

INTERIM AGREEMENT
(Lee Village at Silver Lake LLC)

This Interim Agreement (“Agreement”) is entered into as of the ____ day of _____, 2007, by and between the Board of Supervisors of Fairfax County, Virginia, a political subdivision of the Commonwealth of Virginia in its proprietary capacity, and not in its governmental or regulatory capacity, having an address at c/o Office of the County Executive, 12000 Government Center Parkway, Suite 552, Fairfax, VA 22035, including its successors and/or assigns (hereinafter, the “County”) and Lee Village at Silver Lake, LLC, including its successors and/or assigns (hereinafter, “Developer”).

Recitals

R-1 The County owns approximately 6.6 acres of land located near the intersection of Beulah Street and Manchester Lakes Boulevard, Tax Map 91-3 ((9)) 8b, (the “Site”).

R-2 Lee Village at Silver Lake, LLC (formerly referred to as Public Private Alliances, LLC) submitted an unsolicited proposal on June 29, 2006 (the “Proposal”) under the Public-Private Education Facilities and Infrastructure Act (“PPEA”) in order to form a public-private partnership to provide the County certain design, permitting, development, land use planning, financing, and construction services in connection with the proposed construction of (i) a new library (“Library”), (ii) a joint use structured parking facility (“Structured Parking Facility”), and (iii) residential housing called Lee Village at Silver Lake (“Residential Housing”) on the Site (“Project”).

R-3 The County accepted the Proposal for review and consideration, advertised receipt of the Proposal and requested competing proposals. The competition period ended on February 1, 2007 with no competing proposals submitted. The parties contemplate that they will enter into an agreement relating to the development of the Project, the terms of which have not yet been determined.

R-4 On March 12, 2007, the Board of Supervisors unanimously authorized Developer to file land use applications for the Site on its behalf and requested expedited and concurrent processing of the Comprehensive Plan Amendment and other land use applications on the Project.

R-5 On August 6, 2007, the Board of Supervisors unanimously authorized the County Executive and County staff to negotiate an Interim Agreement with Developer for the Project and to work towards the delivery of all Project components.

R-6 Developer and the County have been working together on an informal basis to further the design and the zoning and land use approvals for the Project and have been discussing possible structures for the Project.

R-7 In order to meet the projected Project completion date, the parties acknowledge that it is necessary to file the necessary applications for zoning and land use approvals prior to execution of a final agreement for the Project.

R-8 Notwithstanding that Developer does not have a final agreement regarding the Project and with full recognition that Developer may be unsuccessful in concluding a final agreement, County is prepared to agree that Developer may pursue, in accordance with the terms hereof, a zoning application for the Project, subject to County's right to terminate at any time.

Terms

Intending to be legally bound, and for good and valuable consideration, the County and Developer now agree as follows:

1. Agreement Regarding Zoning Application

- (a) Zoning and land use applications shall be in accordance with the scope of the Project as set forth in the Proposal. Developer shall consult and coordinate with County in regards to the design of the Project and all planning and zoning submissions. The Developer shall provide the County (in its proprietary capacity) a copy of all zoning applications and submissions concurrent with the filing with or submission to the applicable County agencies for the County's review and consent, which consent may be granted or withheld in County's sole and absolute discretion.
- (b) The County will reimburse the Developer monthly for 50% of its costs and expenses relating to the zoning for the entire site and for 100% of its costs and expenses relating to the planning and zoning of the Library and the Structured Parking Facility including, but not limited to, planning, architectural and legal expenses, up to a maximum amount of \$480,000 (see Exhibit I). If unbudgeted expenditures are incurred or recommended by Developer, the County will consider increasing this maximum amount in its sole discretion. Payments by the County shall be made on the basis of invoices and supporting documentation submitted by Developer. Developer agrees to continue to pursue the necessary planning and zoning approvals regardless of whether it incurs costs and expenses in excess of the amount reimbursed by the County, however, Developer shall not be required to continue performance beyond March 1, 2008 except to the extent additional funds are allocated by the County.
- (c) Either party may terminate this agreement for convenience for any reason or no reason at any time or for cause by giving ten (10) days' written notice to the other party. Upon notice of termination, Developer shall cease all activities on the Project and shall submit invoices to the County for costs and expenses incurred as of the date of termination for payment in accordance with the terms hereof. In the

event of termination, the County will pay the Developer a termination fee equal to its actual costs and expenses for (i) 50% of the costs of zoning of the entire site that are not reimbursable under paragraph 1(b) above and (ii) 50% of the costs associated with the Residential Housing portion of the Project, not to exceed a total of \$250,000 for 1(c)(i) and 1(c)(ii) above (see Exhibit II) in addition to payment of other amounts due under the terms of this Agreement. The termination fee will be paid within 30 days of the termination.

- (d) In the event this agreement is terminated for any reason, or for no reason, and the County wishes to receive and take title to any and all work product produced by the Developer and its consultants associated with the Project, including any plans and specifications prepared by the Developer's architect, the County will be required to reimburse the Developer for the remaining costs and expenses incurred by Developer on the Project not paid under paragraphs 1(b) or 1(c) above, not to exceed \$250,000. Except for payments to its consultants and others of amounts reimbursed under this Agreement, Developer shall have no liability associated with the use by the County of the plans and specifications or other work product. Developer shall cause its consultants to comply with the obligations set forth in this paragraph.

2. Designation of Developer as Agent

- (a) County grants to Developer the limited revocable right to pursue as Developer for County a rezoning of the Property, in general accord with the Proposal, subject to the limitations set forth in this Agreement.
- (b) Developer, as the County's representative, was authorized, as of March 12, 2007, to commence land use planning, design and other work activities necessary to advance the comprehensive plan amendment and rezoning process for all components of the Project. The County and Developer acknowledge and agree that these activities commenced on March 12, 2007 and ratify all actions taken through the date hereof.
- (c) Developer agrees that it shall not execute any proffered conditions for the Property without the prior written consent of the County, which consent may be granted or withheld in County's sole and absolute discretion.
- (d) Developer hereby acknowledges and agrees that the agency created hereby is temporary and revocable immediately by notice from County to Developer. Upon any revocation by County, Developer shall immediately cease all work with respect to the zoning and land use approvals relating to the Project and shall promptly submit invoices to the County for the termination fee and for all costs and expenses which have been incurred as of the date of County's revocation,

which costs and expenses shall be reimbursed in accordance with the terms hereof.

3. General Provisions

- (a) It is understood and agreed that the County has entered into this Agreement solely in its proprietary capacity and not in its governmental or regulatory capacity. The County's entering into this Agreement in its proprietary capacity shall in no manner be deemed to affect, limit or obligate the Board of Supervisors of Fairfax County in its governmental or regulatory capacity and/or the County of Fairfax, Virginia, or its agencies, departments or divisions thereof with respect to any actions the foregoing may desire or be requested to undertake that pertain in any manner to this Agreement and the provision hereof, including without limitation, any approval requests, inspections or other matters involving governmental authorities.
- (b) This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the Commonwealth of Virginia and the applicable laws of the United States of America.
- (c) Except for either party's right to terminate this Agreement, this Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the County or Developer, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.
- (e) This Agreement shall be binding upon and inure to the benefit of the County, solely in its proprietary capacity and not in its governmental or regulatory capacity and Developer, and their respective successors and assigns, forever.
- (f) If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
- (g) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- (h) For purposes of this Agreement all notices must be sent by courier service, facsimile or U.S. mail as follows:

If to Developer:

Lee Village at Silver Lake, LLC
C/O Edgemoor Real Estate Services, LLC
7500 Old Georgetown Road
Bethesda, Md. 20814

Attn: Claudia M. Meer _____
Facsimile No. 301-272-1912 _____

If to County:

Fairfax County
Office of the County Executive
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035
Attn: County Executive
Facsimile No.: 703-324-3956

With a copy to:

Fairfax County
Office of the County Executive
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035
Attn: David P. Bobzien
Facsimile No.: 703-324-2665

[Signatures On Following Pages]

WITNESS the following signatures:

DEVELOPER:

LEE VILLAGE AT SILVER LAKE, LLC

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2007,
by _____.

Notary Public

My Commission Expires: _____

Registration Number: _____

[SIGNATURE PAGE TO INTERIM AGREEMENT]

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, acting in its proprietary capacity and not its governmental or regulatory capacity.

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2007,
by _____.

Notary Public

My Commission Expires: _____

Registration Number: _____

[SIGNATURE PAGE TO INTERIM AGREEMENT]

Exhibit I
100% Library/Structured Parking Facility Costs and 50% Entire Site Land Use Costs
Budget

Exhibit II
100% Residential Housing Costs and 50% Entire Site Land Use Costs
Budget