuance of the demolition, clearing and grading permit. Lighting shall be turned on between dusk and dawn 7 days a week. Any high-intensity overhead lighting, such as lighting placed on construction cranes shall be used only during construction hours (except lower levels after hours for safety and security reasons), and shall be placed so as not to directly illuminate residential dwellings or be a nuisance to neighboring property owners. The approved temporary lighting plan shall be operated from prior to issuance of the Demolition, Clearing and Grading permit until County standard lighting fixtures are in place and operational around the perimeter of the site. Street lighting shall be in accordance with the latest IES Roadway Lighting Design Guidelines, AASHTO Roadway Lighting Design Guide, VDOT Traffic Engineering design manuals, and Arlington County’s Streetlight System Design Guidelines memorandum, and shall conform to minimum illuminance levels approved by the County.

The developer agrees to maintain street surfaces adjacent to the site in a clean, smooth condition devoid of potholes at all times during the construction period. Whenever a

significant portion of an adjacent road surface is disturbed for reasons relating to the construction, including utility work, the developer agrees to repair promptly the disturbed portion(s) of pavement with hot patching to return the road surface to a clean, smooth condition. The developer agrees to insure that the road surface is promptly repaired regardless of whether the excavation work or other damage to the road surface was done by the developer, the developer's contractors, or private utility companies. The developer agrees to make reasonable efforts to schedule construction work so that digging in the street surfaces will not occur during the winter months. However, if the road surface is disturbed during the winter months, the developer may temporarily restore the road surface using cold patching and then hot patch the disturbed surface at the earliest opportunity when weather conditions permit. If cold patching is used, it shall be properly maintained and resurfaced as necessary to maintain a clean, smooth road condition. The term "significant portion of a road" is understood to include, but not be limited to, a cut in the road surface that exceeds 10 feet in length or 100 square feet in size. This condition is in addition to any other conditions in this site plan and any County requirements relating to reconstruction and repaving of streets at the completion of construction.

Residential Relocation

7. ~~The developer agrees to coordinate with the Arlington County Relocation Program Coordinator in order to provide each rental household living in either an apartment unit or a single-family dwelling which is displaced by the construction of this site plan, except those who sign initial leases for a unit in the project after the date of this site plan approval, with at least the following:~~
- a. ~~— A minimum of 120 days written notice to vacate.~~
 - b. ~~— Relocation payments, in accordance with the *Arlington County Tenant Relocation Guidelines* adopted by the County Board and in effect on the County Board date identified in Condition #1.~~
 - e. ~~— Relocation services in accordance with the *Arlington County Tenant Relocation Guidelines* adopted by the County Board and in effect on the County Board date identified in Condition #1.~~

~~If the developer decides to limit relocation benefits to persons who executed initial leases before adoption of the site plan, the developer agrees to notify, in writing, any tenant moving in after the date that the site plan is approved of his/her ineligibility for relocation payments and services. Any tenant who has not signed a waiver of rights to relocation assistance must receive the assistance. In cases where State law requires 120-day notice to vacate (displacement from multi-family buildings containing four or more units), notice cannot be waived, but the lead time for such notice may be reduced by mutual agreement in writing. Evidence of compliance with this condition shall be provided to the Zoning Administrator before the issuance of the Clearing, Grading and Demolition Permit.~~

Intentionally Omitted

Retail Relocation

8. The developer agrees to coordinate with the Department of Economic Development in order to provide the following relocation assistance to all retail tenants under lease as of the date of the approval of the proposed site plan:
 - a. The developer agrees to keep all retail tenants informed of the redevelopment schedule by providing periodic updates with regard to material changes in the development program for the site, including the phasing of the project, anticipated schedules for eviction, construction and occupancy, and any anticipated material impacts on the tenants while they remain on the site, such as test borings, construction signs and fencing, asbestos removal, disruptions to customer parking and pedestrian paths, and the like.
 - b. The developer will assist the County to make available to all retail tenants, either directly or through the developer, information on available commercial space in the County, business counseling services and appropriate business courses.
 - c. The developer agrees to cooperate with the retail tenants by referring tenants who so request to private sources of professional assistance in regard to lease negotiation (i.e., understanding lease terms, trends and negotiation strategy), space planning and other related sources of help.
 - d. Except for provisions in any lease to the contrary, the developer agrees to maintain the site, structures and systems in good repair and in a businesslike appearance until the last retail tenant vacates or until the notice to vacate expires, whichever comes first.
 - e. The developer agrees to show compliance with the terms of this condition to the Zoning Administrator before the issuance of the Clearing, Grading and Demolition Permit.

Compliance with Federal, State and Local Laws

9. The developer agrees to comply with all federal, state and local laws and regulations not modified by the County Board's action on this plan and to obtain all necessary permits. In addition, the developer agrees to comply with all of the agreed-upon conditions approved by the County Board as a part of this site plan approval. The developer specifically agrees that the County has the authority to take such actions as may be necessary, to include the issuance of a stop work order for the entire project, when the developer is not in compliance with the agreed-upon conditions. Further, temporary Certificates of Occupancy will not be issued without approval by the Zoning Administrator.

Post-County Board 4.1 Filing

10. The developer agrees to file four copies of a site plan and the tabular information form, and digital copies on compact disc in JPEG, PDF, and DXF formats, which complies with the final approval of the County Board and with Administrative Regulation 4.1, with

the Zoning Administrator within 90 days of the County Board approval and before the issuance of the Clearing, Grading and Demolition Permit.

The developer agrees to include on the post-4.1 plans details regarding existing traffic signal system infrastructure, e.g., poles, meters, controller cabinets, and to indicate on the plans if any part of the system will be moved and to where it is proposed to be moved.

The developer also agrees that no changes to the approved post-4.1 plans can take place in the field. All post-4.1 plan changes must be submitted for review and approval by either the Zoning Administrator or the County Board.

Community Liaison and Activities During Construction

11. The developer agrees to comply with the following before issuance of the Clearing, Grading and Demolition Permit and to remain in compliance with this condition until the Master Certificate of Occupancy is issued.
 - a. The developer agrees to identify a person who will serve as liaison to the community throughout the duration of construction. This individual shall be on the construction site throughout the hours of construction, including weekends and/or available for direct and immediate contact. The name and telephone number of this individual shall be provided in writing to residents, property managers and business owners whose property abuts the site, the Clarendon-Courthouse Civic Association, the Lyon Park Citizens Association, the Lyon Village Citizens Association, the 1021 Clarendon Condominium Owners Association, and to the Zoning Administrator, and shall be posted at the entrance of the project.
 - b. Before commencing any clearing or grading of the site, the developer shall hold a community meeting with those whose property abuts the project to review the construction hauling route, location of construction worker parking, plan for temporary pedestrian and vehicular circulation, and hours and overall schedule for construction. The Zoning Administrator and the Arlington County Police representative must be notified once the community meeting dates/times are established. The developer agrees to provide documentation to the Zoning Administrator of the date, location and attendance of the meeting before a Clearing, Grading and Demolition Permit is issued. The developer agrees to submit to the Zoning Administrator two (2) sets of plans or maps showing the construction hauling route, construction worker parking and temporary pedestrian and vehicular circulation (one set of which will be forwarded to the Police). Copies of plans or maps showing the construction hauling route, construction worker parking and temporary pedestrian and vehicular circulation shall be posted in the construction trailer and given to each subcontractor and construction vehicle operator before they commence work on the project. The location of all construction trailers shall be approved either by Administrative Change approval or to be shown on the Tree Protection Plan, with the construction staging's location and travel routes shown on a map approved as part of that plan. All

trailers shall require approval by DES staff, and the site plan's Arlington County Police representative shall receive a copy of the aforementioned map.

- c. Throughout construction of the project, the developer agrees to advise abutting property owners in writing of the general timing of utility work in abutting streets or on-site that may affect their services or access to their property.
- d. At the end of each work day during construction of the project, the developer agrees to ensure that any streets used for hauling construction materials and entrance to the construction site are free of mud, dirt, trash, allaying dust, and debris and that all streets and sidewalks adjacent to the construction site are free of trash and debris.
- e. The developer agrees that construction activity, except for construction worker arrival to the construction site and indoor construction activity, will commence no earlier than 7:00 a.m. and end by 6:30 p.m. on weekdays and will commence no earlier than 10:00 a.m. and end by 6:30 p.m. on Saturdays, Sundays, and holidays. "Holidays" are defined as New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas. Indoor construction activity defined as activity occurring entirely within a structure fully enclosed on all sides by installed exterior walls, windows, and/or doors shall end at midnight each day, and any such activity that occurs after 6:30 p.m. shall not annoy or disturb reasonable persons of normal sensitivities. The developer agrees to place a minimum of one sign per street front around the construction site, indicating the permissible hours of construction, to place one additional sign within the construction trailer containing the same information, to provide a written copy of the permissible hours of construction to all subcontractors, and to require its subcontractors to observe such hours.
- f. Storage of construction materials, equipment and vehicles shall occur on the site or an approved off-site location, or as approved by the County Manager.

C & D Waste

- 12. The developer agrees to provide a plan for diverting from landfill disposal the demolition, construction, and land clearing debris generated by the project. The plan should outline recycling and/or reuse of waste generated during demolition and/or construction. The plan should outline specific waste streams and identify the means by which waste will be managed (reused, reprocessed on site, removed by licensed haulers for reuse/recycling, etc.). The developer agrees to obtain the County Manager's approval of this plan prior to the issuance of the Clearing, Grading, and Demolition permit, and to implement the plan throughout demolition and construction of the project. -

~~Green Building Fund Contribution~~

- 13. ~~The developer agrees to make a contribution to the County's Green Building Fund of \$_____ (\$0.045 X _____ square feet). The payment shall be made to the~~

~~Department of Environmental Services prior to the issuance of the Clearing, Grading, and Demolition Permit, and compliance with this condition shall be provided to the Zoning Administrator in the form of a letter at the time of payment. If the project achieves formal certification as a LEED Green Building from the U.S. Green Building Council within one year of issuance of the Master Certificate of Occupancy, the Green Building fund contribution shall be refunded upon receipt of written request, and documentation of LEED certification, by the applicant.~~

Intentionally Omitted

14. **Vacations and Encroachments**

Prior to the issuance by the County of any permit for development of the site plan, except for demolition permits solely for buildings and structures not owned by the County or located on property within which the County has an interest, the developer agrees to obtain approval of, and fulfill all required conditions of, all ordinances of vacation and/or ordinances of encroachment associated with and/or required to build the project, or any portion thereof, as depicted on the site plan referenced in Condition # 1 of this Ordinance and in accordance with final site engineering plans for the project approved by the County. The satisfaction of the requirements of this condition may be phased (i.e., all ordinances of vacation or ordinances of encroachment associated with each approved phase of development must be enacted or obtained before issuance, by the County, of any permit for any work relating to, or necessary for, such phase, except for demolition permits for buildings or structures, not owned by the County or located on property within which the County has a legal interest) provided that such phasing is approved by the County Manager as part of a phasing plan as set forth in Condition #70. Irrespective of any other conditions set forth herein, the developer agrees that no building, structure or utility of any type shall encroach upon, or interfere with, the use of any County property or the exercise by the County of any property right or interest, unless and until the developer, before any Excavation/Sheeting and Shoring Permit is issued, first has: a) obtained an ordinance of vacation or an ordinance of encroachment, enacted by the County Board, permitting such use, encroachment or interference; and, b) met all of the conditions of such ordinance(s).

- **The following Conditions of site plan approval (#15 through #31) are valid for the life of the site plan and must be met by the developer before issuance of the Excavation/Sheeting and Shoring Permit, unless otherwise stated in the Condition.**

15. **Coordination of these plans: final site development, landscape and site engineering**

The developer agrees to attach the County Board meeting minutes outlining the approved conditions and the conditions themselves to each set of Building Permit drawings that they submit to the County. The developer agrees to submit to the Zoning Administrator ~~and obtain approval from the County Manager~~ a detailed final landscape plan prior to issuance of the Excavation/Sheeting and Shoring Permit. The final landscape plan shall be submitted at a scale of 1 inch = 25 feet, in conjunction with the final civil engineering plan as required in Condition #18 below, as well as a vicinity map with major streets labeled. The final landscape plan shall be developed by, and display the professional seal

of, a landscape architect certified to practice in the Commonwealth of Virginia. The developer further agrees that the final landscape plan and the final civil engineering plan shall verify, by means of survey, that there are no conflicts between the street trees and utilities. The developer shall obtain approval by the County Manager for both plans as meeting all requirements of the County Board's site plan approval and all applicable county laws and plans before the issuance of the ~~Excavation/Sheeting and Shoring~~ Footing to Grade Permit. The plan shall be consistent with the conceptual landscape plan approved as a part of the site plan, and, at a minimum, shall conform to: the landscaping requirements in Conditions #16 and 21 below; the Arlington County Streetscape Standards if applicable; the Sector Plans if applicable; the County's landscaping, planting, and sidewalk and driveway construction specifications; and/or other applicable urban design standards approved by the County Board. In order to facilitate comparison with the final civil engineering plan, the landscape plan shall be at a scale of 1 inch = 25 feet; the County may require more detailed plans appropriate to landscape installation at a larger scale to also be submitted. The County may permit minor changes in building, street and driveway locations and other details of design as necessitated by more detailed planning and engineering studies if such changes are consistent with the provisions of the Zoning Ordinance governing administrative approval and with the intent of the site plan approval. The landscape plan shall include a Street Tree Plan which shall be reviewed by DPRCR and DCPHD, and shall be accompanied by the civil engineering plan. All hardscape features shown on the approved landscape plan shall be completed prior to the issuance of the first partial Certificate of Occupancy for tenant occupancy. All plant materials shown on the final landscape plan shall be installed before the issuance of the first Partial Certificate of Occupancy for occupancy for any space above grade for the respective phase of construction. The Zoning Administrator may, for good cause shown and through the administrative change process, allow modifications to the timing of this condition based on the planting season, availability of plant materials, weather, or other construction-related issues, which may not permit installation of plant materials or construction of hardscape features by the required timing.

Upon approval of the final landscape plan and prior to the issuance of the first partial Certificate of Occupancy for the respective phase of construction/tenant occupancy, the developer agrees to submit to the Department of Community Planning, Housing, and Development (DCPHD) a copy of the contract for construction and installation of all landscape materials. The final landscape plan shall include the following details:

- a. The location and dimensions of traffic signal poles and control cabinets, utility meters, utility vaults and boxes, transformers, mechanical equipment, fire hydrants, standpipes, storm water detention facilities, bus stops, the location of all existing and proposed utility lines and of all easements. The location of traffic control cabinets shall be shown on the final civil engineering plan and placed so they do not obstruct pedestrian travel or be visually obtrusive. Traffic control cabinets (existing or proposed) shall not be located in the pedestrian clear zone of the public sidewalk, including but not limited to access areas to ADA ramps, crosswalks, building entrances, and interior walkways. Transformers shall not be placed above grade in the setback area between the building and the street.

The developer agrees to relocate existing traffic signal poles, traffic signal cabinets, and any other existing traffic-related items and equipment located on, or in the public right-of-way contiguous to, the development site as described below. The improvements shall conform to the DES Construction Standards and Specifications, and shall be shown on the final engineering plan. Installation of the improvements shall be completed prior to issuance of the first certificate of occupancy for the development. The developer agrees to install the following improvements:

None

- b. Intake and exhaust garage ventilation grates may not be located within public sidewalks or streets, or within areas between the street curb and any building which is used as a walkway. The developer agrees to provide drawings showing how the garage will be ventilated as part of the post-County Board Administrative Regulation 4.1 drawings required in Condition #10 above. Ventilation grates shall be located and/or screened so as not to be visible from public rights-of-way. The developer shall obtain approval from the County Manager of the location and screening of all ventilation grates as part of the review of the final civil engineering plan and the final landscape plan before issuance of the Footing to Grade Permit.
- c. The location, dimensions, materials, and pavement pattern, where applicable, for driveways and access drives, automobile drop-off areas, ADA ramps, driveway aprons, service drives, parking areas, interior walkways and roadways, plaza areas and sidewalks, as well as for address indicator signs. Interior walkways shall have a minimum width of four (4) feet. All plaza areas, access drives, automobile drop-off areas, interior walkways and roadways shall contain special treatments that coordinate in design, color and materials with the treatment of the public sidewalk. The materials and colors used are subject to approval by the County Manager according to adopted Sector Plans or other urban design standards approved by the County Board as a part of review and approval of the final landscape plan.
- d. The location and types of light fixtures for streets, parking, walkway and plaza areas, and associated utilities, as contained in the lighting plan required in Condition #~~53~~ 52 below.
- e. Topography at two (2) foot intervals, and the finished first floor elevation of all structures, and top-of-slab elevation for any proposed underground structures.
- f. Landscaping for open space areas, plaza areas, courtyards, raised planters (including cross-sections of raised planters), surface parking areas, and service drives, including a listing of plant materials; details of planting, irrigation and drainage; and details of proposed furnishings for all areas, including but not limited to dimensions, size, style(s), materials(s), finish(s) and manufacturer(s) of seating, bollards, trash receptacles, bike racks, arbors, trellises, and water features, and other landscape elements or structures. Include public art information, if known.

- g. The location and planting details for street trees in accordance with Department of Environmental Services Standards and Specifications for planting in public rights-of-way and as shown on the final civil engineering plan.
- h. The limits of demolition and construction.

The developer agrees that once approved, the final landscape plan shall govern construction and/or installations of elements and features shown thereon, except as amendments may be specifically approved through an Administrative Change request.

Landscape Standards

- 16. The developer agrees that all landscaping shall conform to Department of Environmental Services Standards and Specifications and to at least the following requirements:
 - a. Plant materials and landscaping shall meet the then-current American Standard for Nursery Stock, and shall also meet the following standards:
 - (1) Major deciduous trees (shade or canopy trees such as Oaks, Maples, London Plane Trees, Japanese Zelkovas, etc.) other than street trees—a minimum caliper of 4 to 4 1/2 inches, except as indicated in Condition #21 below.
 - (2) Evergreen trees (such as Scotch Pines, White Pines, Hemlocks, etc.)—a minimum height of 7 to 8 feet.
 - (3) Ornamental deciduous trees (such as Cherries, Dogwoods, Serviceberries, Hornbeams, etc.)—a minimum caliper of 3 to 3 1/2 inches. Multi-stem trees shall not be less than 10 feet in height.
 - (4) Shrubs—a minimum spread of 18 to 24 inches.
 - (5) Groundcover—in 2 inch pots.
 - b. The developer agrees to plant all street trees prior to issuance of the first Partial Certificate of Occupancy for occupancy of any space above grade for the respective phase of construction, unless otherwise approved by the Zoning Administrator, based on the planting season, the availability of street trees, and the weather. The developer also agrees to fulfill the Public Improvement Bond requirements (Condition #33). The developer agrees to notify the DPRCR Urban Forester at least 72 hours in advance of the scheduled planting of any street trees in the public right-of-way and to be available at the time of planting to meet with staff of DPRCR to inspect the plant material, the tree pit and the technique of planting. Soil used in the tree pit must meet the specifications for street tree planting available from the DPRCR Urban Forester.

- c. All new lawn areas shall be sodded; however, if judged appropriate by the County Manager, based on accepted landscaping standards and approved in writing, seeding may be substituted for sod. All sod and seed shall be state certified.
- d. Exposed earth not to be sodded or seeded shall be well-mulched or planted in ground cover. Areas to be mulched may not exceed the normal limits of a planting bed.
- e. Soil depth shall be a minimum of four (4) feet plus 12 inches minimum of drainage material or other drainage material commonly used in the industry as reviewed and approved by the County Manager on the landscape plan, for trees and tall shrubs and three (3) feet for other shrubs. This requirement shall also apply to those trees and tall shrubs in raised planters. Soil depth for raised planters shall be measured from the bottom of the planter to the top of the planter wall. The walls of raised planters shall be no higher than seat-wall height (2 1/2 feet, maximum) above the adjacent finished grade.
- f. Finished grades shall not exceed a slope of three to one or the grade that existed before the site work began.
- g. The developer agrees to maintain the site in a clean and well-maintained condition before the issuance of the Clearing, Grading and Demolition Permit and agrees to secure and maintain the site throughout the construction and phasing process. Further, the developer agrees to submit a maintenance agreement which shall ensure that all plaza areas and other landscaped areas located on private property are kept in a clean and well-maintained condition for the life of the site plan and to follow the terms of that maintenance agreement approved for that purpose by the Zoning Administrator, as required in Section 32A of the Zoning Ordinance.

Utility Company Contacts

- 17. The developer agrees to contact all utility companies, including the electric, telephone and cable television companies, and offer them access to the site at the time of utility installation to install their underground cables. In order to comply with this condition the developer agrees to submit to the Zoning Administrator copies of letters from the developer to the utility companies offering them access as stated above for each phase of the project.

Final site Civil engineering plan approval by DES

- 18. ~~The developer agrees to submit final site engineering plans to the Department of Environmental Services. The plans shall include a receipt from the Zoning Office that the landscape plan has been accepted. Staff comments on the final engineering plans will not be provided to the developer without submission of the landscape plan to the Zoning Office. The plans shall be drawn at the scale of 1 inch = 25 feet and be 24 inches by 36 inches in size. Neither the Excavation/Sheeting and Shoring permit nor the first Building Permit shall be issued until final site engineering plans which agree with the approved final site development and landscape plans, and the sequence of construction, has been~~

~~approved by the Department of Environmental Services and the CPHD Site Planner, as consistent with all site plan approval requirements and all County laws. To ensure final sign-off, the plans shall include CPHD Site Planner review and signature blocks. Upon completion of the construction of a project, the developer agrees to submit one (1) set of as-built mylar plans for sanitary, storm sewer and water main construction to the Department of Environmental Services for recording.~~

The developer agrees to submit a complete set of civil engineering plans acceptable to the Department of Environmental Services prior to issuance of the Demolition, Clearing and Grading Permit. The plans shall be drawn at the scale of 1 inch = 25 feet and be 24 inches by 36 inches in size. The Footing to Grade Permit shall not be issued until civil engineering plans which agree with the approved final landscape plan, and the sequence of construction, have been approved by the Department of Environmental Services and the CPHD Site Planner, as consistent with all site plan approval requirements and all County codes, standards, and policies.

The developer further agrees to meet the following requirements prior to issuance of the Excavation/Sheeting and Shoring Permit:

- Approval of a Maintenance of Traffic Plan for the Excavation/Sheeting and Shoring phase of work;
- Approval of a tieback plan, or alternatively, submission of a statement from the developer confirming that tiebacks will not be used in the right of way during construction of the project; and
- A minimum of one complete review of the civil engineering plans for which staff has made a finding of no adverse impact to public infrastructure and adjacent public or private property.

The developer also agrees to obtain all necessary permits prior to commencing excavation, sheeting, and shoring.

Pavement, Curb and Gutter Along All Frontages

19. The developer agrees to show on the final engineering plans pavement, curb and gutter along all frontages of this site in accordance with the then-current Arlington County Standard for concrete curb and gutter and the then-current standards for pavement and according to the following dimensions. The pavement, curb and gutter shall be constructed prior to issuance of the first partial Certificate of Occupancy for tenant occupancy of the applicable phase of the project/tenant occupancy. The Zoning Administrator may, for good cause shown and through the administrative change process, allow modifications to the timing of this condition based on the season, weather, or other construction-related issues, which may not permit installation of these features by the required timing.

- a. The developer agrees to construct new curb and gutter along Washington Boulevard, which results in a street cross section of approximately 75 feet, as shown on the final engineering plan approved by the County Manager. The developer agrees to nub the parking lanes along the north side of Washington Boulevard at North Garfield Street and at North Highland Street. The developer

agrees to construct crosswalks across Washington Boulevard at the intersections of Washington Boulevard and North Garfield Street and Washington Boulevard and North Highland Street, as shown on the final engineering plan approved by the County Manager.

- b. The developer agrees to construct new curb and gutter along North Highland Street, which results in a street cross section of approximately 44 feet, as shown on the final engineering plan approved by the County Manager. The developer agrees to nub the parking lane along the north and south side of North Highland Street. The developer also agrees to construct an ADA ramp on the west side of North Highland Street at the intersection of 11th Street North, as shown on the final engineering plan approved by the County Manager. The developer also agrees to construct a nub and ADA ramps along Washington Boulevard, at the northwest corner of the intersection of North Highland Street and Washington Boulevard, as shown on the exhibit attached to these conditions as Attachment A.
- c. The developer agrees to construct new curb and gutter along 11th Street North, which results in a street cross section of approximately 35-37 feet, as shown on the final engineering plan approved by the County Manager. The developer agrees to nub the parking lanes along the west and east side of 11th Street North. The developer agrees to construct crosswalks across 11th Street North at North Highland Street and at North Garfield Street, as shown on the final engineering plan approved by the County Manager.
- d. The developer agrees to construct new curb and gutter along North Garfield Street, which results in a street cross section of approximately 37 feet, which narrows down to approximately 28 feet at the intersection with 11th Street North, as shown on the final engineering plan approved by the County Manager. The developer agrees to nub the parking lanes along the north and south side of North Garfield Street. The developer agrees to construct crosswalks across North Garfield Street at 11th Street North and Washington Boulevard, as shown on the final engineering plan approved by the County Manager.

All improvements to curb, gutter, sidewalks and streets for pedestrian and/or vehicular access or circulation shall be in full compliance with the Americans with Disabilities Act (ADA) and any regulations adopted thereunder, as well as any other applicable laws and regulations. The developer further agrees that all improvements to curb, gutter, sidewalks, crosswalks, and streets for pedestrian and/or vehicular access or circulation shall be as determined by the County Manager on the final Site Development and Landscape Plan and on the final Site Engineering Plan, in accordance with the Rosslyn-Ballston Corridor Streetscape Standards or other applicable urban design standards in effect at the time of final Site Engineering Plan Approval; provided, however, that the provision of such improvements shall not increase the projected cost anticipated for such improvements as shown on the site plan drawings dated December 7, 2011 unless the County provides additional funding to offset such increased cost.

20. **Survey Monuments**

The developer agrees to submit, before issuance of the Excavation/Sheeting and Shoring Permit, a survey of the site adherent to the following:

Horizontal Datum - All Site Plans shall be referenced to the Virginia Coordinate System of 1983 (VCS 83). Two (2) adjacent corners or two points on every plan sheet shall be referenced to the VCS 83 with coordinate values shown in U.S. Survey feet. All plans shall be annotated as follows: "The site shown hereon is referenced to the Virginia Coordinate System of 1983 as computed from a field run boundary and horizontal control survey."

Vertical Datum - All Site Plans shall be referenced to the North American Vertical Datum of 1988 (NAVD 88). All plans shall be annotated as follows: "The site shown hereon is referenced to the North American Vertical Datum of 1988 as computed from a field run vertical control survey."

21. **Sidewalk Design and Improvements**

The developer agrees that the final sidewalk pattern/design and final selection of materials and colors to be used shall be as determined by the County Manager on the final landscape plan and final civil engineering plan, in accordance with the Arlington County Streetscape Standards or other applicable urban design standards approved by the County Board and in effect at the time of the final landscape plan approval. The clear pedestrian zone of all public sidewalks shall also be indicated.

The sidewalk clear zones along the street frontages of this development shall be consistent with the Arlington County Streetscape Standards and shall be placed on a properly-engineered base approved as such by the Department of Environmental Services. The developer agrees that the clear pedestrian zone sidewalk shall:

- a. Continue across all driveway aprons for loading and garage entrances along all frontages of the site plan, and there shall be no barriers to impede the flow of pedestrian traffic.
- b. Not be less than six feet wide at any point.
- c. ~~Allow encroachments by sidewalk cafes only in accordance with Condition # 67 and under the provisions of the Arlington County Streetscape Standards.~~
- d. Allow pinch-points only under the provisions of the Arlington County Streetscape Standards.
- e. Use plain, un-tinted concrete or, subject to approval, an integral tint that harmonizes with its setting. Non-standard materials or surface treatments may be used subject to approval and under the provisions of the Arlington County Streetscape Standards.
- f. Not contain joints or use patterns that create gaps of ¼-in ~~depth~~ width or greater at spacings of less than 30."

The developer further agrees to construct the sidewalk improvements detailed below prior to the issuance of the first partial Certificate of Occupancy for tenant occupancy of the applicable phase of the project/tenant occupancy.

The sidewalks shall contain street trees placed in either tree pits, tree grates or planting strips, consistent with the Standards for Planting and Preservation of Trees in Site Plan Projects, and as specified below. Placement, planting and root enhancement options shall be consistent with the Standards for Planting and Preservation of Trees in Site Plan Projects, and as specified below. Street trees shall not be placed within the vision obstruction area. All public walkways shall be constructed to County Standard. The developer, or any subsequent owner, also agrees to maintain and replace the street trees and sidewalks for the life of the site plan. The sidewalk sections and street tree species shall be as follows:

Washington Boulevard – a minimum 18-foot wide sidewalk measured from the back of curb maintaining a 12-foot wide clear sidewalk, including 5 feet by 12 feet tree pits, planted with 4 ½ inch caliper Willow Oak street trees, placed 28 to 32 feet on center and the tree pits located a minimum of eight (8) inches back from the back of curb, except in front of the plaza along Washington Boulevard, where two (2) Lacebark Elm trees will be planted as shown on the Plaza Paving and Planting Plan.

North Highland Street – a minimum 18-foot wide sidewalk measured from the back of curb, except in front of the preserved building frontage, where the sidewalk shall be a minimum of 15-foot, maintaining a 12-foot wide clear sidewalk across that frontage, including 5 feet by 12 feet tree pits, planted with Lacebark Elm street trees, placed 28 to 32 feet on center and the tree pits located a minimum of eight (8) inches back from the back of curb.

11th Street North – a minimum 14-foot wide sidewalk measured from the back of curb with a minimum 8-foot clear sidewalk, except where adjacent to the preserved building frontage, where the sidewalk shall be a minimum of 12 feet, maintaining an 8-foot wide clear sidewalk, including 4.66 feet by 12 feet tree pits, utilizing an enhanced soil panel such as, but not limited to a Silva Cell installation, planted with London Plane street trees, placed 28 to 32 feet on center, **as shown in the exhibit provided as Attachment B to these conditions ~~or~~ and** as shown on the final landscape plan and final engineering plan approved by the County Manager, and the tree pits located a minimum of eight (8) inches back from the back of curb.

North Garfield Street – a minimum 14-foot wide sidewalk measured from the back of curb maintaining a minimum 8-foot wide clear sidewalk, including 5 feet by 12 feet tree pits, planted with Zelkova street trees, placed 28 to 32 feet on center and the tree pits located a minimum of eight (8) inches back from the back of curb.

Subsurface Structure-free Zone for Utilities and Streetscape

22. The developer agrees that in order to accommodate the subsurface requirements of utilities and streetscape elements (including street trees), the final design of the project shall provide a structure-free zone under the public sidewalk along all street frontages, ~~as required in the Standards for Planting and Preservation of Trees in Site Plan Projects.~~ This zone shall be a minimum of five (5) feet deep and shall extend from the back of the

street curb to the far edge of the public sidewalk, except in those locations shown on the final site plan and as shown on the exhibit titled "Perimeter Grade Sections Exhibit #22-A," along North Highland Street and Washington Boulevard, from column 8.7/A.2 (corner of North Highland Street and 11th Street North) to column 1/I (corner of Washington Boulevard and North Garfield Street), where such zone may be less than five feet shown on the aforementioned exhibit. No subterranean structures (such as parking garages) shall intrude into this five foot deep zone. Within the zone, underground utilities and utility vaults shall not be located in a manner that interferes with the appropriate spacing and replacement of street trees, consistent with the approved final site and development and landscape plan. Utility lines shall not be located beneath street trees. The location of all existing and proposed utility lines shall be shown on both the final landscape plan and the final site engineering plan.

The developer further agrees that the developer, its successors and assigns, shall indemnify and hold harmless the County Board, its elected and appointed officials, employees and agents from any liability, claim, damage, cost and expense of whatsoever nature concerning or arising out of the design, location, construction, reconstruction, maintenance, use and/or regulation of the garage located under the sidewalk and utility easements along North Highland Street, 11th Street North, North Garfield Street, and Washington Boulevard.

Water Service Requirements

23. The developer agrees that the location of the water services will be determined at the time of the review of the final engineering plan, and shall be constructed in accordance with the standards defined in the Arlington County Department of Environmental Services Construction Standards and Specifications Manual.

Existing Water Main or Fire Hydrant Service

24. The developer agrees that no existing water main or fire hydrant shall be taken out of service or made inaccessible without the prior approval of the Department of Environmental Services. This approval shall be obtained before the issuance of the Excavation/Sheeting and Shoring Permit.

Replacement of Damaged Existing Curb, Gutter and Sidewalk

25. The developer agrees to remove and replace, according to the Arlington County Department of Environmental Services Construction Standards and Specifications Manual, any existing curb, gutter and sidewalk along the street frontages of this site which is in poor condition or damaged by the developer, prior to the issuance of the first Certificate of Occupancy for tenant occupancy. The Zoning Administrator may, for good cause shown and through the administrative change process, allow modifications to the timing of this condition based on shall, upon a finding that (1) the season, weather, or other unforeseen construction-related issues, which may not permit installation of these features by have prevented the applicant from removing and replacing the curb gutter and sidewalk within the required timing timeline of this condition, and (2) the developer has been diligently pursuing the work and has agreed to reasonable provisions to ensure that

the removal and replacement will be completed in a reasonable amount of time, approve a modification to the timing of this condition.

Street Lighting Requirements

26. The developer agrees to show on the final engineering plans street lighting along all frontages of the site prior to the issuance of the Excavation/Sheeting and Shoring Permit. The plans shall include the height and color of the street light poles. The developer agrees, at its cost, to purchase and install approved Arlington County street lighting along the frontages of the site prior to the issuance of the ~~Shell and Core~~ Certificate of Occupancy for tenant occupation. In addition, the developer agrees to furnish and install all conduit and junction boxes necessary for the lighting system. All construction shall meet Arlington County standards.

The developer agrees to purchase and install "~~Carlyle~~" standard Arlington County street lights along all frontages of the site in accordance with adopted County Street Lighting Policy. The height of the street lights shall be ~~feet, measured from the sidewalk to the base of the luminaire~~ as shown on the final engineering plan or as otherwise approved by the County Manager. The developer agrees to remove all standard thoroughfare lights from the site, unless the County decides that one or more are required to provide adequate lighting for street safety purposes at intersections. The developer agrees to pay the cost of moving existing or installing additional standard thoroughfare lights if required above.

Underground Existing Aerial Utilities

27. The developer agrees to remove and/or place underground all existing aerial utilities within or along the periphery of the entire site plan site as shown on the final site development and landscape plan and the final engineering plan approved by the County Manager. Any utility improvements necessary to provide adequate utility services to this development or utility work necessary to provide a terminus to the underground facilities shall be paid for by the developer and shall not result in the installation of any additional utility poles, or aerial devices. ~~The developer agrees to also contact the Development Services Bureau Chief, Transportation Division of the Department of Environmental Services in Arlington County not less than two (2) months prior to its planned commencement of utility undergrounding for each phase of the project to offer the County, at no cost to the County, access to the locations where the developer plans to excavate trenches or similar areas to install underground utilities so the County may install its fiber optic cable and/or conduit in those places concurrently with the developer's utility installation. Such access, and the terms and conditions under which access to the site will be provided and the undergrounding activities of the County and the developer will be coordinated, shall be set forth in an agreement approved by the County Manager and the County Attorney.~~ All utility relocation shall be completed prior to the issuance of the Shell and Core Certificate of Occupancy.

The developer agrees to construct/install four (4) 2-inch communication conduits (HDPE or equivalent County standard for communication conduits) and junction boxes along North Garfield Street, for the sole and exclusive use by Arlington County, unless the County Manager determines that less conduit is required at the time of Final Engineering

Plan approval. The conduit shall be designed and built as approved in the Final Engineering Plan and consistent with the then current Arlington County Traffic Signal Specification for the installation of communication conduit. The developer agrees to install the conduit prior to the issuance of the Certificate of Occupancy for tenant occupation.

Off-street Parking for Construction Workers

28. The developer agrees to provide off-street parking for all construction workers without charge to the workers. In lieu of providing parking, the developer may provide a subsidy for the construction workers in order that they may use Metro, provide a van for van pooling, or use another established method of transportation to provide for construction workers to arrive at the site. Compliance with this condition shall be determined based on a plan which shall be submitted to the Zoning Administrator, and for which the developer has obtained the Zoning Administrator's approval, before the issuance of the Excavation/Sheeting, and Shoring Permit. This plan shall set forth the location of the parking to be provided at various stages of construction, how many spaces will be provided, how many construction workers will be assigned to the work site, and mechanisms which will be used to encourage the use of Metro, carpooling, vanpooling, and other similar efforts. The plan shall also provide for a location on the construction site at which information will be posted regarding Metro schedules and routes, bus schedules and routes, and carpooling and vanpooling information. If the plan is found to be either not implemented or violated during the course of construction, a correction notice will be forwarded to the developer. If the violation is not corrected within ten (10) days, a "stop work order" will be issued, and construction halted until the violation has been corrected.

Address Indicator Signs

29. The developer agrees to install address indicator signs on the site which comply with Section 27-12 of the Arlington County Code or successor provision in a location visible from the street and as shown on the final site development and landscape plan.

Façade Treatment of Buildings

30. The developer agrees that the design of the facade treatment for the buildings and the materials to be used on the facades shall be as specified and shown on the submitted drawings identified in Condition #1 and as presented to the County Board and made a part of the public record on the County Board date identified in Condition #1, including all renderings, drawings, and presentation boards presented during public hearings and according to the optional treatments detailed on pages A292E and A500A of the revised plans dated December 7, 2011. The developer agrees to submit three (3) copies of colored façade elevations at 24" x 36", which label the materials and colors for each elevation of the building, including interior elevations (e.g. elevations adjacent to interior courtyards, plazas and access drives), one (1) copy of black and white architectural elevations, and one (1) sample material board at no larger than 24" x 36", for review by the County Manager for consistency with this site plan approval prior to the issuance of the Footing to Grade Permit. The submission shall be made to the Zoning Office. The developer further agrees to obtain the approval of the County Manager of the façade

treatment as being consistent with the County Board approval before the issuance of the Final Building Permit.

The developer agrees that all retail storefronts along public rights-of-way are required to have an overall minimum transparency of 50% as measured from floor to ceiling. In addition, the portion of the retail storefronts that is located between three and eight feet from grade is required to be at least 80% transparent. The purpose of this condition is to allow pedestrians to view the activity within the retail establishment and to allow patrons and employees of the retail establishments to view the activity on the sidewalk and street. "Transparency" shall mean using glass or other transparent exterior material offering a view into an area of the retail establishment where human activity normally occurs and shall not be satisfied by views into areas blocked by display cases, the rear of shelving, interior walls, blinds, hallways, or the like. Provided that the exterior material is glass or other transparent material, a tenant may apply to the County Board for a site plan amendment to grant an exception to this condition for a specified duration.

Recordation of Deeds of Public Easements and Deeds of Dedications

31. The developer agrees that, for each phase, as phase is defined in the phasing plan required in Condition #70, all required plats, deeds of conveyance, deeds of dedication, and deeds of easement associated with, and/or required by the final approved site engineering plans, for the construction of any public street, public infrastructure, public utility, public facility or public improvement (jointly "Public Improvements"), shall be, unless otherwise specifically required by the associated vacations of ordinance: a) submitted by the developer to the Department of Environmental Services for review ~~and approval~~ prior to the issuance of any Excavation/Sheeting and Shoring Permit for such phase; and b) approved by the developer shall obtain the approval from the County and recorded by the developer such deeds, among the land records of the Circuit Court of Arlington County, before the issuance of the first Certificate of Occupancy for the building(s) or any portion thereof for such phase. Real estate interests conveyed by the developer to the County for public street or public right-of-way purposes shall be conveyed in fee simple, free and clear of all liens and encumbrances. Real estate interests conveyed by the developer to the County for Public Improvements or public uses, including, but not limited to, sidewalk, street trees, other streetscape planting, water mains, storm sewers, sanitary sewers, and other public utilities and facilities, which other Public Improvements are not located, or to be located, in the public street or public right-of-way may be granted to the County by deed(s) of easement, provided, however, that in the deed(s) conveying such real estate interests to the County, all liens and encumbrances shall be subordinated to the easement rights of the County.

- **The following conditions of site plan approval (#32 through #40) are valid for the life of the site plan and must be met by the developer before issuance of the Footing to Grade Structure Permit, unless otherwise stated in the Condition.**

Plat of Excavated Area

32. The developer agrees to submit one (1) plat, drawn at the scale of 1 inch = 25 feet and 24 inches x 36 inches in size, of the excavated area showing spot elevations which confirm

that the construction drawings are consistent with the average site elevation, and with the building's ground floor elevation(s) at the building's lowest level(s), as approved by the County Board and as indicated in the plans referenced in Conditions #1 and #10 above. Spot elevations shall be taken at spots determined at the time of the pre-construction meeting and shall at a minimum consist of two corners and spot elevations from 50 % of the total area to be excavated. The elevations shall be provided prior to the issuance of the footing to grade permit. Provided however, that when the Zoning Administrator determines that the excavated area will be greater than 20,000 square feet, the Zoning Administrator may reduce the area for which elevations must be provided before issuance of a footing to grade permit. Additional elevations confirming the elevations of the remainder of the excavation shall be provided prior to issuance of any permit for above grade construction.

Public Improvements Bond

33. Upon approval of the final site engineering plan the developer agrees to submit a performance bond estimate for the construction or installation of all facilities (to include street trees and all landscape materials) within the public rights-of-way or easements to the Department of Environmental Services for review and approval. Upon approval of the performance bond estimate by the Department of Environmental Services, the developer agrees to submit to the Department of Environmental Services a performance bond, in the approved amount of the estimate, and an agreement for the construction or installation of all these facilities (to include street trees and all landscape materials) within the public rights-of-way or easements, which shall be executed by the developer in favor of the County before the issuance of the Final Building Permit.

Prior to the release of the public improvement bond, the developer agrees to submit as-built drawings showing the location and facilities for all underground utilities (water, sanitary sewer, and storm sewer) that will be maintained by Arlington County.

Underground Electrical Transformers

34. The developer agrees to install all new electric transformers, and all associated appurtenances, in underground utility vaults that shall meet both Dominion Virginia Power and County design and construction standards and specifications. The developer agrees to install all other underground utility vaults in conformance with the County design and construction standards and specifications, and all applicable construction standards and specifications of the owner of the utilities. Such underground utility vaults ("Utility Vaults") may be placed, in whole or in part, within the County right-of-way or public easement, only after the developer applies for, and there is enacted by the County Board, an encroachment ordinance, or other County Board approval, permitting use of the County right-of-way or public easement for such purpose. Upon enactment of the ordinance or approval, the developer agrees to comply with all the conditions of such ordinance and any other conditions prescribed in the site plan condition addressing vacations and encroachments, including, but not limited to, recordation of any deeds, plats, or ordinances, the payment of compensation and required fees. Any associated ventilation grates for such vaults shall not be permitted, located or constructed within any portion of the County right-of-way or public easement area for sidewalks or public

streets, or within any areas that provide pedestrian access to any buildings, street, and public or private open spaces. The location and placement of the Utility Vaults shall not conflict with the physical operation or placement of other existing or proposed public or private utility facilities. The Utility Vaults shall have a minimum horizontal clearance of five (5) feet to conduits and manholes and a minimum horizontal clearance of ten (10) feet to public water mains and public sanitary sewers, unless a greater or lesser clearance is specifically shown on the site engineering plans and approved by the Department of Environmental Services. The developer shall obtain approval from the County Manager, or his/her designee, for the location of all Utility Vaults, ventilation grates, and associated appurtenances, as part of the review and approval of the final site engineering plans by the Department of Environmental Services.

Interior Trash Collection and Recycling Areas

35. The developer agrees that interior space shall be provided and used for the collection, storage, compaction, and removal of trash, as well as appropriate facilities for the recycling of reusable materials as defined by the County. The collection, storage, compaction, and removal of trash shall not occur outside the interior loading space. This space may not conflict with the use of a loading berth. The developer agrees to obtain approval from the Zoning Administrator of drawings showing compliance with this condition before the issuance of the Footing to Grade Structure Permit.

Interior Loading Spaces

36. The developer agrees that all loading spaces shall be in the interior of the building and shall also comply with the following requirements: minimum 12-foot clear width (including entrances), 30 foot-length and 14-foot height clearance. Any loading dock to be used for trash removal shall have a minimum interior height clearance of 18 feet. However, if the developer provides documentation to demonstrate that compaction services require a lower interior minimum height clearance, then the County Manager may approve a lower minimum interior height clearance of not less than 15 feet. If the minimum interior height clearance is approved at less than 18 feet, the developer agrees to use only services for trash collection and pick-up that require a maximum height clearance of 15 feet for the life of the site plan. All loading docks shall contain roll-down doors. Use of the loading dock for deliveries or trash pick-ups, excluding moving vans, shall be limited to the hours from 8:00 a.m. to 6:00 p.m., seven (7) days a week. The loading dock door shall also be closed when the loading dock is in use, except when necessary for entry or exit of vehicles, venting of vehicle exhaust, or when required for similar operational or safety measures. If any tenant, as suggested by the retail attraction and marketing plan specified in Condition #63, demonstrates the need, based on the nature of the tenant's business, for earlier deliveries, for example of baked goods or other perishable items, to accommodate morning patrons, the hours may be administratively changed, for that tenant's deliveries only, by the Zoning Administrator through an Administrative Change Request and the developer agrees to provide notification to the Clarendon-Courthouse Civic Association, the Lyon Park Citizens Association, the Lyon Village Citizens Association, and the 1021 Condominium Owners Association. However, the Zoning Administrator shall not approve any deliveries to occur earlier than 6:00 a.m.

Parking Garage Van Access

37. The developer agrees that new office parking garages shall be designed to allow access and use by vanpools. At least 10% of the total new parking supply shall be accessible to vans, shall be conveniently located on the level of the garage closest to street level, and shall have a minimum clearance of 98 inches. All other areas of the garage shall have a minimum clearance of 84 inches. Compliance with this condition shall be determined by review of the building plans by the Zoning Administrator before the issuance of the Footing to Grade Structure Permit, which review shall not relieve the developer from constructing in accordance with this condition.

Parking Space Compliance with Zoning Ordinance

38. The developer agrees to ensure that all parking spaces comply with the requirements of Section 33 of the Zoning Ordinance. Unless otherwise approved by the County Board, the number of compact spaces may not exceed the Zoning Ordinance requirement. The developer shall submit drawings showing that these requirements are met, and shall obtain approval by the Zoning Administrator before the issuance of the Footing to Grade Structure Permit.

Bicycle Storage Facilities

39. The developer agrees to provide, at no charge to the user, secure bicycle storage facilities in locations convenient to office, ~~residential~~ and retail areas on the following basis at a minimum:

Office and Residential Bicycle Storage Facilities:

One (1) employee bicycle parking space for every 7,500 square feet, or portion thereof, of office floor area and one (1) additional such visitor space for every 20,000 square feet, or portion thereof, of office floor area.

~~One (1) resident bicycle parking space for every three (3) residential units, or portion thereof, of residential units and one (1) visitor space for every 50 residential units, or portion thereof, of residential units.~~

Employee ~~and resident~~ bicycle parking facilities shall be highly visible to the intended users and protected from rain and snow within a structure shown on the site plan. The facilities shall not encroach on any area in the public right-of-way intended for use by pedestrians or any required fire egress. The facilities for office users and resident bicycle parking must meet the acceptable standards for Class I storage space as contained in the Arlington Bicycle Transportation Plan, dated April 1994 with Amendments through March 2003, and be highly visible from an elevator entrance, a full-time parking attendant, a full-time security guard or a visitor/customer entrance. Visitor parking must be located within 50 feet of the primary building entrance. Any bicycle parking racks used on the site must conform to the Arlington County Standard or be approved by the Bicycle and Pedestrian Program Manager. Drawings showing that these requirements have been met shall be approved by the Zoning Administrator before the issuance of the

Footing to Grade Structure Permit. ~~Residential condominium covenants shall not prohibit the storage of bicycles in individual condominium units.~~

In addition, the developer agrees that for every 50,000 square feet or fraction thereof of office Gross Floor Area (GFA), one (1) shower per gender shall be installed, up to a maximum of three (3) showers per gender. Also, a minimum of one (1) clothes storage locker per gender shall be installed for every required employee bicycle parking space. The lockers shall be installed adjacent to the showers in a safe and secured area and both showers and lockers shall be accessible to all tenants of the building. The location, layout and security of the showers and lockers shall be reviewed by the Arlington County Police Department before issuance of the Footing to Grade Structure Permit. The developer agrees that an exercise/health facility containing a maximum of 1,000 square feet shall not count as density (FAR) but shall count as GFA if this facility meets all of the following criteria: 1). The facility shall be located in the interior of the building and shall not add to the bulk or height of the project; 2). Showers and clothes lockers shall be provided as required above; 3). The lockers shall be installed adjacent to the showers in a safe and secured area within the exercise facility and both showers and lockers shall be accessible to all tenants of the project; 4). The exercise facility shall be open only to tenants of the project and shall not accept or solicit memberships from outside of the project. The exercise facility, including the showers and lockers, shall be open during normal working hours.

Retail Bicycle Storage Facilities:

Two (2) retail visitor/customer bicycle parking spaces for every 10,000 square feet, or portion thereof, of the first 50,000 square feet of retail floor area; one (1) additional retail visitor/customer space for every 12,500 square feet, or portion thereof, of additional retail floor area; and one (1) additional retail employee space for every 25,000 square feet, or portion thereof, of retail floor area. The retail visitor/customer bicycle spaces shall be installed at exterior locations that are convenient to the retail visitors/customers, and such locations shall be reviewed by the Department of Environmental Services. The developer agrees to obtain approval of the location, design and details of the retail visitor/customer bicycle spaces as part of the final site development and landscape plan. Facilities for retail visitors/customers must meet the County standards for bicycle racks, and be located close to retail visitor/customer entrances.

Emergency Vehicle Access/support on Parking and Plaza Areas

- 40. The developer agrees to construct all plaza areas used for vehicular access and all surface parking areas to support the live load of any fire apparatus. Architecturally designed bollards or curbs shall be used on pedestrian plazas to separate the areas intended for emergency vehicle use from areas intended for pedestrian use. No above-grade structure shall be allowed to obstruct fire lanes. The requirements of this condition shall be incorporated in the drawings submitted for the Footing to Grade Structure Permit.

- **The following conditions of site plan approval (#41 through #45) are valid for the life of the site plan and must be met by the developer before the issuance of the Final Building Permit, unless otherwise stated in the Condition.**

Wall Check Survey

41. The developer agrees to submit one (1) original and three (3) copies of a wall check survey to confirm its consistency with the plans approved by the County Board, as referenced in Conditions #1 and #10 above. The wall check survey shall show the location of the walls at the top level of the below-grade structure, and will be provided prior to the issuance of a permit for above-grade construction. The developer further agrees that, within thirty (30) days after approval of the wall check survey, or such other time as mutually agreed upon by the Zoning Administrator and the developer, to submit to the Zoning Administrator a wall check survey showing the location of the walls and the elevation of the slab, at grade.

Screening of Mechanical Equipment

42. Mechanical equipment shall be screened so as not to be visible from public rights-of-way.

Use of Penthouse

43. The use of any penthouse shall be limited to mechanical equipment and equipment maintenance space or telecommunication transmitter and/or receiver equipment as required in Condition #58 57 below.

Review by Crime Prevention Through Environmental Design (CPTED) Practitioner

44. The developer agrees to submit to the Operations Division of the Arlington County Police Department the approved post-4.1 drawings for review by the Crime Prevention Through Environmental Design (CPTED) practitioner in the Police Department for review of CPTED design elements.

FAA Documentation

45. The developer agrees to obtain from the Federal Aviation Administration (FAA), before the issuance of the final building permit, a written statement that the project is not a hazard to air navigation or that the project does not require notice to or approval by the FAA.

- **The following conditions of site plan approval (#46 through #5554) are valid for the life of the site plan and must be met by the developer before the issuance of the First Certificate of Occupancy, unless otherwise stated in the Condition.**

Water Main Improvements

46. The developer agrees to show on the final engineering plans, and to construct, water main improvements in accordance with the standards defined in the Arlington County Department of Environmental Services Construction Standards and Specifications Manual as well as the following as outlined below. The water main improvements shall be constructed prior to the issuance of the first Certificate of Occupancy for the respective phases of construction.

The developer agrees to construct approximately 450 feet of new 8-inch water main along the entire site frontage on North Garfield Street to replace the existing 8-inch water

main installed in 1927. The new 8-inch water main shall be connected to the existing 8-inch main in 11th Street North and to the existing 12-inch water main located in the eastbound lanes of Washington Boulevard. The developer shall also provide two (2) 12-inch valves on the existing 12-inch water main in Washington Boulevard, one (1) on either side of the new 8-inch water main connection from North Garfield Street.

Sanitary Sewer Main Improvements

47. The developer agrees to show on the final engineering plans, and to construct, sanitary sewer main improvements in accordance with the standards defined in the Arlington County Department of Environmental Services Construction Standards and Specifications Manual as well as the following as outlined below. The sanitary sewer main improvements shall be constructed prior to the issuance of the first Certificate of Occupancy for the respective phases of construction.

None

The County will TV-Inspect the sanitary sewer lines serving the site and shall identify any improvements that are necessary to adequately service the development. The developer agrees to repair or replace any sections or appurtenances of the sanitary sewer serving the development that are found to be deficient or damaged by the developer, as identified by County staff and as shown on the final engineering plan approved by the County Manager.

Storm Sewer Improvements

48. The developer agrees to show on the final engineering plans, and to construct, storm sewer improvements in accordance with the standards defined in the Arlington County Department of Environmental Services Construction Standards and Specifications Manual as well as the following as outlined below. The storm sewer improvements shall be constructed prior to the issuance of the first Certificate of Occupancy for the respective phases of construction.

None

Fire Hydrant and Fire Department Connection Requirements

49. The developer agrees to show on the final engineering plan, and to install, fire hydrants at intervals of not more than 300 feet, as well as fire department connections in order to provide adequate fire protection. The County shall specify the kind of service and locations at the time of the final site engineering plan approval based on applicable safety standards. The fire hydrants and fire department connections shall be installed prior to the issuance of the first Certificate of Occupancy.

The developer agrees to provide calculations to demonstrate the needed fire flow as defined in the Arlington County Department of Environmental Services Construction Standards and Specifications Manual. This information shall be clearly shown on the cover sheet of each final engineering plan set submitted.

Transportation Management Plan

50. ~~The developer agrees to develop and implement a transportation management plan as outlined in the attached letter from _____ (applicant) dated _____ to _____ (staff), and the attachment thereto prior to the issuance of the first Certificate of Occupancy. Such plan shall include a schedule for and details of implementation and continued operation of the elements listed in the letter.~~

The developer agrees to develop and implement a Transportation Management Plan (TMP) in order to achieve the desired results of the Arlington County Transportation Demand Management (TDM) program and to mitigate the impacts of the reduced parking ratio for the project. The developer agrees to obtain the approval of the County Manager for such plan, as meeting all requirements for this site plan approval before the issuance of the first Certificate of Occupancy for the building. In addition, unless otherwise specified below, payment of each element of the TDM should be made prior to issuance of first Certificate of Occupancy for tenant occupancy.

All dollar denominated rates stated in this condition shall be adjusted for inflation by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) Inflation Calculator from the date of site plan approval.

The Transportation Management Plan shall include a schedule and details of implementation and continued operation of the elements in the plan. The Transportation Management Plan shall include, but not be limited to, the following strategies:

1. Participation and Funding

- a. Maintain an active, ongoing relationship with Arlington Transportation Partners (ATP), or successor entity, on behalf of the property owner.
- b. Designate a member(s) of building management as Property Transportation Coordinator (PTC) to be a primary point of contact with the County and undertake the responsibility for coordinating and completing all Transportation Management Plan (TMP) obligations. The applicant and /or building management will provide, and keep current, the name and contact information of the PTC to Arlington County Commuter Services (ACCS) or successor. The Property Transportation Coordinator shall be appropriately trained, to the satisfaction of ACCS, to provide rideshare, transit, and other information provided by Arlington County intended to assist with transportation to and from the site.
- c. In addition to supporting the ongoing activities of the Property Transportation Coordinator and other commitments of this TMP, the developer agrees to contribute to the Arlington County Commuter Services (ACCS), or successor, to sustain direct and indirect on-site and off-site services in support of TMP activities annual contributions of \$17,040 for commercial (office and retail) use per year for thirty (30) years. Payment on this commitment will begin as a

condition of issuance of the Shell and Core Certificate of Occupancy. Subsequent payments will be made annually.

2. Facilities and Improvements

- a. Provide in the lobby or lobbies, an information display(s), the number/content/design/location of which shall be approved by ACCS / ATP, to provide transportation-related information to tenants and visitors. Management shall keep display(s) stocked with approved materials at all times.
- b. Comply with requirements of Site Plan conditions to provide bicycle parking/storage facilities. Bicycle clothing lockers shall be a minimum size of 12" wide, 18" deep and 36" high and shall be available for use on a 24 hour basis. The developer agrees to develop a plan of operation of the bicycle facilities which shall include details of implementation and continued operation of the bicycle facilities and related systems.
- c. Comply with requirements of Site Plan conditions to provide construction worker parking.
- d. Bus stops and shelters within 25 feet of the property and contiguous to the property shall be maintained free of snow, ice, trash, and debris. A 6 foot wide path, or the full width of the sidewalk (if less than 6 feet), shall be maintained clear of snow and ice, to the main entrance of the building(s) from these bus stops.
- e. Provide a canopy at the northeast corner of the building along North Garfield Street and 11th Street North, in compliance with the provisions of Condition #80, and a bench for the purpose of serving as a bus stop. The developer agrees to obtain the approval of the County Manager for the final location and design of this canopy and bench, which shall be installed prior to issuance of the first Certificate of Occupancy for tenant occupancy.

3. Parking Management Plan

- a. Subject to the approval by the County Manager, the developer shall prepare a parking management plan regarding: taxi passenger loading and unloading; accessible paratransit pick-up, drop-off, handicapped access, bicycle parking, and passenger waiting area; loading zones for short-term deliveries; bus stops; car sharing locations; and on-and off-street parking for employees and visitors. Such plan shall include a schematic drawing depicting an area parking plan for all block faces abutting the site. Additionally, this plan will note restrictions as to times that various activities (such as deliveries and parking) are permitted in the respective spaces.

- b. The developer agrees to provide a maximum of 20% of the total parking spaces as reserved spaces for specific individuals.
- c. The developer agrees to allow three (3) levels of the parking garage to be available for public parking usage after hours, per condition #65.
- d. No on-street loading will be permitted.
- e. Provide effective directional signage subject to approval of a Comprehensive Sign Plan, if required, to direct tenants and visitors to appropriate locations on the property, such plan to include provision for the items specified in the Parking Management Plan.
- f. Establish monthly parking rates for single occupant vehicles (SOV) consistent with comparable office buildings located in the Arlington County development corridors.
- g. Provide reserved, signed, spaces for carpools and vanpools that are conveniently located with respect to the elevators serving the building.
- h. Provide no cost parking for carpools or vanpools that have two (2) or more employees from the building. The developer agrees to develop a plan of operation of the carpool/vanpool facilities which shall include details of implementation and continued operation.
- i. Three (3) parking spaces shall be set aside in the garage at no cost for one year, and then at market rate for monthly parking, for car sharing services. A minimum monthly subsidy shall be paid to the car sharing service as required. Provision for the spaces shall be provided in the first phase to be built. Upon completion of all phases, the spaces may be provided in any on-site building at the direction of the County. These spaces shall be located convenient to the garage entrance, available to the members of the car sharing service twenty-four hours a day, seven days a week, without restrictions, (for security reasons the garage may be gated—members of the car sharing service would have access to the spaces via a key pad combination to a pass code system, or other similar device). There shall be internal and external signage to direct people to the spaces. The car sharing spaces shall be counted towards the parking requirements of the project and shall be designated on the Parking Management Plan. These spaces shall be allocated from those intended to serve the office space.

4. Promotions, Services, Policies.

- a. Provide SmarTrip cards plus \$ 65.00 Metro fare media per person, for free, one time, to all new on-site property management and maintenance employees. Provide, administer, or cause the provision of a sustainable

commute benefit program for these employees (the program shall include, at a minimum, pre-tax employee contributions and/or tax-free transit or vanpool monthly contributions).

- b. Provide SmarTrip cards plus \$ 65.00 Metro fare media per person, for free, one time, upon initial lease-up to all new on-site employees of the retail and office tenants, distributed no later than their first day of work at the building.
- c. Provide website hotlinks to CommuterPage.com™ under a “transportation information” heading from the developer and property manager’s websites regarding this development.
Link:
<http://www.carfreediet.com/pages/arlington-urban-villages/clarendon/getting-around/>
- d. Distribute a new-employee package, material provided by Arlington County, which includes site-specific ridesharing and transit-related information to each new office and retail employees no later than their first day of work.
- e. Reference to the nearest Metro Station and bus routes in all promotional materials and advertisements.
- f. Cooperate with Arlington County to assist the County in implementing a transit-advertising program that will distribute information four times per year to all tenants, employees, and visitors.
- g. Participate in regionally sponsored clean air, transit, and traffic mitigation promotions by posting notice of such promotions in locations within the building(s).

5. Performance and Monitoring

- a. Upon approval of the TMP by the County, the developer agrees to implement all elements of the plan with assistance when appropriate by agencies of the County.
- b. The owner shall reimburse the County for, and participate in, a transportation performance monitoring study at two years, five years, and each subsequent five years (at the County’s option), after issuance of Shell and Core Certificate of Occupancy, with a total cost of each survey not to exceed \$10,000. The County may conduct the study or ask the owner to conduct the study. The County will specify the timing and scope of the study. The study may include building occupancy (leased space, vacant space, available space by use type); garage occupancy and turnover by time of day, on an average weekday, for the hours of garage operation; average vehicle occupancy, daily vehicle-trips to and from the site; daily pedestrian trips to and from the site; and journey to

work mode of building tenants' employees. The study may include a seven-day count of site-generated vehicle traffic. The building owner and/or operator will notify, assist, and encourage residents, tenants' employees, and building employees to participate in the journey to work surveys which may be of an on-line, or email variety. A report will be produced as specified by the County and shared with the County and the developer (the building management).

- c. During the first year of start up of the TMP and on an annual basis thereafter, the developer will submit an annual report, which may be on-line, or by email, to the County Manager, describing completely and accurately, the TDM related activities of the site, and continuous reports of changes in commercial tenants during each year.

6. Enhanced TDM to Address Parking Reduction

- a. Contribute to Arlington County \$150,000 prior to the issuance of the Shell and Core Certificate of Occupancy, to support construction of multi-modal transportation improvements within the Clarendon Metro station area. Improvement may include but may not be limited to sidewalk, signalization, and intersection improvements for pedestrian safety; transit and other transportation improvements; and bikeshare station.
- b. Contribute \$0.10 per square foot of on-site office development (proposed plan shows approximately 284,000 square feet of office development) annually for fifteen (15) years, to a County fund to be applied only to the proposed building, to incentivize transportation programs for commuting alternatives to driving a Single Occupancy Vehicle (SOV), such as but not limited to: transit, carpooling, vanpooling, cycling, bikeshare, carshare, and walking. The first payment shall be made by First Partial Certificate of Occupancy for tenant occupancy, and thereafter, annually for fifteen (15) years, on or before the anniversary date of the issuance of such Certificate of Occupancy. The developer agrees to provide the County with documentation indicating that payment to the County fund has been made. Funds shall be applied only to the proposed building and its tenants and employees. Alternatively, the funds may be contributed to Arlington County, at the developer's discretion, to support programs to incentivize commute alternatives to the use of an Single Occupancy Vehicle (SOV) by on-site employees or visitors of the project. The building transportation coordinator shall develop and implement a plan for the expenditure of the funds, and allocations consistent with the plan, and shall revise that plan every two (2) years. The initial plan and revised plans developed every two (2) years shall be reviewed and approved by ACCS. In addition, the developer agrees to provide annual reporting to ACCS on the expenditure of these funds. Any money remaining in the fund after the completion of year fifteen (15) will be committed to Arlington County Commuter Services (ACCS) within 90 days of a request by the County Manager.

Residential Parking and Parking Management Plan

51. ~~The intent of this condition is to ensure that at least one parking space is available in perpetuity for parking use by each residential unit in the project. Accordingly, the developer agrees to offer the use, for rental units, and the purchase or use for condominium units, of at least one parking space for each dwelling unit.~~

~~Further, for condominium units, the developer agrees to notify the Zoning Administrator at the time of the settlement of the last dwelling unit. If excess parking spaces are available at the time of settlement of the last dwelling unit, the number of excess parking spaces equaling the number of dwelling units which were sold without a parking space, shall first be offered exclusively for a period of twelve (12) months to the owners of those dwelling units which were sold without a parking space. Any other remaining spaces shall be offered to all dwelling unit owners or transferred to the condominium, cooperative or homeowners association. By the end of twenty four (24) months following the settlement of the last dwelling unit, the developer agrees to relinquish in writing to the condominium, cooperative or homeowners association any and all remaining interest in the parking spaces or garage and a copy shall be filed with the Zoning Administrator. The future purchase of any parking spaces shall be limited to the dwelling unit owners or condominium, cooperative or homeowners association of the building.~~

~~For both rental and condominium buildings, the use of the parking spaces shall be limited to parking use by the residents of the building and their guests, unless otherwise permitted by the Zoning Ordinance, and shall not be converted to storage or other use without approval of a site plan amendment.~~

The developer agrees to submit to the Zoning Administrator a parking management plan which outlines how guest and visitor parking for the ~~residential office~~ building, and parking for ~~office and~~ retail tenants' employees and customers for retail located in the ~~residential office~~ buildings, will be provided, where the parking will be located and how guests and visitors, and retail employees and customers, will be directed to the parking spaces. ~~The developer further agrees to make a minimum of ___ residential visitor parking spaces, and ___ retail tenant parking spaces, available within the residential garage.~~ The developer further agrees to submit an analysis to the County on a biannual basis for the first ten years of the building following issuance of the first Certificate of Occupancy for tenant occupancy. If at any point the analysis confirms that the garage exceeds 85% occupancy during standard office hours (weekdays from opening until 6:00 p.m.), the applicant shall then employ a parking management system during standard office hours for the purpose of maximizing the efficiency of the tandem parking spaces. The parking management plan shall be submitted to the Zoning Administrator, and reviewed and approved by the County Manager, prior to the issuance of the first Certificate of Occupancy for tenant occupancy for the first residential office building. The developer agrees to implement the Parking Management Plan for the life of the site plan.

Lighting Plan for Public Areas

52. The developer agrees to include a lighting plan for all internal and external public areas, including parking areas, as part of the final civil engineering plan and the final landscape plan. This lighting plan shall be subject to review by the County Manager, including street lighting as described in Condition #30 26 above. The developer shall include in the final civil engineering plan and in the final landscape plan certification that the lighting plan meets the minimum standards of the Zoning Ordinance, Section 2, Subsection H, and the Illumination Engineering Society of North America Standards. The developer agrees to obtain the approval of all lighting from the County Manager, and to install approved lighting, before the issuance of the First Certificate of Occupancy for tenant occupancy of the applicable phase of the project.

Documentation of Historical Artifacts, Features and Buildings

53. The developer agrees to be responsible for documenting any historical artifact or historical natural feature uncovered during construction on the site. This documentation shall include written notation describing the artifact or natural feature, color photographs, and mapping of the location and/or depth of the site excavation at which the item was found. The developer agrees to submit a copy of this documentation to Arlington County before issuance of the First Certificate of Occupancy.

In the event an historical artifact or natural feature is found on the site, and is to be disturbed or removed from the site during construction, the developer agrees to contact the Arlington County Historic Preservation Program, Neighborhood Services Division before removing or disturbing the artifact or natural feature. Arlington County shall be given the opportunity to accept donation of the artifact or natural feature before the item is offered to any other organization or individual.

If historic buildings are located on the site, then photographic documentation shall be consistent with Historic American Building Survey (HABS) standards. Should the project be assessed as a possible archaeological site, the developer agrees to pursue, at a minimum, a level one and two archaeological study. The developer agrees to submit to the Arlington County Historic Preservation Program all written results of the level one and two archaeological study and all artifacts found on the site.

~~Availability of Site Plan Conditions to Residential Condos, Cooperatives and Homeowners Associations~~

54. ~~If the project includes a residential condominium or cooperative component, then the developer agrees that a copy of the conditions of this site plan approval shall be made available to all prospective purchasers with the condominium's, cooperative's or homeowners association's bylaws or agreements. Documentation that this condition has been satisfied shall be provided to the County Manager before the issuance of the First Certificate of Occupancy. If the project includes a residential rental component that is converted to a condominium or a cooperative, then the developer agrees that a copy of the conditions of this site plan approval shall be made available to all prospective purchasers with the condominium's, cooperative's, or homeowners' association's bylaws or agreements prior to the issuance of the first Certificate of Occupancy following the conversion.~~

Intentionally Omitted

- **The following condition of site plan approval (#56 55) is valid for the life of the site plan and must be met by the developer before the issuance of the Master Certificate of Occupancy, unless otherwise stated in the Condition.**

Building Height Certification

55. The developer agrees to submit, before the issuance of the Master Certificate of Occupancy, drawings certifying the building height as measured from the average site elevation to both the building roof and to the top of the penthouse roof.

- **The following condition of site plan approval (#57 56) is valid for the life of the site plan and must be met by the developer within 90 days of receipt of the partial Certificate of Occupancy for full occupancy of the building, unless otherwise stated in the Condition.**

Obtain Master Certificate of Occupancy

56. The developer agrees to obtain a Master Certificate of Occupancy within 180 days of receipt of any partial Certificate of Occupancy for full occupancy of the building; however, the Zoning Administrator may administratively approve an extension if she finds that the developer is diligently, and in good faith, pursuing completion of the project.

- **Post Certificate of Occupancy: the following Conditions of site plan approval (#58 57 through #63 62) are valid for the life of the site plan, unless otherwise stated in the Condition.**

County Installation of Telecommunications Transmitter and/or Receiver Equipment

57. In order to maintain the effectiveness of the County's public safety systems, the developer/applicant hereby agrees to grant to the County in perpetuity the right to install telecommunications transmitter and/or receiver equipment and conducting wire in or on the penthouse or top floor, and antennae and traffic monitoring systems on the roof of the proposed buildings in a location and design that is acceptable to the County and the building owner based on a reasonable exercise of judgment by both upon request by the County. The developer agrees to provide, upon request by the County, access to electrical service separately metered, including auxiliary electrical power, and telephone radio control lines to the penthouse in the defined area. The developer is not required to pay for design and installation costs for such equipment. Any radio transmitter or receiver equipment and antenna to be installed or used by others must not interfere with the emergency communication system of the County.

In addition, to enhance the reach of the County's public emergency communications system-of-systems, the developer/applicant agrees to grant to the County in perpetuity the right to install tie-ins from the County's outdoor emergency warning system to the

interior building fire/emergency warning annunciator systems using either land lines or emergency relay transceivers in or on the penthouse or top floor, antennae systems and along with hazardous material detection sensors on the roof of the proposed buildings in a location and design that is acceptable to the County and the building owner based on a reasonable exercise of judgment by both upon request by the County. The developer agrees to provide, upon request by the County, access to electrical service separately metered, including auxiliary electrical power, and telephone radio control lines to the penthouse in the defined area. Any radio transmitter or receiver equipment and antenna to be installed or used by others must not interfere with the emergency communication system of the County.

Structural Additions

58. The developer agrees that any structural addition or changes to the facades or materials shall be subject to the approval of the County Manager. If the County Manager, in consultation with the Zoning Administrator determines that any proposed improvements or changes to the facades or materials have a significant impact on the site plan, or otherwise meet Zoning Ordinance requirements for site plan amendments that go to the County Board, a site plan amendment shall be required.

Snow Removal

59. The developer or owner agrees to remove snow from all interior streets and interior and exterior sidewalks, including accessibility ramps and gutter areas within crosswalks, within a reasonable time after snow has stopped falling but in no case later than snow removal provided for vehicular access to the site.

~~Maintenance of Residential Common Areas~~

60. ~~If the project includes a residential component, then the developer agrees that the maintenance of the common area, walkways, private drives and parking areas which are tied to condominium units shall be provided for by the condominium's, cooperative's or homeowners association's bylaws or agreements consistent with Section 2.D.6 of the Zoning Ordinance.~~

Intentionally Omitted

Retention of Approved Parking Ratio over Subdivided Site

61. The developer agrees to provide parking for each building according to the approved parking ratio; when this parking is not located within the parcel designation of each building but located within the overall project, it shall continue to be committed to the entire project for purposes of administering the Zoning Ordinance.

Retention of Approved Density over Subdivided Site

62. The density allocated for any new construction pursuant to the site plan on any subdivided parcel of the site shall be the same as the approved density for the entire site. No additional density shall be allowed on any individual parcel formed by subdivision of the site.

- **The following unique site specific conditions (#~~64~~ 63 through #~~78~~ 84) are valid for the life of the site plan and must be met before the issuance of the permit specified in each Condition, unless otherwise stated in the Condition.**

63. Retail Elements

- a. The developer agrees to develop and implement a retail attraction and marketing plan for the 22,479 square feet of retail and service commercial space located on the first floors of the office ~~and residential~~ buildings. The plan shall identify the types of retail desired, the marketing strategy to attract the retail, and strategies to retain the retail. The retail attraction and marketing plan shall be in accordance with the approved Retail Action Plan for the Rosslyn-Ballston Corridor, dated January 2001. The retail attraction and marketing plan shall be reviewed and approved by the Department of Economic Development before being submitted to the Zoning Administrator. The above-grade building permit shall not be issued until documentation has been provided to the Zoning Administrator assuring that the plan has been approved by the Department of Economic Development. Any change in the use of the retail space from retail to office or other non-retail use shall require a site plan amendment.
- b. The retail spaces shall be designed and constructed to include interior and exterior improvements necessary to ensure that they are functional and attractive to prospective retailers and that they animate the street frontage. These elements shall include, but are not limited to: approximately 15.75 foot floor to floor heights, with the exception of the service commercial space that may have an approximately 12 foot floor to floor height, as shown on the plans dated December 7, 2011; access to the service corridor/areas as shown on the architectural plans dated December 7, 2011; direct street frontage and access; rough-in of utilities, i.e., sprinkler heads, plumbing, electrical wiring, and stubs for extensions; provision for any venting systems required for any food preparation or restaurant use; and sufficient transparency of the building facade to achieve adequate street exposure.

The developer agrees to submit an application for administrative change for any proposal for retail uses or parking not clearly consistent with the above. Any change in the use of the retail space from retail to office or other non-retail use shall require a site plan amendment.

Public art site plan condition

64. The developer agrees to commission a professional artist to create public art on the subject site for a minimum cost of \$75,000, inclusive of artist fees, fabrication, installation, transportation, artist travel/expenses but exclusive of art consultant fees, fees for coordinating with artist or with other design professionals on the project (architect, landscape architect, engineer, etc.), and other in-house costs or fees. The public art shall respond to the themes and priorities discussed in the Public Art Master Plan (adopted December 2004) in support of the goals of the Public Art Policy (adopted September

2000). If the ~~contribution~~ commissioning is made more than 12 months after site plan approval, the ~~contribution~~ commissioned amount will be adjusted based on the Consumer Price Index.

The developer agrees to obtain the approval of the County Manager for the process to be followed in the selection of artist, art proposal development, maintenance plan, placement and design of informational signage in accordance with Public Art Program signage specifications, and then to implement that approved process. The developer agrees to notify the County Manager when the artist selection process is about to begin. The County Manager at his/her option may, within 15 business days following receipt of this notification, request that a panel process be undertaken and designate panel members to be included or artists to be considered. If requested, the developer agrees to use a panel to select the artist and the art. The panel used by the developer will consist of at least three persons, up to two of whom may be professional artists or arts professionals, as defined by the County, and should include representatives from the developer's project team, including architect, landscape architect and other design professionals. The developer agrees to include in its panel those persons designated by the County Manager and to compensate them at a reasonable hourly rate agreed to by that individual.

The selection panel will consider at least three different artists for the commission, including any named by the County Manager as set forth in this condition. The developer agrees that artists who are currently under contract in the County will not be eligible for commissions for public art within four years after the time of signing a contract or otherwise being initially engaged to create public art. The developer agrees to present its or the panel's choice of artist to, and obtain approval of this choice from the Arlington Commission for the Arts/Public Art Committee (ACA/PAC), prior to issuance of the Clearing and Grading Permit. The developer further agrees to present the art proposal to, and obtain approval from, the ACA/PAC prior to issuance of the Excavation/Sheeting and Shoring Permit. The art proposal shall consist of visual and written representations of the public art and its proposed location within the site, list of materials, proposed maintenance plan, and an itemized budget. The developer further agrees to resubmit the art proposal to reflect any revisions made in response to any recommendations made by ACA/PAC to the County Manager prior to issuance of the Footing to Grade Permit. The public art shall be installed prior to the issuance of the Certificate of Occupancy for the top floor of the building.

In order to prevent the public art from conflicting with other elements of the site plan, the developer also agrees to represent the public art on the landscape plan, building elevation or other plan that represents the site of the art, in the normal course of submission of such plans as provided for in these site plan conditions. The plan(s) on which the art is represented will be determined based upon the art's chosen location within the site plan.

The developer may choose to make a contribution of \$ 75,000 to the Public Art Fund to fund County-initiated public art projects in the Clarendon metro/~~or other specified~~ station area in lieu of commissioning public art through the process set forth above. Such contribution shall be made to the Public Art Fund prior to issuance of the first above

grade building permit. If the contribution is made more than 12 months after site plan approval, the contribution amount will be adjusted based on the Consumer Price Index.

After hours Parking in Office Garages Parking Management

65. The developer agrees to make all parking the upper three levels in the garage available to the public for parking accordingly:

| <u>Day</u> | <u>Hours</u> |
|-------------------------------------|---|
| <u>Sunday</u> | <u>10:00 a.m. until midnight, or until the close of business of retail operations, whichever is later</u> |
| <u>Monday through Wednesday</u> | <u>6:00 p.m. until midnight, or until the close of business of retail operations, whichever is later</u> |
| <u>Thursday</u> | <u>6:00 p.m. until 2:00 a.m.</u> |
| <u>Friday</u> | <u>6:00 p.m. until 3:00 a.m.</u> |
| <u>Saturday and County Holidays</u> | <u>10:00 a.m. until 3:00 a.m.</u> |

The developer further agrees to provide parking to the public during the above stated times, subject to the following price structure:

| <u>Year (following issuance of the first Certificate of Occupancy for tenant occupancy)</u> | <u>Parking Rate</u> |
|---|---|
| <u>1</u> | <u>\$2 for the first 3 hours; \$3 daily maximum</u> |
| <u>2-3</u> | <u>\$2 for the first 3 hours, \$4 daily maximum</u> |
| <u>4 and beyond</u> | <u>Market rate</u> |

~~after standard office hours (weekday evenings after 6:00 p.m., weekends, and all legal holidays) until 12:00 midnight or until the close of business of retail operations, whichever is later.~~ The developer further agrees to make some parking spaces on the levels of the garage available for use exclusively by the retail tenants' employees and customers; at a minimum, the number of spaces to be so reserved shall be consistent with the requirements of the Zoning Ordinance for the retail uses that occupy the space, but need to leave sufficient spaces for other uses. The developer agrees to implement a validation program to allow free use of such spaces for retail customers and employees between 6:00 p.m. and 12:00 midnight or until the close of business of retail operations, whichever is later. In addition, the developer agrees to employ a parking management system, if the garage exceeds 85% occupancy during nights and weekends, submit an analysis to the County on a biannual basis for the first ten years of the building following issuance of the first Certificate of Occupancy for tenant occupancy. If at any point the analysis confirms that the garage exceeds 85% occupancy for any period after standard office hours as stated in the table above, the applicant shall then employ a parking management system for the purpose of increasing the supply of available shared parking in the garage after the standard office hours of the building as stated in the table above. The developer agrees to submit and obtain approval from the Zoning Administrator for

the provision of any parking management system to be employed after standard office hours which shall be reflected in an amendment to the Parking Management Plan required by Condition #51. The developer further agrees that no portion of the public right-of-way shall be utilized in support of this parking management system.

Affordable Housing Contribution

66. The developer agrees to comply with Subsection 36.H.6. of the Zoning Ordinance, “Affordable Dwelling Units for Increased Density Within General Land Use Plan.” Prior to the issuance of the first Certificate of Occupancy for the project, the developer shall have submitted to and obtained from the County Manager confirmation or approval of the developer’s finalized plan for meeting the requirements of the affordable housing ordinance, and shall have executed all necessary documents to implement the approved or confirmed plan.

67. Building Security Requirements

- a. The developer agrees to coordinate with County staff on the design of exterior building security measures in order to limit or mitigate any adverse impacts that these measures may have on the project's urban design (including street and retail base) and streetscape. All exterior building security measures shall be shown on, and approved as part of, the final site development and landscape plan and the approved façade treatment plan. The base of the buildings, as shown in the drawings dated December 7, 2011, and consistent with Condition #64 above, have been designed to accommodate retail uses and provide interest and activate the streetscape. Any change in the use and design of the base resulting from any proposal for exterior building measures shall require a site plan amendment.
- b. The developer agrees that it is the policy of the County to maintain the maximum number of on-street parking spaces around the perimeter of a site, and that it will not remove or reduce the number of on-street parking spaces around the perimeter of a site whether at the request of the developer or a tenant or otherwise. Accordingly, the developer agrees that it shall notify tenants of the aforesaid policy prior to execution of any lease with a tenant.

Phasing Plan

68. The developer agrees to obtain approval of the County Manager of a phasing plan prior to the issuance of any building permits for the site plan, and to implement the approved plan. During the phasing of construction, the developer further agrees to appropriately maintain the site and any buildings located within it. This shall include, but not be limited to, maintaining landscaping, keeping the grass mowed, and removing litter and debris from the site. Until the buildings are demolished, the developer agrees to maintain access on the site for fire emergency vehicles. Improvements required by these site plan conditions shall be constructed in phases, consistent with the phasing plan for construction of the project. Any changes in the project phasing shall require a new phasing plan approved by the County Manager prior to the issuance of any permits.

Enclosure of Balconies

69. The developer agrees that no balconies, other than those identified in the approved site plan, shall be enclosed. Enclosure of any additional balconies shall constitute additional gross floor area and shall require a site plan amendment.

70. LEED Credits and Sustainable Design Elements

- a. The developer agrees to include a LEED[®] Accredited Professional (LEED-AP) as a member of the design and construction team. The team will incorporate sustainable design elements and innovative technologies into the project so that numerous project components will earn the developer points under the U.S. Green Building Council's LEED green building rating system. Specifically, the developer agrees to meet the requirements for all LEED Prerequisites and achieve at least the number of LEED credits necessary to achieve LEED certification at the Silver level using the LEED CS version 2009 green building rating system in place on the date on which the site plan project is accepted by the County through the Admin Reg 4.1 process, or a more recent version as approved by the County Manager. At least four (4) points from LEED EA Credit 1, "Optimize Energy Performance," shall be included in the certification of the project. The developer also agrees to achieve LEED SS Credit 9, "Tenant Design and Construction Guidelines" and will provide the guidelines to all new tenants prior to tenant fit out design.

The developer agrees to fulfill the following before issuance of the indicated permit:

~~b. **Shell & Core CO**~~

- ~~1. For residential units, the developer agrees that all of the following types of appliances, fixtures, and/or building components initially installed in the project shall have earned the U.S. EPA's ENERGY STAR label (or an equivalent as approved by the County Manager or his/her designee): clothes washers, dishwashers, refrigerators, and ceiling fans. Residential units will comply with the EPA's Advanced Lighting Package (or equivalent as approved by the County Manager or his/her designee). The developer shall submit to the County Manager (or designee) documentation sufficient to confirm that such components are ENERGY STAR qualified (or equivalent as approved by the County Manager (or designee)) prior to issuance of the Shell and Core Certificate of Occupancy.~~
- ~~2. For residential units, the developer agrees that all the following fixtures initially installed in the project shall have earned the U.S. EPA's WaterSense label (or equivalent as approved by the County Manager or his/her designee): toilets, showerheads, and bathroom sink faucets. The developer shall submit to the County Manager documentation sufficient to confirm that such components are WaterSense qualified (or equivalent~~

as approved by the County Manager (or designee)) prior to issuance of the Shell and Core Certificate of Occupancy.

- ~~e. **First Partial CO** - The developer agrees to submit documentation to the County Manager (or his/her designee) verifying that the prerequisites and credits needed to earn the above specified LEED certification have been included in the project. A site visit to verify LEED components will be accommodated as requested by staff.~~
- d. **Report Submittals** - The developer further agrees to submit to the Department of Environmental Services (DES) (with notification of submission to the Zoning Office), reports prepared by the LEED-AP and documentation upon request to substantiate the report. Such reports will be submitted prior to the issuance of the following permits or certificates of occupancy for construction of the project and will summarize the efforts to date of the inclusion of the sustainable elements within the project:
1. Demolition, Clearing & Grading Permit
 2. Excavation/Sheeting & Shoring Permit
 3. Above-Grade Building Permit
 4. Shell and Core Certificate of Occupancy
 5. Partial Certificate of Occupancy for occupancy of the last floor of space
 6. Master Certificate of Occupancy
- e. The developer agrees to provide certification by a LEED-AP within ninety (90) days after the issuance of the first certificate of occupancy for any part of the last floor of building. The certification shall state that all the prerequisites and the minimum number of LEED credits, as set forth above in the reporting mechanisms, have been incorporated into the respective building and that, in the professional's opinion, the project will qualify for at least a LEED Silver Certification as outlined in the LEED CS version 2009 rating system or a more recent version. At the request of staff, the developer agrees to accommodate site visits to verify LEED progress. The developer also agrees to submit all appropriate documentation to the USGBC (or their designee) for review and evaluation for LEED certification.
- f. Prior to the issuance of the ~~first~~ partial certificate of occupancy for any space on the last floor of space for which a certificate of occupancy is issued, the developer agrees to provide to the County financial security (in the form of a bond or letter of credit or other form approved by the County Attorney) in the amount of \$295,760 [(\$40 per s.f.) x (7,394 s.f. of LEED bonus density)] guaranteeing that, within twenty-four (24) months from the date of the issuance of the first certificate of occupancy for tenancy of any part of the last floor of the building, the developer will have received from the U.S. Green Building Council its LEED Silver certification. If the total number of LEED points earned during certification is less than the number of points required to achieve the agreed upon

LEED certification level, the developer shall automatically forfeit a percentage of the financial security as follows:

| Points missed | Percentage of financial security forfeited |
|---------------|--|
| <u>1-2</u> | 25% |
| <u>3-4</u> | 50% |
| <u>5-6</u> | 75% |

For each building, should the developer miss ~~six (6) or more points for LEED-NC or seven (7) or more points for LEED-CS~~, within the twenty-four (24) month period (unless due to delay related solely to the USGBC), the developer shall automatically forfeit 100 percent (100%) of the security. The forfeited amount shall be paid to the County within 30 days of the date of notification from the USGBC. The developer agrees that the County may take any amounts due under the condition out of the financial security as deposited with the County.

- g. The developer agrees to provide a complete ENERGY STAR Portfolio Manager report (or equivalent as approved by the County Manager or designee) as outlined in County guidelines titled *Submission Requirements for Site Plans with Portfolio Manager Proffers* for the project each year for a period of five (5) years. The first report shall be due on or before January 31 of the first year following issuance of the partial certificate of occupancy of the last floor of space.
- h. The developer agrees that the LEED points referenced in this condition refer ~~to the version of LEED in use on the date of site plan acceptance~~ LEED CS version 2009 and apply to all buildings in the development project. Any changes to the point valuations incorporated into future updates to the LEED Green Building Rating System must equal or exceed the requirements outlined in version of LEED in use on the date of site plan acceptance.

The developer agrees to permit the County Manager or his/her designee to access the USGBC records for the project, and to provide the County Manager with such authorization as may be necessary to allow such access. Should there be a dispute between the County and the developer as to whether any sustainable element has properly been included in the development so as to qualify for the applicable number of LEED rating system points, the County and the developer will select a mutually agreeable third-party LEED-accredited individual, or other person with substantial experience in the LEED system as approved by the County Manager, and accept the determination of that individual as to whether the developer has qualified for those points. If the third-party person determines that the sustainable element has properly been included, the County will issue the permit. Such a determination shall in no way relieve the developer of the obligation to achieve the level of certification called for in this condition.

Public Use and Access Easements

71. The developer agrees to grant permanent public ~~use and~~ access easements, in a form acceptable to the County Attorney and County Manager, to the County Board of Arlington County providing for public ~~use and~~ access to the plaza in the southern portion of the site along Washington Boulevard. The final location of the easements may change with the preparation of the final building plans. The developer agrees to construct and landscape these areas, as shown on plans dated December 7, 2011 and made a part of the public record on January 21, 2012. Final landscape design and installation shall be approved by the County Manager as part of the final site development and landscape plan. Construction and landscaping of these areas shall be completed prior to the granting of the easements. Granting of the public ~~use and~~ access easements shall be completed prior to the issuance of the first certificate of occupancy for the building. The easements shall be granted by deed, in form and substance acceptable to the County Manager, and shall be recorded among the land records of the Clerk of the Circuit Court of Arlington County. The developer shall be responsible for maintaining these areas.

Refuse Delivery to County Disposal Facility

72. The developer agrees to deliver all refuse, as defined by the Arlington County Code, to an operating refuse disposal facility ~~designated by~~ mutually acceptable to the County Manager and the developer. Any facility designated by the County Manager will have competitive rates at or below other facilities in the region otherwise available to the developer. The developer agrees that if it intends to deliver its refuse from this project to a facility other than the disposal facility designated by the County Manager, then the developer will submit that decision in writing to the DES Solid Waste Bureau along with a comprehensive cost analysis justifying the developer's decision. The developer further agrees to stipulate in any future lease or property sale agreements and deeds that all tenants or property owners shall also comply with this requirement for the life of the site plan.

Towing of Impermissibly Parked Vehicles

73. The developer agrees to have, as a part of its parking management plan, provisions relating to the towing of impermissibly parked vehicles. Such provisions shall include, but not be limited to:
- a. Requirements for signage at the developer's parking lot(s) providing notice of all applicable parking restrictions enforced by towing, the location of the towing contractor(s)' impoundment yard, and the name and telephone number of the developer's on-site representative responsible for towing-related complaints, as well as the telephone number of the Arlington County Office of Citizen and Consumer Affairs;
 - b. Disclosure by the developer and its towing contractor(s), at the developer's parking lot(s), of all fees and charges for towing; and
 - c. Evidence that the developer has a contract with the towing contractor that requires the towing contractor to clearly display all fees and charges for towing.

Speed Bumps at Garage Exit Ramps

74. The developer agrees to install speed bumps adjacent to the top of garage exit ramps at locations where ramps abut the pedestrian sidewalk, in order to slow vehicular traffic prior to vehicles crossing the sidewalk. The locations of the speed bumps shall be shown on the site engineering and building plans approved by the County Manager. The garage doors shall be setback from the sidewalk a minimum distance of six (6) inches.

Authorization for Police to Enter Residential Parking Areas

75. ~~The developer agrees to develop procedures, subject to approval of the County Manager, whereby uniformed Arlington County Police will be authorized to enter the parking areas for purposes of enforcing compliance with County ordinances and state laws applicable to resident's motor vehicles.~~

Intentionally Omitted

Public Safety Radio Communications

76. The developer agrees to install and maintain in operable condition, in a manner acceptable to the County Manager, an internal antenna/amplifier system that permits public safety radio communications to transmit in the 806-825 MHz frequency and to receive in the 851-870 MHz frequency from all areas within the building. The developer agrees to provide documentation in the approved electrical engineering drawings that adequate accommodations have been made in the building to meet this requirement.

Historic Building Deconstruction

77. The developer agrees to develop and implement a plan, prior to the issuance of the Clearing and Grading or Demolition permit, for the salvage and recycling of building elements and materials from the existing building(s) proposed to be demolished or deconstructed in the event the site contains a building that is identified and/or surveyed by Arlington County's Historic Preservation Program. The developer agrees to contact and permit the staff of the Historic Preservation Program to inspect the property and the existing building(s) to identify those historic building elements and materials to be salvaged. Provisions for such salvage shall be incorporated into the plan. The developer agrees to pay for a recycling contractor or other licensed contractor to have the identified building elements and materials that are marked for salvage to be removed from the building and the site.

Power Door Openers

78. The developer agrees to install power door openers for the main pedestrian entrances to the ~~residential~~ office buildings. In addition, at the secure interior doors, the developer agrees that call boxes, if used, shall be mounted and measured at a height that allows for hands-free remote capability. The entrances to the lobby of the ~~residential~~ office elevators from the first level of the parking garage will have automatic door openers. These items shall be installed and functional prior to issuance of any certificate of occupancy for tenancy of the building.

Parking Meters

79. The developer agrees to contribute the cost, up to a maximum of \$24,000, for installation of multi-space parking meters along the project's frontage. The number of meters and the amount of the cost of installation will be determined by the County Manager prior to approval of the Final Engineering Plan and the resulting contribution shall be paid by the developer in one installment prior to the issuance of the first Certificate of Occupancy for the first phase of the project.

Canopies and Awnings

80. The developer agrees that it will not construct or permit to be constructed any structures within areas dedicated, or to be dedicated, as public sidewalk easements and public sidewalk and utilities easements pursuant to the conditions of this site plan, except canopies, awnings and/or other similar architectural details as depicted in the final site plan on the face of the building ("canopies and awnings"), within such easement areas, provided that all such canopies and awnings shall be consistent with the final design and site engineering plans approved by the County Manager. Such canopies and awnings shall also, among other requirements, meet the following minimum standards: each canopy or awning shall (i) be suspended from the face of a building or structure; (ii) have no ground supports; (iii) extend no more than six (6) feet into the adjoining public sidewalk easement or public sidewalk and utility easements, with the exception of the bus stop awning at the northeastern corner of the building along North Garfield Street and 11th Street North, which may extend from the face of the building at a variable distance without encroaching into the public right-of-way; (iv) contain no permanent fixtures, such as, among other things, fans, heaters and sprinklers, with the exception of HVAC vents as long; (v) extend no more than six feet in any location from the face of the building to the outer edge of the canopy or awning, with the exception of the bus stop awning at the northeastern corner of the building along North Garfield Street and 11th Street North, which may extend from the face of the building at a variable distance without encroaching into the public right-of-way; (vi) extend into the easement area no further than to a point that is five feet behind the back of the curb line; (vii) not be located in the clear space above any utility vault; and, (viii) maintain a clearance of at least eight feet above the public sidewalk to the lowest part of the canopy or awning, provided, that if such canopy or awning incorporates a sign, the canopy or awning and the sign shall meet all applicable zoning ordinance provisions.

In the event such canopies and awnings are approved by the County Manager as part of the final site plan, the developer further agrees for itself, its successors in title and interest, and assigns, to indemnify and hold harmless the County Board of Arlington County, Virginia and County officials, officers, employees, and agents from all claims, negligence, damages, costs and expenses arising from the canopies and awnings. The developer agrees that, in the event of an emergency, the County may remove the canopy or awning and shall not be liable for any loss or damage to the canopy, awning or building that may result from such removal. In such event, the County shall not be responsible for replacing such canopy or awning.

The developer agrees that in the event of need for routine utility work in the area of a canopy or awning, or need for County infrastructure repairs in the regular course of business in the area of the canopy or awning, the County may, by written notice delivered to the developer, require the developer, at the developer's sole cost and expense, to remove the canopy or awning within fourteen (14) days of delivery of said notice. The developer further agrees that, if the canopy or awning is not removed within fourteen (14) days of delivery of said notice, the County may, at the sole cost and expense of the developer remove the canopy or awning and the developer agrees that the county shall not be liable for any loss or damage to the canopy, awning or building that may result from such removal, or for replacing such canopy or awning.

The developer agrees that, if the County Manager determines that any canopy or awning, whether or not approved, interferes with public access or is otherwise inconsistent with the public welfare, zoning ordinance requirements, or future development, the developer agrees to, at its sole cost and expense, to remove the canopy or awning and fully restore any affected surface areas of the canopy, building or easement. The developer agrees to complete removal of any canopy or awning upon notice of the County Manager's determination. The developer agrees that, if the developer fails to remove the canopy or awning within the time specified, the County may remove the canopy or awning, at the expense of the developer, and that the County shall not be liable for any loss or damage that may occur as a result of such removal.

Frontage Preservation Easement

81. The developer agrees to record a permanent frontage preservation easement (hereafter referred to as the "Easement") over the building frontage area of the former McQuinn's Sporting Goods Store/ABC Store (1039-1041 North Highland Street; RPC# 18-026-004) (hereafter referred to as the "Frontage Preservation Building") prior to issuance of the Clearing, Grading and Demolition Permit. The developer further agrees that the Easement shall be subject to review and approval by the County Manager, and shall run with the land and be for the benefit of the County Board or to another entity mutually acceptable to the owners of the façade preservation building and the County Manager. The developer agrees that the Easement shall run with the land and require the developer to deconstruct, reconstruct and thereafter preserve and maintain the frontage of the Frontage Preservation Building, subject to the terms of this condition, and as depicted in the final site plan. The Easement shall not require the developer to preserve any aspects of the interior of the Frontage Preservation Building. The Easement may permit modifications to be made to the Frontage Preservation Building, as specifically set forth below. This Easement will allow the commercial signage and awnings on the Frontage Preservation Building to be changed, provided that such signage/awnings otherwise comply with the Arlington County Sign Ordinance or are permitted in a comprehensive sign plan for SP #418, and provided that signage color may be subject to commercially reasonable standards customarily applied with respect to commercial signage on historic properties. The developer agrees that the Easement may permit modifications to the exterior of the Frontage Preservation Building either (i) as required by insurance carriers for insurance on the Frontage Preservation Building or businesses contained therein, or (ii) as required by, or according to standards set forth in, any Federal, state or local laws

(such as ADA, etc.). The developer also agrees that the Easement terms may permit the owners to maintain, repair or replace any exterior features with features that are identical as to design, materials, and decoration. The Easement shall permit other exterior modifications proposed by the developer of the Frontage Preservation Building if, after review by and with input from the Historical Affairs and Landmark Review Board (HALRB) the County Manager determines that the modifications will not be detrimental to the historic nature of the Frontage Preservation Building as it existed prior to acceptance by the County Board or other identified entity. The developer may receive any available tax credits as a result of any improvements or renovations that are performed to the exterior or the interior of the Frontage Preservation Building. The Easement will provide that the developer specifically agrees that no work shall be performed on the exterior of the Frontage Preservation Building prior to the recording of Easement, except as outlined above, and that the County may take such actions as it deems necessary, to include the issuance of a stop work order for the entire project subject to SP #418, if the developer fails to comply with this condition.

Walgreens/Kenyon Peck Building Architectural Exterior Preservation Easement
82A. ~~Condition to be provided in the supplemental report following HALRB review of the preservation easement at their January 18, 2012 meeting.~~ The developer agrees to record or cause the recordation of a permanent architectural exterior preservation easement over the area occupied by the current Walgreens store (2825 Wilson Boulevard; RPC# 15-065-001, -011, -012, -013, -016, -017) prior to the issuance of the Footing to Grade Permit for development of SP #418. The permanent architectural exterior preservation easement shall be identical with the draft easement attached to these conditions as Attachment C, subject to changes needed to correct details and that do not otherwise change the meaning of the document, as determined by the County Attorney.

Boulevard Woodgrill/Faccia Luna Building Architectural Exterior Preservation Easement
82B. ~~Condition to be provided in the supplemental report following HALRB review of the preservation easement at their January 18, 2012 meeting.~~ The developer agrees to record or cause the recordation of a permanent architectural exterior preservation easement over the area occupied by the current Boulevard Woodgrill/Faccia Luna building (2901 Wilson Boulevard; RPC# 15-066-019) prior to the issuance of the Footing to Grade Permit for development of SP #418. The permanent architectural exterior preservation easement shall be identical with the draft easement attached to these conditions as Attachment D, subject to changes needed to correct details and that do not otherwise change the meaning of the document, as determined by the County Attorney.

Walgreens/Kenyon Peck Transferred Density
83A. Additional unused density available from the Walgreens/Kenyon Peck store (2825 Wilson Boulevard/RPC# 15-065-001, -011, -012, -013, -016, -017) certified in the amount of 69,464 square feet of commercial GFA shall be transferred to SP #418 consistent with County Board approval of a Transfer of Development Rights on January 21, 2012. Prior to the issuance of the Footing to Grade Permit, the developer agrees to

provide evidence to the Zoning Administrator that the appropriate deeds have been recorded among the land records transferring such density as described above.

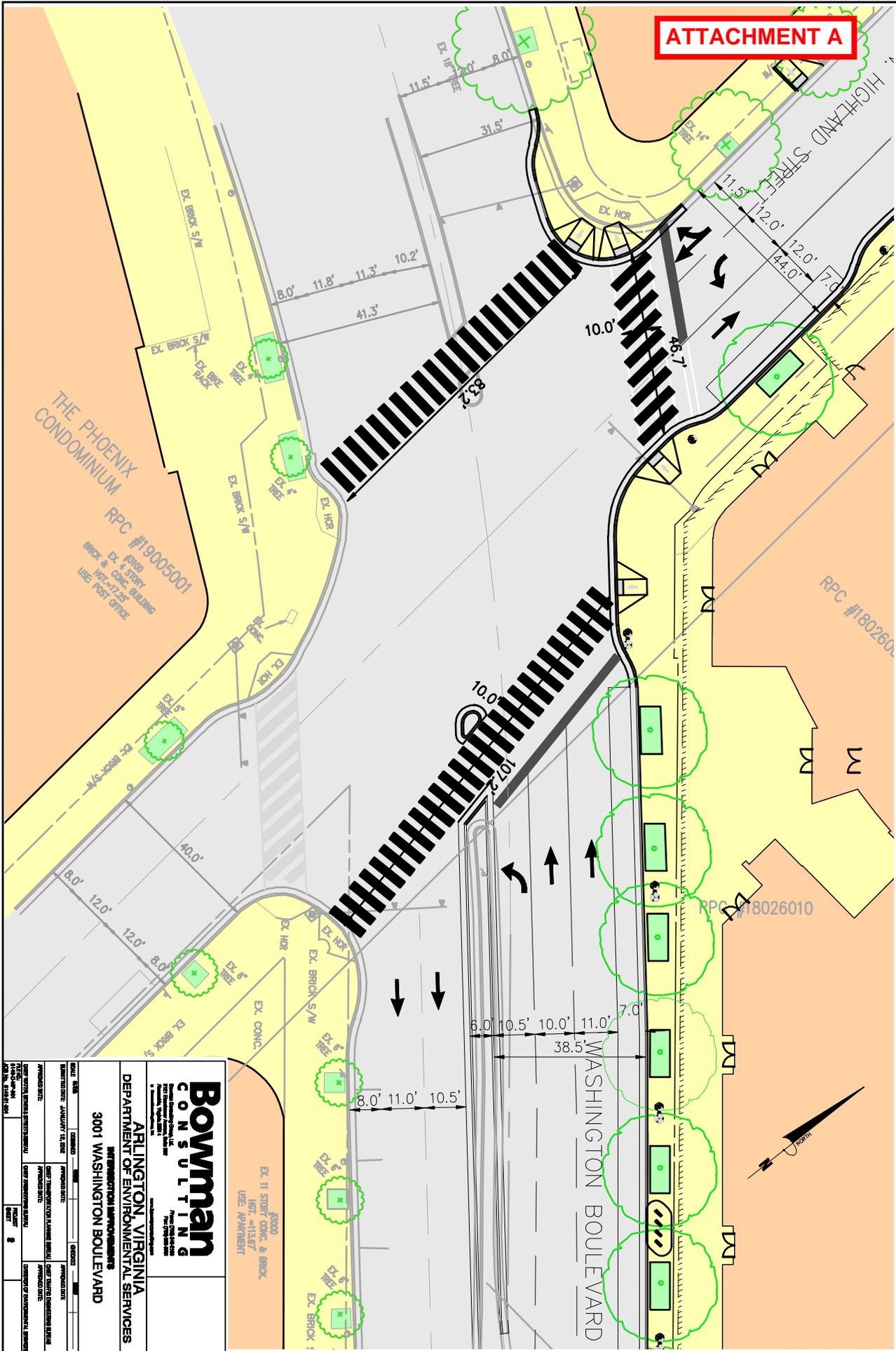
Boulevard Woodgrill/Faccia Luna Transferred Density

- 83B. Additional unused density available from the Boulevard/Faccia Luna restaurants (2901 Wilson Boulevard/RPC# 15-066-019) certified in the amount of 74,747 square feet of commercial GFA shall be transferred to SP #418 consistent with County Board approval of a Transfer of Development Rights on January 21, 2012. Prior to the issuance of the Footing to Grade Permit, the developer agrees to provide evidence to the Zoning Administrator that the appropriate deeds have been recorded among the land records transferring such density as described above.

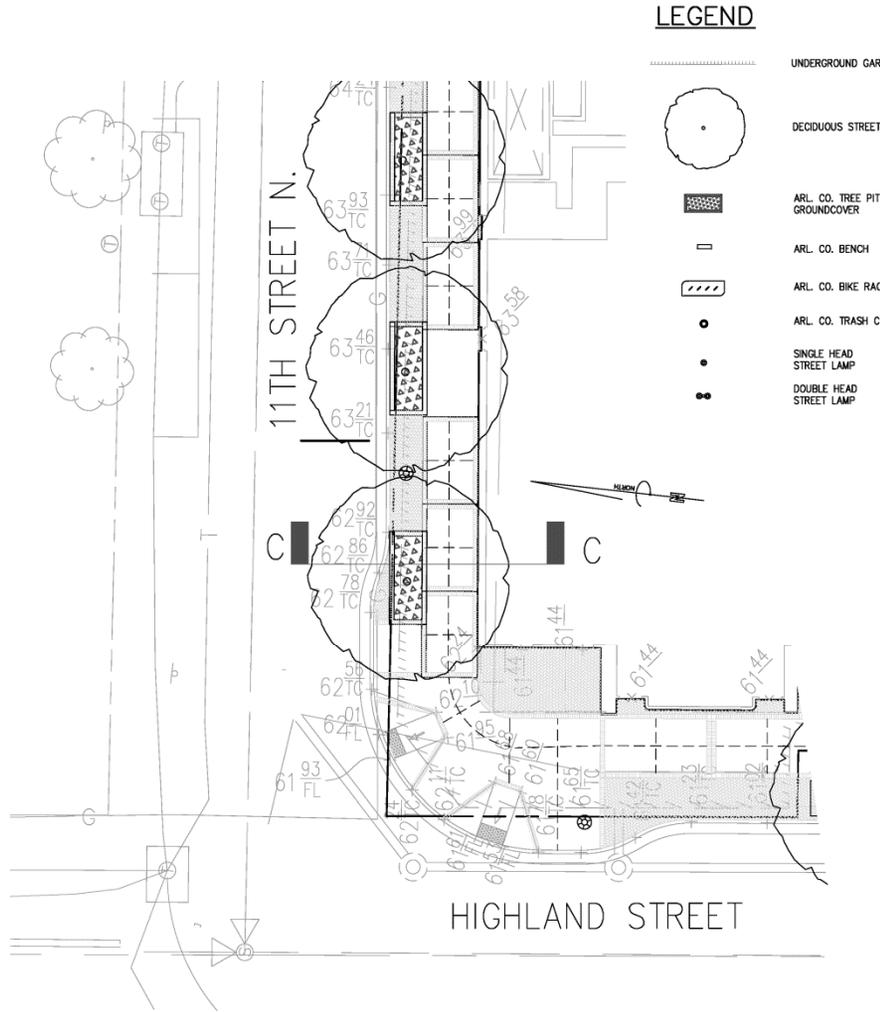
TDR Sending Site Sidewalk/Street and Utility Easements

84. The developer agrees, prior to issuance of the Footing to Grade Permit, to cause the dedication and recordation of sidewalk easements on the Boulevard Woodgrill/Faccia Luna TDR Sending Site located at 2901 Wilson Boulevard, RPC# 15-066-019 (hereafter referred to as the "Boulevard Woodgrill TDR Sending Site"). The developer further agrees that the easements to be dedicated shall provide a) the additional area necessary to provide a six foot wide sidewalk and utility easement along the property's entire southern boundary adjacent to Wilson Boulevard; b) the additional area necessary to provide a six foot wide sidewalk and utility easement along the property's entire eastern boundary adjacent to North Fillmore Street; and c) a street and utility easement of variable width, as measured from the eastern property boundary in North Fillmore Street westward to the back of the existing curb. The developer agrees that sidewalk and utility easements to be granted may permit existing, and approved, uses within the easement areas so long as the retail spaces remain under lease to the tenants occupying the retail spaces at the time of recordation of said easements, and no longer. The developer further agrees that the easement will provide that upon termination of the aforementioned leases for each respective retail space, the new tenant(s) shall not be permitted to locate any structures, or operate any uses, within the easement areas without separate authorization by way of County Ordinance or County Board approval.

ATTACHMENT A

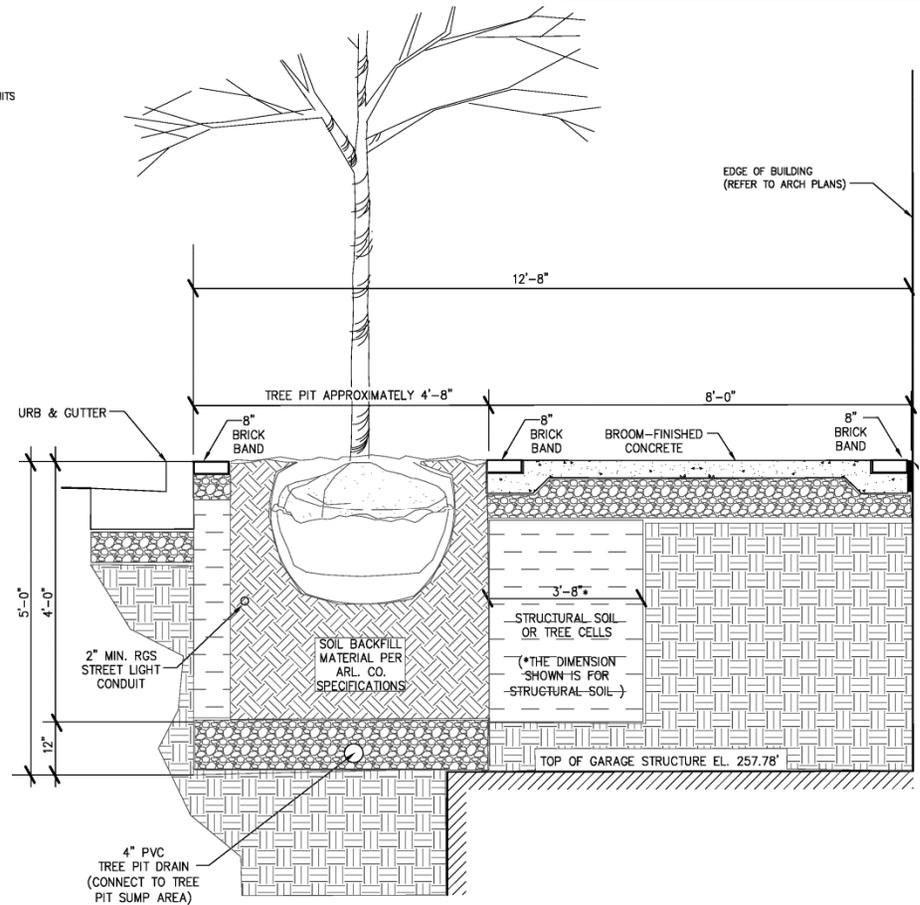


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| <p>Bowman CONSULTING 3001 WASHINGTON BOULEVARD ARLINGTON, VIRGINIA DEPARTMENT OF ENVIRONMENTAL SERVICES</p> | |
| <p>DATE: 08/14/19 DRAWN: [blank] CHECKED: [blank] APPROVED: [blank]</p> | <p>DATE: 08/14/19 DRAWN: [blank] CHECKED: [blank] APPROVED: [blank]</p> |
| <p>PROJECT: 3 SHEET: 2</p> | <p>PROJECT: 3 SHEET: 2</p> |



TREE PIT DETAIL – 11TH STREET N.
 PLAN

1"=10'-0"



TREE PIT DETAIL – 11TH STREET N.
 SECTION C-C

N.T.S.

Bowman
CONSULTING

Bowman Consulting Group, Ltd.
 2121 Eisenhower Avenue, Suite 302
 Alexandria, Virginia 22314
 © Bowman Consulting Group, Ltd.

Phone: (703) 548-2188
 Fax: (703) 663-5781

www.bowmanconsulting.com

ARLINGTON, VIRGINIA
DEPARTMENT OF ENVIRONMENTAL SERVICES

TREE PIT EXHIBIT @ 11TH STREET NORTH
3001 WASHINGTON BOULEVARD

| | | |
|----------------------------------|----------------|---------------|
| SCALE 1" = 10' | DESIGNED JDB | CHECKED JDB |
| SUBMITTED DATE: JANUARY 16, 2012 | APPROVED DATE: | APPROVED DATE |

ARCHITECTURAL EXTERIOR PRESERVATION EASEMENT

This ARCHITECTURAL EXTERIOR PRESERVATION EASEMENT (the “Easement”) is as of the date on which it is signed on behalf of the Grantee, by and between 2825 WILSON, LLC, a Virginia limited liability company, with its principal office at 4416 East-West Highway, 4th Floor, Bethesda, Maryland, 20814-000 (the “Grantor”) and the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic (the “Grantee”).

RECITALS:

- R-1. Grantor is the sole owner in fee simple of certain real property and improvements located in Arlington County, Virginia, commonly known as 2825 Wilson Boulevard, more particularly identified by RPC 15065001 and described in **Exhibit A** which is incorporated herein by reference (the “Property”).
- R-2. The Property’s building and other specified improvements have been recognized as important structures worthy of preservation by Arlington County. This recognition is reflected by Arlington County’s adoption of the Clarendon Sector Plan and approval of Site Plan No. 418 which permits the development of the property bounded by North Highland Street, North 11th Street, North Garfield Street and Washington Boulevard (the “Penzance Site”) in Clarendon owned by unrelated third parties using transferrable density from the Property. Site Plan No. 418 requires that a preservation easement be placed on the Property and transfers 69,464 s.f. of density rights from the Property to the Penzance Site.
- R-3. After transfer of the density rights from the Property to the Penzance Site, no density other than the existing building will exist or be available for use on the Property after January 24, 2012.
- R-4. Article XI of the Constitution of Virginia provides, in part, that “it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth” and “[i]n furtherance of such policy, the General Assembly may undertake ... the acquisition and protection of historical sites and buildings”.
- R-5. Section 15.2-2306 of the Code of Virginia enables counties and municipalities to provide for the preservation of historic sites and areas.
- R-6. The Arlington County Open Space Master Plan, adopted September 10, 1994, which is a part of the County’s Comprehensive Plan, states that Arlington County should “encourage private donations and the acquisition of open space Easements in order to protect scenic views and natural areas from development” and “cooperate in efforts with other public agencies and the private sector to preserve, protect and interpret cultural and historic sites.”
- R-7. The Grantor desires to grant this Easement in order to preserve a historic building and in order for it to fulfill certain obligations it has in Site Plan No. 418; and

R-8. The Grantee desires to accept this Easement in order to provide for the preservation of the Property's structure and improvements on the terms below.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee agree as follows:

1. Purpose. This Easement is granted over the building envelope of the Walgreens / Kenyon Peck Building, a two-story structure located at the southeast corner of the block bounded by Wilson Boulevard, North Filmore Street, North Edgewood Street and North Franklin Street in Arlington County (the "Building") as specifically identified in Section 3.a. below and over certain other elements on the Property as specifically identified in Section 3.b. below. This Easement is granted by the Grantor to the Grantee in order to comply with Condition No. **82A** of Site Plan No. 418 as approved by the Arlington County Board on January 24, 2012, and to ensure that certain architectural and historic features of the Building, as specifically identified in Section 3.a. below, and certain other elements on the Property, as specifically identified in Section 3.b. below, will be maintained in their current condition or better for preservation purposes and to prevent any change to the exterior of the building and the other improvements on the Property, except as specifically described herein, that would significantly impair or interfere with the preservation of these aspects of the Property.

2. Grant. Grantor hereby grants to Grantee an easement over the building envelope of the Building, as specifically identified in Section 3.a. below, and over certain other elements on the Property, as specifically identified in Section 3.b. below. The Building utilizes approximately 16,488 s.f. of density on approximately 40,619 s.f. of land area at the Property. Grantor shall preserve and maintain the building envelope of the Building in its configuration and condition as of January 24, 2012, subject to the terms of Condition No. **82A** of Site Plan No. 418 and the terms of this Easement.

3. Exterior Easement.

a. Exterior of the Building. This Easement affects only the building envelope of the Building and does not require the preservation of any aspects of the interior of the Building, nor shall this Easement be construed to prohibit any uses of the Property that existed as of January 24, 2012, or are permitted by the Arlington County Zoning Ordinance.

Grantor shall maintain the following significant architectural elements of the Building on the façade fronting Wilson Boulevard: the vertical sign area with flanking glass block sidelights; the curved, two-story masonry wall; the original metal windows and all window openings on the second story; the string courses, fenestrations and decorative pilasters; the water table; and the original window openings on the first floor. Some first-floor openings on the Building have been bricked over, most notably the garage bays on the west, south and east elevations. These openings may be reopened at some point in the future.

Grantor covenants that the primary Building façade material shall not be changed or resided in any manner and that the Building will remain a masonry building.

The Grantor reserves the right to maintain, repair and replace any exterior features of the Building with features that are identical (in design, materials and decorations) to the features that existed as of January 24, 2012. Any maintenance, repair or replacement by Grantor or its agents that is in any way not identical in these respects shall be governed by **Section 5** below.

b. Easement Over Other Improvements on the Property. In addition to the easement over the building envelope of the Building, an easement is granted over the knee wall existing on the Property near the corner of Wilson Boulevard and North Edgewood Street as of January 24, 2012.

4. Voluntary Demolition. Grantor may not voluntarily demolish or raze the Building or the knee wall, and shall not cause, authorize or permit others to do so. Voluntary demolition may be permitted only under very limited circumstances after major casualty or destruction, as described in **Section 6**.

5. Modification of Items Subject to Easement; County Manager and HALRB Review. Grantor and Grantee recognize that buildings are not static but may evolve over time. This Easement is not intended to prohibit changes or additions to the Building but rather is to preserve the most important physical aspects of the Building and to ensure that any changes account for the historic and existing character of the building envelope of the Building and the knee wall on the Property. Therefore, certain changes to the building envelope of the Building and the knee wall on the Property shall be subject to the review and approval processes described in this Easement. In considering a proposal to modify the building envelope of the Building or the knee wall on the Property or to build any additional structures or improvements on the Property, the Arlington County Historical Affairs and Landmark Review Board (“HALRB”) will be asked by the Grantor or its successors to consider, in addition to other factors, as part of the design review process, the durability, design integrity, materials and overall harmony of the proposed modifications to the building envelope of the Building or the knee wall on the Property. Exterior changes to the Building’s façade, as well as to the back and side elevations of the Building, may be undertaken so long as the proposed changes meet the following general requirements before they are implemented.

Notwithstanding this Easement, any changes to the Property or the Building must meet all applicable Virginia and Arlington County zoning and building requirements.

Except for those modifications specifically identified and exempted herein, all other modifications proposed by the Grantor to be done to the building envelope of the Building or the knee wall on the Property or to build any additional structures or improvements on the Property shall be subject to approval in writing by the County Manager after HALRB review as described below.

Grantor shall obtain a review of any proposed modifications as required below and shall, after that review, obtain from the County Manager a determination that the modifications will or will not be detrimental to the historic nature of the building envelope of the Building or the knee wall on the Property. The determination by the County Manager shall control whether or not Grantor may proceed with those modifications.

As used herein, "HALRB review" shall mean:

1. submission of the drawings, plans and specifications showing the details of the proposed modification by the Grantor or its agents to the HALRB at least forty-five (45) days before a scheduled HALRB meeting; and
2. consideration of the modifications by the HALRB at its meeting, provision of a written recommendation to the County Manager regarding whether the modifications would preserve the important historical aspects of the building envelope of the Building and the knee wall on the Property and, if the HALRB's recommendation states that the modifications would negatively impact the building envelope of the Building or the knee wall on the Property, description of how the building envelope of the Building or the knee wall on the Property will be impacted.

HALRB review shall be required prior to any of the following:

- a. Construction, enlargement, or addition to the exterior of the Building;
- b. The removal or demolition of all or part of the Building or the knee wall; or
- c. Construction of a new structure or improvement on the Property.

HALRB review shall be completed at the meeting at which the respective proposed modifications are considered by the HALRB, unless otherwise agreed in writing by the Grantor and the Grantee, through its County Manager. After receiving the HALRB's recommendation, the County Manager shall not be bound to follow the HALRB's recommendation but may rely on it in making his or her determination regarding whether the proposed modifications will or will not be detrimental to the historic nature of the building envelope of the Building or the knee wall on the Property. If the proposed modifications are found by the County Manager to be detrimental to the historic nature or character of the building envelope of the Building or the knee wall on the Property, then they will not be approved by him or her. The County Manager may approve modifications conditioned on changes to the proposal by the Grantor.

The following types of modifications to the building envelope of the Building or the knee wall on the Property shall require Historic Preservation program staff review, but not HALRB review, to ensure the compatibility of those modifications with the historic character of the building envelope of the Building and the knee wall on the Property:

- a. Changes in the materials or structure of any of the existing elevations of the building envelope of the Building or the knee wall on the Property, including major repair and rehabilitation work;
- b. The removal, replacement or enclosure of entrances and window openings;
- c. The installation or modification of commercial signage not in accordance with the signage requirements and guidelines below, or the installation of commercial signage in locations where commercial signage did not exist on January 24, 2012;
- d. Modification of the existing knee wall on the Property;
- e. The erection of any additional structures or edifices (other than street trees and low-level shrubs) that would affect the visibility of the Building from the street frontages;
- f. The installation of windows, storm windows or doors that do not match the glass configuration of existing windows, window sash(es) or doors;
- g. The installation of any rooftop solar panels, geothermal wells or other types of modifications made for energy-efficiency purposes that require a change, addition or alteration to any portion of the Building that is visible from a public street or public sidewalk;
- h. Installation of expanded air conditioning, heat pump and other mechanical equipment on the roof of the Building. Grantor covenants that any such equipment shall be of a neutral color or a color that blends into existing rooftop equipment of the Building, and acknowledges that rooftop screening may be required if the expanded equipment would be visible from a public street or public sidewalk;
- i. Removal of exterior paint (as to the proper treatment and methods for removal);
or
- j. Signs and lighting hardware prior to their installation.

As used herein “Historic Preservation program staff review” shall entail:

- 1. submission of the the drawings, plans and specifications showing the details of the proposed modification to the Historic Preservation program staff (“Staff”);
- 2. review by Staff of the proposed modifications; and
- 3. preparation by Staff of a written recommendation to the County Manager regarding whether the modifications would preserve the important historical aspects of building envelope of the Building and the knee wall on the Property

and, if the Staff's recommendation states that the proposed modifications would negatively impact those aspects, how they will be negatively impacted.

The County Manager shall not be bound to follow the Staff's recommendation, but may rely on it in making his or her determination regarding whether the proposed modifications will or will not be detrimental to the historic nature of the building envelope of the Building and the knee wall on the Property. If the proposed modifications are found by the County Manager to be detrimental to the historic nature or character of the building envelope of the Building and the knee wall on the Property, then they will not be approved. The County Manager may approve modifications conditioned on changes by the Grantor to its proposed modifications. In the event that the Staff does not make a written recommendation to the County Manager within five (5) County business days after the Grantor's submission of complete drawings, plans and specifications, the Grantor may request that the County Manager make his or her determination without a Staff recommendation, and the County Manager will proceed to approve or reject the proposed modifications without a Staff recommendation.

This Easement specifically does not cover (1) modifications to the building envelope of the Building or the knee wall on the Property or the Property other than those specifically described herein and (2) the following items which are exempt from this Easement and shall not require HALRB review, Historic Preservation program staff review or County Manager approval, unless otherwise required by Virginia or County law:

- a. Any interior modifications or interior renovations to the Building;
- b. Minor repair to and ordinary maintenance of the building envelope of the Building or the knee wall on the Property;
- c. Replacement of the building envelope of the Building or the knee wall on the Property with the same materials of identical design;
- d. General landscaping, preparation, and maintenance of fences, lawns, trees, shrubbery, flower beds, and gardens on the Property;
- e. Paving or sidewalk repair on the Property using the same materials or a material approved by Arlington County or adopted in the Clarendon Sector Plan;
- f. Exterior painting of, and the paint colors on, previously painted masonry surfaces;
- g. Removable items and accessories such as window air conditioners, window or door screens, outdoor furniture, mail boxes, building numbers, and any other temporary outdoor features associated with the Building or on the Property;
- h. Replacement of gutters and downspouts;
- i. Removal of unused mechanical equipment, wires, vents, hoods, or other utility-related features on the Building or its roof that cease to be used;

- j. Door replacement, so long as the replacement door matches the glass configuration of the existing doors;
- k. Storm windows that either match the profile and glass configuration of the existing window sash(es) or are a single pane of glass over the existing window(s);
- l. Replacement of existing air conditioning condensers, heat pump units or other mechanical equipment on the roof so long as the replacement equipment is of the same or smaller dimensions as the equipment that is being replaced. Grantor covenants that replacement equipment shall be of a neutral color or a color that blends into existing rooftop equipment of the Building;
- m. The installation of rooftop solar panels, geothermal wells or other modification made for energy-efficiency purposes, that would not require any change, addition or alteration to any portion of the existing Building that is visible from a public street or public sidewalk;
- n. Modifications to the exterior of the Building that are required by insurance carriers providing insurance on the Building;
- o. Modifications or changes to the Building as required by or established in the standards set forth in any federal, Virginia or Arlington County law;
- p. Repair and replacement of any exterior features of the Building with features that are identical as to design, materials and decorations;
- q. Re-stripping and re-paving of the existing parking lot; or
- r. Modifications or improvements to the Property which are not visible from the public right-of-way (e.g. a Dumpster).

6. Signage. Commercial signage, awnings and doorways on the Building may be modified so long as the signage, awning or doorway as modified otherwise complies with the Arlington County sign ordinance and other local laws and regulations. New signage that is consistent with the signage existing at the Property on January 24, 2012, may be permitted if it is reviewed by Historic Preservation staff and approved by the Zoning Administrator in his or her sole discretion.

The following requirements shall apply to any and all signs on the Building or the Property:

- a. All signs must meet the requirements of the Arlington County Zoning Ordinance;

- b. All signs must meet the requirements of the Virginia Uniform Statewide Building Code (USBC);
- c. Zoning approval, as described more fully in the Arlington County Zoning Ordinance, is required for all new signs. Such approval shall be obtained by the Grantor after receiving the County Manager's approval described in **Section 5** above;
- d. Any signage placed on the Building that is not located on the vertical screen wall or on the original monument sign at the corner of North Edgewood Street shall be placed so that it does not obscure the string course of decorative bricks on the first and second stories of the Building;
- e. Moveable and flashing signs shall not be used because they are not appropriate given the time period when the Building was constructed;
- f. The signs' size, lettering and illumination shall not overwhelm or destroy the historic façade or decorative features of the Building, nor may they obscure or negatively impact the building envelope of the Building or the knee wall on the Property;
- g. Signs shall be designed to be compatible with the architectural style of the Building as it existed on January 24, 2012; and
- h. Signs and lighting shall be installed in a manner that limits the impact to the building envelope of the Building and the knee wall on the Property.

7. Major Casualty or Destruction. In the event that the building envelope of the Building or the knee wall on the Property or any material part thereof is damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee of such casualty in writing within fourteen (14) days of the date of the casualty. Such notification shall describe any repair or replacement that has been made to the building envelope of the Building or the knee wall on the Property as a result of the casualty. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the building envelope of the Building or the knee wall on the Property and/or to protect public safety, may be undertaken by Grantor without the County Manager's prior written approval. Such approval shall not be unreasonably conditioned or delayed. Grantee, through the County Manager, shall respond to Grantee's requested casualty-related repairs within thirty (30) days after receipt of a written request accompanied by a report prepared by a qualified engineer or architect as set out below:

If required by Grantee, the Grantor, at its sole expense, shall submit to Grantee, within a reasonable period of time, a written report prepared by a qualified engineer or architect acceptable to both the Grantee and Grantor, which report shall include the following:

- a. an assessment of the nature and extent of the damage; and

- b. a determination of the feasibility of the restoration of the building envelope of the Building or the knee wall on the Property and/or reconstruction of the damaged or destroyed portions of the building envelope of the Building or the knee wall on the Property.

If the Building's structure is intact and if, after reviewing the engineering/architectural report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims, Grantor and Grantee agree that the purpose of the Easement will be served by such restoration/reconstruction, then the Grantor shall undertake such restoration/reconstruction consistent with such plans to return the building envelope of the Building or the knee wall on the Property to substantially the condition in which it existed on January 24, 2012, as previously modified by permitted changes under the terms of this Easement.

If, however, the report determines that the structure of the building envelope of the Building and the knee wall on the Property is unsound (or is destroyed in whole or in substantial part), making restoration/reconstruction impracticable, or if the report determines that restoration/ reconstruction is impossible, and Grantor wishes to raze or demolish the building envelope of the Building or the knee wall on the Property because of the damage, then, other than temporary emergency work to prevent further damage to the building envelope of the Building or the knee wall on the Property or to protect public safety, no further demolition may be undertaken by Grantor until at least thirty (30) days after such report is provided to the County Manager outlining the conditions on the Property.

In addition, if Grantor and Grantee agree that the purpose of the Easement would not be served by such restoration/reconstruction, Grantor may demolish, remove and/or raze the building envelope of the Building or the knee wall on the Property upon not less than thirty (30) County business days written notice to the Grantee. Any redevelopment of the Property shall be subject to all required building codes, the Arlington County Zoning Ordinance and approvals by Arlington County and shall be limited to 16,488 square feet of development.

8. Grantor's Retained Duties. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, the building envelope of the Building and the knee wall on the Property.

9. Maintenance. The building envelope of the Building and the knee wall on the Property shall be maintained by the Grantor and its agents in the same structural condition as they existed on January 24, 2012. Any damage to the building envelope of the Building or the knee wall on the Property shall be promptly repaired by the Grantor or its agents in accordance with the maintenance standards set forth in this Easement. The building envelope of the Building and the knee wall on the Property shall be maintained in a professional manner and in the condition and configuration that they existed on January 24, 2012.

10. Photographic Records. Written descriptions and photographs which cannot be recorded with this Easement for technical imaging reasons are on file in the offices of both the Grantee and Grantor. These records include black and white photographs of the Property,

building envelope of the Building and the knee wall on the Property (collectively the "Photographs"). Notwithstanding the foregoing, the Photographs form an integral part of this Easement and are incorporated herein by this reference as if they were a part of the recorded document. The Grantor and Grantee agree that the Photographs and descriptions provide an accurate representation of the Property, the building envelope of the Building and the knee wall on the Property as of the effective date of this Easement.

The Photographs show the distinctive features of the building envelope of the Building and the knee wall on the Property. The Photographs also identify locations on the Building where new signage could be located or where existing signage could be relocated.

In the event of any discrepancy between the descriptions and Photographs in the Grantor's and Grantee's respective files, the descriptions and Photographs in the Grantee's possession shall control. It is the intent of the Grantor and the Grantee that the Property, the building envelope of the Building and the knee wall on the Property remain essentially unchanged except as specifically provided for herein and, in the case of ambiguity, the Photographs and descriptions referenced herein shall control.

11. Insurance. Grantor shall ensure that the building envelope of the Building and the knee wall on the Property are insured by an insurance company rated "A-1" or better by Best's Rating Guide for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance. Property damage insurance shall include change in condition and building ordinance coverage in a form and amount sufficient to completely replace the building envelope of the Building and the knee wall on the Property without cost or expense to, or contribution from, the Grantor. The County Board of Arlington County, Virginia, shall be a named additional insured on the insurance policy or policies that satisfy this paragraph.

12. Indemnification. Grantor covenants, for itself, its employees and agents, to save, defend, hold harmless and indemnify the Grantee, and all of its elected and appointed officials, officers, current and former employees, contractors, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the Grantee for any and all losses, damages, injuries, fines, penalties, costs (including reasonable court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with, Grantor's acts or omissions, including the acts or omissions of its employees and agents, in fulfillment of the requirements of this Easement. If, after notice by Grantee, Grantor fails or refuses to fulfill its obligations contained in this section, Grantor shall be liable for and shall reimburse the Grantee for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements or payments made.

13. Taxes. Grantor shall pay all real estate taxes and special assessments when they are due and owing.

14. Enforcement. The Grantee and its representatives may enter upon the Property from time to time, upon reasonable notice to Grantor, for the sole purpose of inspections and

enforcement of the terms of this Easement. Upon any violation or threatened violation of this Easement by the Grantor, the Grantee, after reasonable written notice to Grantor, shall be entitled to pursue any cause of action which may be available to the Grantee to enforce the covenants and restrictions set forth in this Easement. If the Grantor is found to have breached any of the terms of this Easement, the Grantor shall be liable to the Grantee for any costs or expenses incurred by the Grantee in enforcing this Easement, including court costs and reasonable attorneys' fees. Upon request from the Grantee, the Grantor shall provide evidence of insurance coverage, or other paperwork establishing compliance with this Easement.

No failure on the part of the Grantee to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Grantee shall discharge or invalidate such covenant or restriction or any other covenant or restriction hereof, or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor solely for any injury to or change in the building envelope of the Building or the knee wall on the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Building or to the public resulting from such causes.

15. Control. Nothing in this Easement shall be construed as giving rise, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's or Grantor's tenants' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) and any similar statute of the Commonwealth of Virginia.

16. Sale or Transfer. Grantor shall notify Grantee of any transfer of title to the Property by Grantor to another party or other parties. Grantor agrees to reference in whole or by reference the terms of this Easement in any deed or legal instrument by which it transfers any legal interest in the Property. This Easement shall be specifically referenced by Deed Book and Page Number in the deed or other transferring document. The Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and Easement interest of the Property.

17. Condemnation. If the Property or any interest therein is taken, in whole or in part, by exercise of the power of eminent domain, or an agreement in lieu thereof, the Grantor and Grantee agree that the right to compensation for such condemnation shall belong solely to the Grantor.

18. Assignment. Grantee shall have the right to assign, after written notice to Grantor, Grantee's rights under this Easement only to any entity that is a "qualified organization" within the meaning of § 170(h)(3) of the Internal Revenue Code (or any successor provision then applicable) and a "holder" or "public body" within the meaning of the provisions of §§ 10.1-1009 and 10.1-1700 of the Code of Virginia (or any successor provisions then applicable). Any assignment to a "qualified organization" within the meaning of § 170(h)(3) of the Internal

Revenue Code (or any successor provision then applicable) shall be subject to the mutual agreement of both Grantor and Grantee.

19. Successors and Assigns; Intent of the Grantor and Grantee. This Easement shall be binding upon the Grantor, including all of its successors and assigns, future owners of all or any portion of the Property, and their personal representatives and heirs, and shall constitute a servitude upon and touching the Property and shall continue as a servitude running in perpetuity with the Property.

20. Cessation of Assignee of Grantee. If any assignee of the Grantee shall cease to exist, then this Easement and any right of enforcement shall vest in the County Board of Arlington County, Virginia.

21. Notice. In any case where the terms of this Easement require notice to or approval of the Grantee, such notice or request for approval shall be in writing. Notice of an activity and requests for approval must describe the activity in question in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Except as otherwise expressly stated in this Easement, the Grantee shall have thirty (30) days from the receipt of requests for approval (or such longer period as the Grantor and Grantee may agree to in writing) within which to review such request and grant or deny approval. If the Grantee fails to respond within thirty (30) days, Grantor will further contact the Grantee in writing to confirm that the Grantee received the first request, and if after ten (10) days the Grantee has not responded, the Grantor may proceed with the proposed activity.

Written notices by Grantor and any subsequent response by the Grantee shall be deemed given three (3) days after mailing by registered or certified mail, or upon delivery by the Arlington County's Sheriff's Office or by FedEx or similar private courier service which provides receipt of delivery, properly addressed as follows:

if to Grantor: 2825 Wilson, LLC
Att'n: Robert S. Selzer
4416 East West Highway, 4th Floor
Bethesda, Maryland 20814

with a copy to: H. Mark Rabin
Selzer Gurvitch Rabin Wertheimer Polott & Obecny, P.C.
4416 East West Highway, 4th Floor
Bethesda, Maryland 20814

if to Grantee: County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

with a copy to: Arlington County Attorney
Arlington County, Virginia

2100 Clarendon Blvd., Ste. 403
Arlington, Virginia 22201

if to HALRB: Staff Director
Historical Affairs and Landmark Review Board (HALRB)
Arlington County, Virginia
2100 Clarendon Boulevard, Ste. 700
Arlington, Virginia 22201

if to Staff: Historic Preservation Coordinator
Arlington County, Virginia
2100 Clarendon Boulevard, Ste. 700
Arlington, Virginia 22201

The Grantor or Grantee or other notice recipient may change the address to which notices are to be sent to him, her or it by giving notice pursuant to this section.

22. Amendment. If any circumstances arise to which amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual agreement jointly amend this Easement provided that no amendment may be made which is inconsistent with the provisions of Condition No. **82A** of Site Plan No. 418, as amended, without the specific written agreement of the County Board of Arlington County, Virginia. Any such amendment shall be in writing and recorded among the land records of Arlington County, Virginia. Nothing in this section shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

23. No Waiver of Sovereign Immunity by Grantee. Nothing in this Easement, nor any action taken by the Grantee pursuant to this Easement, nor any document which arises out of this Easement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the Grantee, or of its elected and appointed officials, officers and employees.

24. No Rights in Third Parties. The Grantor and Grantee mutually agree that no provision of this Easement shall create in the public, or in any person or entity other than the Grantor and Grantee (except as noted in Site Plan No. 418), rights as a third-party beneficiary hereunder, or authorize any person or entity to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Easement or otherwise.

25. Severability. If any term or provision of this Easement, or the application thereof to any person or circumstance, shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement shall be valid and enforced to the fullest extent permitted by law.

26. Compliance with Laws. In performing its obligations under this Easement, the Grantor shall comply with applicable federal, state, and local laws, ordinances, regulations, policies and procedures.

27. Entire Agreement; Applicable Law. This Easement contains the entire agreement of the Grantor and Grantee with respect to the subject matter hereof. The Grantor and Grantee expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any, that are expressly stated herein. This Easement shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Grantor and Grantee. This Easement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by the Grantor or Grantee concerning this Easement shall be filed in the Circuit Court of Arlington County, Virginia, and in no other court whatsoever.

28. Approval of Easement by the Grantee. The term “days”, when used in this Easement, unless otherwise specifically noted, means “calendar days”. This Easement shall not become effective unless and until the County Board of Arlington County approves and accepts this Easement and it is signed on behalf of the Grantee. If this Easement is not approved by the County Board and executed by an authorized person, then no liability whatsoever shall accrue to the Grantor or Grantee, and the Grantor and Grantee shall have no obligations whatsoever to each other.

29. Incorporation of Recitals. The Recitals set forth hereinabove are incorporated into this Easement and made a part hereof by this reference.

[Signatures to follow]

GRANTOR:

2825 WILSON, LLC, a Virginia limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY/CITY OF _____) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2012 by _____ as _____ of 2825 Wilson, LLC, a Virginia limited liability company, on behalf of 2825 Wilson, LLC.

_____[SEAL]
Notary Public

My commission expires:

Registration number:

GRANTEE:

County Board of Arlington County, Virginia

By: _____
Name: Barbara M. Donnellan
Title: County Manager

COMMONWEALTH OF VIRGINIA)
COUNTY OF ARLINGTON) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2012 by Barbara M. Donnellan as County Manager of Arlington County, Virginia, on behalf of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia.

_____ [SEAL]
Notary Public

My commission expires:

Registration number:

Approved as to form:

Name: Stephen A. MacIsaac
Title: County Attorney

Acknowledged:

Arlington County Historical Affairs and Landmark Review Board

Name: Christopher Wilson
Title: Chairman

Exhibit A

Legal Description

All those certain pieces or parcels of land, situate, lying and being in Arlington County, Virginia, being more particularly described as follows:

Parcel I

Lot 151, Section 1, of the subdivision of Lyon Village; as the same appears duly dedicated, platted and recorded in Deed Book 272 at page 287, among the land records of Arlington County, Virginia.

Parcel II

Lots numbered 152, 153 and 154, Section 1, a resubdivision of Lots 151 and 155 of Section 1 of the subdivision of Lyon Park, as it appears by plat attached to a deed from Lyon and Fitch, Inc. to R.A. Quick dated December 6, 1927 and recorded in Deed Book 272 at page 289 of the land records Arlington County, Virginia. Also all of Lot numbered 155, Section 1, Lyon Village, a resubdivision of Lots 155 and 155-A of Section 1 of the subdivision of Lyon Village, as the same appears by plat attached to a Deed of Trust from Lyon, Inc. to Thomas B. Sebrell, Trustee, dated May 12, 1936, and recorded in Deed Book 388 at page 580 of the land records of Arlington County, Virginia.

Parcel III

All that certain piece and parcel of land situate in Lyon Village, Section 1, Arlington County, Virginia, more particularly described as follows:

Beginning at point north line of Wilson Boulevard, said point of beginning marking the southwest corner of Lot 155, Section 1, Lyon Village; thence with west line of Lot 155, 91.7 feet to an angle point; thence with the northerly line of Lot 155 and a northerly line of Lot 154, 59.92 feet to an angle point in the north line of Lot 154; ;thence with the north line of Lots 154 and 153, 97.78 feet to a point marking the northeast corner of Lot 153 and the northwest corner of Lot 152, Section 1, Lyon Village 132.10 feet to a point marking the northeast corner of Lot 151; thence along the arc of a 26°07'40" degree curve to the left to a point marking the southeast corner of Lot 165, Section 1, Lyon Village; thence with the south line of Lot 165, said line being 10 feet north, and parallel to the north line of Lots 151 and 152, 132.05 feet to a point marking the southwest corner of Lot 165 and the southeast corner of Parcel "A"; and parallel to the north line of Lots 153 and 154, 101.20 feet to a point in the east line of Lots 157; thence with the east line of Lots 157 and 156, said line being 10 feet from and parallel to M the northern line of Lots 155 and 154, 70.00 feet to a point marking the southeast corner of Lot 156; thence with the east line of Lot 155-A, said line being 10 feet west of, and parallel to, the west line of 155, 95.7 feet to a point in the north line of Wilson Boulevard and the southeast corner of Lot 155-A; thence with the north line of Wilson Boulevard across said alley for a distance of 10.0 feet to a point and place of beginning.

Parcel IV

Lot 165, Section 1, of the subdivision of Lyon Village, as per plat recorded among the land records of said County in Deed Book 200 at page 179, and Parcel "A" resubdivision of Lots 151 to 155, inclusive, Section 1, of the subdivision of Lyon Village, as per plat attached to and made a part of a Deed recorded among the land records of said County in Deed Book 272 at page 287.

Exhibit B

Joinder

THIS JOINDER (“Joinder”) is entered into this ____ day of _____ 2012 by the WALTER A. HUTCHERSTON, JR. MARITAL TRUST (the “Lienholder”) under that certain Deed of Trust dated March 23, 2007 (the “Deed of Trust”), recorded in Deed Book 4081 at page 956 among the land records of Arlington County, Virginia, granting a security interest in and to real property commonly referred to as 2825 WILSON BOULEVARD, ARLINGTON, VIRGINIA, 22201 (“Grantor” for the purposes of this Joinder).

RECITALS

R-1. 2825 WILSON, LLC, a Virginia limited liability company (“Grantor” for the purposes of this Joinder), is indebted to Lienholder for certain loan financing (“Loan”) in the original principal amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00); and

R-2. Grantor executed and delivered the Deed of Trust to secure payment of the Loan; and

R-3. Lienholder consents to Grantor granting an Architectural Exterior Preservation Easement to the County Board of Arlington County, Virginia, a body corporate and politic (“Grantee” for the purposes of this Joinder), and Lienholder desires to execute and deliver this Joinder as evidence of such consent.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lienholder hereby joins in the granting of the Architectural Exterior Preservation Easement (the “Easement”) by the Grantor to the Grantee, solely for the purposes of evidencing the Lienholder’s consent to the execution of the Easement and authority to give such consent.

[Signature to follow]

WITNESS the following signature and seals with the intent that this shall be deemed an instrument under seal.

LIENHOLDER:

WALTER A. HUTCHERSTON, JR., MARITAL TRUST

By: _____
Printed Name: _____
Title: _____

STATE OF _____)
CITY COUNTY OF _____) to-wit:

The foregoing Joinder was acknowledged before me this _____ day of _____, 2012 by _____, Trustee of the WALTER A. HUTCHERSTON, JR. MARITAL TRUST on behalf of the Lienholder.

_____ [SEAL]
Notary Public

My commission expires: _____

My registration number: _____

ARCHITECTURAL EXTERIOR PRESERVATION EASEMENT

This ARCHITECTURAL EXTERIOR PRESERVATION EASEMENT (the “Easement”) is as of the date on which it is signed on behalf of the Grantee, by and between C.P. MASTER ASSOCIATES, L.P., a Virginia limited partnership, with its principal office at 4600 N. Fairfax Drive, Ste. 1000, Arlington, Virginia, 22203 (the “Grantor”) and the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic (the “Grantee”).

RECITALS:

- R-1. Grantor is the sole owner in fee simple of certain real property and improvements located in Arlington County, Virginia, fronting 2901-2909 Wilson Boulevard, more particularly identified by RPC 15066019 and described in **Exhibit A** which is incorporated herein by reference (the “Property”).
- R-2. The Property’s building has been recognized as an important structure worthy of preservation by Arlington County. This recognition is reflected by Arlington County’s adoption of the Clarendon Sector Plan and approval of Site Plan No. 418 which permits the development of the property bounded by North Highland Street, North 11th Street, North Garfield Street and Washington Boulevard (the “Penzance Site”) in Clarendon owned by unrelated third parties using transferrable density from the Property. Site Plan No. 418 requires that a preservation easement be placed on the Property and transfers 74,747 s.f. of density rights from the Property to the Penzance Site.
- R-3. After transfer of the density rights from the Property to the Penzance Site, no density other than the existing building will exist or be available for use on the Property after January 24, 2012.
- R-4. Article XI of the Constitution of Virginia provides, in part, that “it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth” and “[i]n furtherance of such policy, the General Assembly may undertake ... the acquisition and protection of historical sites and buildings”.
- R-5. Section 15.2-2306 of the Code of Virginia enables counties and municipalities to provide for the preservation of historic sites and areas.
- R-6. The Arlington County Open Space Master Plan, adopted September 10, 1994, which is a part of the County’s Comprehensive Plan, states that Arlington County should “encourage private donations and the acquisition of open space Easements in order to protect scenic views and natural areas from development” and “cooperate in efforts with other public agencies and the private sector to preserve, protect and interpret cultural and historic sites.”
- R-7. The Grantor desires to grant this Easement in order to preserve a historic building and in order for it to fulfill certain obligations it has in Site Plan No. 418; and

R-8. The Grantee desires to accept this Easement in order to provide for the preservation of the Property's structure and improvements on the terms below.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee agree as follows:

1. Purpose. This Easement is granted over the building envelope of the building fronting 2901-2909 Wilson Boulevard, a two-story structure with a basement located at the southeast corner of the block bounded by Wilson Boulevard, North Fillmore Street, North Garfield Street and North Franklin Street in Arlington County (the "Building") as specifically identified in **Section 3** below. This Easement is granted by the Grantor to the Grantee in order to comply with Condition No. **82B** of Site Plan No. 418 as approved by the Arlington County Board on January 24, 2012, and to ensure that certain architectural and historic features of the Building, as specifically identified in **Section 3** below, will be maintained in their current condition or better for preservation purposes and to prevent any change to the exterior of the building, except as specifically described herein, that would significantly impair or interfere with the preservation of the Building.

2. Grant. Grantor hereby grants to Grantee an easement over the building envelope of the Building, as specifically identified in Section 3 below. The Building utilizes approximately 18,249 s.f. of density on approximately 15,390 s.f. of land area at the Property. Grantor shall preserve and maintain the building envelope of the Building in its configuration and condition as of January 24, 2012, subject to the terms of Condition No. **82B** of Site Plan No. 418 and the terms of this Easement.

3. Exterior Easement. This Easement affects only the building envelope of the Building and does not require the preservation of any aspects of the interior of the Building, nor shall this Easement be construed to prohibit any uses of the Property that existed as of January 24, 2012, or are permitted by the Arlington County Zoning Ordinance.

Grantor shall maintain the following significant architectural elements of the two-story masonry Building with its major façade facing Wilson Blvd. and its minor façade facing North Fillmore Street: the storefronts along Wilson Blvd. have recessed entrances, display glass on small knee walls, and marble accents. The storefronts wrap around the Wilson Blvd. frontage and partially down the North Fillmore frontage. Over the storefronts' windows are retractable inset awning boxes and a projecting overhang that follows the storefront windows on both the Wilson Blvd. and North Fillmore elevations. All these storefront openings shall be maintained. On the second floor and along the rear elevation are metal-frame windows, in the main having four horizontal lights flanking a large fixed plate glass. There are several variations to this window type (see Photographs, defined below) but all are metal-framed. All window openings shall be maintained. An entry to the second floor offices is on the N. Fillmore St. elevation.

Grantor covenants that the primary Building façade material shall not be changed or resided in any manner and that the Building will remain a masonry building.

The Grantor reserves the right to maintain, repair and replace any exterior features of the Building with features that are identical (in design, materials and decorations) to the features that existed as of January 24, 2012. Any maintenance, repair or replacement by Grantor or its agents that is in any way not identical in these respects shall be governed by **Section 5** below.

4. Voluntary Demolition. Grantor may not voluntarily demolish or raze the Building, and shall not cause, authorize or permit others to do so. Voluntary demolition may be permitted only under very limited circumstances after major casualty or destruction, as described in **Section 6**.

5. Modification of Items Subject to Easement; County Manager and HALRB Review. Grantor and Grantee recognize that buildings are not static but may evolve over time. This Easement is not intended to prohibit changes or additions to the Building but rather is to preserve the most important physical aspects of the Building and to ensure that any changes account for the historic and existing character of the building envelope of the Building. Therefore, certain changes to the building envelope of the Building shall be subject to the review and approval processes described in this Easement. In considering a proposal to modify the building envelope of the Building or to build any additional structures or improvements on the Property, the Arlington County Historical Affairs and Landmark Review Board (“HALRB”) will be asked by the Grantor or its successors to consider, in addition to other factors, as part of the design review process, the durability, design integrity, materials and overall harmony of the proposed modifications to the building envelope of the Building. Exterior changes to the Building’s façade, as well as to the back and side elevations of the Building, may be undertaken so long as the proposed changes meet the following general requirements before they are implemented.

Notwithstanding this Easement, any changes to the Property or the Building must meet all applicable Virginia and Arlington County zoning and building requirements.

Except for those modifications specifically identified and exempted herein, all other modifications proposed by the Grantor to be done to the building envelope of the Building or to build any additional structures or improvements on the Property shall be subject to approval in writing by the County Manager after HALRB review as described below.

Grantor shall obtain a review of any proposed modifications as required below and shall, after that review, obtain from the County Manager a determination that the modifications will or will not be detrimental to the historic nature of the building envelope of the Building. The determination by the County Manager shall control whether or not Grantor may proceed with those modifications.

As used herein, “HALRB review” shall mean:

1. submission of the drawings, plans and specifications showing the details of the proposed modification by the Grantor or its agents to the HALRB at least forty-five (45) days before a scheduled HALRB meeting; and

2. consideration of the modifications by the HALRB at its meeting, provision of a written recommendation to the County Manager regarding whether the modifications would preserve the important historical aspects of the building envelope of the Building and, if the HALRB's recommendation states that the modifications would negatively impact the building envelope of the Building, description of how the building envelope of the Building will be impacted.

HALRB review shall be required prior to any of the following:

- a. Construction, enlargement, or addition to the exterior of the Building;
- b. The removal or demolition of all or part of the Building; or
- c. Construction of a new structure or improvement on the Property.

HALRB review shall be completed at the meeting at which the respective proposed modifications are considered by the HALRB, unless otherwise agreed in writing by the Grantor and the Grantee, through its County Manager. After receiving the HALRB's recommendation, the County Manager shall not be bound to follow the HALRB's recommendation but may rely on it in making his or her determination regarding whether the proposed modifications will or will not be detrimental to the historic nature of the building envelope of the Building. If the proposed modifications are found by the County Manager to be detrimental to the historic nature or character of the building envelope of the Building, then they will not be approved by him or her. The County Manager may approve modifications conditioned on changes to the proposal by the Grantor.

The following types of modifications to the building envelope of the Building shall require Historic Preservation program staff review, but not HALRB review, to ensure the compatibility of those modifications with the historic character of the building envelope of the Building:

- a. Changes in the materials or structure of any of the existing elevations of the building envelope of the Building, including major repair and rehabilitation work;
- b. The removal, replacement or enclosure of entrances and window openings;
- c. The installation or modification of commercial signage not in accordance with the signage requirements and guidelines below, or the installation of commercial signage in locations where commercial signage did not exist on January 24, 2012;
- d. The erection of any additional structures or edifices (other than street trees and low-level shrubs) that would affect the visibility of the Building from the street frontages;

- e. The installation of windows, storm windows or doors that do not match the glass configuration of existing windows, window sash(es) or doors;
- f. The installation of any rooftop solar panels, geothermal wells or other types of modifications made for energy-efficiency purposes that require a change, addition or alteration to any portion of the Building that is visible from a public street or public sidewalk;
- g. Installation of expanded air conditioning, heat pump and other mechanical equipment on the roof of the Building. Grantor covenants that any such equipment shall be of a neutral color or a color that blends into existing rooftop equipment of the Building, and acknowledges that rooftop screening may be required if the expanded equipment would be visible from a public street or public sidewalk;
- h. Removal of exterior paint (as to the proper treatment and methods for removal);
or
- i. Signs and lighting hardware prior to their installation.

As used herein “Historic Preservation program staff review” shall entail:

1. submission of the the drawings, plans and specifications showing the details of the proposed modification to the Historic Preservation program staff (“Staff”);
2. review by Staff of the proposed modifications; and
3. preparation by Staff of a written recommendation to the County Manager regarding whether the modifications would preserve the important historical aspects of building envelope of the Building and, if the Staff’s recommendation states that the proposed modifications would negatively impact those aspects, how they will be negatively impacted.

The County Manager shall not be bound to follow the Staff’s recommendation, but may rely on it in making his or her determination regarding whether the proposed modifications will or will not be detrimental to the historic nature of the building envelope of the Building. If the proposed modifications are found by the County Manager to be detrimental to the historic nature or character of the building envelope of the Building, then they will not be approved. The County Manager may approve modifications conditioned on changes by the Grantor to its proposed modifications. In the event that the Staff does not make a written recommendation to the County Manager within five (5) County business days after the Grantor’s submission of complete drawings, plans and specifications, the Grantor may request that the County Manager make his or her determination without a Staff recommendation, and the County Manager will proceed to approve or reject the proposed modifications without a Staff recommendation.

This Easement specifically does not cover (1) modifications to the building envelope of the Building or the Property other than those specifically described herein and (2) the following items which are exempt from this Easement and shall not require HALRB review, Historic Preservation program staff review or County Manager approval, unless otherwise required by Virginia or County law:

- a. Any interior modifications or interior renovations to the Building;
- b. Minor repair to and ordinary maintenance of the building envelope of the Building;
- c. Replacement of the building envelope of the Building with the same materials of identical design;
- d. General landscaping, preparation, and maintenance of fences, lawns, trees, shrubbery, flower beds, and gardens on the Property;
- e. Paving or sidewalk repair on the Property using the same materials or a material approved by Arlington County or adopted in the Clarendon Sector Plan;
- f. Exterior painting of, and the paint colors on, previously painted masonry surfaces;
- g. Removable items and accessories such as window air conditioners, window or door screens, outdoor furniture, mail boxes, building numbers, and any other temporary outdoor features associated with the Building or on the Property;
- h. Replacement of gutters and downspouts;
- i. Removal of unused mechanical equipment, wires, vents, hoods, or other utility-related features on the Building or its roof that cease to be used;
- j. Door replacement, so long as the replacement door matches the glass configuration of the existing doors;
- k. Storm windows that either match the profile and glass configuration of the existing window sash(es) or are a single pane of glass over the existing window(s);
- l. Replacement of existing air conditioning condensers, heat pump units or other mechanical equipment on the roof so long as the replacement equipment is of the same or smaller dimensions as the equipment that is being replaced. Grantor covenants that replacement equipment shall be of a neutral color or a color that blends into existing rooftop equipment of the Building;
- m. The installation of rooftop solar panels, geothermal wells or other modification made for energy-efficiency purposes, that would not require any change, addition

or alteration to any portion of the existing Building that is visible from a public street or public sidewalk;

- n. Modifications to the exterior of the Building that are required by insurance carriers providing insurance on the Building;
- o. Modifications or changes to the Building as required by or established in the standards set forth in any federal, Virginia or Arlington County law;
- p. Repair and replacement of any exterior features of the Building with features that are identical as to design, materials and decorations; or
- q. Modifications or improvements to the Property which are not visible from the public right-of-way (e.g. a Dumpster).

6. Signage. Commercial signage, awnings and doorways on the Building may be modified so long as the signage, awning or doorway as modified otherwise complies with the Arlington County sign ordinance and other local laws and regulations. New signage that is consistent with the signage existing at the Property on January 24, 2012, may be permitted if it is reviewed by Historic Preservation staff and approved by the Zoning Administrator in his or her sole discretion.

The following requirements shall apply to any and all signs on the Building or the Property:

- a. All signs must meet the requirements of the Arlington County Zoning Ordinance;
- b. All signs must meet the requirements of the Virginia Uniform Statewide Building Code (USBC);
- c. Zoning approval, as described more fully in the Arlington County Zoning Ordinance, is required for all new signs. Such approval shall be obtained by the Grantor after receiving the County Manager's approval described in **Section 5** above;
- d. Moveable and flashing signs shall not be used because they are not appropriate given the time period when the Building was constructed;
- e. The signs' size, lettering and illumination shall not overwhelm or destroy the historic façade or decorative features of the Building, nor may they obscure or negatively impact the building envelope of the Building or the knee wall on the Property;
- f. Signs shall be designed to be compatible with the architectural style of the Building as it existed on January 24, 2012; and

- g. Signs and lighting shall be installed in a manner that limits the impact to the building envelope of the Building.

7. Major Casualty or Destruction. In the event that the building envelope of the Building or any material part thereof is damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee of such casualty in writing within fourteen (14) days of the date of the casualty. Such notification shall describe any repair or replacement that has been made to the building envelope of the Building as a result of the casualty. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the building envelope of the Building and/or to protect public safety, may be undertaken by Grantor without the County Manager's prior written approval. Such approval shall not be unreasonably conditioned or delayed. Grantee, through the County Manager, shall respond to Grantee's requested casualty-related repairs within thirty (30) days after receipt of a written request accompanied by a report prepared by a qualified engineer or architect as set out below:

If required by Grantee, the Grantor, at its sole expense, shall submit to Grantee, within a reasonable period of time, a written report prepared by a qualified engineer or architect acceptable to both the Grantee and Grantor, which report shall include the following:

- a. an assessment of the nature and extent of the damage; and
- b. a determination of the feasibility of the restoration of the building envelope of the Building and/or reconstruction of the damaged or destroyed portions of the building envelope of the Building.

If the Building's structure is intact and if, after reviewing the engineering/architectural report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims, Grantor and Grantee agree that the purpose of the Easement will be served by such restoration/reconstruction, then the Grantor shall undertake such restoration/reconstruction consistent with such plans to return the building envelope of the Building to substantially the condition in which it existed on January 24, 2012, as previously modified by permitted changes under the terms of this Easement.

If, however, the report determines that the structure of the building envelope of the Building is unsound (or is destroyed in whole or in substantial part), making restoration/reconstruction impracticable, or if the report determines that restoration/reconstruction is impossible, and Grantor wishes to raze or demolish the building envelope of the Building because of the damage, then, other than temporary emergency work to prevent further damage to the building envelope of the Building or to protect public safety, no further demolition may be undertaken by Grantor until at least thirty (30) days after such report is provided to the County Manager outlining the conditions on the Property.

In addition, if Grantor and Grantee agree that the purpose of the Easement would not be served by such restoration/reconstruction, Grantor may demolish, remove and/or raze the building envelope of the Building upon not less than thirty (30) County business days written

notice to the Grantee. Any redevelopment of the Property shall be subject to all required building codes, the Arlington County Zoning Ordinance and approvals by Arlington County and shall be limited to 18,249 square feet of development.

8. Grantor's Retained Duties. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, the building envelope of the Building.

9. Maintenance. The building envelope of the Building shall be maintained by the Grantor and its agents in the same structural condition as they existed on January 24, 2012. Any damage to the building envelope of the Building shall be promptly repaired by the Grantor or its agents in accordance with the maintenance standards set forth in this Easement. The building envelope of the Building shall be maintained in a professional manner and in the condition and configuration that it existed on January 24, 2012.

10. Photographic Records. Written descriptions and photographs which cannot be recorded with this Easement for technical imaging reasons are on file in the offices of both the Grantee and Grantor. These records include black and white photographs of the Property, building envelope of the Building (collectively the "Photographs"). Notwithstanding the foregoing, the Photographs form an integral part of this Easement and are incorporated herein by this reference as if they were a part of the recorded document. The Grantor and Grantee agree that the Photographs and descriptions provide an accurate representation of the Property and the building envelope of the Building as of the effective date of this Easement.

The Photographs show the distinctive features of the building envelope of the Building. The Photographs also identify locations on the Building where new signage could be located or where existing signage could be relocated.

In the event of any discrepancy between the descriptions and Photographs in the Grantor's and Grantee's respective files, the descriptions and Photographs in the Grantee's possession shall control. It is the intent of the Grantor and the Grantee that the Property, the building envelope of the Building remain essentially unchanged except as specifically provided for herein and, in the case of ambiguity, the Photographs and descriptions referenced herein shall control.

11. Insurance. Grantor shall ensure that the building envelope of the Building is insured by an insurance company rated "A-1" or better by Best's Rating Guide for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance. Property damage insurance shall include change in condition and building ordinance coverage in a form and amount sufficient to completely replace the building envelope of the Building without cost or expense to, or contribution from, the Grantor. The County Board of Arlington County, Virginia, shall be a named additional insured on the insurance policy or policies that satisfy this paragraph.

12. Indemnification. Grantor covenants, for itself, its employees and agents, to save, defend, hold harmless and indemnify the Grantee, and all of its elected and appointed officials,

officers, current and former employees, contractors, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the Grantee for any and all losses, damages, injuries, fines, penalties, costs (including reasonable court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with, Grantor’s acts or omissions, including the acts or omissions of its employees and agents, in fulfillment of the requirements of this Easement. If, after notice by Grantee, Grantor fails or refuses to fulfill its obligations contained in this section, Grantor shall be liable for and shall reimburse the Grantee for any and all expenses, including, but not limited to, reasonable attorneys’ fees incurred and any settlements or payments made.

13. Taxes. Grantor shall pay all real estate taxes and special assessments on the Property when they are due and owing.

14. Enforcement. The Grantee and its representatives may enter upon the Property from time to time, upon reasonable notice to Grantor, for the sole purpose of inspections and enforcement of the terms of this Easement. Upon any violation or threatened violation of this Easement by the Grantor, the Grantee, after reasonable written notice to Grantor, shall be entitled to pursue any cause of action which may be available to the Grantee to enforce the covenants and restrictions set forth in this Easement. If the Grantor is found to have breached any of the terms of this Easement, the Grantor shall be liable to the Grantee for any costs or expenses incurred by the Grantee in enforcing this Easement, including court costs and reasonable attorneys’ fees. Upon request from the Grantee, the Grantor shall provide evidence of insurance coverage, or other paperwork establishing compliance with this Easement.

No failure on the part of the Grantee to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Grantee shall discharge or invalidate such covenant or restriction or any other covenant or restriction hereof, or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor solely for any injury to or change in the building envelope of the Building resulting from causes beyond Grantor’s control, including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Building or to the public resulting from such causes.

15. Control. Nothing in this Easement shall be construed as giving rise, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor’s or Grantor’s tenants’ activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) and any similar statute of the Commonwealth of Virginia.

16. Sale or Transfer. Grantor shall notify Grantee of any transfer of title to the Property by Grantor to another party or other parties. Grantor agrees to reference in whole or by reference the terms of this Easement in any deed or legal instrument by which it transfers any legal interest in the Property. This Easement shall be specifically referenced by Deed Book and

Page Number in the deed or other transferring document. The Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and Easement interest of the Property.

17. Condemnation. If the Property or any interest therein is taken, in whole or in part, by exercise of the power of eminent domain, or an agreement in lieu thereof, the Grantor and Grantee agree that the right to compensation for such condemnation shall belong solely to the Grantor.

18. Assignment. Grantee shall have the right to assign, after written notice to Grantor, Grantee's rights under this Easement only to any entity that is a "qualified organization" within the meaning of § 170(h)(3) of the Internal Revenue Code (or any successor provision then applicable) and a "holder" or "public body" within the meaning of the provisions of §§ 10.1-1009 and 10.1-1700 of the Code of Virginia (or any successor provisions then applicable). Any assignment to a "qualified organization" within the meaning of § 170(h)(3) of the Internal Revenue Code (or any successor provision then applicable) shall be subject to the mutual agreement of both Grantor and Grantee.

19. Successors and Assigns; Intent of the Grantor and Grantee. This Easement shall be binding upon the Grantor, including all of its successors and assigns, future owners of all or any portion of the Property, and their personal representatives and heirs, and shall constitute a servitude upon and touching the Property and shall continue as a servitude running in perpetuity with the Property.

20. Cessation of Assignee of Grantee. If any assignee of the Grantee shall cease to exist, then this Easement and any right of enforcement shall vest in the County Board of Arlington County, Virginia.

21. Notice. In any case where the terms of this Easement require notice to or approval of the Grantee, such notice or request for approval shall be in writing. Notice of an activity and requests for approval must describe the activity in question in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Except as otherwise expressly stated in this Easement, the Grantee shall have thirty (30) days from the receipt of requests for approval (or such longer period as the Grantor and Grantee may agree to in writing) within which to review such request and grant or deny approval. If the Grantee fails to respond within thirty (30) days, Grantor will further contact the Grantee in writing to confirm that the Grantee received the first request, and if after ten (10) days the Grantee has not responded, the Grantor may proceed with the proposed activity.

Written notices by Grantor and any subsequent response by the Grantee shall be deemed given three (3) days after mailing by registered or certified mail, or upon delivery by the Arlington County's Sheriff's Office or by FedEx or similar private courier service which provides receipt of delivery, properly addressed as follows:

if to Grantor: C.P. Master Associates, L.P.
Att'n: Caruthers Properties, L.L.C.
4600 N. Fairfax Drive, Ste. 1000
Arlington, Virginia 22203

with a copy to: Bean, Kinney & Korman, P.C.
Att'n: Real Estate Section
2300 Wilson Blvd, Ste. 700
Arlington, Virginia 22201

if to Grantee: County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

with a copy to: Arlington County Attorney
Arlington County, Virginia
2100 Clarendon Blvd., Ste. 403
Arlington, Virginia 22201

if to HALRB: Staff Director
Historical Affairs and Landmark Review Board (HALRB)
Arlington County, Virginia
2100 Clarendon Boulevard, Ste. 700
Arlington, Virginia 22201

if to Staff: Historic Preservation Coordinator
Arlington County, Virginia
2100 Clarendon Boulevard, Ste. 700
Arlington, Virginia 22201

The Grantor or Grantee or other notice recipient may change the address to which notices are to be sent to him, her or it by giving notice pursuant to this section.

22. Amendment. If any circumstances arise to which amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual agreement jointly amend this Easement provided that no amendment may be made which is inconsistent with the provisions of Condition No. **82B** of Site Plan No. 418, as amended, without the specific written agreement of the County Board of Arlington County, Virginia. Any such amendment shall be in writing and recorded among the land records of Arlington County, Virginia. Nothing in this section shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

23. No Waiver of Sovereign Immunity by Grantee. Nothing in this Easement, nor any action taken by the Grantee pursuant to this Easement, nor any document which arises out of this Easement, shall constitute or be construed as a waiver of either the sovereign immunity or

governmental immunity of the Grantee, or of its elected and appointed officials, officers and employees.

24. No Rights in Third Parties. The Grantor and Grantee mutually agree that no provision of this Easement shall create in the public, or in any person or entity other than the Grantor and Grantee (except as noted in Site Plan No. 418), rights as a third-party beneficiary hereunder, or authorize any person or entity to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Easement or otherwise.

25. Severability. If any term or provision of this Easement, or the application thereof to any person or circumstance, shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement shall be valid and enforced to the fullest extent permitted by law.

26. Compliance with Laws. In performing its obligations under this Easement, the Grantor shall comply with applicable federal, state, and local laws, ordinances, regulations, policies and procedures.

27. Entire Agreement; Applicable Law. This Easement contains the entire agreement of the Grantor and Grantee with respect to the subject matter hereof. The Grantor and Grantee expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any, that are expressly stated herein. This Easement shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Grantor and Grantee. This Easement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by the Grantor or Grantee concerning this Easement shall be filed in the Circuit Court of Arlington County, Virginia, and in no other court whatsoever.

28. Approval of Easement by the Grantee. The term “days”, when used in this Easement, unless otherwise specifically noted, means “calendar days”. This Easement shall not become effective unless and until the County Board of Arlington County approves and accepts this Easement and it is signed on behalf of the Grantee. If this Easement is not approved by the County Board and executed by an authorized person, then no liability whatsoever shall accrue to the Grantor or Grantee, and the Grantor and Grantee shall have no obligations whatsoever to each other.

29. Incorporation of Recitals. The Recitals set forth hereinabove are incorporated into this Easement and made a part hereof by this reference.

GRANTOR:

C.P. MASTER ASSOCIATES, L.P.

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY/CITY OF _____) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2012 by _____ as _____ of C.P. Master Associates, L.P., a Virginia limited partnership, on behalf of C.P. Master Associates, L.P.

_____[SEAL]
Notary Public

My commission expires:

Registration number:

GRANTEE:

County Board of Arlington County, Virginia

By: _____
Name: Barbara M. Donnellan
Title: County Manager

COMMONWEALTH OF VIRGINIA)
COUNTY OF ARLINGTON) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2012 by Barbara M. Donnellan as County Manager of Arlington County, Virginia, on behalf of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia.

_____ [SEAL]
Notary Public

My commission expires:

Registration number:

Approved as to form:

Name: Stephen A. MacIsaac
Title: County Attorney

Acknowledged:

Arlington County Historical Affairs and Landmark Review Board

Name: Christopher Wilson
Title: Chairman

Exhibit A

Legal Description

All that certain lot or parcel of land situate and lying in Arlington County, Virginia, and more particularly described as follows:

Lots A and B, Section Two, Clarendon, a resubdivision of Lots 83, 84, 85, 86 and 87, Section 2, Clarendon, original plat recorded in Deed Book 132 at page 279 and resubdivision plat recorded in Deed Book 823 at page 545, all among the land records of Arlington County, Virginia.