

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 14, 2014**

**AGENDA**

|       |                 |  |
|-------|-----------------|--|
| 8:30  | <b>Held</b>     | Reception – Burmester Day<br>Conference Center Reception Area  |
| 9:30  | <b>Done</b>     | Presentations  |
| 10:30 | <b>Approved</b> | Board Organization and Appointments of Board Members to<br>Various Regional and Internal Boards and Committees |
| 10:40 | <b>Done</b>     | Items Presented by the County Executive  |

**ADMINISTRATIVE  
ITEMS**

|   |                 |   |
|---|-----------------|---|
| 1 | <b>Approved</b> | Supplemental Appropriation Resolution AS 14131 for the Fairfax<br>County Economic Development Authority to Accept Grant Funding<br>from the Commonwealth of Virginia – Governor’s Opportunity<br>Fund for Cvent, Inc. (Providence District) |
| 2 | <b>Approved</b> | Authorization to Advertise a Public Hearing on Proposed Award of<br>Taxicab Operator Certificates Pursuant to Chapter 84.1 of the<br>Fairfax County Code  |
| 3 | <b>Approved</b> | Streets into the Secondary System (Mount Vernon and Sully<br>Districts)   |

**ACTION ITEMS**

|   |                 |   |
|---|-----------------|---|
| 1 | <b>Approved</b> | Approval of the Board of Supervisors’ Meeting Schedule for<br>Calendar Year 2014 and Authorization for the Chairman to<br>Postpone a Scheduled Meeting in the Event of Weather or Other<br>Hazardous Conditions     |
| 2 | <b>Approved</b> | Expression of No Opposition to Virginia Department of<br>Transportation Project to Construct a Roundabout at the Pleasant<br>Valley Road (Route 609) and Braddock Road (Route 620)<br>Intersection (Sully District) |
| 3 | <b>Approved</b> | Board Action to Restructure the Financing and Governmental<br>Structure of the Workhouse Arts Center to Ensure its Long-Term<br>Sustainability  |

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 14, 2014**

**INFORMATION  
ITEMS**

|       |              |  |
|-------|--------------|--|
| 1     | <b>Noted</b> | Recognition of Comprehensive Annual Financial Reports and the Annual Budget by the Government Finance Officers Association; Performance Measurement Program by the International City/County Management Association; and Investment Policy by the Association of Public Treasurers |
| 2     | <b>Noted</b> | Contract Award – Government Relations Consultant   |
| 3     | <b>Noted</b> | Planning Commission Action on Application 2232-M13-14, Fairfax County School Board (Mason District)  |
| 10:50 | <b>Done</b>  | Matters Presented by Board Members   |
| 11:40 | <b>Done</b>  | Closed Session   |

**PUBLIC  
HEARINGS**

|      |  |   |
|------|--|---|
| 3:30 | <b>Approved</b>  | Public Hearing on RZ 2009-PR-022 (James Hollingsworth) (Providence District)  |
| 3:30 | <b>Approved</b>  | Public Hearing on SE 2013-SU-018 (The Centreville Pre-School, Inc.) (Sully District)  |
| 3:30 | <b>Deferred Indefinitely</b>   | Public Hearing on RZ 2013-PR-007 (EYA Development, LLC) (Providence District)   |
| 3:30 | <b>Approved</b>  | Public Hearing on RZ 2013-PR-006 (Fairfax Plaza, LLC) (Providence District)   |
| 3:30 | <b>Deferred to 2/11/14 at 3:30 p.m.</b>                                    | Public Hearing on PCA 86-D-108 (William Weiss) (Dranesville District)   |
| 3:30 | <b>Approved</b>  | Public Hearing on SE 2013-HM-012 (Blue Ocean Development, Inc.) (Hunter Mill District)  |
| 4:00 | <b>Approved</b>  | Public Hearing on RZ 2013-LE-008 (Penn-Daw Associates Limited Partnership) (Lee District)   |
| 4:00 | <b>Approved</b>  | Public Hearing on RZ 2012-BR-020 (Eastwood Properties, Inc.) (Braddock District)  |
| 4:00 | <b>Public Hearing Held; Decision Only Deferred to 1/28/14 at 3:30 p.m.</b> | Public Hearing on Proposed Area Plans Review Nominations 09-IV-IMV and 09-IV-15MV, Located Northwest of Richmond Highway, and Northeast Huntington Avenue (Mount Vernon District) |

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
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**PUBLIC  
HEARINGS  
(Continued)**

- |      |                                  |   |
|------|----------------------------------|---|
| 4:00 | <b>Deferred<br/>Indefinitely</b> | Public Hearing to Consider Amending Fairfax County Code Section 82-5A and Appendix G (Residential Permit Parking Districts) Related to Administration and Eligibility |
| 4:00 | <b>Approved</b>                  | Public Hearing on a Proposal to Abandon a Part of Lyles Road and Convey the Abandoned Right-of-Way to ECHO, Incorporated (Lee District)                               |
| 4:00 | <b>Approved</b>                  | Public Hearing on Amendment to the Code of the County of Fairfax, Chapter 2, Article 2 (Disposal of Property Seized by Police)  |

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*Fairfax County, Virginia*  
**BOARD OF SUPERVISORS**  
**AGENDA**

**Tuesday**  
**January 14, 2014**

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9:30 a.m.

**PRESENTATIONS**

- CERTIFICATE – To recognize the Westfield High School Girls Hockey team for winning the state championship. Requested by Supervisor Frey.
- CERTIFICATE – To recognize Fairfax County high school football coaches for their efforts to bring the Heads Up Football program to Fairfax County. Requested by Supervisors Herrity and Frey.
- RESOLUTION – To recognize John W. Peterson for his accomplishments on behalf of the environment, resulting in a National Association of Conservation Districts Distinguished Service Award. Requested by Supervisors Herrity and Cook.
- PROCLAMATION – To designate January 14, 2014, as Jessica and Raymond Burmester Day in Fairfax County. Requested by Chairman Bulova and Supervisor Cook.
- PROCLAMATION – To designate January 2014 as Mentoring Month in Fairfax County. Requested by Chairman Bulova.

**STAFF:**

Merni Fitzgerald, Director, Office of Public Affairs  
Bill Miller, Office of Public Affairs

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Board Agenda Item  
January 14, 2014

10:30 a.m.

Board Organization and Appointments of Board Members to Various Regional and Internal Boards and Committees

ENCLOSED DOCUMENTS:

Attachment 1 - Listing of Interjurisdictional Committees and Inter- and Intra-Governmental Boards and Committees for Calendar Year 2014

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

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**INTERJURISDICTIONAL COMMITTEES AND INTER- AND INTRA-  
GOVERNMENTAL BOARDS AND COMMITTEES FOR CALENDAR  
YEAR 2014**

**INTERJURISDICTIONAL COMMITTEES**

**ALEXANDRIA**

**ARLINGTON**

**DISTRICT OF COLUMBIA**

**FAIRFAX CITY**

**FALLS CHURCH**

**FORT BELVOIR (Board of Advisors/Base Realignment and  
Closure)**

**HERNDON**

**LOUDOUN COUNTY**

**PRINCE WILLIAM**

**VIENNA**

**INTERGOVERNMENTAL BOARDS AND COMMITTEES**  
(including Federal and State)

**COMMUNITY CRIMINAL JUSTICE BOARD**

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS  
(COG)**

**COG BOARD OF DIRECTORS**

**COG METROPOLITAN WASHINGTON AIR QUALITY  
COMMITTEE**

**COG CHESAPEAKE BAY AND WATER RESOURCES  
POLICY COMMITTEE**

**COG CLIMATE, ENERGY AND ENVIRONMENTAL  
POLICY COMMITTEE**

**COG EMERGENCY PREPAREDNESS COUNCIL**

COG HUMAN SERVICES AND PUBLIC SAFETY  
COMMITTEE

COG REGION FORWARD COMMITTEE

COG TASK FORCE ON REGIONAL WATER SUPPLY  
ISSUES

COG NATIONAL CAPITAL REGION TRANSPORTATION  
PLANNING BOARD

CLEAN AIR PARTNERS

COLUMBIA PIKE TRANSIT INITIATIVE POLICY COMMITTEE

FAIRFAX PARTNERSHIP FOR YOUTH, INCORPORATED

GEORGE MASON UNIVERSITY FAIRFAX CAMPUS ADVISORY  
BOARD

INOVA HEALTH CARE SERVICES BOARD

INOVA HEALTH SYSTEMS BOARD

**METROPOLITAN WASHINGTON AIR QUALITY COMMITTEE  
(MWAQC)- formerly Clean Air Partners**

**NORTHERN VIRGINIA REGIONAL COMMISSION (NVRC)**

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION (NVTC)  
(including WMATA and VRE Representatives)**

**PHASE I DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT COMMISSION**

**PHASE II DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT COMMISSION**

**POTOMAC WATERSHED ROUNDTABLE**

**ROUTE 28 HIGHWAY TRANSPORTATION IMPROVEMENT DISTRICT  
COMMISSION**

**VACo BOARD OF DIRECTORS (REGIONAL DIRECTORS)**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
(WMATA)**

(Appointed by NVTC. The Board of Supervisors makes recommendations for consideration.)

**INTRAGOVERNMENTAL AND OTHER COMMITTEES**

**50+ COMMITTEE**  
(Committee of the Whole)

**AUDIT COMMITTEE**

**BOARD PROCEDURES COMMITTEE**

**BUDGET POLICY COMMITTEE**  
(Committee of the Whole)

**COMMUNITY REVITALIZATION AND REINVESTMENT COMMITTEE**  
(Committee of the Whole)

**DEVELOPMENT PROCESS COMMITTEE**  
(Committee of the Whole)

**ECONOMIC ADVISORY COMMITTEE**  
(Committee of the Whole)

**ENVIRONMENTAL COMMITTEE**  
(Committee of the Whole)

**HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE**  
(Committee of the Whole)

**HUMAN SERVICES COMMITTEE**  
(Committee of the Whole)

**INFORMATION TECHNOLOGY COMMITTEE**  
(Committee of the Whole)

**LEGISLATIVE COMMITTEE**  
(Committee of the Whole)

**PERSONNEL AND REORGANIZATION COMMITTEE**  
(Committee of the Whole)

**PUBLIC SAFETY COMMITTEE**  
(Committee of the Whole)

**TRANSPORTATION COMMITTEE**  
(Committee of the Whole)

Board Agenda Item  
January 14, 2014

10:40 a.m.

Items Presented by the County Executive

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ADMINISTRATIVE - 1

Supplemental Appropriation Resolution AS 14131 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Commonwealth of Virginia – Governor’s Opportunity Fund for Cvent, Inc. (Providence District)

ISSUE:

Board of Supervisors’ approval of Supplemental Appropriation Resolution AS 14131 for the Fairfax County Economic Development Authority (FCEDA) to accept grant funding in the amount of \$1,000,000 from the Commonwealth of Virginia as part of the Governor’s Opportunity Fund (GOF) for Cvent, Inc. This grant will assist the County with the expansion of Cvent, Inc. No local cash match is required. However, Fairfax County will provide transportation improvements in the Providence District, near the firm’s new headquarters.

RECOMMENDATION:

The County Executive recommends that the Board approve Supplemental Appropriation Resolution AS 14131 for the FCEDA to accept the grant funding in the amount of \$1,000,000 to convey to Cvent, Inc. as the state portion of the grant. No local cash match will be required. Fairfax County will provide transportation improvements in the Providence District. The transportation improvements identified for the GOF match (i.e. the Jones Branch Connector) are already planned and funded within the Fairfax County Department of Transportation, and will not require any additional County expenditure.

TIMING:

Board approval is requested on January 14, 2014.

BACKGROUND:

Fairfax County competed with other jurisdictions for the Cvent, Inc. headquarters expansion. As part of the negotiations, the Commonwealth of Virginia supported the expansion of the company in Fairfax County with a GOF grant. The grant is a performance grant and a performance agreement has been executed to ensure that, on behalf of Fairfax County and the Commonwealth of Virginia, the projected growth occurs.

As part of the GOF grant, Fairfax County must provide a “local match” which will be in the form of road improvements relevant to the firm’s new location in Tysons Corner.

Board Agenda Item  
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Road improvements (i.e. the Jones Branch Connector) in the vicinity of the company's new location were identified to provide the match.

In addition, as stated in the Performance Agreement, the Commonwealth will provide the following incentive. Please note that these funds do not pass through the County nor do they require County match.

- Estimated funding of \$250,000 from the Virginia Jobs Investment Program (VJIP).

FISCAL IMPACT:

Funding in the amount of \$1,000,000 will be provided to Fairfax County to be made available to Cvent, Inc. for the costs of the tenant build-out of its new headquarters facility in Tysons Corner as permitted by Section 2.2-115(C) of the Virginia Code and as permitted by the current GOF statute. There is no local cash match required. However, Fairfax County must provide road improvements relevant to the firm's new headquarters. These improvements have already been identified, planned, and funded within the Fairfax County Department of Transportation. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards. One payment in the amount of \$1,000,000 will be made to Cvent, Inc.

If Cvent, Inc. does not achieve its performance metrics as described in the Performance Agreement executed between Fairfax County and Cvent, Inc., then Cvent, Inc. is responsible for paying that portion of the grant that it did not achieve back to Fairfax County. Fairfax County, in turn, will then refund to the Commonwealth of Virginia the funds it received from Cvent, Inc. Fairfax County will not be held responsible for the financial shortfalls associated with performance metrics not met. The FCEDA will monitor the performance metrics and will provide the office of the County Executive information on the number of jobs and capital investment achieved during the performance period.

CREATION OF NEW POSITIONS:

No County positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1: Supplemental Appropriation Resolution AS 14131

Attachment 2: Cvent, Inc. Performance Agreement

Attachment 3: Notification of GOF Award from the Commonwealth of Virginia

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STAFF:

Robert Stalzer, Deputy County Executive  
Dr. Gerald L. Gordon, President, FCEDA  
Catherine Riley, Vice President, FCEDA

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**SUPPLEMENTAL APPROPRIATION RESOLUTION AS 14131**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on January 14, 2014, at which a quorum was present and voting, the following resolution was adopted:

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2014, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

|         |   |             |
|---------|---|-------------|
| Fund:   | 500-C50000, Federal-State Grant Fund                  |             |
| Agency: | G1616, Economic Development Authority                 | \$1,000,000 |
| Grant:  | 1160005-2014, Governor's Opportunity Fund-Cvent, Inc. |             |

Reduce Appropriation to:

|         |   |             |
|---------|---|-------------|
| Agency: | G8787, Unclassified Administrative Expenses | \$1,000,000 |
| Fund:   | 500-C50000, Federal-State Grant Fund        |             |

Source of Funds: Virginia Economic Development Partnership, \$1,000,000

A Copy - Teste:

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Catherine A. Chianese  
Clerk to the Board of Supervisors

**GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND**

**PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this 22 day of October, 2013, by and between the **COUNTY OF FAIRFAX, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **CVENT, INC.**, Delaware corporation authorized to transact business in the Commonwealth (the "Company").

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$1,000,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to lease, improve, equip and operate, or cause to be leased, equipped and operated, a headquarters facility at existing adjoining buildings at located at 1707, 1709, and 1710 Solutions Drive, Tysons Corner, Virginia 22102 and further identified by Fairfax County Tax Map No. 29-3 ((15)) 4 -E, F, and D respectively (the "Facility"), thereby making or causing to be made a significant Capital Investment, as hereinafter defined, and creating and maintaining a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Locality is willing to provide the funds from the GOF Grant to the Company, with the expectation that the Company will meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the proceeds of the GOF Grant, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the GOF Grant under certain circumstances;

WHEREAS, it is anticipated that leasing, improving, equipping and operating the Facility will entail a capital expenditure of approximately \$7,032,430, of which approximately \$2,100,000 will be invested in a capitalized lease, \$4,486,500 will be invested in leasehold improvements, and approximately \$445,930 will be invested in furniture, fixtures and equipment;

WHEREAS, it is anticipated that leasing, improving, equipping and operating the Facility will further entail the creation and maintenance of 400 New Jobs; and

WHEREAS, the Locality has determined that the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure (including rent payments under a commercial lease) by or on behalf of the Company on or after June 1, 2013 in taxable real property, taxable tangible personal property, or both, at the Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer (or other lessor) and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements (including fees for architecture, engineering and construction services) by or on behalf of the Company will qualify as Capital Investment. The Company may count as Capital Investment capital expenditures made on or after June 1, 2013 related to equipment and furniture purchased or leased to accommodate persons holding the New Jobs who may be temporarily housed at the Company’s existing facilities in the Locality, if that equipment and furniture is moved to the Facility as the Facility becomes available for occupancy by the Company.

“Maintain” means that the New Jobs created pursuant to the GOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility by the Company for which the standard fringe benefits (including medical insurance) are provided by the Company for the employee. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 451 full-time jobs at the Company’s existing facilities in the Locality as of June 1, 2013. The Company may count as New Jobs positions created on or after June 1, 2013 that are first housed at the Company’s existing facilities in the Locality, if those New Jobs are then moved to the Facility as the Facility becomes available for occupancy by the Company.

“Performance Date” means September 30, 2016. If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means, as of the Performance Date, the Company’s obligations to make or cause to be made Capital Investments of at least \$7,032,430, to create and Maintain at least 133 New Jobs paying an average annual wage of at least \$79,268 and to create and Maintain an additional 267 New Jobs paying an average annual wage of at least \$53,782.

“Virginia Code” means the Code of Virginia of 1950, as amended.

## **Section 2. Targets.**

By the Performance Date, the Company will lease, improve, equip and operate the Facility in the Locality, and make or cause to be made a Capital Investment of at least \$7,032,430. Further, by the Performance Date, the Company will create and Maintain at least 400 New Jobs, with at least 133 of the New Jobs paying an average annual wage of at least \$79,268 and the remaining 267 New Jobs paying an average annual wage of at least \$53,782.

The Locality hereby strongly encourages the Company to ensure that at least thirty percent (30%) of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of at least 133 of the New Jobs of at least \$79,268 is more than the prevailing average annual wage in the Locality of \$76,828. The Locality is not a high-unemployment locality, having an unemployment rate for 2012, which is the last year for which such data is available, of 4.2% as compared to the 2012 statewide unemployment rate of 5.9%. The Locality is not a high-poverty locality, with a poverty rate for 2011 which is the last year for which such data is available, of 6.8% as compared to the 2011 statewide poverty rate of 11.6%.

## **Section 3. Disbursement of Grants.**

By no later than December 31, 2013, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by December 31, 2013, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The GOF Grant in the amount of \$1,000,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the

GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets. The Company will use the GOF Grant proceeds to defray the cost of the build-out of the Facility or the cost of training its employees, as permitted by Section 2.2-115(D) of the Virginia Code.

**Section 4. Break-Even Point; State and Local Incentives.**

VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs with the Commonwealth’s expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

| <u>Category of Incentive:</u>                         | <u>Total Amount</u> |
|---|---------------------|
| GOF Grant   | \$1,000,000         |
| Virginia Jobs Investment Program (“VJIP”) (Estimated) | 250,000             |

Provided that the Commonwealth pays the GOF Grant to the Locality, the Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

| <u>Category of Incentive:</u>   | <u>Total Amount</u> |
|---|---------------------|
| Acceleration of the Construction of the Jones Branch Connector<br>(Estimated Cost to the Locality of such Acceleration) | \$1,000,000         |

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality on or after September 1, 2013 associated with the acceleration of the construction of the Jones Branch Connector total less than the \$1,000,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional non-cash grant in the nature of public infrastructure improvements, to or for the benefit of the Company, of the difference at the Performance Date, so long as the Company has met its Targets. Any changes to the Locality’s incentives from the improvements described above will require the prior approval of the Company and VEDP.

The Company acknowledges and agrees that the acceleration of the construction of the Jones Branch Connector was an important factor in the Company’s decision to lease, improve, equip and operate the Facility in the Locality. The Locality believes that the construction of the Jones Branch Connector will benefit the Company, surrounding businesses and residents, and the traveling public.

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

**Section 5. Repayment Obligation.**

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make or cause to be made a Capital Investment of at least \$5,000,000 and create and Maintain at least 50 New Jobs paying an average annual wage of at least \$76,828 in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire GOF Grant must be repaid by the Company to the Locality.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) are only applicable if the Company has met the statutory minimum eligibility requirements for a GOF Grant, as described in subsection (a). Solely for purposes of repayment, the GOF Grant is to be allocated as \$500,000 (50%) for the Company's Capital Investment Target and \$500,000 (50%) for its New Jobs Target. Further, the \$500,000 allocated to the New Jobs Target shall be allocated as \$250,000 for the 133 New Jobs required to have an average annual wage of at least \$79,268 and \$250,000 for the additional 267 New Jobs required to have an average annual wage of at least \$53,782. If the Company has met at least 90% of all of the Targets at the Performance Date (meaning that it has made Capital Investments of at least \$6,329,187, has created and Maintained at least 120 New Jobs paying an average annual wage of at least \$79,268, and has created and Maintained another 240 New Jobs paying an average annual wage of at least \$53,782), then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least 90% of any of its Targets, the Company shall repay to the Locality that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$5,625,944 (representing a 20% shortfall in its achievement of the Capital Investment Target), only 80 New Jobs paying an average annual wage of at least \$79,268 have been created and Maintained (representing a 40% shortfall in its achievement of that portion of the New Jobs Target requiring the higher wages), and only 187 additional New Jobs paying an average annual wage of at least \$53,782 have been created and Maintained (representing a 30% shortfall in its achievement of that portion of the New Jobs Target allowing the lower wages), the Company shall repay to the Locality 20% of the moneys allocated to the Capital Investment Target (\$100,000), 40% of the moneys allocated to that portion of the New Jobs Target requiring the higher wages (\$100,000), and 30% of the moneys allocated to that portion of the New Jobs Target allowing the lower wages (\$75,000).

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant to the Locality. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets.

(d) *Repayment Dates: Such repayment shall be due from the Company to the Locality within ninety days of the Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality shall use its reasonable efforts to recover such funds, including legal action for breach of the Company's obligation to make repayments as required by this Agreement. The Company shall be liable for all attorneys' fees and costs incurred by the Locality in connection with any legal action brought to collect such funds. The Locality shall have no responsibility for the repayment of any sums hereunder unless said sums have been received by the Locality from the Company.

**Section 6. Company Reporting.**

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at December 31, 2015 and covering the period through the prior September 30, and at such other times as the Locality or VEDP may reasonably require. Such progress reports shall substantiate the amount of the Capital Investment, the number of New Jobs created and Maintained, the average annual wages paid to those employees (broken out by the number of New Jobs paying at least \$79,268 and those paying less than \$79,268) and the average level of fringe benefits provided to all of the employees. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

**Section 7. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Cvent, Inc.  
8180 Greensboro Drive, Ninth Floor  
McLean, VA 22102  
Attention: Jason Wooten

with a copy to:

Cvent, Inc.  
8180 Greensboro Drive, Ninth Floor  
McLean, VA 22102  
Attention: Legal

if to the Locality, to:

County of Fairfax, Virginia  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035-0066  
Attention: Mr. Edward L. Long, Jr., County  
Executive

with a copy to:

David P. Bobzien, Esquire  
County Attorney  
County of Fairfax, Virginia  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0066

and with a further copy to:

Fairfax County Economic Development  
Authority  
8300 Boone Blvd, Suite 450  
Tysons Corner, VA 22182  
Attention: Gerald L. Gordon, Ph.D., President  
and CEO

if to VEDP, to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19<sup>th</sup> Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19<sup>th</sup> Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: General Counsel

**Section 9. Miscellaneous.**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Fairfax, and such litigation shall be brought only in such court. In the event of any such litigation, the Locality shall notify the President and Chief Executive Officer of VEDP in writing.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF FAIRFAX, VIRGINIA**

By Edward L. Long Jr.  
Name: EDWARD L. LONG JR.  
Title: COUNTY EXECUTIVE  
Date: 10/23/13

**CVENT, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



*COMMONWEALTH of VIRGINIA*

*Office of the Governor*

James S. Cheng  
Secretary of Commerce and Trade

September 18, 2013

Mr. Edward L. Long, Jr.  
County Executive  
Fairfax County  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035

Dear Mr. Long:

I am delighted to inform you that Governor McDonnell has preliminarily approved a \$1,000,000 grant from the Governor's Opportunity Fund to assist Fairfax County with the expansion of Cvent. Formal approval will occur when Cvent finalizes its decision and we can jointly announce this significant accomplishment for your community.

The Cvent facility is extremely important to both the Commonwealth and Fairfax County, and we are hopeful that the Opportunity Fund Grant will encourage Cvent to make a favorable decision. You certainly have our full support as we work to this end. If you are successful in securing this commitment from Cvent to expand in Fairfax County, please notify Suzanne Clark at the Virginia Economic Development Partnership (804-545-5806) so that the announcement of their decision can be coordinated with the company and you. Governor McDonnell has followed this project closely and would like to participate in the official announcement if his schedule permits. If not, a mutually agreed upon joint press release is the appropriate vehicle for the public disclosure of this project.

We would like to remind you that in accordance with the Governor's Opportunity Fund guidelines, a performance agreement between the County and Cvent is essential prior to the actual payment of this grant. This item will be required when your payment request is submitted.

Mr. Edward L. Long, Jr.  
September 18, 2013  
Page Two

I want to thank you for your efforts in working on this project to bring economic growth to Fairfax.

Sincerely,

A handwritten signature in black ink, appearing to read 'James S. Cheng', with a large, stylized flourish at the end.

James S. Cheng

JSC:kme

cc Mr. Martin J. Briley  
Virginia Economic Development Partnership

Ms. Suzanne Clark  
Virginia Economic Development Partnership

ADMINISTRATIVE – 2

Authorization to Advertise a Public Hearing on Proposed Award of Taxicab Operator Certificates Pursuant to Chapter 84.1 of the Fairfax County Code

ISSUE:

On November 19, 2013, the Consumer Protection Commission (CPC) approved a recommendation to the Board to award 78 taxicab operator certificates to four operators.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing on the award of taxicab operator certificates pursuant to Chapter 84.1 of the Fairfax County Code.

TIMING:

Board authorization is requested on January 14, 2014 to advertise a public hearing for February 11, 2014 at 4 p.m., on the award of taxicab operator certificates pursuant to Chapter 84.1 of the Fairfax County Code.

BACKGROUND:

Section 84.1-2-5 of the Fairfax County Code requires that the Board of Supervisors (Board) determine the number of taxicab operator certificates that are available to be issued on a biennial basis. At its June 18, 2013 meeting, the Board approved the recommendations of the Consumer Protection Commission (CPC) and Department of Cable and Consumer Services (DCCS) to authorize an additional 39 taxicab operator certificates. The authorization increased the number of certificates from 576 to 615.

Following completion of the application process, seven companies filed requests for 421 new taxicab certificates in the 2013 review period. Two applicants requested certificates in excess of the 39 authorized by the Board.

On November 19, 2013, the CPC held a public hearing pursuant to Section 84.1-2-6 for the purposes of developing its recommendations to the Board regarding (1) whether demand for taxicab service and the enhancement of public welfare warranted certificates in excess of the 39 authorized and, if so, the number of such additional certificates; and (2) the allocation of taxicab operator certificates among the applicants. In developing its recommendations, the CPC considered the applications, the staff report, and information provided during the public hearing.

At the public hearing, the CPC voted to recommend to the Board that (1) an additional 39 taxicab operator certificates, or a total of 78 certificates, be authorized to meet demand for taxicab service and to enhance public welfare, and (2) the 78 certificates should be allocated among four applicants. Three of the four applicants are currently providing taxicab service in Fairfax County (**Fairfax Yellow, Red Top and White Top**), and the fourth applicant is a new entrant (**enviroCab**) that is currently providing taxicab service in Arlington County.

**The CPC recommended to the Board that the 78 taxicab certificates be allocated as follows:**

- **Fairfax Yellow – 23 certificates, 9 for handicap accessible vehicles**
- **Red Top – 10 certificates, 1 for a handicap accessible vehicle**
- **White Top – 6 certificates**
- **enviroCab – 39 certificates, 10 for handicap accessible vehicles**

**The CPC did not recommend allocation of taxicab certificates to the following three applicants:**

- **Go Green**
- **Fairfax Green**
- **King Cab**

If adopted, the CPC's recommendations will result in significant public benefits for those riders seeking trips from wheelchair accessible vehicles. The CPC's recommendation will nearly double the number of wheelchair-accessible taxicabs serving the Fairfax County market, increasing the number from 23 to 43, or 6.6 percent of the total fleet, which exceeds the Code requirement of 4 percent. With the exception of wheelchair-accessible taxicabs, the taxicabs to be placed in service will be new or later-model hybrid or plug-in electric hybrid vehicles.

The Board last awarded taxicab operator certificates in 2005. The staff report will be made available for the Public Hearing. A copy of Article 2 of Fairfax County Code Chapter 84.1, pertaining to Operator's Certificates, is provided as Attachment 1.

**ENCLOSED DOCUMENTS:**

Attachment 1 – Fairfax County Code Chapter 84.1, *Public Transportation*, Article 2, *Operator's Certificates*

**STAFF:**

David J. Molchany, Deputy County Executive  
Michael S. Liberman, Director, Department of Cable and Consumer Services  
Steve Sinclair, Chief, Public Utility Branch, DCCS  
John Burton, Assistant County Attorney

**Chapter 84.1 – Public Transportation**

**CODE  
County of  
FAIRFAX, VIRGINIA**

**Codified through  
Ord. No. 56-08-84.1, adopted October 20, 2008  
(Supplement No. 114, 12-08)**

**THE CODE  
OF THE  
COUNTY OF FAIRFAX  
VIRGINIA  
1976**

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**CHAPTER 84.1 Public Transportation.**

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Article 2. Operator's Certificates

- Sec. 84.1-2-1. Operator's certificate required.
- Sec. 84.1-2-2. Application; forms; contents; notice of application.
- Sec. 84.1-2-3. False statements on applications.
- Sec. 84.1-2-4. Investigation of applicant; procedure.
- Sec. 84.1-2-5. Establishment of public convenience and necessity; burden of applicant.
- Sec. 84.1-2-6. Public hearing; requirements; regulations.
- Sec. 84.1-2-7. Issuance of operator's certificate; contents.
- Sec. 84.1-2-8. Certificate fee.
- Sec. 84.1-2-9. Duration of operator's certificates; nontransferable.
- Sec. 84.1-2-10. Notice of any sale agreement, transfer or change in management of the operating company.
- Sec. 84.1-2-11. Insurance requirements; self-insurance requirements.
- Sec. 84.1-2-12. Revocation or suspension of certificates.
- Sec. 84.1-2-13. Filing for vehicle substitution.
- Sec. 84.1-2-14. Filing after denial or revocation of operator's certificates.

## **ARTICLE 2. Operator's Certificates.**

### **Section 84.1-2-1. Operator's certificate required.**

No person will operate or permit to be operated a taxicab or taxicabs in the County without having been approved for and been issued operator's certificates by the County. The individual numbered certificate, issued by the Department, must be carried in the taxicab to which it pertains at all times during operation and must be presented, upon request, to any taxicab inspector or duly sworn law enforcement officer. The driver of a taxicab which is duly authorized as a taxicab in any other jurisdiction of this State or in any other state may convey into and discharge within the County a passenger or passengers; and, if required by the passenger or passengers, the taxicab driver who conveyed the passenger or passengers into the County may wait for the passenger or passengers and convey the passenger to his or her ultimate destination. The driver of a taxicab registered in any other jurisdiction will not otherwise convey, pick up, wait for or solicit a passenger or passengers within this County, except as permitted in Section 84.1-10-1 or Section 84.1-10-2. (4-00-84.1)

### **Section 84.1-2-2. Application; forms; contents; notice of application.**

(a) Applications for operator's certificates or for an increase in the number of individual certificates authorized to be issued to a certificate holder will be accepted by the Director on a biennial basis, in odd numbered years by 4:00 p.m. June 30. Incomplete applications will be returned to the applicant, who will be given seven calendar days after receipt of a rejected application to correct any deficiencies. A resubmitted application which remains incomplete will be returned and will not be processed. In the event that certificates are made available for redistribution as in Section 84.1-2-9, the Director will establish prescribed milestone dates for certificate application similar to the timing intervals for the biennial certificate application process as set forth herein.

(b) Application for operator's certificates, or for an increase in the number of individual certificates authorized to be issued, will be made by the proposed operator or its duly authorized agent upon forms provided and in the format requested by the Department. The applicant will provide full answers to all questions on the application, and that information will be submitted under oath. The Director may require full disclosure of all corporate, financial, and business interests of the applicant and of all corporate, financial and business interests of persons having a corporate, financial or business interest in the applicant. Information required on the application will be related to the considerations of the Commission in its investigation of the public convenience and necessity of additional certificates as stated in Section 84.1-2-6(b).

(c) The fee for processing operator's certificates applications will be \$100.00 for each vehicle to be operated under the application. This application processing fee is nonrefundable, and it will be paid by check or money order upon submission of the application to the Director.

(d) In order to carry out the purposes of this Chapter, the Department, the Commission, or the Board may ask for information in addition to that provided on the application from the applicant.

(e) An applicant for operator's certificates, or a certificate holder applying for an increase in the number of individual certificates authorized to be issued to such certificate holder, will, within seven calendar days of such application, provide written notice of such application to all other County certificate holders, to any driver association as defined herein, and if a current County Certificate holder, will conspicuously display notice of such application at the applicant's place of business. Such notice will be provided by certified mail to the regular place of business of other certificate holders and to the legal address of any driver association as defined herein. Notice will be sufficient if it describes the number of certificates sought, the area to be served, identification of the applicant, and the date of the application.

(f) If the Department has not received proof of notification by any applicant within 15 calendar days from the date of the receipt by the Department, that applicant's application will be returned and not processed. (4-00-84.1)

### **Section 84.1-2-3. False statements on applications.**

It will be unlawful for any person to make or cause to be made any false statement in writing for the purpose of procuring an operator's certificate or a hacker's license, or to make any false statements or entry on the records required to be kept by this Chapter. (4-00-84.1)

### **Section 84.1-2-4. Investigation of applicant; procedure.**

Upon the Director's determination that an application filed under Section 84.1-2-2 of this Chapter is technically complete, the Director will cause to be made a thorough investigation of the character, traffic criminal record, financial status and service plan of the applicant or its officers, among other relevant factors. Upon completion of the investigation, the information obtained as a result of this investigation, together with all pertinent documents, will be submitted to the Commission.

The Director's report pertaining to all applications for certificates will be distributed to members of the Commission and will be made available to applicant companies and the public not later than 10 calendar days before the scheduled hearing date. (4-00-84.1)

### **Section 84.1-2-5. Establishment of public convenience and necessity; burden of applicant.**

(a) The number of certificates that are available to be issued on a biennial basis, will be determined by the Board, based on public convenience and necessity, after considering any appropriate recommendations submitted by the Commission or the Director and such other information as the Board chooses to consider. That number will be reviewed and established by resolution of the Board after May 1 of each odd numbered year, but the Board reserves the right to revise that number by subsequent resolution as the Board deems appropriate. The burden will be upon the applicant to establish the existence of all facts and statements within the applicant's application and to provide such other information as is required or requested pursuant to this Chapter.

(b) If the applicant applies for certificates in excess of the number determined by the Board, based on public convenience and necessity, the burden of proof for the excess certificates shifts to the applicant. The applicant will then have the burden of establishing that public welfare will be enhanced by the award of the certificates of public convenience and necessity requested in the application. The applicant will be required to provide factual documented evidence indicating the demand and establishing public welfare. (4-00-84.1)

### **Section 84.1-2-6. Public hearing; requirements; regulations.**

(a) Upon the filing of applications for operator's certificates, or for any additions to the number of individually numbered certificates issued to an existing certificate holder, the Commission will hold hearings as promptly as practical, prior to September 30 of each year, or as soon thereafter as the Commission conveniently may schedule the matter for hearing. The Commission will give the applicant, certificate holders, and any driver association as defined herein notice of the hearing at least 14 calendar days prior to the hearing date and will cause notice to be published once a week for two successive weeks in a newspaper published or circulated in the County. If the application is for an increase in the number of certificates, the applying certificate holder must conspicuously display notice of such application and the hearing date and place at the applicant's place of business at least 10 calendar days prior to the hearing date.

(b) The Commission will, upon holding public hearings and after such further investigation as it may deem advisable, make recommendations to the Board of Supervisors the allocation of taxicab certificates among the certificate applicants, which have been designated by the Board for the given year. If an applicant meets the burden of proof for excess certificates as set forth in 84.1-2-5, the Consumer Protection Commission may recommend to the Board additional allocations. In making these recommendations, the Commission will consider the following:

- (1) Current and potential levels of usage of taxicab services in the Fairfax County market as set forth in 84.1-2-5;
- (2) Areas of the County to be served, and the adequacy of existing public vehicle service, existing taxicab service and other forms of passenger transportation in those areas;
- (3) The kind, class, fuel efficiency, character of the vehicles to be used, and the adequacy of the proposed dispatch system;
- (4) The conformance of proposed operational facilities with zoning and other legal requirements;
- (5) The financial status of the certificate applicant and its effect on permanence and quality of service, as demonstrated by the applicant's ability to provide, maintain, and operate the number of vehicles proposed in accordance with the character of service proposed in the application;
- (6) The character and responsibility and related business experience of the applicant;

(7) The investigative report of the Director and the applications of the applicants.

(c) All parties notified under Section 84.1-2-2(e) will have the right to present comments when the Commission holds public hearings to investigate the public convenience and necessity of applied for certificates. (4-00-84.1)

### **Section 84.1-2-7. Issuance of operator's certificate; contents.**

(a) Upon the approval by the Board of operator's certificates, the Director will issue such certificates upon receiving proof that each proposed vehicle is ready for service as set forth herein.

(b) All operators' certificates issued will contain the following information:

(1) Name, including trading as name if not the same as name, and business address of the certificate holder.

(2) The make, model, model year, vehicle identification number, seating capacity of the vehicle, and the lettering, marks and color scheme to be used on the vehicle authorized by the certificate to be operated.

(3) The date of issuance and expiration.

(4) A number assigned in a manner determined by the Director.

(5) Such other information as the Director determines may assist in carrying out the purpose of this Chapter.

(c) Each operator's certificate issued by the Director will remain the property of the DCCCP, may not be copied, and will be returned to the Director in the event that it is revoked or suspended in accordance with Section 84.1-2-12. (4-00-84.1)

### **Section 84.1-2-8. Certificate fee.**

The annual fee for each taxicab certificate will be \$150.00. However, the fee for newly authorized certificates will be established on a pro rata basis from the date of initial issuance until December 31 of that calendar year in which the certificate was issued. An annual vehicle inspection fee of \$20.00 will be paid for each certificate owned by an operator. That annual inspection fee will be paid on a calendar year basis, and be received no later than January 31 of each calendar year. If a vehicle substitution is made in accordance with Section 84.1-2-13, the operator will pay a substitution fee of \$25.00. The Director may issue replacement certificates when appropriate, and operators who are issued replacement certificates will be charged a replacement fee of \$25.00 per certificate. (4-00-84.1)

### **Section 84.1-2-9. Duration of operator's certificates; nontransferable.**

(a) No operator's certificates will be issued under this Article nor continued in effect until all fees and taxes imposed by this Chapter of the County Code, as amended, are paid.

(b) Such certificates will be nontransferable by sale, lease, or otherwise and will be valid from the date of issuance until relinquished or revoked as provided in this Chapter; provided, if any certificate holder will fail to place in operation, within 180 calendar days of the date of authorization for new or additional taxicab certificates, any taxicabs so authorized for operation under a numbered certificate, such unused certificates will become null and void and available for redistribution to other applicants in accordance with Section 84.1-2-2(a). If an operator faces extenuating circumstances which prohibit the operation of vehicles within 180 calendar days, an application for a one time 90 calendar day extension may be filed no later than 15 calendar days prior to the 180 calendar day deadline. Requests for extensions will be reviewed by the Director and granted based on the justification for non-compliance and planned corrective action.

(c) In the event that a taxicab is permanently removed from service, the certificate holder may substitute a replacement vehicle on that numbered certificate, but any such replacement vehicle will meet the requirements of Section 84.1-8-5 and the holder will submit that replacement vehicle to Director for inspection prior to placement in service. If the replacement vehicle is not placed in service within 180 calendar days, such unused certificates will become null and void and available for redistribution to other applicants in accordance with Section 84.1-2-2(a). If an operator faces extenuating circumstances which prohibit the operation of vehicles within 180 calendar days, an application for a one time 90 calendar day extension may be filed no later than 15 calendar days prior to the 180 calendar day deadline. Requests for extensions will be reviewed by the Director and granted based on the justification for non-compliance and corrective action planned. (4-00-84.1)

#### **Section 84.1-2-10. Notice of any sale agreement, transfer or change in management of the operating company.**

(a) Within 45 calendar days of any agreement to sell or transfer any company holding taxicab operator's certificates hereunder, including, but not limited to, any form of lease-purchase, inheritance, or other long-term arrangements, the owner or manager of the company authorized to operate taxicabs in Fairfax County must seek the approval of the County for the sale or ownership transfer of company held certificates. The prospective owner must submit appropriate information to the Director to establish the intended manager's or operator's ability to provide taxicab services consistent with requirements of this Chapter. Failure to do so, as herein required, may lead to certificate revocation.

(b) In the event any holder of Fairfax County taxicab operator's certificates enters into a contract or agreement with any person or company to operate the certificate holder's taxicab vehicles on the certificate holder's behalf, the company authorized to operate taxicabs in Fairfax County must provide notification of such agreement or contract, including the name and business address of the person or company which has been contracted with to operate the service, to the Director no less than 45 calendar days before such a change in the management and/or operation of the vehicles takes effect. The certificate holder must submit appropriate information to the Director to establish the intended manager's or operator's ability to provide taxicab services consistent with requirements of this Chapter. Failure to provide notice as herein required and to establish the capability of the intended manager or operator to provide service as required by this Chapter, may lead to certificate revocation. (4-00-84.1)

## **Section 84.1-2-11. Insurance requirements; self-insurance requirements.**

(a) Except as otherwise provided by Subsection (d) or (e) of this section, no operator's certificates will be issued or continued in effect unless there is in full force and effect a public liability automobile insurance policy for each authorized taxicab in the amount of at least \$100,000.00 for bodily injury or death to any person, and in the amount of at least \$300,000.00 for injuries or death to more than one person sustained in the same accident, and in the amount of \$50,000.00 for property damages resulting from any one accident.

(b) Such insurance policy will inure to the benefit of any person who may be injured or the estate in the event of death, or to the benefit of any persons sustaining damage to property for which the certificate holder may be liable.

(c) Evidence of such insurance will be filed with the Director prior to the issuance of any operator's certificate and will include provisions for notice by the insurance carrier to the Director prior to termination of such coverage. In the case where the certificate holder is not the vehicle owner, the certificate holder is fully responsible for providing evidence of insurance for all authorized taxicabs under his or her company, and for ensuring that all owner-operators maintain adequate insurance according to this Chapter. The certificate holder must notify the Director prior to termination of any owner-operator's insurance coverage. In the event an owner-operator's insurance has lapsed, and the owner-operator incurs a liability from an accident or other circumstance, the certificate holder's insurance must be so written that it will cover such liability up to the coverage levels prescribed in this Chapter.

(d) If the minimum State automobile insurance requirements exceed the above rates, those requirements will automatically apply.

(e) The requirements of this Section may be met in part by a self-insurance certificate which has been adopted and approved by the Commonwealth of Virginia in accordance with Code of Virginia, Section 46.2-368, as amended, and that such self-insurance certificate will be in full force and effect at all times and that evidence of such a policy will be filed with the Director prior to the issuance of any operator's certificates and will include provision for notice by the Commonwealth of Virginia to the Director prior to termination of such coverage; provided, if the minimum State insurance requirements do not equal or exceed the requirements of this Section, the certificate holder may self-insure up to the amount of \$100,000.00 and must carry an umbrella insurance policy against all risks specified above in an amount at least equal to the amounts specified in Subsection (a) above and further provided that the following requirements are met:

(1) Application for approval to partially meet County insurance requirements through self-insurance up to \$100,000.00 will be made by the certificate holder or duly authorized agent upon forms provided by the Department. The applicant will provide full answers to all questions on the application, and that information will be submitted under oath. In addition, the applicant must provide:

(A) Proof that all requirements for self-insurance established by the Virginia Department of Motor Vehicles and the Virginia State Corporation Commission have been met;

(B) Claims history for the company for the preceding four-year period.

(2) The certificate holder must file all documents and other materials required by the Virginia Department of Motor Vehicles and the Virginia State Corporation Commission with the Department of Cable Communications and Consumer Protection, simultaneous with the filing requirements established by the Virginia Department of Motor Vehicles and Virginia State Corporation Commission.

(3) The certificate holder must submit a report to the Department of Cable Communications and Consumer Protection two years to the day after receiving approval, and every other year thereafter, concerning the company's claims history and claims procedures. The report will be ordered and undertaken at the company's expense.

(4) If at any time it should appear that the certificate holder no longer meets the criteria required for approval as a self-insurer as set forth herein or fails to file any required documents, the certificate holder will be given written notice identifying the failure of criteria or filing default. The written notice will stipulate a reasonable date and time by which the certificate holder must furnish evidence, satisfactory to the Director, that the approval criteria are again met or the default cured. Failure to timely respond to the notice, failure to meet approval criteria or failure to cure a default will result in revocation of the right to self-insure. Nothing in this Subsection will preclude the suspension of a certificate holder's certificate(s) pursuant to the Code of Virginia, Section 84.1-2-12(a)(4) for failure to maintain adequate insurance during the time a certificate holder fails to meet the criteria for approval as a self-insurer. (4-00-84.1)

### **Section 84.1-2-12. Revocation or suspension of certificates.**

(a) In response to any finding that the public safety and welfare so demands, the Director may suspend any individual numbered certificate(s) of a certificate holder, until proof of compliance is met to the Director's satisfaction for any of the following reasons:

(1) Failure to maintain the taxicab(s) and/or meter(s) identified in such certificates in good order and repair, in accordance with Article 8 of this Chapter.

(2) Failure to pay any fees lawfully assessed upon the ownership or operation of any such vehicle(s), identified as taxicabs in such individual numbered certificates, under this Chapter.

(3) Failure to supply information required under Sections 84.1-2-11(c) and (e) and 84.1-5-2 of this Code pertinent to any taxicabs operated under such certificates.

(4) Failure to maintain proper insurance, as required by this Chapter, on any vehicle including any vehicle operated by an owner-operator. The certificate holder's right to operate such vehicle will be suspended for as long as the required amount of insurance is not in effect.

(5) Failure to comply with the vehicle inspection requirements set forth in Section 84.1-8-6.

(6) Failure of drivers to respond to or pick up a fare.

(b) A certificate holder's entire operating authority and all individual numbered certificates issued to the certificate holder may be suspended by the Director until proof of compliance is met to the satisfaction of the Director upon finding that the public safety and welfare are so impacted, or for any of the following reasons:

- (1) Discontinuance of service of the entire business of the certificate holder for more than five consecutive calendar days.
- (2) Failure to pay all fees and taxes imposed by this Chapter or any other Chapter of this Code insofar as such fees relate to operation of a taxicab business within the County.
- (3) Three or more violations by the certificate holder of any of the provisions of this Chapter within a twelve-month period.

The Director's failure to suspend an individual numbered operator's certificate for any of the causes set forth in Subsection (a) of this Section will not impair the authority of the Director to suspend all certificates held by an operator based on such causes.

(c) A certificate holder's entire ability to operate within Fairfax County and all individual numbered certificates thereunder may be revoked by the Director for any of the following reasons:

- (1) If the certificate holder makes or causes or allows to be made any false statement in writing for the purpose of procuring operator's certificates or any additions to an existing number of operator's certificates;
- (2) If the certificate holder makes or causes or allows to be made any false statement or entry on the records required to be kept by this Chapter; or
- (3) Operates or permits to be operated a taxicab in the County that the individual numbered operator's certificate under which the taxicab was placed in service is under suspension.
- (4) Operates or permits to be operated in the County any taxicab for which an individual numbered operator's certificate has not been issued.

(d) Written notice of any suspension or revocation pursuant to Section 84.1-2-12(a), (b), or (c) will be given to the certificate holder by certified mail by the Director. Such suspension or revocation will be effective seven calendar days after deposit in the mails of the notice of such action; except that no delayed effective date will be required for a suspension pursuant to Section 84.1-2-12(a)(4). The Director will notify the Commission of any revocation or suspension of any operator's certificate within seven calendar days of mailing the notice to the certificate holder.

(e) The Director, upon a determination that the certificate holder is not operating the authorized taxicabs in such a manner as to serve the public adequately, safely, efficiently or legally, may suspend or revoke its grant of authority to the certificate holder to operate a taxicab business and all individual numbered certificates issued there under. Such determination will be based upon the Director's consideration of evidence showing violation, by the certificate holder, of one or more of the provisions of Article 7 or Article 8 of this

Chapter. Such suspension or revocation will only be taken after such certificate holder has been notified of such proposed action and given an opportunity for a hearing.

(f) It will be unlawful for a person to operate or permit to be operated a taxicab in the County when the operator's certificate under which the taxicab was placed in service is under suspension or revocation.

(g) A certificate that has been suspended or revoked will be returned to the Director within seven calendar days from the effective date of the revocation or suspension. (4-00-84.1)

### **Section 84.1-2-13. Filing for vehicle substitution.**

(a) A certificate holder or its designated agent may at any time substitute a new vehicle for a vehicle that has an individual numbered certificate and is to be removed from service, if the addition does not increase the total number of taxicabs authorized by the operator's certificates.

(b) Such substituted vehicle will comply with all provisions of this Chapter, including Section 84.1-2-11. The Director will, upon receipt of insurance certificate and vehicle data, issue an addendum to the operator's certificate.

(c) If the substituted vehicle is a used vehicle, the certificate holder or its designated agent will present to the Director for inspection the title or current registration for the vehicle, and documented proof of the vehicle's mileage.

(d) The fee for vehicle substitution is \$25.00 per vehicle. (4-00-84.1)

### **Section 84.1-2-14. Filing after denial or revocation of operator's certificates.**

(a) An applicant who has had his application for operator's certificate(s) denied or a certificate holder who has had his operator's certificates revoked may not file another application for certificates until the following open period specified in Section 84.1-2-2.

(b) A certificate holder who has had his application for the addition of vehicles to his authorized number of individual certificates denied may not file another application until the following open period specified in Section 84.1-2-2. (4-00-84.1)

Board Agenda Item  
January 14, 2014

ADMINISTRATIVE – 3

Streets into the Secondary System (Mount Vernon and Sully Districts)

ISSUE:

Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:

The County Executive recommends that the street(s) listed below be added to the State Secondary System.

| <u>Subdivision</u>            | <u>District</u> | <u>Street</u>  |
|-------------------------------|-----------------|--|
| Laurel Crest Drive Phase II   | Mt. Vernon      | Laurel Crest Drive   |
|                               |                 | Hooes Road (Route 636)<br>(Additional Right-of-Way (ROW) Only) |
| Lorton Market Street          | Mt. Vernon      | Lorton Market Street   |
|                               |                 | Lorton Road (Route 642)<br>(Additional ROW Only)               |
| Faircrest Landbay Five        | Sully           | Coreopsis Court (Route 10336)                                  |
| The Reserve at Oakton Phase I | Sully           | Westwood Hills Drive (Route 6300)                              |

TIMING:

Routine.

BACKGROUND:

Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

FISCAL IMPACT:

None.

Board Agenda Item  
January 14, 2014

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Michelle Brickner, Deputy Director, DPWES, Land Development Services

Print Form

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**  
Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**  
REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

**PLAN NUMBER:** 1183-SP-07 & 016  
**SUBDIVISION PLAT NAME:** Laurel Crest Drive Phase II  
**COUNTY MAGISTERIAL DISTRICT:** Mount Vernon

**ENGINEERING MANAGER:** Terry L. Yates, P.E.

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL:** 08/29/2013

| STREET NAME   | LOCATION  |                               | LENGTH<br>MILE |
|---|---|-------------------------------|----------------|
|   | FROM  | TO                            |                |
| Laurel Crest Drive  | CL Hooes Road (Route 636) - 832' N CL Talbert Road (Route 1912) | 3,259' N/SE to Section Line   | 0.62           |
| Hooes Road (Route 636)<br>(Additional Right-of-Way Only)                                  | 288' N CL Talbert Road (Route 1912)                             | 1,053' N to End of Dedication | 0.0            |
|   |   |                               |                |
|   |   |                               |                |
|   |   |                               |                |
|   |   |                               |                |
| <b>NOTES:</b>   |   |                               | <b>TOTALS:</b> |
| Laurel Crest Drive: 6' Asphalt Trail on North Side of to be maintained by Fairfax County. |   |                               | 0.62           |
|   |   |                               |                |
|   |   |                               |                |
|   |   |                               |                |
|   |   |                               |                |



# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

PLAN NUMBER: 0915-5D-03

SUBDIVISION PLAT NAME: Faircrest Landbay Five

COUNTY MAGISTERIAL DISTRICT: Sully

ENGINEERING MANAGER: Terry L. Yates, P.E.

BY: *Nadia Aphonel*

FOR OFFICIAL USE ONLY

DATE OF VDOT INSPECTION APPROVAL: *10/16/2013*

| STREET NAME   | LOCATION  |                             | LENGTH<br>MILE |
|---|---|-----------------------------|----------------|
|   | FROM  | TO                          |                |
| Coreopsis Court (Route 10336)                               | Existing Coreopsis Court (Route 10336) -<br>292' N CL Lamium Lane (Route 10337) | 345' N to End of Cul-de-Sac | 0.07           |
|   |   |                             |                |
|   |   |                             |                |
|   |   |                             |                |
|   |   |                             |                |
|   |   |                             |                |
| <b>NOTES:</b>   |   |                             | <b>TOTALS:</b> |
| 4' Concrete Sidewalk on West Side to be maintained by VDOT. |   |                             | 0.07           |
|   |   |                             |                |
|   |   |                             |                |
|   |   |                             |                |



ACTION – 1

Approval of the Board of Supervisors' Meeting Schedule for Calendar Year 2014 and Authorization for the Chairman to Postpone a Scheduled Meeting in the Event of Weather or Other Hazardous Conditions

ISSUE:

Board approval of its meeting schedule for January through December 2014.

RECOMMENDATION:

The County Executive recommends that the Board (1) approve the Board meeting schedule for January through December 2014 and (2) authorize the Chairman to defer any scheduled meeting to the Tuesday following a scheduled Board meeting if the Chairman, or the Vice Chairman if the Chairman is unable to act, finds and declares that the weather or other conditions are such that it is hazardous for members to attend.

TIMING:

Immediate. Virginia law requires the Board to adopt its regular schedule of meetings for calendar year 2014 at the first meeting in January.

BACKGROUND:

Previously, on September 10, 2013, staff presented the Board with a preliminary meeting schedule for calendar year 2014 for planning purposes, but Virginia Code Section 15.2-1416 requires the governing body of each county to establish the days, times, and places of its regular meetings at the annual meeting, which is the first meeting of the year. For that reason, the meeting schedule for calendar year 2014 is being presented to the Board again for formal approval. Scheduled meetings may be adjourned and reconvened as the Board may deem necessary, and the Board may schedule additional meetings or adjust the schedule of meetings approved at the annual meeting, after notice required by Virginia law, as the need may rise.

In addition, Virginia Code Section 15.2-1416 authorizes the Board to fix the day or days to which a regular meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting. If those provisions are made, then all hearings and other matters previously advertised for that date shall be conducted at the continued meeting. In order to take advantage of that authority in such an emergency, staff recommends that the Board also authorize the Chairman to continue any scheduled meeting to the following

Board Agenda Item  
January 14, 2014

Tuesday when weather or other conditions make attendance hazardous. In that circumstance, the Board then would consider the agenda for that rescheduled meeting on that following Tuesday without further advertisement.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENT:

Attachment 1 – Proposed Meeting Schedule for Calendar Year 2014

Attachment 2 – Virginia Code Section 15.2-1416

Attachment 3 – Proposed Resolution Adopting Meeting Schedule and Authorizing the  
Chairman to Reschedule a Meeting in an Emergency

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of  
Supervisors

## 2014 Board of Supervisors Meeting Schedule

|  |
|--|
| <b>January 14, 2014</b>  |
| <b>January 28, 2014</b>  |
| <b>February 11, 2014</b>   |
| <b>February 25, 2014</b>   |
| <b>March 4, 2014</b>   |
| <b>March 25, 2014</b>  |
| <b>April 8, 2014<br/>9:30 to 6:00 pm Board Meeting<br/>6:00 pm Budget Public<br/>Hearing<br/>and</b> |
| <b>April 9 - April 10 , 2014<br/>3:00 pm – Budget Public<br/>Hearings</b>                            |
| <b>April 22, 2014<br/>Budget Markup</b>  |
| <b>April 29, 2014<br/>(Includes Budget Adoption)</b>   |

|                           |
|---------------------------|
| <b>May 13, 2014</b>       |
| <b>June 3, 2014</b>       |
| <b>June 17, 2014</b>      |
| <b>July 1, 2014</b>       |
| <b>July 29, 2014</b>      |
| <b>September 9, 2014</b>  |
| <b>September 23, 2014</b> |
| <b>October 7, 2014</b>    |
| <b>October 28, 2014</b>   |
| <b>November 18, 2014</b>  |
| <b>December 2, 2014</b>   |

**§ 15.2-1416. Regular meetings.**

The governing body shall assemble at a public place as the governing body may prescribe, in regular session in January for counties and in July for cities and towns. Future meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year.

The days, times and places of regular meetings to be held during the ensuing months shall be established at the first meeting which meeting may be referred to as the annual or organizational meeting; however, if the governing body subsequently prescribes any public place other than the initial public meeting place, or any day or time other than that initially established, as a meeting day, place or time, the governing body shall pass a resolution as to such future meeting day, place or time. The governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the initial public meeting place and inserted in a newspaper having general circulation in the county or municipality at least seven days prior to the first such meeting at such other day, place or time. Should the day established by the governing body as the regular meeting day fall on any legal holiday, the meeting shall be held on the next following regular business day, without action of any kind by the governing body.

At its annual meeting the governing body may fix the day or days to which a regular meeting shall be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

Regular meetings, without further public notice, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the governing body is completed.

Notwithstanding the provisions of this section, any city or town that holds an organizational meeting in compliance with its charter or code shall be deemed to be in compliance with this section.

(Code 1950, § 15-241; 1950, p. 8; 1954, c. 286; 1958, c. 291; 1960, c. 33; 1962, cc. 218, 623, § 15.1-536; 1964, c. 403; 1980, c. 420; 1994, cc. [371](#), [591](#); 1997, c. [587](#); 2004, c. [549](#).)

**Resolution Establishing the Board Meeting Schedule for Calendar Year 2014 and Authorizing the Chairman to Reschedule a Meeting in the Event of Weather or Other Hazardous Conditions**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, January 14, 2014, at which a meeting quorum was present and voting, the following resolution was adopted:

**WHEREAS**, Virginia Code Section 15.2-1416 requires the Board of Supervisors of Fairfax County, Virginia, to assemble at its first meeting in January to adopt a schedule of the days, times, and places of its regular meetings in calendar year 2014; and

**WHEREAS**, Virginia Code Section 15.2-1416 authorizes the Board of Supervisors of Fairfax County, Virginia, to fix the day or days to which a regularly scheduled meeting shall be continued if the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Fairfax County that

1. During Calendar Year 2014, the Board of Supervisors will meet in the Board Auditorium at 12000 Government Center Parkway, Fairfax, Virginia, on January 14, January 28, February 11, February 25, March 4, March 25, April 8, April 9, April 10, April 22, April 29, May 13, June 3, June 17, July 1, July 29, September 9, September 23, October 7, October 28, November 18, and December 2;
2. All such meetings shall generally begin at 9:30 A.M. in the morning except that the Board meetings on April 9 and 10 begin at 3 P.M. in the afternoon; and
3. If the Chairman, or the Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regularly scheduled meeting, then that meeting shall be postponed and conducted

ATTACHMENT 3

on the following Tuesday and all hearings and other matters shall be conducted at that time without further advertisement.

A Copy Teste:

---

Catherine A. Chianese  
Clerk of the Board of Supervisors

ACTION - 2

Expression of No Opposition to Virginia Department of Transportation Project to Construct a Roundabout at the Pleasant Valley Road (Route 609) and Braddock Road (Route 620) Intersection (Sully District)

ISSUE:

Board expression of no opposition to the Virginia Department of Transportation (VDOT) project to construct a new roundabout at the Pleasant Valley Road (Route 609) and Braddock Road (Route 620) intersection to replace the existing four-way stop intersection which is inadequate for the current traffic volumes.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors expresses no opposition to VDOT's conceptual plans to construct a new single-lane 100 foot in diameter roundabout at the intersection of Pleasant Valley Road (Route 609) and Braddock Road (Route 620) in Fairfax County, including raised landscaped central island, right turn bypass lane on the northbound approach of Pleasant Valley Road (Route 609), curb cut ramps, crosswalks, sidewalk tied to existing trail along the east side of Pleasant Valley Road south of the intersection to enhance pedestrian access, and lighting to enhance safety of the intersection as presented at the October 9, 2013, Public Hearing with the following considerations:

- Continue coordination with the Fairfax County Park Authority regarding access to Mountain Road District Park and Rock Hill District Park.
- Review and implement potential maintenance improvements to the "S-curve": segment of Braddock Road east of the Braddock Road/Pleasant Valley Road intersection.
- Consider reducing a lane on the southbound Pleasant Valley Road through Virginia Run community similar to a "road diet" existing on the northbound side of Pleasant Valley Road through the Virginia Run community.
- Consider monitoring and review of the ingress/egress situation, i.e. availability of gaps in traffic after the roundabout is constructed and conduct unsignalized intersection analysis at the following intersections: Braddock Road/Pleasant Forest Drive and Braddock Road/Tre Towers Court.

- Continue coordination with the Fairfax County Department of Transportation regarding construction of the pedestrian access/walkway on the south side of Braddock Road within the existing right-of-way along Pleasant Valley Properties and park frontage from Pleasant Forest Drive to the existing trail on the east side of Pleasant Valley Road at the Braddock Road/Pleasant Valley Road intersection.

TIMING:

The Board should take action on this matter on January 14, 2014, to allow VDOT to proceed with Advertisement of a Request for Proposals for a design build contract.

BACKGROUND:

This project would improve the operations at the intersection of Pleasant Valley Road (Route 609) and Braddock Road (Route 620) in western Fairfax County. The intersection is currently controlled with a four-way stop, with a single lane in each direction.

During weekday peak hours, the intersection experiences substantial congestion, operating at full capacity with extensive backups on Braddock Road eastbound in the mornings and westbound in the evenings. The congestion results in severe delays causing the intersection to operate at the level of service "F" (failing) during peak hours.

The design of the improvements at this intersection must consider the parkland on three corners of the intersection, commercial property in Agricultural – Forestal District on the fourth corner of the intersection, wetlands, rare habitats, and significant overhead utilities.

Taking these constraints into consideration, VDOT in coordination with Fairfax County Department of Transportation (FCDOT) and Fairfax County Park Authority (FCPA), has developed a concept and preliminary plans for a roundabout.

The plans will be refined during the next phase of the project – Design/Build method of project delivery. The Design-Build approach provides a shorter timeframe for implementation and reduced impacts to the traveling public and surrounding community.

This project is being designed and will be constructed by VDOT, but is funded by a combination of Federal, State and Local (Loudoun County) funds.

A copy of the public hearing brochure is attached.

### Environmental Considerations

A Categorical Exclusion/Section 4(f) Evaluation was prepared in accordance with National Environmental Policy Act (NEPA), 23, CFR Part 771 and CFR 774.

The site of the roundabout is abutted on all four sides by properties having environmental constraints. Three of the quadrants (SE, NE, and NW) are properties owned by the Fairfax County Park Authority (FCPA) and VDOT is obligated by federal law to avoid impacts to parkland to the greatest extent possible. The fourth quadrant (SW) is owned by Cox Farms, which is designated by the County as an Agricultural/Forestral District (AFD). State law requires that only a minimal amount of right-of-way can be taken from AFD for highway purposes without Board of Supervisors approval.

The following environmental constraints exist in the immediate vicinity of the project:

- Wetlands, including rare upland forested wetlands in the **NE** quadrant
- Parkland
- Agricultural/Forestral District
- A rare plant species which is located outside of the project limits in the quadrant

Through a series of negotiations with the stakeholders, including Federal Highways Administration (FHWA), FCPA, and FCDOT, VDOT has been able to adjust the design of the project to minimize impacts to sensitive resources while still retaining a design that can be expected to function safely and efficiently. All impacts to environmental resources will be avoided, minimized, and /or mitigated in full accordance with applicable state and federal laws.

### Public Hearing Comments

A public hearing was held on Wednesday, October 9, 2013, from 6 p.m. to 8 p.m. at Ormond Stone Middle School at 5500 Sully Park Drive in Centreville. A total of 158 people attended the public hearing. Subsequently, a Citizen Information Meeting was held at the Little River Elementary School at 25450 Riding Center Drive in South Riding in Loudoun County.

VDOT records indicate that 656 members of the public at both meetings submitted comments orally, in writing, by mail, and by email before the October 30, 2013 comment closing date.

468 citizens responded in support of the project

180 citizens responded in opposition to the project

3 citizens responded with conditional support for the project

5 citizens responded with questions but without expression of their position on the project

Project Cost and Schedule

The current estimated project cost is \$4.1 million, which includes design, right-of-way acquisition, utility relocation, and construction. The latest anticipated schedule is:

Design Build Contract Execution: June 18, 2014  
Notice to Proceed (NTP): June 19, 2014  
Contract Completion Date: May 4, 2016

FISCAL IMPACT:

No Fairfax County funds will be used for this project.

Project is funded by a combination of the following:

Federal Funds - \$1,344,400  
State Funds - \$1,725,397  
Loudoun County - \$1,000,000

ENCLOSED DOCUMENTS:

Attachment I: Location and Design Public Hearing Handout

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT  
Karyn L. Moreland, Section Chief, Capital Projects, FCDOT  
Jane Rosenbaum, Senior Transportation Planner, FCDOT

**Get Involved**

VDOT representatives will review and evaluate any information received as a result of this meeting. The comment sheet in this brochure is provided to assist in making your comments. You may leave the sheet or any other written comments in the comment box at the meeting, provide oral comments to the court reporter tonight, or mail/email your comments.

Comments must be postmarked, emailed or delivered to VDOT by **October 23, 2013** to be included in the public hearing record.

Comments may be mailed to Mr. Bud Siegel at the address below or emailed to [meeting\\_comments@vdot.virginia.gov](mailto:meeting_comments@vdot.virginia.gov). Please include "Braddock and Pleasant Valley Roundabout" in the email subject line.

Project information shared here, including a summary of comments received during the comment period will be available at [www.virginiadot.org/projects](http://www.virginiadot.org/projects) and at VDOT's Northern Virginia District Office.

**Contact Information**

|   |   |   |                     |
|---|---|---|---------------------|
| <p><b>Primary Contact:</b><br/> <b>Bud Siegel, PE</b><br/>                 Bud.Siegel@VDOT.Virginia.gov</p> | <p>VDOT Northern Virginia<br/>                 Preliminary Engineering</p>            | <p>4975 Alliance Drive<br/>                 Fairfax, VA 22030</p> | <p>703-259-2118</p> |
| <p><b>Amir Salahshoor, PE</b><br/>                 A.Salahshoor@VDOT.Virginia.gov</p>                       | <p><b>VDOT Northern Virginia<br/>                 Project Manager</b></p>             | <p>4975 Alliance Drive<br/>                 Fairfax, VA 22030</p> | <p>703-259-1957</p> |
| <p><b>Joan Morris</b><br/>                 Joan.Morris@VDOT.Virginia.gov</p>                                | <p><b>VDOT Northern Virginia<br/>                 Public Affairs Manager</b></p>      | <p>4975 Alliance Drive<br/>                 Fairfax, VA 22030</p> | <p>703-259-1799</p> |
| <p><b>D. Brian Costello</b><br/>                 Brian.Costello@VDOT.Virginia.gov</p>                       | <p><b>VDOT Regional Right of<br/>                 Way &amp; Utilities Manager</b></p> | <p>4975 Alliance Drive<br/>                 Fairfax, VA 22030</p> | <p>703-259-2986</p> |

TTY/TDD Dial 711



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**Design Public Hearing**

**Braddock Road and Pleasant Valley Road Roundabout  
 Fairfax County**

**Wednesday, October 9, 2013, 6 - 8 p.m.**

Ormond Stone Middle School  
 5500 Sully Park Drive  
 Centreville, VA 20120



**Public Meeting**

**The Virginia Department of Transportation welcomes you to the design public hearing on the proposed roundabout at Braddock Road and Pleasant Valley Road. We look forward to your active participation.**

This meeting is being held to provide an opportunity for citizens and organizations to give VDOT comments and/or suggestions on the proposed project. VDOT strives to ensure that all members of the community have the opportunity to participate in public decisions on transportation projects and programs affecting them.

VDOT representatives are present to discuss the project and answer your questions.

A comment sheet is included in the handouts for this meeting, and your input is encouraged. All oral and written comments received on this project will be included in a transcript for review by VDOT personnel, citizens and other interested parties.

VDOT staff will address questions and concerns raised as a result of this meeting before the project is presented to VDOT's Chief Engineer for consideration.

**Project Overview**



**Purpose** – Construct a new roundabout to replace the existing 4-way stop intersection, which is inadequate for current traffic volumes

**Location** – Braddock and Pleasant Valley Roads

**Total Length** – 0.200 miles

**Improvements** – Enhance operational and safety performance of the intersection

State Project Number: (INFO) 0620-029-017, P-101, R-201, C-501 UPC: 103318  
 Federal Project Number: STP-5A01 (382)

## PROJECT DESCRIPTION

This design/build project will construct a new roundabout at the intersection of Braddock Road (Rte. 620) and Pleasant Valley Road (Rte. 609) in Fairfax County.

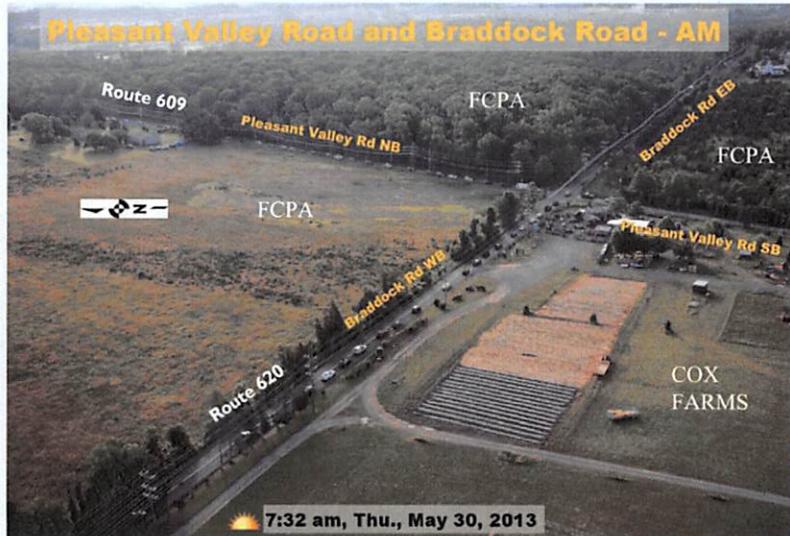
As of 2012, about 7500 vehicles per day travelled this section of Braddock Road and about 8500 travelled along Pleasant Valley Road.

The roundabout will provide additional capacity for forecasted traffic volumes and improve safety by reducing conflict points and eliminating the potential for turn/angle crashes at the intersection. It will also enhance pedestrian access for residents in the area.

The new roundabout includes crosswalks, landscaping, and lighting to enhance the intersection.

Pedestrians will be provided with painted crosswalks, and curb ramps to walk around the intersection.

The sidewalk will be tied into the existing trail along the east side of Pleasant Valley Road south of the intersection.



FCPA: Fairfax County Park Authority

## Estimated Project Cost

Total cost:  
**\$4,079,041**

Preliminary Engineering Plans:  
**\$516,531**

Right of Way Acquisition and Utility Relocation:  
**\$300,000**

Construction:  
**\$3,262,510**

*This cost is subject to change as development of the project is in early design stages.*

## Civil Rights

VDOT ensures nondiscrimination and equal employment in all programs and activities in accordance with Title VI and Title VII of the *Civil Rights Act of 1964*.

If you need more information in regards to your civil rights on this project or special assistance for persons with disabilities or limited English proficiency, contact the project manager listed on the back of this brochure.

## Right of Way

Construction will not require displacement of any families, businesses or non-profit organizations.

As design of this project is finalized, additional easements may be required beyond the proposed right of way shown on the public hearing plans. The property owners will be informed of the exact location of the easements during the right of way acquisition process and prior to construction.

Information about right of way purchase is discussed in VDOT's brochure, "Right of Way and Utilities: a Guide for Property Owners and Tenants." Copies of this brochure are available here from a VDOT Right of Way agent.

After this meeting, information regarding right of way may be obtained from the Right of Way contact listed on the back of this brochure.

## Anticipated Schedule (Design/Build)

Public Hearing:  
**October 9, 2013**

Public Hearing Comment Period Ends:  
**October 23, 2013**

Adopt Location/Design:  
**December 16, 2013**

Right of Way Funds Authorized:  
**December 31, 2013**

Advertise Design/Build Project:  
**December 31, 2013**

## Environmental Review

A Categorical Exclusion/Section 4(f) Evaluation was prepared in accordance with the *National Environmental Policy Act (NEPA)*, 23 CFR Part 771 and 23 CFR 774.

In compliance with the *National Historic Preservation Act*, Section 106 and 36 CFR Part 800, information concerning the potential effects of the proposed improvements on properties listed in or eligible for listing in the National Register of Historic Places is also included in the document.

Copies of the document are available for review here tonight, or it can be viewed at VDOT's website, [www.virginiadot.org/projects](http://www.virginiadot.org/projects).

## Roundabout Benefits

- ✓ Improved Safety
- ✓ Increased Capacity
- ✓ Reduced Queuing
- ✓ Improved Geometric Design to Accommodate Larger Vehicles (School Buses)
- ✓ Improved Access to Cox Farms

ACTION – 3

Board Action to Restructure the Financing and Governmental Structure of the Workhouse Arts Center to Ensure its Long-term Sustainability

ISSUE:

Board approval of attached resolutions to authorize the purchase of the leasehold interest in the renovated Workhouse Arts Center campus currently occupied by the Lorton Arts Foundation (LAF) and related settlement of claims with LAF's lender, Wells Fargo.

RECOMMENDATION:

The County Executive recommends approval of the resolution in Attachment 1 to purchase the leasehold interest of LAF on terms that will result in the discharge of all LAF's obligations to its lender, the release of the lender's liens on the leasehold being acquired by the County and cancellation of the County's contingent liabilities under the terminated lease. Pursuant to the adoption of this resolution, Wells Fargo will agree to write off and eliminate half of the outstanding debt on the Workhouse Arts Center, eliminating approximately \$30 million in current obligations. The County Executive further recommends approval of the resolution in Attachment 2 to authorize a draw on the County's line of credit to provide interim financing of the purchase price of the leasehold interest of LAF. The County Executive also recommends approval of the resolution in Attachment 3 to authorize a revocable license for the operation of the Arts Center on a temporary basis.

TIMING:

Board action is required on January 14, 2014 in order to achieve a closing by January 30, 2014 of the purchase of the leasehold on the terms negotiated among the County, LAF and Wells Fargo.

BACKGROUND:

The Workhouse Arts Center is a 56-acre, historically important County landmark, owned by Fairfax County and situated on the site of the former Lorton prison operated by the District of Columbia. Originally constructed in the early 1900's, the former workhouse and reformatory is on the National Park Service's Register of Historic Places, and included the imprisonment of early suffragettes. The prison facility closed in 2001 and the following year it was part of a 2,440-acre purchase by Fairfax County from the federal government. As reflected in the nominal purchase price, the federal sale of the total acreage set aside much of the land to parks and

open space, and required the County to develop an adaptive re-use plan for the associated buildings. The County's non-profit tenant, LAF, implemented the adaptive re-use plan on the Workhouse portion of this property in accordance with zoning proffers and other restrictions, restoring 10 historic buildings on the campus with a total of about 84,000 improved square feet.

In order to renovate these buildings, LAF obtained tax-exempt bond financing via the EDA, secured by letters of credit provided by Wells Fargo. At present, LAF has debt obligations of nearly \$60 million to Wells Fargo. This debt burden has proven to be unsustainable and threatens to collapse upon LAF, thereby throwing this County asset into uncertainty and entangling the three parties in protracted and costly litigation. Although the debt belongs to LAF, the County is not without financial exposure given certain lease commitments.

LAF was created in 2001 as a 501(c)(3) not-for-profit entity. In 2004, LAF engaged local consultants to conduct a Financial Feasibility Study in support of bond financing. According to a subsequent study in 2012 prepared for the County by the firm of Brailsford & Dunlavey, LAF's original feasibility study "overestimated revenues and underestimated operating expenses" associated with the arts campus. It was further determined that the LAF business model "was created at a time when the national and local economies were robust." The national economic recession clearly impacted LAF's ability to achieve its revenue goals, especially in a more challenging fundraising environment. Another study commissioned by LAF earlier in 2012 by the Urban Land Institute (ULI) also acknowledged that "building an arts community and educational center from the ground up while managing a complex historical renovation of this scale is a sizable and complex undertaking." As such, LAF simply overextended its ability to pay for operations and cover the debt. In fact, both studies identified significant, continued Fairfax County support as a critical necessity. According to ULI, "most nonprofit Arts Centers rely on significant public contributions as part of their budgets."

Over the years the Board of Supervisors has invested over \$16 million in this asset, both in infrastructure costs and direct operating support to LAF. Moreover, the Board has previously committed to identifying long-term solutions to this fiscal crisis while honoring prior commitments to open space, parkland and rustic settings that reflect community needs and desires expressed during the intensive land use planning process that led to the development plan at the Workhouse site. During the past 18 months, senior County staff have been working with LAF to stabilize their operations, while negotiating with Wells Fargo towards a long-term debt resolution. Reflecting its commitment to strong financial management, the Board's action to resolve the current LAF debt crisis and protect this County asset will enable the continued adaptive reuse of this historic property; provide for the stabilization, preservation and

improvement of this site; and will help improve the quality of life in the Laurel Hill community through sustained arts programming at the Workhouse complex.

With the adoption of the attached resolutions and the County's acquisition of the LAF leasehold interest in the Arts Center, Fairfax County, Wells Fargo, and LAF are resolving this issue in partnership. This will result in the cancelling of all remaining debt obligations; cancelling the existing long-term lease; and cancelling all contingent lease liabilities. Fairfax County is protecting its financial interests consistent with its triple A bond rating, and Wells Fargo, recognizing the financial realities of LAF, is writing off approximately \$30 million in outstanding debt, or half of the current obligation.

In addition, while there were extraordinary construction obstacles throughout the renovation project, LAF accepts responsibility for the present situation and, at the insistence of the Board of Supervisors, LAF will be abolished and a new non-profit foundation will be restructured under County oversight, to include a new board with greater business and management expertise. The new non-profit entity is expected to take over operations in the next few months and is committed to an operating under a balanced budget, back-stopped by reserves funded by its restructured board.

Coming out from under the crushing debt burden, the non-profit organization also believes future fundraising will be far more productive as it becomes clear that all contributions can now be plowed directly into campus operations. As landlord, Fairfax County will continue to exercise expanded financial oversight and approval of future operating budgets and is expected to enter into a shorter term lease with the reorganized non-profit entity in the next few months.

FISCAL IMPACT:

Adoption of the resolution in Attachment 1 will result in the termination of the County's liabilities under the existing lease, and Wells Fargo will agree to write off half of the outstanding debt, or approximately \$30 million. Adoption of the resolution in Attachment 2 will authorize a draw on the County's line of credit with Bank of America in the amount of \$30 million to provide interim financing for the acquisition of the leasehold interest that LAF has in the Arts Center. The entire \$30 million will be paid to Wells Fargo, and Wells Fargo will release LAF from all of its debt obligations. County staff, in concert with its financial advisors, will in the next several months recommend the conversion of the interim financing to longer term financing and will return to the Board with the permanent financing plan. Adoption of the resolution in Attachment 3 will authorize a revocable license for the temporary operation of the Arts Center on a self-sufficient basis with no fiscal impact on the County.

ENCLOSED DOCUMENTS:

Attachment 1 - Resolution Authorizing the Purchase Contract of Leasehold Interests of LAF and Settlement Agreement

Attachment 2 - Resolution Authorizing Interim Financing for Leasehold Purchase

Attachment 3 - Resolution Authorizing a Revocable License for the Temporary Operation of the Arts Center

STAFF:

Edward L. Long Jr., County Executive

David P. Bobzien, County Attorney

Susan W. Datta, Chief Financial Officer

David J. Molchany, Deputy County Executive

Cynthia L. Tianti, Deputy County Attorney

Kevin C. Greenlief, Director, Department of Tax Administration

Alan M. Weiss, Assistant County Attorney

Merni Fitzgerald, Director, Office of Public Affairs

ATTACHMENT 1

*County Resolution*  
*Purchase Contract*

**RESOLUTION APPROVING AND AUTHORIZING THE ACQUISITION OF THE LEASEHOLD INTEREST OF LAF, LLC, IN THE WORKHOUSE ARTS CENTER; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE CONTRACT WITH LAF, LLC, THAT SETS FORTH THE TERMS AND CONDITIONS FOR SUCH ACQUISITION AND A SETTLEMENT AGREEMENT WITH WELLS FARGO BANK NATIONAL ASSOCIATION; AND DELEGATING TO CERTAIN COUNTY OFFICIALS AUTHORITY TO EXECUTE AND DELIVER OTHER DOCUMENTS AND AGREEMENTS RELATING TO SUCH ACQUISITION AND TO DETERMINE CERTAIN DETAILS OF SUCH ACQUISITION**

**WHEREAS**, Fairfax County, Virginia (the “**County**”), acquired from the federal government in 2002 the 56-acre site and facilities of the architecturally significant and historic Lorton Correctional Complex (the “**Premises**”), and in 2006 leased the Premises for 35 years for a nominal rental to LAF, LLC (“**LAF**”), which, with its affiliates, undertook with, among other resources, over \$16 million of financial investment and support from the County and proceeds of over \$53 million in loans secured in part by liens (“**Lender’s Liens**”) of Wells Fargo Bank National Association (“**Lender**”) on the leasehold interest of the Tenant in the Premises (such leasehold as it may exist at any time, “**Leasehold**”) and by contingent commitments of the County in accordance with the terms of the Lease (as amended from time to time, the “**Lease**”) between the County, as landlord, and LAF, LLC, as tenant (the “**Tenant**”), to rehabilitate and develop the Premises into a public Workhouse Arts Center for the performing and visual arts (the “**Project**”); and

**WHEREAS**, the Board of Supervisors of Fairfax County, Virginia (the “**Board of Supervisors**”) finds and determines that LAF (i) has failed to complete construction of key components of the Project, such as the Event Center, the Theater, the Music Barn and the Amphitheater, that are critical to the function and financial success of the Workhouse Arts Center and (ii) lacks the resources to complete the Project, and, therefore, the potential and promise of a fully developed and operational Workhouse Arts Center remain frustrated and unrealized;

**WHEREAS**, the County has heretofore exercised its unilateral right under the Third Amendment to Lease dated as of June 14, 2012, which amendment was consented to by the holder of the Lender’s Liens, to remove from the Premises the facilities and land identified as “Unoccupied Facilities” in the Lease; and

**WHEREAS**, the Board of Supervisors finds and determines that the exercise by the County of its unilateral right of the County to remove the Unoccupied Facilities from the Premises at no cost will enable the County to develop or attract others to develop the Unoccupied Facilities on more favorable terms than if the Unoccupied Facilities were to remain part of the Leasehold; and

**WHEREAS**, the Board of Supervisors finds and determines that the County's acquisition of the Leasehold will significantly enhance the prospect that the County will be able to attract the resources and talent necessary to complete the Project and to operate or obtain the services of others to operate the various facilities that comprise the Workhouse Arts Center and to offer to County residents a robust and expanded menu of cultural programs featuring visual and performing arts; and

**WHEREAS**, the County and the Tenant have reached agreement on the terms on which the County would acquire the Leasehold from the Tenant, such agreement being embodied in a Agreement of Purchase and Sale of Leasehold Interest between the County and the Tenant (the "**Purchase Contract**"), such terms including (a) the requirement of the County that the Premises be free and clear of the Lender's Liens (which circumstance will result in termination of the contingent commitments of the County) and (b) the requirement of the Tenant that the purchase price of the Leasehold must be sufficient for the Tenant to obtain the discharge of the Lender's Liens; and

**WHEREAS**, the Board of Supervisors finds and determines, based, among other things, upon the advice of senior staff, that the value of Leasehold is not less than the purchase price to be paid under the Purchase Contract and has approved a purchase price for the Leasehold that the Tenant has represented will enable the Tenant to discharge the Lender's Liens and that will therefore also relieve the County of its contingent commitments; and

**WHEREAS**, the Lender and the County have reached agreement, embodied in Settlement Agreement between them (the "**Settlement Agreement**"), to resolve all matters relating to the County's contingent commitments to support the Project; and

**WHEREAS**, the Board of Supervisors has reviewed, duly considered the form and terms of the Purchase Contract and the Settlement Agreement, weighed the recommendations of the County's senior staff, financial advisor and counsel and determined to proceed to approve and authorize the execution and delivery of the Purchase Contract and the Settlement Agreement; and

**WHEREAS**, the Board of Supervisors has determined that it is necessary to delegate to appropriate County officials authority to execute the Purchase Contract and the Settlement Agreement subject to the guidelines and standards established hereby; now, therefore,

**BE IT RESOLVED** by the Board of Supervisors, as follows:

**SECTION 1.** The acquisition of the Leasehold is hereby approved.

**SECTION 2.** (a) The form and terms of the Purchase Contract attached to this resolution are approved, and the Chairman or Vice Chairman of the Board or the County Executive or the Chief Financial Officer of the County (each a “**PC Delegate**”), as appropriate, is authorized and directed to execute and deliver, in the name and on behalf of the County, and the Clerk or any Deputy Clerk is authorized and directed to impress the County’s seal upon, the Purchase Contract in substantially such form, with such additions and modifications as shall be approved by the PC Delegate executing the Purchase Contract, such execution being conclusive evidence of such approval.

(b) (i) The form and terms of the Settlement Agreement attached to this resolution are approved, and the Chairman or Vice Chairman of the Board or the County Executive or the Chief Financial Officer of the County (each a “**SA Delegate**”), as appropriate, is authorized and directed to execute and deliver, in the name and on behalf of the County, and the Clerk or any Deputy Clerk is authorized and directed to impress the County’s seal upon, the Settlement Agreement in substantially such form, with such additions and modifications as shall be approved by the SA Delegate executing the Settlement Agreement, such execution being conclusive evidence of such approval.

(ii) As required by the terms of the Settlement Agreement, the County agrees to reimburse the Lender if and to the extent that the Lender is not fully reimbursed by LAF or an affiliate for a draw on its standby letter of credit issued for the account of LAF, in favor of the beneficiaries thereof, in the amount of \$1,000,000 and with an expiry date of May 6, 2014.

(iii) As required by the terms of the Settlement Agreement, the County Executive is hereby directed and authorized to replace such letter of credit on or before May 6, 2014 with an undertaking of the County to reimburse the beneficiaries of such letter of credit for up to \$1,000,000 in the event for which the letter of credit was issued should transpire, and such undertaking in any form approved by the County Attorney is hereby approved and the execution and delivery thereof authorized.

**SECTION 3.** The execution and delivery by any PC Delegate of the Purchase Contract and by any SA Delegate of the Settlement Agreement, and any other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of such Delegate’s approval, on behalf of the County, of the changes, if any, in the form and content of the Purchase Contract and the Settlement Agreement.

**SECTION 4.** The Delegates and other members, officers and employees of the Board of Supervisors and the County are hereby authorized and directed to do all acts and things required of them by the provisions of the Purchase Contract and the Settlement Agreement for the full, punctual and complete performance of all the terms, covenants, provisions and agreements of the Purchase Contract and the Settlement Agreement and also to do all acts and things required of them by, and to confirm the removal of the Unoccupied Facilities, record such instruments and take such other actions, as will promote the goals of this Resolution.

**SECTION 5.** Each of the Delegates is authorized to execute one or more certificates evidencing the determinations made or other actions carried out pursuant to the authority granted

in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein.

**SECTION 6.** All actions taken by any of the Delegates and other members, officers and employees of the County heretofore in connection with the acquisition of the Leasehold and their actions authorized and approved hereby are hereby ratified and confirmed.

**SECTION 7.** Any and all resolutions of the Board of Supervisors or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

**SECTION 8.** This resolution shall take effect immediately upon its adoption.

Adopted January 14, 2014

(Seal)      **A Copy Teste:**

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Clerk to the Board of Supervisors

Lorton Arts Foundation Leasehold

AGREEMENT OF PURCHASE AND SALE of LEASEHOLD INTEREST

SELLER: LAF, LLC, a Virginia Limited Liability Company

PURCHASER: Board of Supervisors of Fairfax County, Virginia

List of Exhibits

- Exhibit A - Premises
- Exhibit B - Occupancy Agreements
- Exhibit C - Warranty Release and Termination of Lease
- Exhibit D - Permitted Exceptions
- Exhibit E - Existing Contracts
- Exhibit F - Insurance
- Exhibit G -Warranty Bill of Sale
- Exhibit H -Warranty Assignment of Permits

AGREEMENT OF PURCHASE AND SALE OF LEASEHOLD INTEREST

This **AGREEMENT OF PURCHASE AND SALE OF LEASEHOLD INTEREST** (this “**Agreement**”) is made and entered into as of January \_\_, 2014 (the “**Effective Date**”), by and between **LAF, LLC** a Virginia limited liability company (“**Seller**”), and the **Board of Supervisors of Fairfax County, Virginia** (“**Purchaser**”).

**RECITALS:**

**R-1.** Purchaser, as the landlord thereunder, and Seller, as the tenant thereunder, entered into a lease agreement made as of the 27<sup>th</sup> day of July, 2006 (“**Initial Lease**”), whereunder Purchaser leased to Seller certain land and improvements as identified as Parcel G on Exhibit A to the Initial Lease (the “**Premises**”), which exhibit is attached hereto as **Exhibit A**.

**R-2.** The Initial Lease was amended pursuant to (i) an Amendment to Financing Documents dated as of August 15, 2008, between and among Seller, Purchaser, The Lorton Arts Foundation, Inc. (“**LAF, Inc.**”), Workhouse Art Center, LP (“**Workhouse**”), Wachovia Bank, National Association (“**Wachovia**”) (the “**First Amendment**”); (ii) a Phase II Amendment to Lease Documents dated as of July 8, 2010, between and among, Seller, Purchaser, Wells Fargo Bank, National Association (“**Wells**”) successor to Wachovia, LAF, Inc. (collectively Wachovia and Wells, as the success-by-merger to Wachovia are sometimes referred to herein jointly as the “**Bank**”) and the Workhouse (the “**Second Amendment**”); and (iii) a Third Amendment to Lease dated as of June 14, 2012, by and between Purchaser and Seller, and consented to by Wells (the “**Third Amendment**”). (The Initial Lease, as amended by the First Amendment, the Second Amendment, and the Third Amendment are herein collectively referred to as the “**Lease**”).

**R-3.** Pursuant to the Third Amendment, Purchaser has the unrestricted right to remove from the Premises of the Lease certain “**Unoccupied Facilities,**” as described therein, such Unoccupied Facilities including vacant buildings and the surrounding land.

**R-4.** On December 20, 2013, Purchaser exercised its right under the Lease to remove from the Premises the Unoccupied Facilities, thereby leaving the remainder of the Premises being referred to herein as the “**Leasehold.**”

**R-5.** The Fairfax County Economic Development Authority (the “**Issuer**”) issued its Industrial Development Revenue Bonds (Lorton Arts Foundation, Inc. Project) Series 2006 in the aggregate principal amount of \$26,200,000 (the “**2006 Bonds**”) pursuant to an Indenture of Trust dated as of July 1, 2006 (as the same may have been supplemented pursuant to its terms, the “2006 Indenture”) with the Bank as Trustee.

**R-6.** Pursuant to a Loan Agreement dated as of July 1, 2006, between the Issuer and LAF, Inc. Seller, and Workhouse (collectively, LAF, Inc. Seller and Workhouse are called the “**Company**”) (the “**2006 Loan Agreement**”), the Issuer lent the proceeds of the 2006 Bonds to the Company (a) to finance the development, construction and equipping of certain facilities subject to the Lease as more fully described in the 2006 Loan Agreement, (b) to fund reserves, and (c) to pay certain costs of issuing the 2006 Bonds.

**R-7.** To provide additional security for the payment of the 2006 Bonds, the Bank issued Irrevocable Letter of Credit No. SM221113W (as the same may have been amended from time to time, the “**2006 Letter of Credit**”) pursuant to the terms of a Reimbursement and Security Agreement dated July 27, 2006 between the Company and the Bank, as amended and restated by an Amended and Restated Reimbursement and Security Agreement dated July 1, 2010 between

the Company and the Bank (the “**Amended and Restated Reimbursement Agreement**”), as subsequently amended (collectively, the “**Reimbursement Agreement**”).

**R-8.** The Issuer issued its Tax-Exempt Adjustable Mode Industrial Development Revenue Bonds (Lorton Arts Foundation, Inc. Project) Series 2010 in the original aggregate principal amount of \$27,500,000 (the “**2010 Bonds**”, collectively the 2006 Bonds and the 2010 Bonds shall be referred to as the “**Bonds**”) pursuant to an Indenture of Trust dated as of July 1, 2010 (as the same may have been supplemented pursuant to its terms, the “**2010 Indenture**”, collectively, the 2006 Indenture and 2010 Indenture shall be referred to as the “**Indentures**”).

**R-9.** Pursuant to a Loan Agreement dated as of July 1, 2010 between the Issuer and the Company (the “**2010 Loan Agreement**”, collectively the 2006 Loan Agreement and the 2010 Loan Agreement shall be referred to as the “**Loan Agreements**”), the Issuer lent the proceeds of the 2010 Bonds to the Company (a) to finance the development, construction and equipping of certain facilities at the Premises as more fully described in the 2010 Loan Agreement, (b) to fund reserves, and (c) to pay certain costs of issuing the 2010 Bonds.

**R-10.** To provide additional security for the payment of the 2010 Bonds, the Bank issued Irrevocable Letter of Credit No. SM237464W (as the same may have been amended from time to time, the “**2010 Letter of Credit**”) pursuant to the Amended and Restated Reimbursement Agreement.

**R-11.** In connection with the 2006 Bonds and the 2010 Bonds, Purchaser and the Bank entered into a Leasehold Mortgagee Agreement dated July 27, 2006, as subsequently amended (collectively, the “**Mortgagee Agreement**”). Among other things, the Mortgagee Agreement requires Purchaser, upon the satisfaction of certain conditions as set forth in the Mortgagee Agreement, to enter into a contingent master lease and upon the occurrence of certain conditions

precedent that are set forth therein to make payments thereunder pursuant to the terms contained therein (the “**Contingent Lease Obligation**”).

**R-12.** The LAF, Inc. and the Bank executed an interest rate swap transaction with a trade date of May 3, 2006 (the “**2006 Swap**”) evidenced by an ISDA Master Agreement and Schedule thereto dated May 2, 2006 and a Swap Transaction Confirmation dated July 26, 2006 (collectively, the “**2006 Swap Documents**”). The Company and the Bank executed an interest rate swap transaction with a trade date of July 8, 2010 (the “**2010 Swap**”) (collectively, the 2006 Swap and 2010 Swap shall be referred to as the “**Swaps**”) evidenced by an ISDA Master Agreement and Schedule thereto dated July 8, 2010 and a Swap Transaction Confirmation dated July 8, 2010 (the “**2010 Swap Documents**” and collectively with the 2006 Swap Documents the “**Swap Documents**”).

**R-13.** The Bank provided a Standby Letter of Credit on behalf of the Company to John Hancock Realty Advisors, Inc. (“John Hancock”) in the amount of \$1,000,000 to secure tax credits that were previously awarded to the company (the “**Hancock LOC**”) and a Standby Letter of Credit on behalf of the Company to Hartford Fire Insurance Company in the amount of \$1,641,241 to secure a construction performance bond issued by Hartford Fire Insurance Company to the County.

**R-14.** The Company’s obligations under the Reimbursement Agreement and Swaps are secured by, among other things, (a) a Credit Line Deed of Trust dated July 1, 2006 and recorded in the land records of Fairfax County, Virginia as instrument number 2006023920.002, as the same may have been amended from time to time (collectively, the “**Deed of Trust**”), and (b) an Assignment of Leases, Rents and Profits dated July 1, 2006 and recorded among the land records of Fairfax County, Virginia as instrument number 2006023920.003, as amended from time to

time (the “**Assignment of Rents**”) (collectively, the Deed of Trust, Assignment of Rents, and all other documents securing the Company’s obligations to the Bank under the Reimbursement Agreement and Swaps shall be referred to as the “**Security Documents**”).

**R-15.** Seller has made substantial capital improvements to the Leasehold with Bond Proceeds, which Leasehold, as improved with the Bond Proceeds, Purchaser desires to purchase from Seller, subject to Wells releasing all claims of whatever nature (collectively the “**Claims**”) against Purchaser and Seller with regard to (i) the Security Documents, including without limitation, the Mortgagee Agreement and the Contingent Lease Obligation, or (ii) claims that Purchaser or Purchaser’s representatives made oral or written statements to the effect that Purchaser would provide financial support to or for the benefit of Seller or Seller’s affiliates (the foregoing release of claims being hereinafter referred to as the “**Bank Release**”).

**R-16.** Seller desires to sell the Leasehold, as improved, in consideration of the Purchase Price of Thirty Million Dollars (\$30,000,000.00) (the “**Purchase Price**”), which Purchase Price shall be applied at Closing (hereinafter defined in Article 9) in the amount that Wells has agreed pursuant to a separate agreement, to accept as payment in full for all Claims.

**NOW, THEREFORE,** in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Purchaser and Seller agree as follows:

## ARTICLE 1

### PURCHASE AND SALE OF LEASEHOLD

1.1 Upon the terms and conditions hereinafter set forth, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Leasehold by Seller’s agreement to terminate and release of record the Lease, including all right and title thereto that Seller may

have. Upon termination of the Lease, Seller, by operation of merger, shall own in fee simple absolute all the Premises, consisting of the real estate comprising the Leasehold, the Unoccupied Facilities, and any and all improvements thereon (whether now or hereafter constructed) and appurtenances thereto, together with all intangible property owned by Seller or affecting or relating to the Leasehold, including, without limitation, the following intangible personal property (collectively, the “**Intangible Personal Property**”) consisting of all licenses, Permits (as defined below), accounts, authorizations, approvals, certificates of occupancy and other consents and approvals necessary for the current use and operation of the Premises, and all right, title and interest of Seller in all transferable warranties, telephone exchange numbers, trade names, plans and specifications and development rights related to any of the foregoing.

## ARTICLE 2

### PURCHASE PRICE

2.1 The purchase price to be paid by Purchaser to Seller for the Premises shall be Thirty Million Dollars (the “**Purchase Price**”), which is subject to prorations and adjustments as provided herein and which shall be payable in accordance with this Article 2.

2.2 Purchaser shall pay to Seller at Closing, through the closing escrow established with Escrow One, LTD (“**Escrow One**”), the Purchase Price, as adjusted to reflect the closing adjustments and prorations provided for in this Agreement, which adjusted balance shall be payable by bank wire transfer.

## ARTICLE 3

### DOCUMENT DELIVERY

3.1 Seller has made available to Purchaser prior to execution and delivery of this Agreement a true, complete and accurate copy of each of the documents in Seller's possession or control that affects or in any way relates to the Leasehold or Unoccupied Facilities, including the Intangible Personal Property which Leasehold and Unoccupied Facilities, including the Intangible Personal Property, collectively constitute the Premises. The foregoing documents include, without limitation, the following.

3.1.1 All utility bills payable during the two (2) years immediately prior to the Effective Date.

3.1.2 All insurance policies (together with certificates of insurance and paid receipts therefor), warranty agreements, brokerage, management, leasing, consulting, service, supply and maintenance contracts and agreements (including, without limitation, any warranties or service contracts relating to termite damage or infestation), and any other commitment, license, option, contract or agreement affecting or relating to the Premises (the "**Contracts**").

3.1.3 A current schedule of employees (the "**Existing Employees**") whose function relates to the operation or maintenance of the Leasehold, listing each employee by name, function and current salary.

3.1.4 All plans, specifications, soil reports, drawings, surveys, environmental reports and audits, easements, licenses, parking covenants, common area maintenance agreements, reciprocal operating agreements, and all other similar agreements, and all

engineering, and inspection reports that were prepared by or for Seller or are in Seller's possession or reasonably obtainable by Seller.

3.1.5 All licenses, permits, zoning variances, special permits, special exceptions, or similar zoning approvals (and all pending applications therefor, if any), certificates of occupancy, non-residential use permits, authorizations, consents, easements and other approvals or instruments required in connection with the construction, use, or operation of the Premises (including any appurtenant parking uses) (the “**Permits**”), and all applications or requests submitted in connection therewith.

3.1.6 All applications or requests that have been submitted since January 1, 2006, to any governmental or quasi-governmental bodies or entities relating to development or use of the Premises.

3.1.7 All leases, subleases and other occupancy agreements (the “**Occupancy Agreements**”), a schedule of which Occupancy Agreements, including all current occupants on the Premises, is attached hereto as **Exhibit B**.

3.1.8 Monthly and year-end operating statements and management reports relating to the income and expenses of, together with monthly vacancy rates for, the Leasehold, unaudited for calendar year 2012 to date and audited for each calendar year, commencing with 2006. In addition, Seller shall make all of its books and records pertaining to the Premises available for review and/or audit and copying by Purchaser and its agents and consultants.

3.1.9 A detailed list of capitalized expenditures made since the initial effective date of the Lease.

3.1.10 All documents filed or prepared with respect to any pending or threatened suit, action, arbitration, or legal, administrative or other proceeding relating to or involving the Premises.

3.1.11 Such other documents and materials as are reasonably requested by Purchaser.

## ARTICLE 4

### TITLE

4.1 Title to Seller's interest in the Premises shall conveyed by Warranty Release of Leasehold and Termination of Lease in the form attached hereto as **Exhibit C**, free and clear of any and all liens, mortgages, security interests, tenancies, restrictions, easements, options, claims, unrecorded agreements, judgments, encroachments, rights of way or other encumbrances of any kind whatsoever, except for the following (the "**Permitted Exceptions**"): (a) those matters identified on **Exhibit D** ; and (b) a lien for real estate taxes not yet due and payable as of the Closing Date (as defined below).

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

5.1 In order to induce Purchaser to execute this Agreement and to proceed to Closing Seller hereby makes the following representations and warranties to Purchaser, all of which are true as of the Effective Date and shall be true as of the Closing Date:

5.1.1 Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Seller possesses all requisite

power and authority to own and operate the Leasehold and to carry on its business as now conducted at the Leasehold, to enter into and perform this Agreement, and to carry out the transactions contemplated herein. The person or persons who have executed this Agreement on behalf of Seller have full power and authority to bind Seller to the terms of this Agreement. Seller has the right to enter into and carry out the terms of this Agreement. This Agreement constitutes, and all other agreements, documents and instruments to be executed by Seller pursuant hereto, when executed and delivered by Seller, will each constitute a valid and binding obligation of Seller, enforceable in accordance with its terms.

5.1.2 All consents, approvals, and authorizations from any person, entity, governmental or quasi-governmental authority required with respect to this Agreement and the consummation of the transactions contemplated herein (including, but not limited to, any partner in or shareholder of Seller whose consent may be necessary) have been obtained.

5.1.3 No portion of the Premises has been condemned or taken in any proceeding similar to a condemnation proceeding, and no action, suit or other proceeding (including, but not limited to, condemnation actions) is pending or has been threatened that concerns or involves the Premises or any portion thereof, any lien, or Seller's interest in the Premises. Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation, breach or default by Seller of, nor conflict with, any contract, organizational document or other instrument to which it is a party, or to which it is subject, or by which it or any of its assets or properties may be bound.

5.1.4 There are no violations of any laws, ordinances, orders, regulations or requirements of any federal, state, county or municipal authority, any insurance carrier and any encumbrances, covenants or restrictions (“**Laws**”) affecting the Premises or any portion thereof (including, without limitation, zoning laws, building and fire codes, Environmental Laws and the Americans with Disabilities Act).

5.1.5 No work has been performed at the Premises, and no materials have been furnished to the Premises, which though not presently the subject of a lien might give rise to mechanics', materialmen's or other liens against Seller's interest in the Premises or any portion thereof.

5.1.6 Seller has no knowledge of any fact, condition, action, or proceeding of any kind or character not heretofore disclosed by Seller to Purchaser in writing, that would adversely affect the development or use of the Premises to the fullest extent permitted under the current zoning classification of the Premises, including but not limited to, (i) planned or threatened road widenings, scenic easements, or other takings by eminent domain or condemnation, (ii) adverse subsurface conditions such as underground mines, caves, unusual rock formations, buried military ordnance, burial sites, or archeological or paleontological sites, or (iii) any planned or actual application or proposal to include the Premises or any part thereof in any national or state register of historic places or sites or to designate the Premises as an historic landmark.

5.1.7 No bankruptcy, insolvency, rearrangement or similar action involving the Premises, any Seller, or any of affiliate or member of Seller, whether voluntary or involuntary, is pending or threatened, and Seller has no intention of filing any such action or proceeding.

5.1.8 All Permits have been obtained and are in full force and effect. All fees payable in connection with such items have been paid in full. The Premises have been used in accordance with all applicable zoning, land use, environmental, and other applicable Laws. No special exception or variances are required as conditions to the full use and occupancy of the Premises under such Laws.

5.1.9 Except for this Agreement, and the Occupancy Agreements identified on **Exhibit B** attached hereto, Seller has not entered into any contract to sell, encumber or lease the Premises or any part thereof.

5.1.10 With the exception of a sublease between Seller, as the sublandlord thereunder, and Metropolitan Performing Arts Alliance, Inc. (“MPAA”), dated April 19, 2013 (the “MPAA Sublease”), all Occupancy Agreements are subleases which by operation of law would automatically terminate upon the Seller’s termination and release of the Leasehold at Closing, except for the mutual agreement of Seller and Purchaser hereunder. Purchaser agrees, however, for the convenience of the occupants under the Occupancy Agreements, that the Occupancy Agreements may continue, in accordance with their terms, provided, however, that they shall be extended only on a month-by-month basis at the sole discretion of Purchaser, and otherwise in accordance with the terms of a limited, short-term, non-exclusive revocable non-leasehold license agreement (the “License Agreement”) that Purchaser and Seller intend to enter into immediately following Closing, pursuant to which License Agreement Seller shall have the right and obligation to provide services for the occupants under Occupancy Agreements in accordance with the terms of the License Agreement. Pursuant to the terms of a Consent with Conditions by and among Seller, Purchaser and MPAA dated April 19, 2013, Purchaser has agreed that following Closing, that MPAA under the MPAA Sublease shall have the right to

continue occupancy in accordance with the MPAA Sublease for a period of four (4) months following Closing.

5.1.11 No collective bargaining agreements between Seller and any labor organization apply to Seller's operation or management of the Premises.

5.1.12 Seller has no knowledge, and has received no notices from governmental officials, insurance carriers or others, to the effect that the Premises (or any use thereof) are in violation of any Laws. All utilities necessary for the operation and use of the Premises are available, and no tap or connection fees have been levied or are outstanding.

5.1.13 No special assessments of any kind have been levied or are threatened or pending against all or part of the Premises, and Seller has no knowledge of any intended assessments.

5.1.14 Seller is not a foreign person, corporation, partnership, trust or estate for the purposes of Section 1445 of the Internal Revenue Code, as amended.

5.1.15 Seller is not, and as of the Closing will not be, a party to any agreement or undertaking of any kind whatsoever, written or verbal, which might affect the Premises, other than those furnished to Purchaser pursuant to Article 3.

5.1.16 All items supplied to Purchaser pursuant to Article 3 above are true and complete as of the date delivered to Purchaser and shall represent the entirety of all documents Seller is obligated to provide Purchaser in accordance with this Agreement.

5.1.17 From and after the commencement date of the Lease, the Premises have not been used for industrial purposes, or for the storage, treatment or disposal of hazardous or toxic wastes or materials, nor have the Premises ever been listed by any federal, state or county agency or governmental official as containing any oil, hazardous waste, hazardous material, chemical waste, or other toxic substance. No hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), 42 U.S.C. 9601(14), pollutants or contaminants as defined in CERCLA, 42 U.S.C. 9601(33), or hazardous waste as defined by the Resource Conservation and Recovery Act, 42 U.S.C. 6903(5), or other similar applicable federal or state Laws (collectively, “**Environmental Laws**”), including, but not limited to, asbestos, radon, oil or other petroleum products, PCBs and urea formaldehyde (collectively, “**Hazardous Substances**”), have been handled, packaged, generated, manufactured, released, removed, stored, used, discharged, treated, installed, transported or deposited over, beneath, in or on the Premises or any portion thereof, from any source whatsoever. There are not presently and to Seller’s knowledge never have been any storage tanks on or under the Premises.

5.1.18 **Exhibit E** attached hereto contains a full and complete listing of all Contracts, including all amendments, modifications and side letters thereto, currently in existence (the “**Existing Contracts**”). Except for the Existing Contracts, there are no Contracts in existence or being contemplated by Seller. Seller has delivered to Purchaser true and complete copies of each Existing Contract. Each Existing Contract is terminable without fee or penalty upon not more than thirty (30) days’ notice. Unless otherwise agreed in writing between Purchaser and Seller, all Existing Contracts shall terminate at or before the Closing.

5.1.19 There is currently in full force and effect property and casualty insurance in the amounts and issued by the company specified in **Exhibit F** (the “**Insurance**”). Such Insurance is written on an “occurrence basis,” and Purchaser has full right to receive any proceeds payable thereunder in accordance with the procedures set forth in Section 9.

5.1.20. There is no litigation against Seller or the Premises or that may affect the Premises or Seller’s right to sell the Leasehold pursuant to this Agreement, and Seller has no knowledge or belief of any litigation threatened against Seller or the Premises, including administrative actions or orders relating to governmental regulations affecting the Premises or any part thereof.

5.1.22. Seller has good title to the Leasehold and the Leasehold has not been encumbered except for the Permitted Exceptions, the MPAA Sublease and the Occupancy Agreement as identified in Section 5.1.10.

5.1.23. All documents and materials delivered to Purchaser in accordance with ARTICLE THREE hereof are true, accurate complete and not misleading in any respect.

5.1.24. Seller was lawfully entitled to all historic tax credits that were awarded to the Premises (“Tax Credits”) and there is no basis for disallowing any such Tax Credits. All representations and warranties made by Seller and Seller’s affiliates with regard to the Tax Credits are true, accurate, complete and not misleading in any respect. The Hancock LOC described in Recital R-13 from Wells for the benefit of John Hancock, the purchaser of the Tax Credits, is in full force and effect and no draws have been made upon the Hancock LOC, and Seller represents and warrants that no basis exists or will exist that would permit a draw on the Hancock LOC.

5.2 All of the representations and warranties of Seller as set forth in Section 6.1 and elsewhere in this Agreement and in any document or certificate delivered to Purchaser pursuant to this Agreement (unless otherwise provided therein) shall survive Closing without limitation. All representations, warranties, covenants and agreements contained in this Agreement and in any other document or certificate delivered to Purchaser by or on behalf of Seller hereunder shall be deemed to have been relied upon by Purchaser and any investigation heretofore or hereafter made by Purchaser or on its behalf. Seller acknowledges that the performance by Purchaser of its obligations under this Agreement is intended to be in reliance upon the performance of each and every agreement, term and condition contained in this Agreement and upon the truth and accuracy in all material respects of each of the representations and warranties contained in this Agreement and in any documents or certificates delivered to Purchaser herewith or otherwise made in writing to Purchaser.

5.3 To induce Seller to execute this Agreement and to perform its obligations hereunder, Purchaser hereby represents and warrants to Seller as of the date hereof as follows: Purchaser has the power to execute, deliver and perform this Agreement and has taken all actions required to authorize the due execution and delivery of this Agreement. The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, violate any provision of any agreement, instrument, order, judgment or decree or, to Purchaser's knowledge, any applicable law or regulation to which either Purchaser is a party or by which it or any of its assets is bound.

## ARTICLE 6

### SELLER'S COVENANTS

6.1 Seller hereby covenants and agrees as follows:

6.1.1 Seller at all times shall comply with all terms and conditions applicable to Seller under the Lease.

6.1.2 From the Effective Date until the Closing Date, Seller shall not take any of the following actions without the prior express written consent of Purchaser, which may be granted or withheld in Purchaser's sole discretion: (a) make or permit to be made any material alterations to or upon the Premises or any part thereof; (b) enter into any agreements, leases, or other undertakings with respect to the Premises or any part thereof without the prior written consent of Purchaser, which consent may be granted or withheld in Purchaser's sole and absolute discretion; (c) make any commitments or representations to any applicable governmental authorities (other than Purchaser), any adjoining or surrounding property owners, any civic association, any utility or any other person or entity that would in any manner be binding upon Purchaser or the Premises; (d) extend, modify, cancel or otherwise alter any Existing Contracts or other agreements affecting the Premises, or consent to any sublease or assignment of any of the foregoing; (e) remove or permit the removal from the Premises of any fixtures, mechanical equipment, or any other item included in the Premises; or (f) reduce the quality of services or level of maintenance to the improvements, or reduce the number of the Existing Employees.

6.1.3 Seller shall promptly furnish to Purchaser all information pertaining to the Premises reasonably requested by Purchaser or its representatives and shall continue to permit

Purchaser and its representatives to make inspections and tests of the Premises, including all portions of the buildings, the leased space, and the parking areas.

6.1.4 Seller shall maintain the Premises in the same condition as on the Effective Date, ordinary wear and tear excepted. Seller shall make all repairs and replacements to the Premises as required under the Lease. Seller shall continue to maintain in full force and effect all Permits and related items relating to the Premises or any part thereof.

6.1.5 Immediately prior to the Closing, Seller shall terminate all Existing Contracts and Existing Employees, except for those that Purchaser has agreed may continue to work at the Premises pursuant to the terms of the License. At the Closing, Seller shall provide evidence to Purchaser, in form reasonably acceptable to Purchaser, that prior to such termination all obligations (including, without limitation, fees, accrued salaries, bonuses, vacation arrangements, and the like) have been completely satisfied.

6.1.6 Seller shall not, after the Effective Date, mortgage or encumber the Premises or execute any conveyances, easements, covenants, conditions or restrictions with respect to the Premises or seek any zoning change or other governmental approval with respect to the Premises without first obtaining Purchaser's prior written consent in each instance. Seller shall keep any existing mortgage or deed of trust and other liens encumbering the Premises current and not in default.

6.1.7 Seller shall (a) pay in a timely fashion all taxes and other public charges against the Premises, and (b) provide Purchaser, within one (1) business day after receipt, with copies of any notices Seller receives with respect to any special assessments or proposed changes in the valuation or assessment of the Premises. Seller shall provide Purchaser, within one (1)

business day after receipt, with copies of any notices Seller receives with respect to any condemnation or eminent domain proceedings affecting the Premises.

6.1.8 Seller shall comply with all Environmental Laws applicable to the Premises, and Seller shall not: (a) handle, package, generate, manufacture, release, store, use, discharge, remove, treat, install, transport or deposit any Hazardous Substances on, in, under or from the Premises; or (b) install in or remove from the Premises any storage tanks. Seller shall advise Purchaser promptly in writing of any notice or other communication, written or oral, from the United States Environmental Protection Agency or any other federal, state or local governmental authority having jurisdiction over the Premises with respect to (i) any alleged violation of any Environmental Law, or (ii) the handling, packaging, generating, manufacture, transportation, release, use, discharge, treatment, installation, removal, storage, deposit or disposal of Hazardous Substances or storage tanks.

6.1.9 In accordance with the terms of the License, Seller shall continue to provide services on a month-to-month basis to the Permitted Occupants as Identified on **Exhibit B** attached hereto.

6.1.10 Seller agrees to reimburse Purchaser immediately, absolutely and unconditionally, if and to the extent that Purchaser makes any payment (i) on account of a draw on the standby letter of credit issued by Wells, for the account of Seller or any affiliate, in favor of John Hancock Realty Advisors Inc., in the amount of \$1,000,000 and with an expiry date of May 5, 2014, as such letter of credit shall exist at any time and as the expiry date thereof may be extended up to May 5, 2016, or (ii) pursuant to the terms of a replacement letter of credit or any

other agreement in favor of John Hancock Realty Advisors Inc. or any affiliate that shall replace the letter of credit described in clause (i) and have a term extending up to May 5, 2016.

## ARTICLE 7

### CONDITIONS TO CLOSING

7.1 The obligations of Purchaser under this Agreement are subject to the satisfaction on or before the Closing Date, as such date may be extended hereby, of all conditions contained in this Agreement, including each of the following (any of which may be waived by Purchaser, in Purchaser's sole and absolute discretion, but only in writing):

7.1.1 Seller shall have performed all of its covenants and other obligations contained in this Agreement, and all of Seller's representations and warranties contained in this Agreement shall be true and correct on and as of the Closing Date as if such representations and warranties were restated in full as of the Closing Date.

7.1.2 Escrow One, Ltd shall be prepared to issue to Purchaser, at standard rates and with such provisions for reinsurance as Purchaser shall request, an ALTA Form B (or other form acceptable to Purchaser in its sole discretion) owner's title insurance policy in the amount of the Purchase Price, insuring that the fee simple estate to the Premises is vested in Purchaser as of the Closing Date with exceptions only for the Permitted Exceptions, and without mechanic's lien, survey, encroachment, parties in possession (except for the Permitted Occupants), creditors' rights and other standard exceptions, but with such endorsements as are reasonably required by Purchaser.

7.1.3 From the Effective Date until the Closing Date, there shall not have occurred any material change to, or deterioration of, the physical condition of the Premises, or any part thereof, ordinary wear and tear excepted. At the Closing, possession of the Premises shall be delivered in a fully operational condition.

7.1.4 In the event that, at the time of the Closing, the Premises shall be in violation of any laws, ordinances, regulations, or requirements (sometimes referred to herein collectively as "laws or regulations" or as "requirements") of any governmental authorities having jurisdiction thereover, or if such governmental authorities shall require any work to be done to or upon the Premises, Seller shall be responsible, at its expense, for correcting all such violations and performing all such work prior to the Closing. If such violations are not corrected or such work is not performed prior to the Closing, Purchaser shall have the right, at its option, to require Seller to pay to Purchaser at Closing in currently available funds the amount Purchaser reasonably estimates for correcting such violations and performing such work.

7.1.5 There shall not be in effect or threatened any legal impediment whatsoever, including any governmentally-imposed moratorium, law, regulation, ordinance, ruling, rule, or order, that could restrict, impede, or substantially delay Purchaser from obtaining building or occupancy permits and other governmental approvals required for the development or use of the Land to the fullest extent permitted under the current zoning of the Land.

7.1.6 The existing zoning classification of the Premises shall not have been changed, and no down-zoning or other adverse change in the zoning requirements applicable to the Premises shall have been enacted, proposed or threatened including but not limited to zoning text amendment, map amendments, and changes in open space and density requirements, and

there shall have occurred no event which would decrease the current F.A.R. available for the Premises.

7.1.8 No condemnation or similar action or proceeding shall have been threatened or instituted against the Premises or any portion thereof.

7.1.9 Seller shall have furnished to Purchaser, in a form acceptable to Purchaser in its sole discretion, a certificate stating that Seller is not a foreign person, corporation, partnership, trust or estate for purposes of Section 1445 of the Internal Revenue Code, as amended, which certificate shall also contain Seller's U.S. employer identification number and address.

7.1.10 All applicable Existing Contracts and Existing Employees shall have been terminated in accordance with Section 7.4, except as otherwise expressly permitted by Purchaser in writing to Seller.

7.1.11 There shall be no moratoria limiting, restricting or prohibiting development or use of the Premises.

7.2 If any condition described in Section 8.1 is not satisfied by the Closing Date, Purchaser shall have the right, at its sole option, to extend the Closing Date for up to an additional sixty (60) days or until such conditions are satisfied, whichever is earlier, in order to afford additional time in which to satisfy such conditions.

7.3 If any condition described in Section 8.1 is not satisfied by the Closing Date, as such date may be extended pursuant to Section 8.2, Purchaser shall have the right to terminate this Agreement by giving written notice of such action to Seller. Upon delivery of such notice,

this Agreement shall terminate, and all rights and obligations of the parties hereunder shall be released and discharged, except that Seller shall remain liable to Purchaser for all damages suffered by Purchaser if the unsatisfied condition was due to a breach by Seller of any of the covenants, obligations, representations or warranties of Seller in this Agreement, and Seller shall remain obligated to comply with all of the terms and conditions of the Lease.

## ARTICLE 8

### DAMAGE, DESTRUCTION AND CONDEMNATION

8.1 In the event of any loss, damage or destruction to the Premises or any part thereof, prior to Closing, which would cost Ten Thousand Dollars (\$10,000) or less to repair or replace as estimated by a person or company selected by Purchaser, the Purchase Price shall be reduced by the estimated cost of such repairs, the transaction contemplated herein shall be consummated without further reduction of the Purchase Price and Seller shall receive such insurance proceeds as are paid on the claim of loss. Notwithstanding the foregoing, at Purchaser's option, Purchaser may elect to receive all such insurance proceeds, and in such case, Seller shall assign to Purchaser its right to receive said proceeds (and credit Purchaser with any deductible related thereto) and there shall be no reduction in the Purchase Price.

8.2 If the cost of repairing or replacing any loss, damage or destruction to the Premises or any part thereof exceeds Ten Thousand Dollars (\$10,000) as estimated as aforesaid, Purchaser shall have the right to terminate this Agreement by delivery of a signed, written instrument by Purchaser to Seller, in which event and all rights, obligations and liabilities of the parties hereto shall thereupon terminate. If, however, Purchaser elects to consummate the purchase of the Premises, the Purchase Price shall be reduced by the estimated cost of such

repairs, the transaction contemplated herein shall be consummated without further reduction of the Purchase Price, and Seller shall receive such insurance as is paid on the claim of loss.

Notwithstanding the foregoing, at Purchaser's option, Purchaser may elect to receive all such insurance proceeds, and in such case, seller shall assign to Purchaser its right to receive said proceeds (and credit Purchaser with any deductible related thereto) and there shall be no reduction in the Purchase Price.

8.3 In the event that any condemnation proceedings are instituted, or notice of intent to condemn is given, with respect to all or any portion of the Premises, Seller shall promptly notify Purchaser thereof, in which event Purchaser shall have the option to either terminate this Agreement, or to consummate the purchase of the Premises without reduction of the Purchase Price, and the right to collect any condemnation award or compensation for such condemnation shall be assigned by Seller to Purchaser at the Closing. Seller shall not agree to or accept any compromise or condemnation award without obtaining Purchaser's prior written approval thereof. For purposes of this Agreement, a condemnation shall be deemed to include any governmental action which could limit or render inconvenient the current access to the Premises.

## ARTICLE 9

### CLOSING

9.1 Unless otherwise agreed in writing between Purchaser and Seller, the closing ("**Closing**") shall be conducted at the Offices of Seller's Counsel, McGuireWoods LLP, 1750 Tysons Boulevard, McLean, Virginia. The date (the "**Closing Date**") on which the consummation of the transaction contemplated hereby shall be held on the 31<sup>st</sup> day of January, 2014, unless otherwise mutually agreed in writing between Purchaser and Seller. Purchaser and

Seller shall cooperate to have all documents relating to Closing executed and submitted to Escrow One in escrow at least one (1) business day prior to the Closing Date.

9.2 At the Closing, Seller shall, as appropriate, execute, acknowledge and/or deliver to Purchaser the following:

9.2.1 A fully-executed warranty termination of release of leasehold with covenants of further assurances in the form of **Exhibit C**.

9.2.2 A fully-executed warranty bill of sale conveying the personal property, if any, to be delivered to Purchaser pursuant to this Agreement, in the form of **Exhibit G**; and

9.2.3 A certificate certifying that Seller is not a foreign person, corporation or partnership, trust or estate within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

9.2.4 A certificate that the representations and warranties of Seller are true and accurate as of the Closing Date as if such representations and warranties had been made on and as of the such date.

9.2.5 An assignment of all Permits and warranties relating to the Premises or equipment, or any part thereof in the form attached hereto as **Exhibit H**

9.2.6 The originals of all Permits, warranties, Lease, and books and records relating to the Premises.

9.2.7 All keys, codes, and other security devices for the Premises.

9.2.8 Any and all other documents, instruments, and agreements necessary or appropriate in the reasonable opinion of Purchaser's attorney to transfer and convey the Leasehold and all interests therein to Purchaser, in accordance with this Agreement.

9.3 Seller shall execute and deliver to the Title Company (i) an ALTA affidavit in the form required by the Title Company certifying (a) the absence of claims which would give rise to mechanic's and materialmen's liens, (b) that Seller is the only party in possession of the Premises except for the Permitted Occupants, and (c) that there are no pending or outstanding suits or judgments against either Seller or the Premises, and (ii) such other documentation as required by the Title Company in order to issue the title policy referred to in Section 7.12, including, without limitation, an affidavit and indemnity agreement in the form required by the Title Company. Seller shall deliver to the Title Company such evidence as may be required with respect to the authority of the person executing the deed of conveyance and other items necessary to issue title to Purchaser.

9.4 Each party shall pay its own expenses with respect to Closing. Pursuant to the License, Seller shall be entitled to retain payments Seller has received from the Permitted Occupants and Seller shall remain responsible for all real estate taxes, personal property taxes, rents and other charges, operating expenses, common area maintenance charges, real estate tax pass-throughs, security charges, assessments (general or special public or private) utilities, and all other payments due from tenants, occupants licensees and concessionaires if any.

9.5 A material condition precedent for Purchaser's obligation to proceed to Closing shall be that Wells has executed the Bank Release and all other documents as Purchaser shall require to establish unconditionally that all Claims have been released, each in form and

substance satisfactory to Purchaser. At the Closing, Purchaser and Seller shall execute and deliver a settlement statement (the “**Settlement Statement**”) showing all of the payments, adjustments and prorations provided herein and otherwise agreed upon by them.

9.6 Possession of the Premises shall be delivered to Purchaser immediately upon consummation of the Closing, free and clear of all tenants and occupants other than the Permitted Exceptions, except for the Permitted Occupants, subject to the License.

## ARTICLE 10

### INDEMNIFICATIONS

10.1 Seller agrees to indemnify, hold harmless and defend Purchaser from and against all of the following:

10.1.1 All debts, liabilities and obligations arising from business done, transactions entered into or other events occurring prior to the Closing with respect to the ownership, management, operation, use, occupancy, maintenance and repair of the Premises, other than those costs, expenses and obligations that are taken into account as closing adjustments to the Purchase Price and are shown on the Settlement Statement.

10.1.2 Any loss, liability or damage suffered or incurred by Purchaser as a result of any representation or warranty made by Seller in this Agreement, or in any document furnished to Purchaser in connection with the transaction contemplated hereunder, being false or misleading in any respect.

10.1.3 Any loss, liability or damage suffered or incurred by Purchaser as a result of the nonfulfillment of any covenant, condition, obligation or agreement on the part of Seller under this Agreement.

10.1.4 Any claim made by any broker or agent for a commission or other compensation with respect to the purchase and sale or lease of the Premises.

10.1.5 The failure of Seller to comply with the provisions of any bulk sales law or similar Law that may be applicable to the transaction contemplated by this Agreement.

10.1.6 All reasonable costs and expenses (including reasonable attorney's fees, including the value of legal services if provided by the Fairfax County Attorney's Office) incurred by Purchaser in connection with any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this subsection or the enforcement of this Agreement.

## ARTICLE 11

### REMEDIES

11.1 In the event Seller fails to perform or observe any of the covenants or obligations to be performed or observed by Seller under this Agreement, if there should be a breach of any of Seller's representations or warranties hereunder, or if any conditions to Purchaser's obligations are not satisfied, Purchaser shall be entitled to pursue any and all remedies available to Purchaser at law or in equity (including, but not limited to, specific performance). The foregoing remedies are cumulative and not exclusive.

## ARTICLE 12

### BROKERS

12.1 Seller hereby represents and warrants that no broker has been involved in this transaction and no fee is due to any broker as a result of this transaction. Seller agrees to indemnify and hold harmless Purchaser from and against any claim arising out of a breach of the foregoing agreement and representation and warranty.

## ARTICLE 13

### NOTICES

13.1 Any notice or other communication required or permitted hereby, or convenient to Seller or Purchaser in the consummation of the transactions contemplated hereby, shall be deemed delivered upon receipt (i) when sent by registered or certified mail, return receipt requested postage prepaid, (ii) when sent by an expedited courier services, fees prepaid, and addressed to the respective parties and either a receipt is acknowledged therefor, or the courier service certifies that the party refused receipt, or (iii) when sent by electronic mail provided the party receiving such electronic mail promptly confirms to the other party receipt of such electronic mail.

Notices to Purchaser shall be sent to:

Fairfax County Executive  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Attention: Edward L. Long Jr.  
Email: [JoAnn.Havach@fairfaxcounty.gov](mailto:JoAnn.Havach@fairfaxcounty.gov)

With copies to:

Kevin Greenlief, Director  
Department of Tax Administration  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Email: [Kevin.Greenlief@fairfaxcounty.gov](mailto:Kevin.Greenlief@fairfaxcounty.gov)

and

David P. Bobzien, Esquire  
County Attorney  
12000 Government Center Parkway  
Suite 549  
Fairfax, Virginia 22035  
Email: [David.Bobzien@fairfaxcounty.gov](mailto:David.Bobzien@fairfaxcounty.gov)

Notices to Purchaser shall be sent to:

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

## ARTICLE 14

### MISCELLANEOUS

14.1 The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.

14.2 Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder or which are to be given with respect to this Agreement shall be in writing printed notice of successful transmission.

14.3 Seller and Purchaser agree to execute, acknowledge and deliver any further agreements, documents, certificates or instruments that are reasonably necessary or desirable to carry out the transaction contemplated by this Agreement.

14.4 No amendment to this Agreement shall be binding on Seller or Purchaser unless such amendment is in writing and executed by both Seller and Purchaser.

14.5 This Agreement and all transactions hereunder shall be governed by the laws of the Commonwealth of Virginia, without regard to the application of choice of law principles. The parties expressly agree that the rule that an Agreement should be construed against the party drafting it shall not apply to this Agreement.

14.6 All representations, warranties, covenants and indemnities contained in this Agreement shall survive the Closing without limitation.

14.7 Time is of the essence of each and every provision of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the Commonwealth of Virginia then, and in such event, such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

14.8 If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

14.9 The submission of an unsigned copy of this Agreement to Purchaser or Seller shall not constitute an offer or option to buy or sell the Leasehold. This Agreement shall become effective and binding only upon execution and delivery by both Seller and Purchaser.

14.10 This Agreement may be executed in counterparts, each of which shall be deemed an original document, and all of which together shall constitute one and the same instrument.

14.11 This Agreement contains the entire agreement of the parties and supersedes all prior oral and written agreements, negotiations, letters of intent, proposals, representations, warranties, covenants and discussions between the parties.

14.12 Headings in this Agreement are used for convenience only and shall not be considered when construing this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the dates set forth beneath their respective signatures below.

PURCHASER:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

[SEAL]

By: \_\_\_\_\_  
Edward L. Long Jr.  
County Executive

**ATTEST:**

\_\_\_\_\_

SELLER:

[SEAL]

LAF, LLC  
By: The Lorton Arts Foundation, Inc.  
Its sole member

**ATTEST:**

\_\_\_\_\_

By: \_\_\_\_\_  
John Mason, President and Chief Executive Officer

**EXHIBIT A**  
**Premises**  
**LEGAL DESCRIPTION**

ALL that certain lot, piece or parcel of land, together with all improvements thereon, situate, lying and being in the Mount Vernon Magisterial District, Fairfax County, Virginia, said lot or parcel being more particularly described as follows:

BEGINNING at a point in the centerline of Lorton Road - Virginia State Route #642 - variable width right-of-way and prescriptive right-of-way, and being a corner to Parcel "E" of the Plat of Division; thence departing the centerline of said Lorton Road and with the lands of said Parcel "E" the following two (2) courses: South 47° 04' 06" East, a distance of 1109.10 feet; thence South 37° 55' 10" West, a distance of 703.97 feet to a point, said point being an iron pipe set in a corner of Parcel "H" of the Plat of Division; thence departing said Parcel "E" and with the lands of said Parcel "H" the following four (4) courses and distances: South 01° 42' 33" East, a distance of 445.36 feet; thence, South 55° 15' 02" West, a distance of 486.80 feet; thence, South 06° 53' 35" East, a distance of 261.70 feet; thence, South 00° 29' 44" East, a distance of 290.34 feet to a point, said point being an iron pipe set in a corner of Parcel "I" of the Plat of Division; thence departing said Parcel "H" and with the lands of said Parcel "I" the following two (2) courses and distances: North 64° 43' 24" West, a distance of 923.51 feet; thence, North 77° 50' 42" West, a distance of 33.77 feet to a point in the centerline of Ox Road Virginia State Route #123 - 30' prescriptive right-of-way, and being a corner to the lands of Fairfax County Water Authority - Deed Book 10373 at Page 1122; thence departing said Parcel "I" and with the centerline of said Ox" Road and the lands of said Fairfax County Water Authority the following seven (7) courses and distances: North 19° 29' 12" East, a distance of 136.89 feet; thence, North 10° 07' 47" East, a distance of 66.04 feet; thence North 05° 36' 58" East, a distance of 185.21 feet; thence, North 00° 42' 37" East, a distance of 175.05 feet; thence North 04° 08' 21" West, a distance of 799.14 feet; thence North 04° 00' 00" West, a distance of 654.47 feet; thence, North 05° 42' 34" West, a distance of 36.65 feet to a point in the centerline of said Ox Road (formerly Fairfax Courthouse Road); thence departing the lands of said Fairfax County Water Authority and with the centerline of the former Fairfax Courthouse Road, as it formerly existed, the following two (2) courses and distances: South 22° 43' 11" East, a distance of 450.70 feet; thence South 07° 48' 11" East, a distance of 306.00 feet to a point at the centerline intersection of said former Fairfax Courthouse Road and former Telegraph Road as it formerly existed; thence departing said former Fairfax Courthouse Road and with the former centerline of said Telegraph Road the following two (2) courses and distances: North 15° 39' 49" East, a distance of 251.30 feet; thence, North 48° 14' 49" East, a distance of 157.24 feet to a point in the centerline of the aforesaid Lorton Road; thence with the centerline of said Lorton Road the following eleven (11) courses and distances: North 61° 49' 06" East, a distance of 66.67 feet; thence, North 66° 03' 57" East, a distance of 129.41 feet; thence, North 68° 12' 08" East, a distance of 96.50 feet; thence, North 60° 15' 02" East, a distance of 33.98 feet; thence, North 52° 04' 06" East, a distance of 35.13 feet; thence, North 40° 50' 14" East, a distance of 41.74 feet; thence, North 30° 34' 00" East, a distance of 40.94 feet; thence, North 22° 17' 56" East, a distance of 80.73 feet; thence, North 15° 38' 58" East, distance of 154.19 feet; thence, North 18° 28' 01" East, a distance of 43.45 feet; thence, North 25° 52' 32" East, a distance of 27.82 feet to the point of Beginning. Containing 55.6912 acres of land, more or less.

Less and Except those portions dedicated for public street purposes in Deed Book 19655 at Page 1646, in Deed Book 19918 at Page 2006, and Deed Book 22130 at Page 1001, among the said land records.

**EXHIBIT B**  
**Occupancy Agreements**  
**[To be furnished by Seller]**

**EXHIBIT C**  
**Warranty Release and Termination of Lease**

**WARRANTY RELEASE AND TERMINATION OF LEASE**

This **WARRANTY RELEASE AND TERMINATION OF LEASE** (“**Release**”) is made as of January \_\_, 2014 (the “**Effective Date**”) by **LAF, LLC** a Virginia limited liability company (“**Releasor**”) for the benefit of the **Board of Supervisors of Fairfax County, Virginia** (“**Releasee**”).

**RECITALS:**

**R-1.** Releasee, as the landlord thereunder, and Releasor, as the tenant thereunder, entered into a lease agreement made as of the 27<sup>th</sup> day of July, 2006, recorded July 28, 2006, in Deed Book 18641 at Page 1767 (“**Initial Lease**”), whereunder Releasee leased to Releasor certain land and improvements as identified as Parcel G on Exhibit A to the Initial Lease (the “**Premises**”), which exhibit is attached hereto as **Exhibit A**.

**R-2.** The Initial Lease was amended pursuant to (i) an Amendment to Financing Documents dated as of August 15, 2008, between and among Releasor, Releasee, The Lorton Arts Foundation, Inc. (“**LAF, Inc.**”), Workhouse Art Center, LP (“**Workhouse**”), Wachovia Bank, National Association (“**Wachovia**”) (the “**First Amendment**”); (ii) a Phase II Amendment to Lease Documents dated as of July 8, 2010, and recorded in Deed Book 21127 at Page 108, between and among, Releasor, Releasee, Wells Fargo Bank, National Association (“**Wells**”) successor to Wachovia, LAF, Inc. and the Workhouse (the “**Second Amendment**”); and (iii) an unrecorded Third Amendment to Lease dated as of June 14, 2012, by and between Releasee and Releasor, and consented to by Wells (the “**Third Amendment**”). (The Initial Lease, as amended by the First Amendment, the Second Amendment, and the Third Amendment are herein collectively referred to as the “**Lease**”).

**R-3.** Pursuant to the Third Amendment, Releasee has the unrestricted right to remove from the Premises of the Lease certain “**Unoccupied Facilities,**” as described therein, such Unoccupied Facilities including vacant buildings and the surrounding land.

**R-4.** On December 20, 2013, Releasee exercised its right under the Lease to remove from the Premises the Unoccupied Facilities, thereby leaving the remainder of the Premises being referred to herein as the “**Leasehold.**”

**R-5.** The Leasehold is encumbered by liens (“**Lender Liens**”) currently running for the benefit of Wells.

**R-6.** Releasor has agreed to sell its Leasehold interest to Releasee and terminate and cancel the Lease in accordance with the terms of a Purchase and Sale of Leasehold Interest (“**Leasehold Purchase and Sale Agreement**”) dated as of even date herewith between Releasor and Releasee, which Leasehold interest is required to be unencumbered by the Lender Liens.

**NOW, THEREFORE,** in consideration of the Leasehold Purchase and Sale Agreement, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by Releasor, Releasor does hereby agree as follows for the benefit of Releasee and all successors and assigns of Releasee:

1. Releasor hereby releases to Releasee, discharges and cancels the Lease, including all right, title and interest of Releasor thereto.
2. Releasor, for itself and its successors and assigns, and any party claiming through Releasor, does hereby waive any rights or claims of any nature with respect to the Lease.
3. Releasor does hereby agree to prepare, execute and deliver at Releasor’s sole expense, any additional documents, writings or records, take any other actions Releasee reasonably requests to evidence or effect Releasor’s agreements and obligations hereunder and to protect Releasee’s rights and interests hereunder.
4. Releasor further represents, warrants and covenants that the Leasehold hereby released, terminated and cancelled is free and clear of all encumbrances, including without limitation all Lender Liens, subject only to the Permitted Exceptions attached hereto as **Exhibit A**, and the Current Subleases identified on

**Exhibit B** attached hereto (such Permitted Exceptions and Current Subleases being referred to herein as the “**Permitted Encumbrances**”).

- 5. Releasor represents, warrants and covenants that the Releasor has the requisite power and authority to effectuate the release, termination and cancellation of the Lease as provided herein and Releasor agrees to defend Releasee’s title to the Leasehold and the Lease against any and all persons and entities who claim any interest in such Leasehold or any liens or encumbrances with respect thereto except with respect to the Permitted Encumbrances.
- 6. This Release shall be recorded in the Land Records of Fairfax County, Virginia.

IN WITNESS WHEREOF, Releasor has caused this Warranty Release and Termination of Lease to be executed as of the \_\_\_ day of January, 2014.

ATTEST:

\_\_\_\_\_

**RELEASOR:**

LAF, LLC

By: The Lorton Arts Foundation, Inc.  
Its sole member

By: \_\_\_\_\_ [SEAL]  
John Mason, President and Chief Executive Officer

Commonwealth of Virginia)  
)  
County of Fairfax, ) to wit:

The foregoing instrument was acknowledged before me in my aforesaid jurisdiction by John Mason, President and Chief Executive Officer of The Lorton Arts Foundation, Inc. on behalf of LAF, LLC this \_\_\_ day of January, 2014.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT D**  
**Permitted Exceptions**

1. 24' FCWA easement (Deed Book 11570 page 1544)
2. 75' VEPCO R/W (Deed Book 7393 page 1768)
3. 120' VEPCO R/W (Deed Book 15111 page 271)
4. Unlocatable easement granted to VEPCO, recorded in Deed Book/Page 559/449
5. Unlocatable easements for Rt. 95 recorded in Deed Book/Page 3322/419
6. Unlocatable road easements contained in Deed recorded in Deed Book/Page 397/325
7. Unlocatable easement to VPS recorded in Deed Book/Page Q-11/391
8. Right of Way granted to FCWA recorded in Deed Book/Page 11570/1544 and 1727/1491
9. Restrictions appearing in Deed Correction recorded in Deed Book 13116 at Page 2200.
10. Right-of-way(s) Easement(s) granted to Verizon South recorded in Deed Book 19085 at Page 294.
11. Right of way(s)/Easement(s) granted to FCBS, recorded in Deed Book 19277 at Page 881.
12. Right of way(s)/Easement(s) granted to FCWA, recorded in Deed Book 19467 at Page 1878.
13. Storm Water Management Agreement with FCWA, recorded in Deed Book 19572 at Page 770.
14. Dedication and Right of way(s)/Easement(s) granted to FCBS, recorded in Deed Book 19655 at Page 1646.
15. Right of way(s)/Easement(s) granted to Dominion Power, recorded in Deed Book 19788 at Page 854.
16. Right of way(s)/Easement(s) granted to FCWA, recorded in Deed Book 19797 at Page 1552.
17. Right of way(s)/Easement(s) granted to FCWA, recorded in Deed Book 19972 at Page 517, corrected in Deed Book 20013 at Page 1616.
18. Dedication and Right of way(s) way(s)/Easement(s) granted to FXBS recorded in Deed Book 22130 at Page 1001.
19. Right of way(s)/Easement(s) granted to VEPCO, recorded in Deed Book 22130 at Page 1046, corrected in Deed Book 22559 at Page 1850.
20. Right of way(s)/Easement(s) granted to Verizon South, recorded in Deed Book 22130 at Page 1053, corrected in Deed Book 22259 at Page 1819.
21. Right of way(s)/Easement(s) granted to Cox Communications, recorded in Deed Book 22130 at Page 1058, corrected in Deed Book 22559 at Page 1826.
22. Right of way(s)/Easement(s) granted to FCWA, recorded in Deed Book 22130 at Page 1064, corrected in Deed Book 22586 at Page 2049.

**EXHIBIT E**  
**Existing Contracts**

**[To be furnished by Seller]**

**EXHIBIT F**  
**Insurance**

**[To be furnished by Seller]**

**EXHIBIT G**  
**WARRANTY BILL OF SALE**

KNOWN ALL MEN BY THESE PRESENTS THAT:

The undersigned, **LAF, LLC** a Virginia limited liability company ("**Seller**"), hereby warrants that it is the owner of the full legal and beneficial title to all of the personal property, goods, machinery, equipment, furnishings, furniture, merchandise, chattels, materials, and effects listed on Exhibit A attached hereto ("**Personal Property**") that are presently situated in or upon the land and improvements thereon located at 9517 Workhouse Way, Lorton, Virginia, Tax Map No. 106-4-01-0058 for which Seller holds a leasehold interest therein which leasehold interest Seller is releasing and terminating pursuant to an Agreement of Purchase and Sale of Leasehold Interest ("**Leasehold Purchase and Sale Agreement**") dated as of January \_\_, 2014, between Seller and the **Board of Supervisors of Fairfax County, Virginia** ("**Purchaser**"). Seller further warrants that Seller has the right to sell and transfer title to and possession of the Personal Property to Purchaser. Seller warrants and shall defend Purchaser title to the Personal Property against any and all persons who claim any interest in the Personal Property.

In consideration of the Leasehold Purchase and Sale Agreement, ten dollars (\$10.00) and other good and valuable consideration paid to it by Purchaser, receipt and legal sufficiency of which are hereby acknowledged by Seller, Seller does hereby grant, convey, transfer, bargain and sell, deliver and set over with unto Purchaser, its successors and assigns, to hold forever, all of Seller's right, title, equity and interest in and to the Personal Property.

Seller also hereby agrees to prepare, execute and deliver to Purchaser at Seller's sole expense, any additional documents, writings or records, take any other actions Purchaser reasonably requests to evidence or effect Seller's agreements and obligations hereunder and to protect Purchaser's rights and interests with respect thereto.

The terms of this Warranty Bill of Sale shall survive closing under the Leasehold Purchase and Sale Agreement without limitation.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of the \_\_ day of January, 2014.

ATTEST:

SELLER:

LAF, LLC

By: The Lorton Arts Foundation, Inc.  
Its sole member

By: \_\_\_\_\_ [SEAL]  
John Mason, President and Chief Executive Officer

\_\_\_\_\_  
Commonwealth of Virginia)  
)  
County of Fairfax, ) to wit:

The foregoing instrument was acknowledged before me in my aforesaid jurisdiction by John Mason, President and Chief Executive Officer of Lorton Arts Foundation, Inc. on behalf of on behalf of LAF, LLC this \_\_ day of January, 2014.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT H**  
**WARRANTY ASSIGNMENT OF PERMITS AND PLANS**

KNOWN ALL MEN BY THESE PRESENTS THAT:

The undersigned, **LAF, LLC** a Virginia limited liability company ("**Assignor**"), hereby warrants that it holds a leasehold interest in certain land and improvements located at 9517 Workhouse Way, Lorton, Virginia, Tax Map No. 106-4-01-0058 (the "**Property**"), which leasehold interest Assignor is releasing and terminating pursuant to an Agreement of Purchase and Sale of Leasehold Interest ("**Leasehold Purchase and Sale Agreement**") dated as of January \_\_, 2014, between Assignor and the **Board of Supervisors of Fairfax County, Virginia** ("**Assignee**"). Assignor further warrants that Assignor has the right to assign and transfer any rights Assignor may have to all plans, specifications, utility connectivity availability, bonds, reports, licenses, permits zoning variances, special permits, special exceptions, or similar zoning approvals (and all pending applications therefor, if any), certificates of occupancy, non-residential use permits, authorizations, consents, easements and other approvals or instruments required in connection with the construction, use, or operation of the Property (collectively, the "**Permits**"). Assignor warrants and shall defend Assignee's right to the Permits.

In consideration of the Leasehold Purchase and Sale Agreement, ten dollars (\$10.00) and other good and valuable consideration paid to it by the Assignee, receipt and legal sufficiency of which are hereby acknowledged by Assignor, Assignor does hereby grant, convey, transfer, bargain and sell, deliver and set over unto Assignee, its successors and assigns, to hold forever, all of Assignor's right, title, equity and interest in and to the Permits.

Assignor also hereby agrees to prepare, execute and deliver to Assignee at Assignor's sole expense, any additional documents, writings or records, take any other actions Assignee reasonably requests to evidence or effect Assignor's agreements and obligations hereunder and to protect Assignee's rights and interests with respect thereto.

The terms of this Warranty Assignment of Permits shall survive closing under the Leasehold Purchase and Sale Agreement without limitation.

IN WITNESS WHEREOF, Assignor has caused this Warranty Assignment of Permits and Plans to be executed as of the \_\_ day of January, 2014.

ATTEST:

ASSIGNOR:

LAF, LLC

By: The Lorton Arts Foundation, Inc.  
Its sole member

By: \_\_\_\_\_ [SEAL]  
John Mason, President and Chief Executive Officer

\_\_\_\_\_  
Commonwealth of Virginia)  
)  
County of Fairfax, ) to wit:

The foregoing instrument was acknowledged before me in my aforesaid jurisdiction by John Mason, President and Chief Executive Officer of The Lorton Arts Foundation, Inc. on behalf of LAF, LLC this \_\_ day of January, 2014.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of the \_\_ day of January, 2014 between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, SUCCESSOR-BY-MERGER TO WACHOVIA BANK, NATIONAL ASSOCIATION (the "Bank"), and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, Virginia (the "County"). Collectively, the Bank and the County shall sometimes be referred to herein as the "Parties".

### R E C I T A L S

R-1. The County entered into a lease agreement with LAF, LLC ("LAF"), dated July 27, 2006, as subsequently amended from time to time (the "Lease") pursuant to which LAF leased from the County certain land and improvements thereon as described therein (the "Premises").

R-2. The Fairfax County Economic Development Authority (the "Issuer") issued its Industrial Development Revenue Bonds (Lorton Arts Foundation, Inc. Project) Series 2006 in the aggregate principal amount of \$26,200,000 (the "2006 Bonds") pursuant to an Indenture of Trust dated as of July 1, 2006 (as the same may have been supplemented pursuant to its terms, the "2006 Indenture") with the Bank as Trustee.

R-3. Pursuant to a Loan Agreement dated as of July 1, 2006 between the Issuer and the Lorton Arts Foundation, Inc. (the "Foundation"), LAF, Workhouse Art Center, LP ("WAC")(collectively, the Foundation, LAF and WAC are called the "Company") (the "2006 Loan Agreement"), the Issuer lent the proceeds of the 2006 Bonds to the Company (a) to finance the development, construction and equipping of certain facilities subject to the Lease as more fully described in the 2006 Loan Agreement, (b) to fund reserves, and (c) to pay certain costs of issuing the 2006 Bonds.

R-4. To provide additional security for the payment of the 2006 Bonds, the Bank issued Irrevocable Letter of Credit No. SM221113W (as the same may have been amended from time to time, the "2006 Letter of Credit") pursuant to the terms of a Reimbursement and Security Agreement dated July 27, 2006 between the Company and the Bank, as amended and restated by an Amended and Restated Reimbursement and Security Agreement dated July 1, 2010 between the Company and the Bank (the "Amended and Restated Reimbursement Agreement"), as subsequently amended (collectively, the "Reimbursement Agreement").

R-5. The Issuer issued its Tax-Exempt Adjustable Mode Industrial Development Revenue Bonds (Lorton Arts Foundation, Inc. Project) Series 2010 in the original aggregate principal amount of \$27,500,000 (the "2010 Bonds", collectively the 2006 Bonds and the 2010 Bonds shall be referred to as the "Bonds") pursuant to an Indenture of Trust dated as of July 1, 2010 (as the same may have been supplemented pursuant to its terms, the "2010 Indenture", collectively, the 2006 Indenture and 2010 Indenture shall be referred to as the "Indentures").

R-6. Pursuant to a Loan Agreement dated as of July 1, 2010 between the Issuer and the Company (the “2010 Loan Agreement”, collectively the 2006 Loan Agreement and the 2010 Loan Agreement shall be referred to as the “Loan Agreements”), the Issuer lent the proceeds of the 2010 Bonds to the Company (a) to finance the development, construction and equipping of certain facilities at the Premises as more fully described in the 2010 Loan Agreement, (b) to fund reserves, and (c) to pay certain costs of issuing the 2010 Bonds.

R-7. To provide additional security for the payment of the 2010 Bonds, the Bank issued Irrevocable Letter of Credit No. SM237464W (as the same may have been amended from time to time, the “2010 Letter of Credit”) pursuant to the Amended and Restated Reimbursement Agreement.

R-8. In connection with the 2006 Bonds and the 2010 Bonds, the County and the Bank entered into a Leasehold Mortgagee Agreement dated July 27, 2006, as subsequently amended (collectively, the “Mortgagee Agreement”). Among other things, the Mortgagee Agreement requires the County, upon the satisfaction of certain conditions as set forth in the Mortgagee Agreement, to enter into a contingent master lease and upon the occurrence of certain conditions precedent that are set forth therein to make payments thereunder pursuant to the terms contained therein (the “Contingent Lease Obligation”).

R-9. The Foundation and the Bank executed an interest rate swap transaction with a trade date of May 3, 2006 (the “2006 Swap”) evidenced by an ISDA Master Agreement and Schedule thereto dated May 2, 2006 and a Swap Transaction Confirmation dated July 26, 2006 (collectively, the “2006 Swap Documents”). The Company and the Bank executed an interest rate swap transaction with a trade date of July 8, 2010 (the “2010 Swap”) (collectively, the 2006 Swap and 2010 Swap shall be referred to as the “Swaps”) evidenced by an ISDA Master Agreement and Schedule thereto dated July 8, 2010 and a Swap Transaction Confirmation dated July 8, 2010 (the “2010 Swap Documents” and collectively with the 2006 Swap Documents the “Swap Documents”).

R-10. The Bank provided a Standby Letter of Credit on behalf of the Company to John Hancock in the amount of \$1,000,000 to secure tax credits that were previously awarded to the company (the “Hancock LOC”) and a Standby Letter of Credit on behalf of the Company to Hartford Fire Insurance Company in the amount of \$1,641,241 to secure a construction performance bond issued by Hartford Fire Insurance Company to the County (the “Hartford LOC”) (collectively, the Hancock LOC and the Hartford LOC shall be referred to as the “Additional LOCs”).

R-11. The Company’s obligations under the Reimbursement Agreement and Swaps are secured by, among other things, (a) a Credit Line Deed of Trust dated July 1, 2006 and recorded in the land records of Fairfax County, Virginia as instrument number 2006023920.002, as the same may have been amended from time to time (collectively, the “Deed of Trust”), and (b) an Assignment of Leases, Rents and Profits dated July 1, 2006 and recorded among the land records of Fairfax County, Virginia as instrument number 2006023920.003, as amended from time to time (the “Assignment of Rents”) (collectively, the Deed of Trust, Assignment of Rents, and all

other documents securing the Company's obligations to the Bank under the Reimbursement Agreement and Swaps shall be referred to as the "Security Documents").

R-12. As of January 9, 2014, the Bank contends that there is outstanding under the 2006 Bonds principal in the amount of \$23,565,000, plus interest and costs and expenses.

R-13. As of January 9, 2014, the Bank contends that there is outstanding under the 2010 Bonds principal in the amount of \$27,330,000, plus interest and costs and expenses.

R-14. As of January 9, 2014, the Bank contends that there is on deposit in Operating Reserve Account # 2000028806640 for the Project funds in the amount of \$514,577.54, in Debt Service Reserve Fund # 2000028809951 for the 2006 Bonds funds in the amount of \$809,143.13, in Debt Service Reserve Fund # 2000050592278 for the 2010 Bonds funds in the amount of \$1,406,884.59 (collectively, the "Reserves").

R-15. As of January 1, 2014, the Trustee contends there is \$352,731.30 in bond proceeds remaining that have not been advanced to the Company under the 2010 Loan Agreement ("Remaining Bond Proceeds").

R-16. The Board of Supervisors of the County approved this Agreement through a vote at a public regular meeting on January 14, 2014.

R-17. The Issuer's board of directors approved advancing \$30,000,000 to the County that will consummate the County's obligations under this Agreement at its meeting on January [20], 2014.

R-18. The Bank and the Company are parties to another settlement agreement of even date with this Agreement (the "LAF Agreement). The Bank has furnished the County with a copy of the LAF Agreement as executed and delivered by the parties thereto.

R-19. The Company has given conditional notice, in accordance with the applicable provisions of each of the Reimbursement Agreement, the Indentures, the Loan Agreements, of the redemption of all of the outstanding Bonds on January 30, 2014 so that, in the event that the Closing (as hereinafter defined) does not occur on such date, the Bonds shall not be subject to such redemption. Amounts owed by the Company to the Bank under the Reimbursement Agreement as a result of such redemption shall be defined herein as the "LAF Reimbursement Agreement Debt".

R-20. The Parties have agreed to resolve all claims and disputes between them with respect to the matters covered by this Agreement and in accordance with the terms of this Agreement. This Agreement is entered into for the purpose of settlement and compromise. By entering into this Agreement, neither Party admits liability of any nature to the other Party.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals to this Agreement are true and correct, and are incorporated into and made a substantive part of this Agreement.

2. Purchase of Company's Interest in Premises. On January 30, 2014 or such later date as the County, the Company and the Bank shall have mutually agreed upon (the "Closing Date"), the County shall purchase all of the Company's right, title and interest in the Lease and Premises for Thirty Million and 00/100 Dollars (\$30,000,000.00) (the "Purchase Price") pursuant to the terms of an Agreement of Purchase and Sale of Leasehold Interest with LAF (the "Purchase Contract"). The closing of such purchase shall be referred to as the "Closing". The County has furnished the Bank with a copy of the Purchase Contract as executed and delivered by the parties thereto.

3. Payment to Bank. At the Closing, with LAF's consent as set forth in the Purchase Contract and the Company's consent as set forth in the LAF Agreement, the County shall pay Thirty Million 00/100 Dollars (\$30,000,000.00 ) (the "Bank Payment") directly to the Bank by wire in immediately available funds, pursuant to the wiring instructions attached hereto as Exhibit A, to pay the Purchase Price and obtain the Bank's release of all of the Bank's liens securing repayment of the LAF Reimbursement Agreement Debt and Swap Debt. The Bank Payment shall be applied against the LAF Reimbursement Agreement Debt and/or Swap Debt.

4. Redemption of the Bonds. Assuming that the County and the Company timely meet all of their several obligations under this Agreement and the LAF Agreement, respectively, the Bank will instruct the trustee for the Bonds to cause the redemption of all of the outstanding Bonds on January 30, 2014.

5. Application of Reserves. Contemporaneous with the Closing and as set forth in the LAF Agreement, the Bank shall setoff and apply the monies in the Reserves against the LAF Reimbursement Agreement Debt and/or Swap Debt (the "Reserve Setoff"). The County consents to the Reserve Setoff.

6. Release of Additional LOCs.

6.1. Hartford LOC. On or prior to the Closing the County shall either replace, terminate by consent (with no draw down), or provide the Bank with cash in an amount to fully secure all amounts owed under the Hartford LOC.

6.2. Hancock LOC. The expiry date of the Hancock LOC is May 6, 2014. The Bank will not be extending the Hancock LOC. On or prior to May 6, 2014, the County shall either replace or terminate by consent the Hancock LOC. In the event that a draw down on the Hancock LOC occurs for any reason, the County agrees to immediately reimburse the Bank for any monies that are drawn down. Subject to the subordination by the County in favor of the Bank set forth in Section 9.3 of this Agreement (which subordination takes priority over any subrogation rights that result from a draw down on the Hancock LOC), the Bank agrees that the

County shall, to the extent of such reimbursement set forth in the prior sentence, be subrogated to the rights of the Bank against the Company.

7. Release of Remaining Bond Proceeds. At Closing but after payment of the Bank Payment, the Bank shall authorize the trustee for the Bonds to release the Remaining Bond Proceeds to the Company by transferring such monies to the Company's operating bank account.

8. Termination of Swaps. The Swaps will be voluntarily terminated by mutual agreement of the Bank and the Company as of the Closing Date pursuant to the terms of the LAF Agreement. The amount due and payable by the Company to the Bank in connection with such early termination (including past due swap payments, if any) together with attorney's fees, costs, default interest and any other authorized charges that may arise under the Swap Documents (the "Swap Debt") shall be calculated by the Bank pursuant to the terms of the Swap Documents. The County does not object to such termination.

9. Releases

9.1. Release of County. Upon Closing and subject to its receipt of the Bank Payment on the Closing Date, the Bank RELEASES and FOREVER WAIVES and RELINQUISHES any and all claims, demands, obligations, liabilities and causes of action of whatsoever kind or nature against the County and/or any of its current or former owners, directors, officers, partners, trustees, employees, representatives, insurers, attorneys, agents, successors or assigns, or any parent, affiliates, subsidiaries or related entities of the County and/or their current or former owners, directors, officers, partners, trustees, employees, representatives, insurers, attorneys, agents, successor or assignees, known or unknown, past or present which they had, now have or may have against the County which are based upon or are in any manner connected with the Security Documents (including, without limitation, the Mortgagee Agreement and/or the Contingent Lease Obligation) including, without limitation, claims that the County or County representatives made oral or written statements to the effect that the County would provide financial support to or for the benefit of the Company in excess of what the County agreed to in the Security Documents, from the beginning of time through the date of execution of this Agreement. Notwithstanding the foregoing, in the event that the Bank is forced to disgorge the Bank Payment that it is entitled to receive pursuant to this Agreement as a result of any proceedings claiming that the County did not have the requisite authority or was not otherwise authorized to enter into this Agreement and/or carry out the requirements of this Agreement (including, without limitation, anything related to the advance of funds to the County to pay the purchase price of the Lease as set forth herein), then the releases granted to the County and to the Bank in paragraphs 9.1 and 9.2 shall be null and void and the Parties shall be able to pursue whatever rights and remedies they may possess. This release shall not constitute a release of any of the obligations and covenants of the County under the terms of this Agreement.

9.2. Release of Bank. Upon Closing, the County RELEASES and FOREVER WAIVES and RELINQUISHES any and all claims, demands, obligations, liabilities and causes of action of whatsoever kind or nature against the Bank and/or any of its current or former owners, directors, officers, partners, trustees, employees, representatives, insurers, attorneys,

agents, successors or assigns, or any parent, affiliates, subsidiaries or related entities of the Bank and/or their current or former owners, directors, officers, partners, trustees, employees, representatives, insurers, attorneys, agents, successor or assignees, known or unknown, past or present which they had, now have or may have against the Bank which are based upon or are in any manner connected with the Security Documents (including, without limitation, the Mortgage Agreement and/or the Contingent Lease Obligation) from the beginning of time through the date of execution of this Agreement. This release shall not constitute a release of any of the obligations and covenants of the Bank under the terms of this Agreement.

9.3 Subordination of County's Claims. In consideration of the Bank's agreement to accept the Bank Payment in full satisfaction of all amounts owed under the Security Documents, in the event that the Bank is forced to disgorge any portion of the Bank Payment that it is entitled to receive pursuant to this Agreement for any reason whatsoever (other than the reasons set forth in the next-to-last sentence of Section 9.1 of this Agreement, which sentence governs the type of disgorgement referenced therein), including but not limited to, any proceedings initiated under state law, federal law, or federal bankruptcy law, then the County agrees that: (I) all remaining indebtedness and obligations of the Company to the County (including, without limitation, any claims related in any way to the Lease), now existing or hereafter arising (the "Subordinated Indebtedness") shall be and is hereby made subordinate for all purposes and subject in right of payment to prior payment in full of all indebtedness, amounts and claims owed by the Company (including, without limitation, the Company's bankruptcy estate) to the Bank but not in excess of Thirty Million and 00/100 Dollars (\$30,000,000.00); (II) the County will not (a) ask, demand, sue for, take or receive from the Company, by set-off, judgment or any other manner, the whole or any part of the Subordinated Indebtedness, (b) assert, collect, or enforce any of the Subordinated Indebtedness from or against the Company; (c) take or receive any security for the Subordinated Indebtedness; or (d) borrow any sums from the Company, or in any way directly or indirectly, receive any dividends, money or assets from the Company until such time as the Bank has recovered the full amount of the Bank Payment; and (III) in the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of the Company or the proceeds thereof to creditors of the Company or upon any indebtedness, by reason of the liquidation, dissolution or other winding up of the Company or the Company's business, or in the event of any sale, receivership, insolvency or bankruptcy proceeding, or assignment for the benefit of creditors, or any proceeding by or against the Company for any relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions or extensions, then and in any such event any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any or all of the Subordinated Indebtedness shall be paid or delivered directly to Bank for application to the portion of the Bank Payment that was disgorged until the Bank Payment shall have been paid in full to the Bank.

10. Breach of Settlement Agreement. Notwithstanding anything to the contrary in this Agreement, the release provisions set forth in Section 9 of this Agreement shall not

constitute a release of any claims or causes of action pertaining to the enforcement of this Agreement arising out of or based upon a breach of this Agreement.

11. General Representations and Warranties.

As inducement to enter into this Agreement, each of the parties hereby represents and warrants as follows:

11.1. Authorization and Validity. The execution and delivery of this Agreement by such Party and the performance of its obligations hereunder have been duly authorized, and this Agreement constitutes the legal, valid and binding obligation of such Party in accordance with its terms.

11.2. Benefit. Such Party has derived direct or indirect benefit from this Agreement and the transactions contemplated hereby.

11.3. Arms-Length Agreement. Such Party acknowledges that: (a) it has had access to independent legal counsel in the negotiation of the terms of and in the preparation and execution of this Agreement, and that it has had the opportunity to review, analyze and discuss with counsel this Agreement and the underlying factual matters relevant to this Agreement for a sufficient period of time before the execution and delivery hereof; (b) all of the terms of this Agreement were negotiated at arm's-length; (c) this Agreement was executed without fraud, duress, error, violence or intimidation, undue influence or coercion of any kind exerted by the other Party; and (d) the execution and delivery of this Agreement is the free and voluntary act of such Party.

11.4. Organization and Standing. Each of the Parties represents that it is duly organized, validly existing and in good standing under the laws of all applicable jurisdictions, to carry on the business conducted by it, and to enter into and perform this Agreement and to carry out the transactions contemplated hereby.

11.5. Free Act and Will. Such Party is not entering into this Agreement in reliance upon any statement, representation or warranty of any nature whatsoever made by the other Party or any other person or entity whatsoever, which is not expressly stated herein. Each of the Parties is, or has had an opportunity to be, represented by legal counsel of its choice which has read this Agreement and advised such Party of its contents and meaning. Each of the Parties is signing this Agreement voluntarily, without coercion, intimidation or duress of any kind, and with full understanding of its contents and meaning following consultation with legal counsel of its own choosing.

12. General Provisions.

12.1. Headings. The headings and subheadings in this Agreement are intended for convenience only and shall not be used or deemed to limit or diminish any of the provisions hereof.

12.2. Construction. Unless the context requires otherwise, singular nouns and pronouns used in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

12.3. Interpretation. The parties to this Agreement acknowledge that each of them has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision.

12.4. Survival; Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties made herein, and in any documents executed in connection with this Agreement, shall survive this Agreement and continue in full force and effect.

12.5. Modification. No modification of any provision of this Agreement shall be effective unless the same is in writing and signed by all parties, and then such modification shall be effective only in the specific instance or for the purpose for which given.

12.6. Severability. If any term, provision or condition, or any part thereof, of this Agreement, or any document executed in connection with this Agreement, shall for any reason be found or held to be invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition or any other term, provision or condition, and this Agreement, and all documents executed in connection with this Agreement, shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

12.7. Merger and Integration. This Agreement, and any documents executed in connection with this Agreement, contain the last will and entire agreement of the parties with respect to the settlement hereby effected, and no other agreement, statement or promise, oral or otherwise, made by any party hereto, or any employee, officer, attorney, agent or other representative of any party hereto, shall be valid or binding.

12.8. Notice. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by facsimile or overnight delivery service. Notice shall be directed to the appropriate facsimile number or address set forth below or to such other facsimile number or address as may be hereafter specified by written notice. Notice shall be considered effective as of the date of the transmission of the facsimile or one (1) calendar day after the date of delivery to the overnight delivery service.

If to Bank: [ ]

with a copy to:

Richard M. Kremen, Esquire  
Dale K. Cathell, Esquire  
DLA Piper LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209  
Facsimile: (410) 580-3001

If to County:

Fairfax County Executive  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Attention: Edward L. Long Jr.

with a copies to:

Kevin Greenlief, Director  
Department of Tax Administration  
12000 Government Center Parkway  
Fairfax, Virginia 22035

and

David P. Bobzien, Esquire  
County Attorney  
Suite 549  
12000 Government Center Parkway  
Fairfax, Virginia 22035

12.9. Applicable Law. The performance, construction and enforcement of this Agreement and the documents executed in connection with this Agreement shall be governed by the laws of the Commonwealth of Virginia.

12.10. Further Assurances and Corrective Instruments. The parties to this Agreement shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and documents as may be required to facilitate the carrying out of the intentions of the parties to this Agreement.

12.11. Counterparts. This Agreement may be executed by facsimile and pdf and in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

12.12. Binding Effect. This Agreement shall have no effect unless and until it has been executed by all parties hereto.

12.13. Contemporaneous Execution of Other Agreement. The Parties expressly acknowledge that this Agreement is expressly conditioned on and subject to the contemporaneous execution of the LAF Agreement and Other County Agreement..

12.14. Waiver of Jury Trial. The Parties agree that any suit, action or proceeding brought or instituted by any party hereto or any successor or assign of any party on or with respect to this Agreement shall be tried only by a court and not a jury. EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY SUCH SUIT, ACTION OR PROCEEDING. The Parties acknowledge and agree that this provision is a specific and material aspect of this Agreement between the Parties and that the Parties would not agree to enter into this Agreement if this waiver of jury trial provision were not a part of this Agreement.

13. Opinion of Counsel. At the Closing, each Party shall provide the other Party with an opinion letter from its outside counsel, in the form attached hereto, which opinion shall include, among other things, that the County and the Bank, as applicable, has the full power and authority to execute and perform its obligations under the terms of this Agreement without any contingencies of any kind and that this Agreement has been approved by the appropriate approval process as provided for under the laws of the Commonwealth of Virginia and the County of Fairfax, Virginia, with respect to the County and under applicable law with respect to the Bank.

(signatures on following pages)

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the day and year first written above.

WITNESS/ATTEST:

BANK:

WELLS FARGO BANK NATIONAL  
ASSOCIATION

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

COUNTY:

FAIRFAX COUNTY, Virginia

(Seal)

Attest:

\_\_\_\_\_

]

By: \_\_\_\_\_

Name: Edward L. Long Jr.

Title: County Executive

**RESOLUTION APPROVING AND AUTHORIZING THE USE OF A DRAW ON THE FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY (EDA) LINE OF CREDIT WITH BANK OF AMERICA, N.A. TO PROVIDE INTERIM FINANCING FOR THE ACQUISITION OF THE LEASEHOLD INTEREST IN THE WORKHOUSE ARTS CENTER; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYMENT AGREEMENT WITH EDA RELATING TO PAYMENT OF AMOUNTS OWED ON THE LINE OF CREDIT; AND DELEGATING TO CERTAIN COUNTY OFFICIALS AUTHORITY TO EXECUTE AND DELIVER SUCH OTHER DOCUMENTS AND AGREEMENTS RELATING TO SUCH TRANSACTION AND TO DETERMINE CERTAIN DETAILS OF SUCH TRANSACTION**

**WHEREAS**, Fairfax County, Virginia (the “**County**”), the Fairfax County Economic Development Authority (the “**EDA**”) and Bank of America, N.A. (the “**Line of Credit Bank**”) have entered into a Master Credit Agreement (the “**Master Credit Agreement**”) pursuant to which the Line of Credit Bank provides a line of credit in an aggregate principal amount of \$100,000,000 to the EDA for the benefit of the County (the “**Line of Credit**”) and, on request, will make advances under the Line of Credit to the County, all for purposes of providing interim financing or refinancing for the costs of planning, developing, acquiring, constructing, improving, renovating and equipping facilities described in the County’s Adopted Capital Improvement Program or similar projects not described in the County’s Adopted Capital Improvement Program (the “**Line of Credit Projects**”); and

**WHEREAS**, the County proposes to finance on an interim basis the acquisition from LAF, LLC of its leasehold interest in the Workhouse Arts Center located at 9601 Ox Rd, Lorton, VA 22079 (the “**Leasehold Acquisition**”) through a draw on the Line of Credit (the “**Leasehold Acquisition Advance**”); and

**WHEREAS**, the County anticipates providing further interim financing or long term permanent financing for the Leasehold Acquisition, including, in either case, provision for payment of the Leasehold Acquisition Advance, not later than the stated maturity of the Acquisition Advance, in Fiscal Year 2015; and

**WHEREAS**, the County proposes to enter into a payment agreement (the “**Payment Agreement**”) with EDA by the terms of which the County will agree to make payments to EDA in sufficient amounts for EDA to timely pay the interest and, if and to the extent that provision for payment is not made from the proceeds of long-term financing or other sources, the principal owed on the Leasehold Acquisition Advance; and

**WHEREAS**, the Board of Supervisors of Fairfax County, Virginia (the “**Board of Supervisors**”) has duly reviewed and considered the form of the Payment Agreement and has determined that it is in acceptable form; and

**WHEREAS**, the Board has determined that it is necessary to delegate to appropriate County officials authority to execute the Payment Agreement; and

**WHEREAS**, the Board has determined to delegate to the Chief Financial Officer or the County Debt Coordinator, each having been designated a County Representative under the Master Credit Agreement (each a “**Leasehold Acquisition Advance Representative**”), the power to approve the Leasehold Acquisition Advance and the details of the transactions but subject to the guidelines and standards established hereby; now, therefore,

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, as follows:

**SECTION 1.** The Leasehold Acquisition is hereby approved as a project similar to those described in the County’s Capital Improvement Program thus eligible to be financed by the Line of Credit.

**SECTION 2.** EDA is hereby requested to make the Leasehold Acquisition Advance on the Line of Credit to provide interim financing for the Leasehold Acquisition.

**SECTION 3.** A Leasehold Acquisition Advance Representative is hereby authorized to obtain a Leasehold Acquisition Advance in the aggregate principal amount of \$30,000,000 on a taxable basis at LIBOR rate for a LIBOR Period (as defined in the Master Credit Agreement) not to exceed twelve (12) months and to determine a maturity date of the Leasehold Acquisition Advance not to exceed twelve (12) months pursuant to the terms and conditions set forth in the Master Credit Agreement and subject to such limitations as set forth herein.

**SECTION 4.** The form of the Payment Agreement presented to this meeting is approved, and the Chairman or Vice Chairman of the Board or the County Executive or the Chief Financial Officer of the County (each a “**Delegate**”) is authorized and directed to execute and deliver, in the name and on behalf of the County, and the Clerk or any Deputy Clerk is authorized and directed to impress the County’s seal upon, the Payment Agreement in substantially such form, with such additions and modifications as shall be approved by the Delegate executing the Payment Agreement.

**SECTION 5.** The execution and delivery by a Delegate of the Payment Agreement and any other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution shall be conclusive evidence of such Delegate’s approval, on behalf of the County, of the additions and modifications, if any, to the Payment Agreement or such other agreements, documents, closing papers and certificates.

**SECTION 6.** The Delegates and other members, officers and employees of the Board of Supervisors and the County are hereby authorized and directed to do all acts and things required of them by the provisions of the Payment Agreement for the full, punctual and complete performance of all the terms, covenants, provisions and agreements of the Payment Agreement and also to do all acts and things required of them by the provisions of this Resolution.

**SECTION 7.** Each of the Delegates is authorized to execute one or more certificates evidencing the determinations made or other actions carried out pursuant to the authority granted in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein.

**SECTION 8.** All actions taken by any of the Delegates and other members, officers and employees of the County in connection with the transactions authorized and approved hereby are hereby ratified and confirmed.

**SECTION 9.** Any and all resolutions of the Board of Supervisors or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

**SECTION 10.** This resolution shall take effect immediately upon its adoption.

Adopted January 14, 2014

**(Seal)      A Copy Teste:**

\_\_\_\_\_  
Clerk to the Board of Supervisors

## **PAYMENT AGREEMENT**

This Payment Agreement (this “Agreement”), dated as of January 30, 2014, is by and between the **FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY**, a political subdivision of the Commonwealth of Virginia having its principal office at 8300 Boone Boulevard, Vienna, Virginia (“EDA”), and the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia and having its principal office at 12000 Government Center Parkway, Fairfax, Virginia (the “County”).

### **SECTION I. DEFINITIONS**

For purposes of this Agreement, unless the context clearly indicates otherwise, the words and terms defined in this Section I have the respective meanings given to them herein:

“Advances” means the \$30,000,000 advance and any advance that refinances such advance made by the Bank to EDA pursuant to the terms of the Master Credit Agreement to finance or refinance the Project.

“Advance Payments” means the interest and principal owed on the Advances on an Advance Payment Date, such amounts shall be equal to the Interest Payments and Principal Payments.

“Advance Payment Date” means each June 1 and December 1, commencing June 1, 2014, until the Advances are no longer outstanding (provided that if June 1 or December 1 is not a Business Day then such Advance Payment Date shall be the next succeeding Business Day) and any maturity date of an Advance.

“Bank” means Bank of America, N.A. the lender of the Advances pursuant to the provisions of the Master Credit Agreement.

“Business Day” means a day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the Commonwealth of Virginia are required or authorized by law to close.

“County Payments” means the Interest Payments and Principal Payments contributed by the County, subject to appropriation, to or for the account of EDA, for purposes of making the Advance Payments due under the Master Credit Agreement.

“County Payment Date” means an Interest Payment Date or Principal Payment Date.

“Interest Payments” shall mean the amount of interest accrued and owing on the outstanding Advances on each Interest Payment Date as determined pursuant to the terms of the Master Credit Agreement.

“Interest Payment Date” means each June 1 and December 1, commencing June 1, 2014, until the Advances are no longer outstanding (provided that if June 1 or December 1 is not a Business Day then such Interest Payment Date shall be the next succeeding Business Day).

“Master Credit Agreement” means the Master Credit Agreement Agreement, dated December 18, 2013, between EDA, the County and the Bank pursuant to which the Advances are made.

“Principal Payments” shall mean the payment of the principal amount of the Advances.

“Principal Payment Date” shall mean the maturity date of an Advance as determined by the County pursuant to the terms of the Master Credit Agreement.

“Project” means the acquisition from LAF, LLC of its leasehold interest in the Workhouse Arts Center located at 9601 Ox Rd, Lorton, VA 22079 (the “Leasehold Acquisition”).

## **SECTION II. ADVANCES**

Section 2.01. Acceptance of the Advances. EDA agrees to accept the Advances pursuant to the terms of the Master Credit Agreement. EDA agrees to provide the proceeds of the Advances to the County for purposes of financing or refinancing the Project.

Section 2.02. Purpose for the Advances. The County agrees to apply the proceeds of the initial Advance to finance the Project.

## **SECTION III. PAYMENT UNDERTAKINGS**

Section 3.01. Payments. (a) The County hereby agrees to contribute to EDA the County Payments on each County Payment Date subject to Sections 3.02 and 3.03 hereof.

(b) EDA hereby agrees to use its best efforts to issue bonds or bond anticipation notes, at one time or from time to time, but in any event prior to the maturity date of the Advance, in an amount sufficient to pay or provide for timely payment of the unpaid principal of the Advance and the interest due thereon.

(c) EDA hereby agrees to use its best efforts to issue bond anticipation notes or otherwise provide interim financing to the extent that the proceeds of any bonds issued as contemplated in subsection (b) above and any other funds referred to in (a) above are insufficient to pay all amounts due on the Advance at its maturity.

(d) The County hereby agrees to use its best efforts to arrange permanent long-term financing or to provide interim financing to the extent that the proceeds and funds referred to in subsections (a), (b) and (c) above are insufficient to pay all amounts due on the Advance at its maturity.

(e) The County may, at its option, prepay, all or any portion, of the County Payments to be contributed by the County on not less than [twenty (20) days'] written notice to the EDA accompanied by a specific direction to the EDA to apply such prepayment to the prepayment of the Advance Payments in accordance with their terms as set forth in the Master Credit Agreement. Upon such redemption, the Authority shall credit the principal amount of the Advance Payments so redeemed against the County Payments and reduce the remaining County Payments otherwise to be contributed in an amount equal to the sum of (x) the principal amount of the Advance Payments redeemed, (y) the interest on the Advance Payments so redeemed and (z) the interest that would have accrued on such Installment Payments so redeemed but for such prepayment redemption.

Section 3.02. County Payments Subject to Appropriation. The obligation of the County to contribute the County Payments under this Agreement is contingent upon the appropriation for the applicable fiscal year by the Board of Supervisors of the County of funds from which such County Payments can be made. The County shall not be liable for any County Payments which are to be contributed pursuant to this Agreement unless and until such funds have been appropriated for payment and then only to the extent thereof. This Agreement shall not constitute a pledge of the full faith and credit of the County or a bond or debt of the County in violation of Section 10 of Article VII of the Constitution of the Commonwealth of Virginia.

Section 3.03. County Executive to Request Appropriations. The Board of Supervisors of the County covenants that it will cause the County Executive (i) if necessary, to request a supplemental appropriation for fiscal year 2014 and (ii) in preparing the County's operating budget for each fiscal year subsequent to fiscal year 2014 so long as the Advance Payments are outstanding under the Master Credit Agreement, to include as a separate line item therein, for the Advance Payments that are scheduled to become due and payable during the applicable fiscal year.

Section 3.04. Renewal. In the event that the initial Advance shall not have been paid in full at maturity or the payment in full thereof provided for in accordance with its terms and either the County shall so request or funds are not otherwise available for the payment of the unpaid principal of and interest accrued thereon at the maturity of the Note, EDA covenants that it shall use its best efforts to issue a bond anticipation note or notes in a principal amount sufficient to provide for the payment of the unpaid principal of the Advance and the interest thereon due at maturity, the terms thereof to be approved by the County Executive or the Chief Financial Official of the County, such terms to include a principal amount not in excess of the amount authorized by the County and EDA, the interest rate or rates not to exceed any applicable statutory limitation, the buyer or buyers to be an institution or institutions capable of assessing the creditworthiness of the renewal notes, the County to have made prior or simultaneous

appropriation for any debt service coming due in the current fiscal year and the applicable provisions of this Payment Agreement to apply *mutatis mutandis* to such renewal note.

#### **SECTION IV. MISCELLANEOUS**

Section 4.01. Third Party Beneficiaries. This Agreement shall inure to the benefit of EDA, the County and the Bank, and no other persons shall be deemed third party beneficiaries of this Agreement.

Section 4.02. Amendments. This Agreement may be amended or any of its terms modified only by a written document authorized, executed and delivered by EDA and the County with the prior written consent of the Bank.

Section 4.03. Effective Date. This Agreement shall take effect immediately upon its execution and delivery.

Section 4.04. Termination. This Agreement shall terminate upon the final payment or prepayment of the Advances.

Section 4.05. Counterparts. This Agreement may be executed in one or more counterparts and when each party hereto has executed at least one counterpart, this Agreement shall become binding on both parties and such counterparts shall be deemed to be one and the same document.

Section 4.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, EDA and the County have caused this Agreement to be executed by their respective duly authorized officers, all as of the date and year first written above.

**FAIRFAX COUNTY ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Chairman

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Secretary

**BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA**

By: \_\_\_\_\_  
Chief Financial Officer

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Clerk to the Board of Supervisors

**ATTACHMENT 3**

*County Resolution  
License Agreement*

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TEMPORARY, NON-EXCLUSIVE LICENSE AGREEMENT WITH LAF, LLC, THAT SETS FORTH THE TERMS AND CONDITIONS FOR SUCH LICENSE**

**WHEREAS**, Fairfax County, Virginia (the “**County**”), acquired from the federal government in 2002 the 56-acre site and facilities of the architecturally significant and historic Lorton Correctional Complex (the “**Property**”), and in 2006 leased the Property for 35 years for a nominal rental to LAF, LLC (“**LAF**”), in accordance with the terms of a Lease (as amended from time to time, the “**Lease**”) between the County, as landlord, and LAF, as tenant (the “**Tenant**”); and

**WHEREAS**, the Board of Supervisors has by a prior resolution authorized the acquisition of the leasehold interest of the Tenant in the Property with the result that the Lease will terminate on the effective date of such acquisition; and

**WHEREAS**, the County intends to undertake an exhaustive review of the Property to determine how best to maximize County resources to stabilize, preserve and improve the site for the future benefit of citizens of the County; and

**WHEREAS**, for the period that the County is conducting its review of potential uses of the Property, the County desires that, on a temporary, non-exclusive basis, LAF should continue to operate certain arts related activities on a portion of the Property (the “Non-Exclusive Licensed Space”); now, therefore,

**BE IT RESOLVED** by the Board of Supervisors, as follows:

**SECTION 1.** The form and terms of the Temporary, Non-Exclusive License Agreement (“License Agreement”) with LAF as licensee are approved, and the Chairman or Vice Chairman of the Board or the County Executive or the Chief Financial Officer of the County (each a “Delegate”), as appropriate, is authorized and directed to execute and deliver, in the name and on behalf of the County, and the Clerk or any Deputy Clerk is authorized and directed to impress the County’s seal upon, the License Agreement in substantially such form, with such additions and modifications as shall be approved by the Delegate executing the License Agreement, such execution being conclusive evidence of such approval.

**SECTION 2.** The Delegates and other members, officers and employees of the Board of Supervisors and the County are hereby authorized and directed to do all acts and things required of them by the provisions of the License Agreement for the full, punctual and complete performance of all the terms, covenants, provisions and agreements of the License Agreement

and also to do all acts and things required of them by, and record such instruments and take such other actions as will promote the goals of, the License Agreement and this Resolution.

**SECTION 3.** Each of the Delegates is authorized to execute one or more certificates evidencing the determinations made or other actions carried out pursuant to the authority granted in this Resolution, and any such certificate shall be conclusive evidence of the determinations or actions as stated therein.

**SECTION 4.** Any and all resolutions of the Board of Supervisors or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

**SECTION 5.** This resolution shall take effect immediately upon its adoption.

Adopted January 14, 2014

(Seal)      **A Copy Teste:**

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Clerk to the Board of Supervisors

Lorton Arts Foundation License

LICENSEOR: Board of Supervisors of Fairfax County, Virginia

LICENSEE: LAF, LLC, a Virginia Limited Liability Company

List of Exhibits

- Exhibit A - Property
- Exhibit B – Non-Exclusive Licensed Space
- Exhibit C – Expired Subleases
- Exhibit D - Deed Restrictions
- Exhibit E - Proffers

## **TEMPORARY, NON-EXCLUSIVE, REVOCABLE LICENSE AGREEMENT**

This **TEMPORARY, NON-EXCLUSIVE, REVOCABLE LICENSE AGREEMENT** (“License”) is made as of the 30<sup>th</sup> day of January, 2014 (“**Effective Date**”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, in its proprietary capacity (“Licensor”) as the owner of certain land in Fairfax County, Virginia and not in its governmental or regulatory capacity, and **LAF, LLC**, a Virginia limited liability company whose sole member is The Lorton Arts Foundation, Inc., a charitable 501(c)(3) non-stock corporation organized in the Commonwealth of Virginia (“Licensee”).

### **Recitals**

**R-1.** Licensor is the legal owner of approximately 55.6912 acres of land in Fairfax County, Virginia as described on Exhibit A attached hereto, together with all the improvements thereon and adjacent property thereto that was formerly known as the Lorton Correctional Complex (“Property”).

**R-2.** Licensor, as the landlord thereunder, and Licensee, as the tenant thereunder, entered into a lease agreement as of July 27, 2006 (“Initial Lease”), pursuant to which Licensee operated an arts facility on portions of the Property.

**R-3.** The Initial Lease was amended pursuant to (i) an Amendment to Financing Documents dated as of August 15, 2008, between and among Licensor, Licensee, The Lorton Arts Foundation, Inc. (“LAF, Inc.”), Workhouse Art Center, LP (“Workhouse”), Wachovia Bank, National Association (“Wachovia”) (the “First Amendment”); (ii) a Phase II Amendment to Lease Documents dated as of July 8, 2010, between and among, Seller, Purchaser, Wells Fargo Bank, National Association (“Wells”) successor to Wachovia, LAF, Inc. and the Workhouse (the “Second Amendment”); and (iii) a Third Amendment to Lease dated as of June 14, 2012, by and

between Purchaser and Seller, and consented to by Wells (the “Third Amendment”). (The Initial Lease, as amended by the First Amendment, the Second Amendment, and the Third Amendment are herein collectively referred to as the “Lease”).

**R-4.** Pursuant to the Third Amendment, Licensor has the unrestricted right to remove from the Property leased to Licensee, as the tenant under the Lease, certain “Unoccupied Facilities” as described therein, such Unoccupied Facilities including vacant buildings and the surrounding land.

**R-5.** On December 20, 2013, Licensor exercised its right under the Lease to remove from the Property leased to Licensee under the Lease the Unoccupied Facilities.

**R-6.** On even date herewith, Licensor purchased all of Licensee’s right, title and interest in and to the Lease, whereupon, pursuant to a Warranty Release of Leasehold and Termination of Lease, Licensee sold, released and terminated the Lease.

**R-7.** Licensor is currently undertaking an exhaustive review of the Property to determine how best to maximize County resources to stabilize, preserve and improve the site for the future benefit of citizens of the County.

**R-8.** In the period that Licensor will be conducting its review of potential uses of the Property, Licensor desires that, on a temporary, non-exclusive basis, Licensee continue to operate certain arts related activities on a portion of the Property, including the improvements thereon identified on Exhibit B attached hereto but excluding the Unoccupied Facilities (the “Non-Exclusive Licensed Space”).

**R-9.** As sublandlord under the Lease, Licensee previously entered into a number of subleases with various individuals and entities, including those subleases identified on Exhibit C attached

hereto (the “Subleases”) that have been entered into with current occupants on the Non-Exclusive Licensed Space (the “Current Occupants”).

**R-10.** Although all Subleases have, by operation of law, terminated coincidentally with the termination and release of the Lease, Licensor and Licensee have agreed, for the mutual benefit and convenience of Licensor, Licensee and the Current Occupants, that the Current Occupants may occupy on a calendar month-by-month basis those respective portions of the Non-Exclusive Licensed Space previously subleased to them during the period that Licensee is continuing to operate arts related activities on the Non-Exclusive Licensed Space pursuant to this License.

**NOW, THEREFORE,** Licensor licenses to Licensee on a temporary, non-exclusive basis, the Non-Exclusive Licensed Space.

TO HAVE AND TO HOLD the Non-Exclusive Licensed Space on the terms and conditions set forth herein.

The foregoing license rights are made subject to the following:

(a) All restrictions, regulations and statutes, and amendments and additions thereto, of any and all federal, state, county and municipal authorities having jurisdiction thereof;

(b) All covenants, restrictions, easements, reservations and agreements recorded prior to the date of execution of this License, including without limitation the deed restrictions set forth on Exhibit D (“Deed Restrictions”) attached hereto, which Deed Restrictions include an obligation for the Non-Exclusive Licensed Space to comply with the Fairfax County Reuse Plan adopted July 26, 1999 (“Reuse Plan”);

(c) All conditions of the proffers applicable to the Non-Exclusive Leasehold Space, a copy of which proffers are attached hereto as Exhibit E (the “Proffers”);

- (d) Any state of facts which an accurate survey may show;
  - (e) Building restrictions and regulations, zoning ordinances and regulations and any amendments thereto now or hereafter in force and effect;
  - (f) The lien of all taxes, assessments, water charges and sewer rents, if any;
- and
- (g) The condition and state of repair of the improvements in the Non-Exclusive Licensed Space (the “Improvements”).

## **ARTICLE ONE**

### **Term of the License**

**Section 1.01.** The term (“Term”) of this License shall be for a maximum limited period of six (6) months, terminating no later than July 30, 2014 unless otherwise mutually agreed by the parties hereto; provided however that this License is revocable at the election of Licensor at any time upon ten (10) days prior written notice to Licensee.

**Section 1.02.** Upon expiration or earlier termination of this License, Licensee's interest in the Non-Exclusive Space shall terminate and Licensor shall be entitled to the exclusive rights to the entire Property, including all Non-Exclusive Space including the Improvements.

**Section 1.03.** Notwithstanding the expiration or earlier termination of this License, Licensee covenants and agrees that it, its successors and its and their affiliates, at its sole expense, shall take and refrain from taking any and all actions and cooperate with Licensor in such manner that may be required or prudent, in the judgment of Licensor, to preserve and

protect the historic tax credits received by Licensee and its affiliates from the Commonwealth of Virginia.

## **ARTICLE TWO**

### **Condition of Non-Exclusive Licensed Space**

**Section 2.01.** Licensee represents that it has been in possession of the entire Property pursuant to the Lease and is fully informed about the condition of Non-Exclusive Licensed Space, is satisfied with the physical condition thereof and agrees to accept the same “as is.” Licensee further acknowledges that Licensor has not made any representations as to such physical condition or as to any other matter or thing affecting or relating to the Non-Exclusive Licensed Space. Licensee also hereby acknowledges that the existing improvements on the Non-Exclusive Licensed Space may contain asbestos, lead-based paint, mercury and other environmental hazards that Licensee shall be required to abate in accordance with the Proffers and all other applicable governmental rules, regulations and laws.

## **ARTICLE THREE**

### **Use of Non-Exclusive Licensed Space**

**Section 3.01.** Licensee shall use the Non-Exclusive Licensed Space for the operation and maintenance of an arts center (the “Workhouse Arts Center”) open to the public with facilities consistent with the uses that Licensee previously operated under the Lease, but at all times subject to the right of Licensor to prohibit any uses it deems undesirable or unwise for any reason in Licensor’s sole and absolute discretion.

Licensee shall not use or occupy, or permit or suffer the Non-Exclusive Licensed Space, or any part thereof, to be used or occupied, (i) for any unlawful or illegal business, use or purpose, (ii) for any business, use or purpose involving or producing any Hazardous Material as hereinafter defined, (iii) in any such manner to constitute a nuisance of any kind, (iv) for any purpose or in any way in violation of any zoning and/or certificate of occupancy, or of any applicable insurance policies reasonably required to be maintained by Licensee under this License, (v) for any purpose inconsistent with the Deed Restrictions, Proffers, or the Reuse Plan, or (vi) for any purpose or in any way in material violation of any applicable governmental laws, ordinances, orders, directives, rules or regulations. Licensee shall indemnify and hold Licensor harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including without limitation attorneys' fees, including the value of legal services provided by the County Attorney's Office, arising out of, by reason of, or in account of, any violation of or default in the covenants of this Section 3.01. For purposes of the foregoing indemnity, Licensor shall include any successor assigns of Licensor's interest in the Non-Exclusive Licensed Space, and also shall include all agencies, employees, contractors and agents of Licensor. The term "Hazardous Material" as used herein, means: (i) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. § 11001, *et seq.*, and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, *et seq.*; (ii) any

substance, product, waste or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil or products thereof, other than petroleum and petroleum products that are contained within regularly-operated motor vehicles; and (iv) asbestos.

**Section 3.02.** Licensee shall observe and comply with all conditions and requirements necessary to preserve and/or extend any and all governmental permits that are necessary for the operation of the Improvements.

**Section 3.03.** Licensee agrees that if and when any governmental or any other public authority shall require the execution and delivery of any instrument to evidence or consummate the conveyance or dedication of any street adjoining the Non-Exclusive Licensed Space and/or if and when Fairfax County or the Commonwealth of Virginia or any other public authority or any public utility company or telecommunications service or cable television communications provider shall require the execution and delivery of any rights of way, easements or grants in, over or along any such streets or in, over, under or through the Non-Exclusive Licensed Space for the purpose of providing water, gas, steam, electricity, telephone, television, internet service, storm and sanitary sewer or any other necessary or desirable service or facility for the benefit of the Non-Exclusive Licensed Space, or that shall otherwise be reasonably necessary for service to the property in the vicinity of the Non-Exclusive Licensed Space, then Licensee will execute, acknowledge and deliver any such instrument or document as may be reasonably required. Licensee shall comply with all governmental regulations and other applicable regulatory

agencies regarding mitigation for environmental impacts for wetland impacts and habitat impacts at Licensee's sole cost, expense and liability.

**Section 3.04.** Licensee's rights hereunder are non-exclusive and Licensor shall be entitled to enter on and use the Non-Exclusive License Space at any time for any reason. Without limiting the foregoing, Licensor hereby reserves unto itself and reserves the right to assign as follows.

Licensor reserves unto itself and reserves the right to assign to public entities, public utilities or telecommunications or cable television providers the right to design, lay out, construct, utilize and maintain, anywhere on the Non-Exclusive Licensed Space, utility lines, conduits, poles and facilities and other improvements for the purpose of providing for, including but not limited to, sanitary sewer, storm sewer, water, telephone, gas, electric, telecommunications service, cable television service and other utilities; provided, however, that Licensor will use reasonable efforts to avoid interfering with Licensee's operations on the Non-Exclusive Licensed Space.

Licensor hereby further reserves unto itself and reserves the right to assign to other public entities, public utilities or telecommunications or cable television providers the right to design, lay out, construct, utilize and maintain rights-of-way, including, but not limited to, streets, sidewalks and trails, on any portion of the Non-Exclusive Licensed Space; provided, however, that Licensor will use reasonable efforts to avoid interfering with Licensee's operations on Non-Exclusive Licensed Space.

Licensor hereby further reserves unto itself the right to enter, maintain and improve any storm water facilities, including, but not limited to, sewers, ditches, pipes, ponds, spillways and other facilities and any sanitary sewer facilities that Licensor currently maintains or has the legal

obligation to maintain; provided, however, that Licensor will use reasonable efforts to avoid interfering with Licensee's operations on Non-Exclusive Licensed Space.

## **ARTICLE FOUR**

### **Requirements of Workhouse Arts Center Operations**

**Section 4.01.** The Workhouse Art Center will be open all year for use, conditions permitting, on a schedule reasonably determined by Licensee and approved by Licensor.

**Section 4.02.** Licensee shall make the Improvements available for access by members of the general public (with reasonable restrictions regarding such access), with the exception of work studios for artists, the dance studio, and such other space as Licensor may allow Licensee to make available for restricted use.

**Section 4.03.** It is hereby agreed that representatives of Licensee and Licensor will meet, on a schedule to be developed by the parties, for the purpose of discussing planned programming and other matters requiring direct communication between Licensee and Licensor. In no event shall Licensee perform or allow any programs or activities in the Non-Exclusive Licensed Space that are objected to by Licensor.

**Section 4.04.** Licensee shall keep full and accurate accounts, records and books of all rents, income, receipts and revenues received from its use and operation of the Non-Exclusive Licensed Space in accordance with generally accepted accounting principles applied on a consistent basis, all of which shall be maintained for inspection by Licensor for at least five years after each statement has been delivered to Licensor. Licensee's obligations under this Section 4.04 shall survive expiration or earlier termination of this License.

## ARTICLE FIVE

### License Fees

**Section 5.01.** Licensee covenants and agrees to pay to Licensor, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as a fee for the Non-Exclusive Licensed Space (“Monthly Fee”) during the term of this License a nominal amount of (\$1.00) per month in installments on the Effective Date and the first day of every month after Effective Date.

**Section 5.02.** All amounts payable under this ARTICLE FIVE, as well as all other amounts payable by Licensee to Licensor under the terms of this License, shall be paid at the office of Licensor c/o Facilities Management Division, 12000 Government Center Parkway, Suite 424, Fairfax, Virginia, or at such other places as Licensor shall from time to time designate by notice to Licensee, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

**Section 5.03.** In addition to the Monthly Fee, Licensee shall also pay without notice or demand and without abatement, deduction or setoff (except as may be expressly provided for herein), all Taxes (as hereinafter defined in Section 6.01) and all other sums of money required to be paid by Licensee under the terms of this License (collectively, the “Additional Fees”).

**Section 5.04.** Any and all Additional Fees which may become due and payable to Licensor under this License if not paid timely shall bear interest from the date such Additional Fees shall become due and payable at the rate of 300 basis points above the Prime Rate as published in the *Wall Street Journal* (“Default Rate”).

## ARTICLE SIX

### Taxes and Other Charges

**Section 6.01.** Licensee agrees that it will pay and discharge, or cause to be paid and discharged, all federal, state and local taxes and charges (“Taxes”) when such become due and payable as required by applicable law, including, without limitation, all real estate taxes, personal property taxes, water charges, sewer charges and assessments associated with the Non-Exclusive Licensed Space or Licensee's interest therein, if any.

**Section 6.02.** Any Taxes relating to a fiscal period of the taxing authority that falls in part within the Term and in part subsequent to the Term, shall, whether or not such Taxes shall be assessed, levied, imposed or become a lien upon the Non-Exclusive Licensed Space or the Improvements, or shall become payable, during the Term, be apportioned and adjusted between Licensor and Licensee, for the period up to the last day of the Term, so that Licensee shall pay that proportion of such Taxes which that part of such fiscal period falling within the Term bears to such fiscal period and Licensor shall be responsible for the remainder thereof, if any. Licensee is responsible for all Taxes relating to the period prior to the Effective Date of this License.

**Section 6.03.** Licensee covenants to furnish to Licensor if requested by Licensor, within ten (10) days after the last date when any tax must be paid by Licensee as provided in this ARTICLE SIX, official receipts, if such receipts are then available to Licensee, of the appropriate taxing authority, or other proof satisfactory to Licensor, evidencing the payment thereof.

**Section 6.04.** If Licensee shall fail to pay any Taxes as in this ARTICLE SIX are required to be paid, after the same shall become due, Licensor shall have the right, at its option, to pay the same with all interest and penalties thereon. As provided in ARTICLE FIVE, the

amount so paid shall constitute Additional Fees, but shall bear interest from the date of such payment at the Default Rate.

## **ARTICLE SEVEN**

### **Insurance**

**Section 7.01.** At all times during the Term, at its own cost and expense, Licensee shall keep or cause to be kept on the Improvements, and all equipment, fixtures, motors and machinery owned or leased by Licensee and installed in or used in connection with the Non-Exclusive Licensed Space, including the Improvements, including all alterations, renovations, replacements, substitutions, changes and additions thereto, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that may hereafter be considered as included within the standard form extended coverage insurance endorsement, in an amount equal to the Full Insurable Value thereof, hereinafter defined. The term "Full Insurable Value" shall mean actual replacement cost. Such Full Insurable Value shall be determined from time to time at the request of Licensor but at the expense of Licensee by the fire insurance company carrying the highest amount of fire insurance on the Non-Exclusive Licensed Space or its agent, or by an appraiser selected by Licensee that is experienced in insurance appraisals who is approved in writing by Licensor. The failure of Licensor to request such appraisal shall not release Licensee from its obligations hereunder.

**Section 7.02.** At all times during the Term, at its own cost and expense, Licensee shall provide and keep in force comprehensive general liability insurance in standard form, protecting Licensee and Licensor, as an additional insured, against personal injury, including without limitation, bodily injury, death or property damage and elevator and contractual liability on an

occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and with an annual aggregate limit of not less than Five Million Dollars (\$5,000,000), subject to adjustment every year to reflect the increase, if any, in the Consumer Price Index for all Urban Consumers (2013=100), Washington, D.C.-Baltimore MSA, all Items, published by the United States Department of Labor, Bureau of Labor Statistics, or any substitute or successor index published by any successor governmental agency. All such policies shall cover the entire Non-Exclusive Licensed Space and the Improvements, including parking, common areas, means of access and roadways therein, and streets and sidewalks adjacent thereto.

**Section 7.03.** At all times during the Term, at its own cost and expense, Licensee shall provide and keep in force for the benefit of Licensor and Licensee flood insurance in an amount satisfactory to Licensor and which otherwise complies with the national flood insurance program as set forth in the “Flood Disaster Protection Act of 1973, as amended” as well as subsequent amendments or successors thereto, provided that such insurance shall be required only if and so long as the Non-Exclusive Licensed Space are or become included in a United States Department of Housing and Urban Development (or successor agency) designated flood prone area.

**Section 7.04.** At all times during the Term when Licensee is engaged in the construction or reconstruction of the Improvements, or repairs thereof, at its own cost and expense, Licensee shall provide and keep in force for the benefit of Licensor and Licensee “all risk” builders risk insurance on the Improvements and other improvements on the Non-Exclusive Licensed Space under construction; provided however that nothing in this Section 7.04 shall be deemed to grant the right to Licensee to perform any construction or reconstruction without the

prior written consent of Licensor, which consent may be granted or withheld in Licensor's sole and absolute discretion.

**Section 7.05.** At all times during the Term, at its own cost and expense, Licensee shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of Licensee in strict compliance with the laws of the Commonwealth of Virginia.

**Section 7.06.** At all times during the Term, Licensee shall maintain business interruption insurance in form and substance reasonably acceptable to Licensor.

**Section 7.07.** All insurance to be provided by Licensee under this ARTICLE SEVEN shall name Licensee and Licensor as insureds as their respective interests may appear.

**Section 7.08.** All of the policies of insurance required by this License shall be (i) in form and substance as reasonably approved by Licensor, (ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of B+ or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof), (iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis, (iv) contain standard waiver of subrogation clauses, and (v) provide that they may not be cancelled by the insurer for non-payment of premiums or otherwise until at least forty-five (45) days after a receipt of the proposed cancellation, and in any event shall not be invalidated, as to the interests of Licensee therein, by any act, omission or neglect of Licensee (other than nonpayment of premiums) which might otherwise result in a forfeiture or suspension of such insurance, including, without limitation, the occupation or use of the Non-Exclusive Licensed

Space including the Improvements for purposes more hazardous than those permitted by the terms of the policy. If requested by Licensor, copies of all insurance policies required by this License shall be delivered by Licensee to Licensor. All insurance policies shall be renewed by Licensee and proof of such renewals, accompanied by evidence of the payment of the premiums thereon to the insurance companies or their agents, shall be delivered to Licensor at least twenty (20) days prior to their respective expiration dates.

**Section 7.09.** If Licensee fails to obtain and maintain insurance as in this License provided, Licensor may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. As provided in ARTICLE FIVE, all premiums so paid by Licensor shall constitute Additional Fees and shall bear interest at the Default Rate from the date of such payment by Licensor. Such Additional Fees shall be payable by Licensee to Licensor by the fifth day of the month following the month in which payment therefor is made by Licensor. In addition thereto, Licensor may recover from Licensee, and Licensee covenants and agrees to pay as Additional Fees to Licensor, any and all damages which Licensor may have sustained by reason of the failure of Licensee to obtain and maintain such insurance, it being expressly declared that any damages of Licensor shall not necessarily be limited to the amount of premiums thereon. Licensee shall make payment to Licensor by the fifth day of the month following the month in which any payments were made by Licensor or in which the amount of such damage was determined. The payment by Licensor of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the default of Licensee with respect thereto or the right of Licensor to pursue any other remedy permitted hereunder or by law as in the case of any other default hereunder or of default in the payment of rent. At the sole discretion of Licensor, Licensee may be deemed to meet certain insurance requirements of this

ARTICLE SEVEN if Licensor determines that the risks associated therewith are covered by Licensor's policies of self-insurance. In such event Licensee shall not be required to maintain the insurance otherwise required hereunder provided that Licensee first agrees in writing with Licensor to be responsible for and pay the amount of any deductibles that Licensor would otherwise be required to pay for a claim under Licensor's self-insurance program.

## **ARTICLE EIGHT**

### **Applicable Laws and Regulations**

**Section 8.01.** Throughout the Term hereof Licensee shall, at its own cost and expense, observe and comply with all laws, rules, orders, ordinances and regulations of the County, state and federal governments and of each and every department, entity, bureau and duly authorized official thereof and of any successor or future governmental authority, department, entity, bureau and duly authorized official thereof having jurisdiction and/or any other corporation, body or organization possessing similar authority and exercising similar functions, which laws, requirements, rules, orders, ordinances and regulations are now operative, or which at any time during the Term of this License may be operative and in force and effect and applicable to the Non-Exclusive Licensed Space, including the Improvements. The foregoing shall include, without limitation, the Deed Restrictions, the Proffers, the Reuse Plan, all zoning requirements, and approvals as shall be necessary from the Fairfax County Architectural Review Board and also shall include such abatement of environmental hazards as shall be required by applicable federal, state and/or local governmental authorities.

## ARTICLE NINE

### Repairs and Maintenance

**Section 9.01.** Throughout the Term, Licensee shall, without any cost or expense to Licensor: (i) take good care of and keep in good order and repair, or cause the same to be done, inside and out, the Improvements, all alterations, renovations, replacements, substitutions, changes and additions therein or thereto and the roofs and foundations thereof, all fixtures and appurtenances therein and thereto, all machinery and equipment therein, including without limitation, all machinery, pipes, plumbing, wiring, gas, steam and electrical fittings, sidewalks, water, sewer and gas connections, heating equipment, air conditioning equipment and machinery, and all other fixtures, machinery and equipment installed in or connected with the Non-Exclusive Licensed Space including the Improvements or used in their operations; (ii) make all repairs inside and outside, ordinary and extraordinary, structural or otherwise, necessary to preserve the Non-Exclusive Licensed Space including the Improvements in good order, and promptly pay or cause the payment of the expense of such repairs; (iii) not cause or permit any waste to the Non-Exclusive Licensed Space; (iv) keep the sidewalks, curbs and parking areas in good repair and reasonably free from snow, ice, dirt and rubbish; (v) give prompt written notice to Licensor of any fire or other casualty that may occur; and (vi) permit Licensor to enter the Improvements, the Non-Exclusive Licensed Space, or any part thereof, to make repairs to the Improvements, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by Licensee, to repair, at or before the end of the Term, all injury done by the installation or removal of Licensee's furniture, trade fixtures and property, and/or to comply with all orders and requirements of any governmental authority applicable to the Improvements and to any occupation thereof, where, in

Licensor's judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the Non-Exclusive Licensed Space, and where Licensee is in default of its covenants and obligations herein with respect to any of the foregoing matters. When used in this License, the term "repairs" shall include routine maintenance, replacements, restoration and/or renewals when necessary, as well as painting and decorating.

If Licensee shall fail to perform its maintenance obligations required hereunder, Licensor, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Non-Exclusive Licensed Space and perform such failed maintenance obligations of Licensee, using any equipment or materials on the Non-Exclusive Licensed Space suitable for such purpose. Licensee shall, on demand, reimburse Licensor for its actual costs so incurred as well as the value of services provided by employees of Licensor, which shall be Additional Fees hereunder.

**Section 9.02.** If and to the extent deemed advisable by Licensor, Licensor shall provide, at Licensee's sole cost and expense, repair and maintenance services, including capital repairs and replacement as deemed appropriate by Licensor, that Licensee is obligated to perform pursuant to this Article Nine of this License. At Licensor's election, these maintenance services (the "Maintenance Services") may include security, custodial services, landscaping, and equipment maintenance, repair and replacement. Licensor shall furnish Licensee from time to time with invoices generally describing such Maintenance Services, which Licensee agrees to pay promptly in accordance with the terms herein. Licensor will provide Licensee with an estimate of the average monthly costs for the Maintenance Services (the "Estimate") which Licensee agrees to pay in equal quarterly installments on the first day of every month. If

Licensor determines at any time that actual expenses are materially different from those in the Estimate, Licensor will make an appropriate adjustment therefor in the Estimate (the “Revised Estimate”) and subsequent monthly installments will be modified to reflect the Revised Estimate. Within one hundred and twenty days following the expiration or earlier termination of this License, Licensor shall prepare a reconciliation of expenses based on the total actual costs for the Maintenance Services during the Term of this License. If the actual costs exceed the amounts already paid by Licensee to Licensor, Licensee shall promptly pay to Licensor the difference between the actual costs as determined by Licensor and the amounts previously paid by Licensee. If the actual costs for the Maintenance Services are less than the amounts paid by Licensee to Licensor, Licensor shall paid to Licensee the amount of the overpayment within sixty days of Licensor’s determination of such overpayment.

## **ARTICLE TEN**

### **Public Utilities and Services**

**Section 10.01.** Licensee agrees to pay or cause to be paid all charges for gas, water, sewer, electricity, light, heat, power, steam, air conditioning, telephone or other communication service or other public utility or public service used, rendered or supplied to, upon or in connection with the Non-Exclusive Licensed Space including the Improvements throughout the Term, and to indemnify Licensor and hold Licensor harmless from and against any liability or damages on such account. Licensee shall also, at its sole cost and expense, procure or cause to be procured any and all necessary permits, licenses or other authorizations required for the lawful and proper use, occupation, operation and management of the Non-Exclusive Licensed Space including the Improvements, and for the lawful and proper installation and maintenance

thereon and therein of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such service thereto. Licensee expressly agrees that Licensor is not, nor shall it be, required to furnish to Licensee, or any other occupant of the Non-Exclusive Licensed Space, any water, sewer, gas, heat, electricity, light, power, steam, air conditioning, or any other facilities, equipment, labor, materials or services of any kind whatsoever.

## **ARTICLE ELEVEN**

### **Alterations and Additions**

**Section 11.01.** Licensee agrees that it will not (i) demolish the Improvements for the purpose of reconstruction, renovation or otherwise, or (ii) make any alterations, renovations, additions, changes or substitutions which would weaken or impair the structural integrity of the Improvements or lessen the market value thereof, without, in the case of each of the foregoing, the prior written consent of Licensor, which consent Licensor may grant or withhold in Licensor's sole and absolute discretion. All of the foregoing shall be, without limitation, in compliance with the requirements of ARTICLE EIGHT hereof.

**Section 11.02.** If Licensor permits Licensee to make any alterations, renovations or additions, Licensee shall comply with all of the following:

- (a) The same shall be performed with diligence and in a first-class, workmanlike manner in accordance with all requirements for construction hereunder.
- (b) Licensee shall have delivered to Licensor detailed plans and specifications that are acceptable to Licensor in its sole discretion which detailed plans and specifications shall be prepared in full accordance guidelines as may be established by Licensor and shall have obtained the approval of any and all governmental authorities and departments having

jurisdiction over the work, including the Fairfax County Architectural Review Board, if applicable.

(d) Licensee shall not subject the Non-Exclusive Licensed Space including the Improvements to any charge, liability, claim or lien of any kind or nature whatsoever by reason thereof.

(e) Licensee or Licensee's contractor shall provide and maintain, at its own cost and expense, full workmen's compensation insurance with respect to such work as well as any other insurance as may then be required by law, and certificates of any such policies shall be delivered to Licensor on demand.

(f) If, under the provisions of any insurance policies required to be provided and maintained hereunder, any consent to such demolition, alteration, change or addition by the insurers thereof shall be required to continue and keep such policies in full force and effect, Licensee shall obtain such consents and pay any premiums or charges that may be incurred.

(g) Licensor may inspect the excavation, the construction and all work and materials thereof during the course of construction and upon completion and Licensee shall permit Licensor to examine the plans, drawings and specifications relating thereto or, in the alternative, shall furnish Licensor with copies of same within ten (10) days after receipt of a request therefor. Licensor shall have the right to object to any deviation from such plans and specifications as approved and upon receipt of notice of any such objection, Licensee shall take such steps as shall be necessary to correct such deviation.

(h) Licensee shall comply with all applicable requirements of applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction thereof, including without limitation the requirements as set forth in ARTICLE EIGHT hereof, and the

construction, when completed, shall comply with all applicable laws and regulations of any and all governmental authorities having jurisdiction thereof, including the Fairfax County Architectural Review Board.

(i) Licensee shall procure at its own expense all necessary permits required for the work. Upon completion, Licensee shall deliver to Licensor a set of “as built” plans for the work (if such plans exist) including those as set forth in ARTICLE EIGHT hereof.

(j) Licensee shall pay and discharge all costs, expenses, damages and other liabilities which may arise in connection with or by reason of such demolition, alteration, change, addition or construction work.

(k) If requested by Licensor, Licensee shall have furnished Licensor with an irrevocable letter of credit, contractor's performance bond or other surety in form and amount and from a financial institution, all as acceptable to Licensor, to provide Licensor with assurances that Licensee shall pay for all work performed to avoid any liens on the Non-Exclusive Licensed Space including the Improvements.

## **ARTICLE TWELVE**

### **No Financing Liens or other Encumbrances**

**Section 12.01.** It is expressly understood and agreed that by entering into this License Licensor is not agreeing to subordinate its fee simple interest in the Non-Exclusive Licensed Space to any deed of trust or other debt financing incurred by Licensee.

**Section 12.02.** Licensee shall not suffer or permit any liens to stand against the Non-Exclusive Licensed Space, including the Improvements, or any part thereof, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to Licensee or anyone holding the Non-Exclusive Licensed Space including the

Improvements, or any part thereof, through or under Licensee. If any such lien against the Non-Exclusive Licensed Space including the Improvements or any part thereof shall at any time be filed, Licensee shall cause the same to be discharged of record within five (5) business days after the date of filing the same, by either payment, deposit or bond. If Licensee shall fail to discharge any such lien against the Non-Exclusive Licensed Space including the Improvements or any part thereof within such period, then, in addition to any other right or remedy of Licensor, Licensor may, but shall not be obligated to, procure the discharge of the same after notice to Licensee either by deposit in court, by bonding, or by paying the amount claimed to be due. As provided in ARTICLE FIVE, any amount paid or deposited by Licensor for any of the aforesaid purposes, and all legal and other expenses of Licensor, including attorneys' fees and the value of legal services if provided by the County Attorney's Office, and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien shall constitute Additional Fees, but shall bear interest from the date of payment or deposit at the Default Rate during the period that such payment or deposit is outstanding. Such Additional Fees shall become due and payable forthwith by Licensee to Licensor.

**Section 12.03.** Nothing in this License shall be deemed to be construed in any way as constituting the consent or request of Licensor, expressed or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Non-Exclusive Licensed Space including the Improvements, or any part thereof, or as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Licensor's interest in the Non-Exclusive Licensed Space including the Improvements. Notwithstanding the

foregoing provisions of this Section 12.03, if such lien against the Non-Exclusive Licensed Space including the Improvements or any part thereof is filed, Licensee shall either pay the same and have it discharged of record, or take such action as may be required to legally object to such lien, or to have such lien removed of record within five (5) days after the date of filing the same, and in all events to have such liens against the Non-Exclusive Licensed Space including the Improvements or any part thereof discharged prior to the foreclosure thereof and the imposition of any penalty upon Licensor.

## **ARTICLE THIRTEEN**

### **Exculpation and Indemnification**

**Section 13.01.** As a material condition of this License, Licensee agrees that Licensor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Non-Exclusive Licensed Space including the Improvements or the appurtenances thereto, or for any injury or damage to the Non-Exclusive Licensed Space including the Improvements, or to any property, whether belonging to Licensee or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Non-Exclusive Licensed Space including the Improvements or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Non-Exclusive Licensed Space including the Improvements from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of all or any of the hatches, openings, installations or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Non-Exclusive Licensed Space including the Improvements, including defects in construction, latent or otherwise. The provisions of this License permitting Licensor the right to use of the Non-Exclusive Licensed

Space and to enter and inspect the same and the Improvements shall in no manner limit Licensor's rights to indemnification from Licensee pursuant to the terms of this ARTICLE THIRTEEN.

**Section 13.02.** Licensee shall indemnify and hold Licensor harmless from and against all liability, judgments, claims, demands, suits, actions, losses, penalties, fines, damages, costs and expenses, including without limitation attorneys' fees including the value of legal services provided by the County Attorney's Office, of any kind or nature whatsoever, due to or arising out of or from:

(a) Any breach, violation or nonperformance of any covenant, condition, provision or agreement in this License set forth and contained on the part of Licensee to be fulfilled, kept, observed and performed, and

(b) Claims of every kind or nature arising out of the use and occupancy of the Non-Exclusive Licensed Space including the Improvements (and/or the construction and/or alteration thereof) by Licensee, including, without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by Licensee, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Non-Exclusive Licensed Space including the Improvements.

For purposes of the foregoing indemnity and other indemnities in this License, the term "Licensor" shall include any successors or assigns of Licensor's interest in the Non-Exclusive Licensed Space, and also shall include all agencies, employees, contractors and agents of Licensor.

## **ARTICLE FOURTEEN**

### **Inspection and Access**

**Section 14.01.** Licensee expressly acknowledges and agrees that the this License is non-exclusive and Licensee further agrees that it shall permit Licensor and its agents to enter the Non-Exclusive Licensed Space including the Improvements at any for any purpose, including without limitation (i) inspection; and (ii) making repairs that Licensee has neglected or refused to make in accordance with the agreements, terms, covenants and conditions of this License;.

## **ARTICLE FIFTEEN**

### **Damage and Destruction**

**Section 15.01.** If, during the Term, the Improvements shall be destroyed or damaged in whole or in part by fire or any other cause, except condemnation, and whether or not such destruction or damage is covered by insurance, Licensee shall give to immediate notice thereof, and, Licensee shall promptly repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt, at least to the conditions thereof immediately prior to such occurrence, subject to the requirements as set forth in ARTICLE ELEVEN hereof (“Restoration”). If the damage or destruction is caused by an event for which Licensee is not insured, for whatever reason, Restoration shall be made, at Licensee's sole cost and expense, in accordance with ARTICLE ELEVEN. Licensor shall in no event be called upon to perform or otherwise be held liable for such Restoration; provided however, that at Licensor election, Licensor shall have the right to cause the Restoration to be performed under the direction of Licensor or Licensor’s agents, employees or independent contractors, in which case Licensee shall be responsible for all of costs therefor, including without limitation the reasonable value of

services performed by Licensor's employees assigned to Restoration, all of which shall be deemed Additional Fees hereunder.

**Section 15.02.** The terms and conditions upon which any Restoration shall be performed by Licensee after any such destruction or damage by fire or any other cause, except by condemnation, and the terms and conditions upon which the proceeds of insurance of the kinds described in ARTICLE SEVEN shall be applied to the cost of such Restoration are as follows:

(a) Licensee shall submit to Licensor, design and development plans which shall be designed to restore the Non-Exclusive Licensed Space including the Improvements thereon to at least the condition immediately prior to such destruction or damage and as completely similar in character as is practicable and reasonable. The design and development plans shall be subject to the approval of Licensor.

(b) During such Restoration, Licensor and any architect, engineer or other representative whom Licensor may select to act on its behalf may inspect all work and materials as rendered and installed during the course of such Restoration and upon completion. Licensee shall keep copies of all plans, shop drawings and specifications relating to such Restoration on the building site and permit Licensor or its architect, engineer or other representative to examine them, or, in the alternative, shall furnish Licensor with copies of such plans, drawings and specifications. If during Restoration Licensor, or its architect, engineer or other representative, shall determine that the materials do not substantially conform to the approved plans or that the Restoration is not in accordance with the approved plans, notice in writing shall be given to Licensee, specifying the particular deficiency, omission or other respect in which Licensor determines that the Restoration does not conform with the plans as approved. Upon the receipt of any such notice, Licensee shall take such steps as shall be necessary to cause corrections to be

made as to any deficiencies, omissions or otherwise, and, if necessary for the purpose of effectuating such corrections, shall immediately remove such materials, replace such construction and furnish materials in accordance with said plans or with materials equally as good as those provided for in such plans.

(c) All of such Restoration and the performance thereof shall be subject to and shall be performed in accordance with the provisions of ARTICLE EIGHT and ARTICLE ELEVEN, including, without limitation, the provision to the effect that historic structures may be required to be restored to their original condition in conformance with the requirements of the Fairfax County Architectural Review Board and otherwise in accordance with ARTICLE EIGHT hereof.

(d) Upon the completion of the Restoration, a set of the “as restored” plans shall be delivered by Licensee to Licensor.

**Section 15.03.** If (i) Licensee shall fail to cause required Restoration to be commenced within sixty (60) days from the date of such damage and destruction in accordance with the provisions of this License, or such longer time as Licensor may agree in its sole discretion if the restoration cannot practicably be commenced within such sixty (60) day period because of delays in obtaining insurance proceeds or other causes beyond the control of Licensee, or (ii) having commenced such Restoration, Licensee shall fail to complete it in accordance with such provisions with reasonable diligence, and such failure shall continue for a period of thirty (30) days after notice by Licensor to Licensee, Licensor may, at its option after at least five (5) days prior notice to Licensee that it elects so to do, make and complete such Restoration. In such event, and whether or not this License may have theretofore been terminated by reason of any default by Licensee, Licensor shall have the right, as the Restoration progresses, to obtain and

apply the insurance proceeds to the cost of such Restoration to the extent that they shall not theretofore have been applied to the payment or reimbursement of costs and expenses of Licensor and/or Licensee as aforesaid.

**Section 15.04.** If prior to the completion of such Restoration, whether by Licensee or Licensor, this License shall terminate or expire for any reason, Licensor shall have the right to receive and retain such insurance proceeds to the extent that they shall not theretofore have been applied to the payment or reimbursement of the costs and expenses of Licensee and/or Licensor, as aforesaid.

## **ARTICLE SIXTEEN**

### **Condemnation**

**Section 16.01.** If, at any time during the Term of this License, the whole or substantially all of the Non-Exclusive Licensed Space shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Licensor, Licensee and those authorized to exercise such right, this License shall terminate on the date of such taking and any Monthly Fees provided to be paid by Licensee shall be apportioned and paid to the date of such taking.

**Section 16.02.** If less than substantially all of the Non-Exclusive Licensed Space shall be taken, this License shall be deemed terminated as to the part so taken as of the date of such taking, but with respect to the part not taken shall continue in full force and effect, without reduction, abatement or effect of any nature whatsoever upon the Term of this License or the liability of Licensee to pay all Monthly Fees and Additional Fees and other sums of money and charges herein provided to be paid by Licensee.

**Section 16.03.** In the event of any taking referred to in Section 16.01 or 16.02, Licensors shall be entitled to all condemnation proceeds.

**Section 16.04.** For purposes of this ARTICLE SIXTEEN, the Non-Exclusive Licensed Space or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Non-Exclusive Licensed Space or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier. Any right of entry which may be granted by Licensor or Licensee to any condemning authority shall not affect the date on which the Non-Exclusive Licensed Space or a part thereof, as the case may be, shall be deemed to have been taken or condemned.

## **ARTICLE SEVENTEEN**

### **Licensors' Rights of Consent, Approval and Participation**

**Section 17.01.** In recognition of Licensor's substantial expertise in all forms of property management, including building maintenance, security services, capital improvements, information technology, and financial management and budget preparation, Licensor and Licensee agree that Licensor shall have the right, upon its election, to maintain oversight over some or all of Licensee's facilities management operations at the Non-Exclusive Licensed Space, as determined by Licensor, to enable Licensor to provide consultation regarding competent budget management, general building maintenance, security, and office management services. Licensee agrees to permit representatives of Licensor to review all books and records of Licensee and all operations of Licensee at Non-Exclusive Licensed Space for the purpose of enabling Licensor to recommend cost saving efficiencies in the conduct of Licensee's operations.

**Section 17.02.** Licensor shall have the right to approve Licensee's annual operating and capital budget. Licensee agrees to cooperate and coordinate with Licensor in the preparation of

Licensee's annual budget. Following such consultation, Licensee agrees to provide Licensor with a thorough budget in form acceptable to Licensor, describing in detail all estimated expenses and revenues of Licensee, and reflecting the comments that Licensor may provide to Licensee. Without limiting the foregoing, Licensee agrees that such annual budget shall include line items for the replenishment of reserves for capital systems. The annual budget that Licensee is obligated to furnish to Licensor shall not be deemed final until approved by Licensor.

Following approval of the budget, Licensee shall be obligated to carry on its operations at the Non-Exclusive Licensed Space in full conformance with the approved budget. If at any time Licensee is unable to operate in material conformance with the approved budget, or if Licensee experiences a material change in its financial condition from that reflected in the approved budget, Licensee shall notify Licensor thereof, and Licensee shall make such revisions to the approved budget as may be necessary for to the budget to reflect the actual financial circumstances of Licensee. Any such revisions to the annual budget shall be subject to the consent of Licensor and such revisions to the budget shall not be deemed approved until Licensor shall have given its written consent. All of Licensee's operations at the Non-Exclusive Licensed Space shall be in conformance with the approved annual budget, as may be revised in accordance with the terms hereof, with the consent of Licensor.

**Section 17.03.** To insure that Licensor is fully informed as to the full scope of Licensee operations at the Non-Exclusive Licensed Space, Licensor shall be entitled to prior written notice of, and the right to attend and participate in all meetings of the board of directors of Licensee and Licensee's sole member, the Lorton Arts Foundation, and all meetings of the executive committee, management committee, or other committees of the board of directors of Licensee and the Lorton Arts Foundation. Licensor shall not be deemed a member of the board of

Licensee or the Lorton Arts Foundation, or of any of their committees, and shall not have any voting rights at such meetings, but shall be entitled to attend and participate in all such meetings whether open or closed and whether or not confidential information shall be discussed.

## **ARTICLE EIGHTEEN**

### **Establishment of Successor to LAF, LLC and Dissolution of Lorton Arts Foundation**

**Section 18.01.** In recognition that Licensee was unable to operate the arts center as a financially self-supporting endeavor as tenant under the Lease, Licensor requires as a material condition of this License that Licensee shall transfer this License, with the consent of Licensor, to a successor organization that shall have (i) the benefit of a letter from the Internal Revenue Service establishing its qualification as an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (a “501(c)(3) Non-Profit Entity”), (ii) a modified board of directors, including a new chairman of the board approved by Licensor, who was not in any manner involved in the past with Licensee, and (iii) a new set of bylaws and articles of incorporation, approved by Licensor, which will in no manner jeopardize in any manner the historic tax credits that have been awarded the Property. Licensor and Licensee desire that this successor, which the parties expect to be named the Workhouse Arts Foundation, Inc. (“WAF”), to have a mission to be a self-sustaining, thriving arts center with programs in the visual and performing arts and arts education requiring no financial assistance from Fairfax County. The parties anticipate that WAF will be established shortly after the Effective Date and that this License will be

transferred by Licensee to WAF as the successor Licensee hereunder by no later than March 1, 2014.

**Section 18.02.** WAF, as the successor Licensee hereunder, shall be required to submit to Licensor by no later than March 1, 2014, a five-year strategic business plan for fiscal years 2015-2019, created in consultation with Licensor, that (i) assumes that Licensor shall enter into a lease, commencing July 1, 2014 and expiring, subject to renewal, on June 30, 2019, with WAF for portions of the Property, and (ii) demonstrates the manner in which WAF proposes to operate a successful arts center that requires absolutely no Fairfax County financial support. In addition to the five-year strategic business plan, WAF shall also be required, as a condition to Licensor's consent to the transfer of this License to WAF, to fund with donations by no later than March 1, 2014, a reserve cash account in the minimum amount of \$500,000 to serve as a special operations reserve to be drawn upon if revenues should be insufficient to cover all operating and maintenance costs (the "Cash Reserve Account"). In no event shall WAF be permitted to draw on the Cash Reserve Account for any purpose other than to cover a shortfall in WAF's operations, and then, only after consultation and the written consent of Licensor. No part of the Cash Reserve Account will be available for capital expenditures, nor shall the amounts in the Cash Reserve Account be credited toward the fund raising goals that may be incorporated into WAF's annual operating or capital budget.

**ARTICLE NINETEEN**

**Application of Construction Fund Reserve for Operations**

**Section 19.01.** Upon termination of the Lease, Licensee became entitled to access to a Construction Account with Wells Fargo Bank, National Association in the amount of \$\_\_\_\_\_ (“Construction Funds”). As a material inducement to Licensor entering into this License, Licensee agrees that, to the extent not credited to the Cash Reserve Account, all of the Construction Funds shall be applied by Licensee toward its operational costs at the Workhouse Arts Center in accordance with Licensee’s revised fiscal year 2014 operating budget approved by Licensor.

**Assignment and Subletting**

**Section 20.01.** Licensee shall not sell, assign or in any manner transfer this License or any interest therein or the estate of Licensee hereunder, or rent, sublet, sublease or underlet the Non-Exclusive Licensed Space including the Improvements as an entirety in a single transaction or a series of related transactions, without the prior written consent of Licensor first had and obtained in each case, which consent may be granted or withheld in the sole and absolute discretion of Licensor; provided, however, that Licensee may continue to make space available for the Current Occupants and other occupants in accordance with guidelines approved in writing by Licensor (“Approved Occupants”). Notwithstanding the foregoing, the parties intend that this License shall be transferred by Licensee to WAF by no later than March 1, 2014, provided that Licensee and WAF have complied with all of the terms and conditions hereunder.

**Section 20.02.** If the Non-Exclusive Licensed Space or any part thereof be sublet or occupied by anybody other than Licensor, Licensee or an Approved Occupant in violation hereof, Licensor may, (i) collect rent from any purchaser, assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved, and (ii) accept any such purchaser, assignee, subtenant or occupant as tenant, without waiving any rights or remedies of Licensor hereunder.

## **ARTICLE TWENTY-ONE**

### **Annual Statements**

**Section 21.01.** Licensee agrees that, it will deliver or cause to be delivered to Licensor within sixty (60) days after June 30, 2014 for the fiscal year then ended the following items:

- (a) An annual audit of Licensee, containing a balance sheet, income statement and statement of changes in financial condition for such fiscal year, prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a public accountant firm approved by Licensor in Licensor's discretion; and
- (b) Other information pertaining to Licensee as Licensor may reasonably request.

## **ARTICLE TWENTY-TWO**

### **Events of Default**

**Section 22.01.** If any one or more of the following events shall occur:

- (a) Licensee shall desert or abandon the Non-Exclusive Licensed Space for a period of ten (10) days; or

(b) Licensee shall default in making timely payment to Licensor of any Monthly Fees, Additional Fees, or of any money advanced by Licensor or otherwise collectible as Additional Fees; or

(c) Licensee shall fail to pay any tax, assessment, water rent, rate or charge, sewer rent or other governmental imposition, or any other charges or lien against the Non-Exclusive Licensed Space including the Improvements which Licensee is required to pay under this License and the same shall not be paid within ten (10) days after Licensee receives notice of the delinquency; or

(d) Licensee shall default in complying with any other agreement, term, covenant or condition of this License and such default in compliance shall continue for a period of ten (10) days after notice by Licensor or such longer period as Licensor may agree if the default cannot reasonably be cured within ten (10) days provided Licensee has commenced curing within such ten (10) days and continues with diligence thereafter to complete the cure and provided further that the Non-Exclusive Licensed Space is in no manner materially adversely affected by the failure of Licensee to cure the default within the original ten (10) day cure period; or

(e) Licensee shall fail to maintain its status as a 501(c)(3) non-profit entity in good standing and authorized to do business in the Commonwealth of Virginia; or

(f) Subject to Licensor rights to make portions of the Non-exclusive Licensed Space available to Approved Occupants in accordance with Section 20.01, any interest of Licensee hereunder shall be transferred, assigned or subleased (in a single transaction or a series of related transactions) without Licensor's prior written consent, then an "Event of Default" shall be deemed to have occurred in which case, Licensor may immediately cancel and terminate this

License any other notice to quit required hereunder or by law being expressly waived by Licensee and inapplicable as this is a non-leasehold license agreement, whereupon, Licensee shall then quit and surrender to Licensor the Non-Exclusive Licensed Space including the Improvements and any other improvements on, under or above the Non-Exclusive Licensed Space, and Licensor may enter into or repossess the same, either by force, summary proceedings or otherwise.

**Section 22.02.** If this License is terminated pursuant to any provision hereof, all of the right, title, estate and interest of Licensee, (i) in and to the Non-Exclusive Licensed Space including the Improvements, (ii) in and to equipment, fixtures and machinery therein or upon the Non-Exclusive Licensed Space including the Improvements and other improvements on, under and above the Non-Exclusive Licensed Space, (iii) in and to all revenue, rents, issues and profits thereof whether then accrued or to accrue, and (iv) in and to all insurance policies and all insurance monies paid or payable thereunder, shall terminate and Licensor, without further action on the part of either party and without cost or charge to Licensor, shall have unlimited and sole title thereto and ownership thereof, free of any claim thereto by Licensee.

## **ARTICLE TWENTY-THREE**

### **Deed Restrictions**

**Section 23.01.** It is expressly agreed and understood by the parties hereto that the Deed Restrictions as set forth on Exhibit D must be complied with at all times without qualification as determined in the sole discretion of Licensor, it being understood and agreed that such Deed Restrictions could affect other property of Licensor and accordingly Licensor must be afforded the opportunity to ensure absolute compliance.

## ARTICLE TWENTY-FOUR

### Remedies of Licensor

**Section 24.01.** If an Event of Default shall have occurred with regard to the payment of any Additional Fees, Licensor may, at its election, pay the same for the account and at the expense of Licensee. If Licensor shall incur any expenses, including, without limitation, attorneys' fees (including the value of legal services if provided by the County Attorney's Office), in instituting, prosecuting or defending any action or proceeding instituted by reason of any default by Licensee, Licensee shall reimburse Licensor for the amount of such expenses. As provided in ARTICLE FIVE, should Licensee, pursuant to this License, become obligated to reimburse or otherwise pay Licensor one or more sums of money in addition to the Monthly Fee, the amount thereof shall be deemed Additional Fees shall be immediately payable by Licensee to Licensor and subject to interest at the Default Rate. The provisions of this Section 24.01 shall survive the termination of this License.

**Section 24.02.** If an Event of Default shall have occurred, in addition to other rights of Licensor hereunder, Licensor shall have the right of injunction to restrain the same and the right to invoke any remedy allowed hereunder by law or in equity as if specific remedies, indemnity or reimbursement were not herein provided.

**Section 24.03.** In the event of any termination of this License, whether by expiration, forfeiture, cancellation, surrender, operation of law, issuance of a final court order or otherwise, Licensor may enter the Non-Exclusive Licensed Space including the Improvements and other improvements on, under or above the Non-Exclusive Licensed Space, to remove therefrom Licensee, its agents, employees, licensees and any subleasees, persons, firms or corporations and all of their respective property, using such force for that purpose as may be necessary without

being liable for prosecution or damages therefor, and thereupon Licensor shall be entitled to retain possession of the Non-Exclusive Licensed Space including Improvements and other improvements on, under or above the Non-Exclusive Licensed Space with all additions, alterations and improvements thereon and fixtures and appurtenances thereto, free from any interest of Licensee therein.

**Section 24.04.** If a judgment is entered for the recovery of possession of the Non-Exclusive Licensed Space in any action or proceeding, Licensee, for itself and for any and all persons claiming through or under Licensee, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have, under and by reason of any present or future law or decision, to redeem the Non-Exclusive Licensed Space including the Improvements or for a continuation of this License for the Term hereby demised after having been dispossessed or ejected therefrom by process of law or otherwise.

**Section 24.05.** No receipt of monies by Licensor from Licensee after the termination hereof in any lawful manner shall reinstate, continue or extend the Term, or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Licensor to enforce the payment of any Monthly Fee or Additional Fees then due or thereafter falling due, or operate as a waiver of the right of Licensor to recover exclusive possession of the Non-Exclusive Licensed Space including the Improvements by proper suit, action, proceedings or other remedy; it being agreed that after the service of notice of termination as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for exclusive possession of the Non-Exclusive Licensed Space, Licensor may demand, receive and collect any monies due, or thereafter falling due, without in

any manner affecting such notice, suit, action, proceedings, order or judgment; and any and all such monies so collected shall be deemed to be payments on account of the use and occupation of the Non-Exclusive Licensed Space, or, at the election of Licensor, on account of Licensee's liability hereunder. Licensor, at its option, may make such alterations and repairs in or to the Non-Exclusive Licensed Space including the Improvements and other improvements as in its judgment Licensor considers advisable and necessary, and the making of such alterations and repairs shall not operate or be construed to release Licensee from liability hereunder. Licensor shall in no event be liable in any way whatsoever for failure to re-license the Non-Exclusive Licensed Space.

**Section 24.06.** The rights and remedies given to Licensor in this License are distinct, separate and cumulative, and no one of them, whether or not exercised by Licensor, shall be deemed to be in exclusion of any of the others herein, or by law or in equity.

## **ARTICLE TWENTY-FIVE**

### **No Waiver**

**Section 25.01.** Waiver by Licensor of any breach by Licensee of any covenant or condition herein contained, or failure by Licensor to exercise any right or remedy in respect of any such breach, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or of any subsequent breach of any such covenant or condition, or bar any right or remedy of Licensor in respect of any such subsequent breach, nor shall the receipt of any amounts due or portion thereof (regardless of any endorsement on any check or any statement in any letter accompanying any payment) by Licensor, whether the same be reserved and provided for herein as a Monthly Fee or Additional Fees under any of the covenants or provisions herein contained, operate as an accord and satisfaction or a waiver of the right of Licensor to enforce

the payment of any kind previously due or as a bar to the termination of this License and the recovery of the Non-Exclusive Licensed Space because of default in the payment of such payments previously due, by any appropriate remedy Licensor may select.

## **ARTICLE TWENTY-SIX**

### **Notices**

**26.01.** Any notice or other communication required or permitted hereby, or convenient to Licensee or Licensor in the consummation of the transactions contemplated hereby, shall be deemed delivered upon receipt (i) when sent by registered or certified mail, return receipt requested postage prepaid, (ii) when sent by an expedited courier services, fees prepaid, and addressed to the respective parties and either a receipt is acknowledged therefor, or the courier service certifies that the party refused receipt, or (iii) when sent by electronic mail provided the party receiving such electronic mail promptly confirms to the other party receipt of such electronic mail.

Notices to Licensor shall be sent to:

Fairfax County Executive  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Attention: Edward L. Long Jr.  
Email: [JoAnn.Havach@fairfaxcounty.gov](mailto:JoAnn.Havach@fairfaxcounty.gov)

With copies to:

Kevin Greenlief, Director  
Department of Tax Administration  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Email: [Kevin.Greenlief@fairfaxcounty.gov](mailto:Kevin.Greenlief@fairfaxcounty.gov)

and

David P. Bobzien, Esquire  
County Attorney  
12000 Government Center Parkway  
Suite 549  
Fairfax, Virginia 22035  
Email: [David.Bobzien@fairfaxcounty.gov](mailto:David.Bobzien@fairfaxcounty.gov)

Notices to Licensee shall be sent to:

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## ARTICLE TWENTY-SEVEN

### Captions

**Section 27.01.** The captions and headings in this License are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this License or the intent of any provision thereof.

## **ARTICLE TWENTY-EIGHT**

### **Time of the Essence**

**Section 28.01.** Time is of the essence with regard to each and every term herein to which time is an element.

## **ARTICLE TWENTY-NINE**

### **No Commissions**

**Section 29.01.** Licensee represents to Licensor that no brokerage commissions or other compensation are due or payable to any person, firm, corporation or other entity with respect to or account of any action taken by or on behalf of Licensee with respect to this License.

## **ARTICLE THIRTY**

### **Integration and Interpretation**

**Section 30.01.** The terms and conditions herein set forth all the promises, agreements, conditions and understandings between Licensor and Licensee pertaining to leasing of the Non-Exclusive Licensed Space, and there is no promise, agreement, condition or understanding either oral or written, between the parties other than as are herein set forth. This License has been negotiated at arm's length with both parties having the opportunity to consult with legal counsel with respect to all provisions hereof. In the event of any ambiguity in any of the terms or provisions, this License shall not be interpreted against or in favor of either Licensor or Licensee, nor shall there be any presumption against or in favor of either Licensor or Licensee. No prior writings, including without limitation, drafts of this License and modifications thereto, shall be given any force or effect.

[Signatures Follow]

IN WITNESS WHEREOF, Licensor and Licensee have caused this License to be executed as of the date first hereinabove written.

**ATTEST:**

**LICENSEE:**

**LAF, LLC**

\_\_\_\_\_

By: The Lorton Arts Foundation, Inc.,  
its sole member

\_\_\_\_\_ [SEAL]  
By: John Mason, President

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX: to-wit:

The foregoing License was acknowledged before me this \_\_\_\_ day of January, 2014, on behalf of LAF, LLC, the Licensee hereunder, by John Mason, the President of The Lorton Arts Foundation, Inc., the sole member of LAF, LLC.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**ATTEST:**

**LICENSOR:**

\_\_\_\_\_

**BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY, VIRGINIA**

By: \_\_\_\_\_ [SEAL]  
Edward L. Long Jr., County Executive

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX: to-wit:

The foregoing License was acknowledged before me this \_\_\_\_ day of January, 2014, by Edward L. Long Jr. the County Executive of the Board of Supervisors of Fairfax County, Virginia, the Licensor hereunder.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

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INFORMATION - 1

Recognition of Comprehensive Annual Financial Reports and the Annual Budget by the Government Finance Officers Association; Performance Measurement Program by the International City/County Management Association; and Investment Policy by the Association of Public Treasurers

The Government Finance Officers Association of the U.S. and Canada (GFOA) has again recognized the superior quality of financial information Fairfax County makes available to the public. The County's Comprehensive Annual Financial Report (CAFR), the Integrated Sewer System's CAFR, the CAFRs of all three Fairfax County retirement systems, and the County's Annual Budget were recognized with GFOA's highest forms of recognition.

The County's CAFR was awarded the Certificate of Achievement for Excellence in Financial Reporting for the thirty-sixth consecutive year and the Integrated Sewer System received this certificate for the tenth consecutive year. The Certificate of Achievement for Excellence in Financial Reporting was also awarded to all three Fairfax County retirement systems (the Employees', Police Officers and Uniformed Retirement Systems) by GFOA for their respective CAFRs. This marks the third consecutive year that all three systems have received this award since first applying for consideration. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. An impartial panel determined that the CAFRs demonstrated a constructive "spirit of full disclosure" to clearly communicate their financial stories and motivate potential users to read the CAFRs. All awards were based on the CAFRs for the fiscal year ended June 30, 2012.

This is the 29<sup>th</sup> consecutive year that Fairfax County has received GFOA's Distinguished Budget Presentation Award. In November 2013, GFOA notified the County that the FY 2014 Budget met the criteria for this award, which represents the highest form of recognition in governmental budgeting and reflects the commitment of the governing body and staff in meeting the highest principles of public budgeting. To receive this award, a budget must be judged proficient in each of four major categories: as a policy document, financial plan, operations guide and communications guide. As part of the Distinguished Budget Presentation Award, GFOA also recognized the County with "Special Performance Measures Recognition."

In July 2013, the International City/County Management Association (ICMA) announced that it had awarded its Certificate of Excellence to Fairfax County for the sixth

Board Agenda Item  
January 14, 2014

consecutive year. The County is among only 28 jurisdictions across the nation being recognized for their superior efforts and results in performance measurement and management with this award – the organization's highest level of recognition – from the ICMA Center for Performance Measurement™ (CPM). The Certificate of Excellence is the highest of CPM's three levels of recognition, and pays special tribute to the County's efforts in identifying and reporting to the public key outcome measures and surveying of residents and employees, as well as the pervasiveness of performance measurement in our organization's culture.

The Association of Public Treasurers of the U.S. and Canada presented the County with the Association's Investment Policy Certificate of Excellence Award. This was the fifteenth consecutive year the County's investment policy received this award – recognition of the County's comprehensive written policy that meets stringent criteria set forth by this organization of treasury professionals.

ENCLOSED DOCUMENTS:

None

STAFF:

Susan W. Datta, Chief Financial Officer  
Victor L. Garcia, Director, Department of Finance  
Jeffrey Weiler, Director, Retirement Administration

INFORMATION - 2

Contract Award – Government Relations Consultant

BACKGROUND:

Government Relations and the Department of Transportation require the services of a lobbyist to represent the County with the U.S. Congress on a myriad of funding and policy issues relating to transportation, Base Realignment and Closure and other military-related issues, public safety, telecommunications, taxation, homeland security, human services, and the environment. In addition, supplemental lobbying services are required on certain targeted, high-priority issues at the General Assembly. In order to establish a contract for government relations consultant services, the Department of Purchasing and Supply Management issued a request for proposal (RFP 2000000873) on September 24, 2013. The solicitation was publicly advertised in accordance with the County's Purchasing Resolution. Four offerors submitted responsive proposals before the closing date of October 22, 2013. The Selection Advisory Committee (SAC), approved by the County Purchasing Agent, evaluated the proposals in accordance with the criteria established in the RFP. Upon final evaluation of the proposals and subsequent interviews, the SAC negotiated with the top-ranked offeror and unanimously recommended contract award to Alcalde & Fay based upon their demonstration of experience and expertise in areas such as transportation, Base Realignment and Closure, as well as other military-related issues, and federal appropriations.

The Fairfax County Department of Tax Administration has verified that Alcalde & Fay possesses the appropriate Fairfax County Business, Professional, & Occupational License (BPOL).

Unless otherwise directed by the Board of Supervisors, the County Purchasing Agent will award a three year contract with three one-year renewal options to Alcalde & Fay. The contract value for the initial three year term will be \$514,800, based on a monthly retainer fee of \$14,300 for both federal and state lobbying.

FISCAL IMPACT:

The fiscal impact will be \$171,600 annually.

ENCLOSED DOCUMENTS:

Attachment 1: List of Offerors

STAFF:

Cathy A. Muse, Director, Department of Purchasing and Supply Management  
Claudia Arko, Legislative Director, Office of the County Executive  
Tom Biesiadny, Director, Department of Transportation

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ATTACHMENT 1

RFP 2000000873 – List of Offerors

| Name                                 | SWAM Status    |
|--------------------------------------|----------------|
| Alcalde & Fay                        | Small Business |
| McDonald Hopkins Government Strategy | Large Business |
| Smith Dawson & Andrews               | Small Business |
| The Livingston Group, LLC            | Small Business |

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Board Agenda Item  
January 14, 2014

INFORMATION – 3

Planning Commission Action on Application 2232-M13-14, Fairfax County School Board  
(Mason District)

On Wednesday, December 4, 2013, the Planning Commission voted (Commissioners Hedetniemi and Sargeant absent from the meeting) to approve 2232-M13-14.

The Commission noted that the application met the criteria of character, location, and extent, and was in conformance with Section 15.2-2232 of the Code of Virginia.

Application 2232-M13-14 sought approval to retrofit the existing building for an elementary school. The property is located at 6245 Leesburg Pike, Falls Church, VA 22044. Tax Map 51-3 ((1)) 30, 31; 51-3 ((11)) 188A; 51-3 ((13)) 5, 10, 11.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpt

Attachment 2: Vicinity map

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Chris Caperton, Public Facilities Branch Chief, Planning Division, DPZ

Jill Cooper, Executive Director, Planning Commission Office

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Planning Commission Meeting  
December 4, 2013  
Verbatim Excerpt

2232-M13-14 – FAIRFAX COUNTY SCHOOL BOARD

After Close of the Public Hearing

Chairman Murphy: Without objection, the public hearing is closed; Ms. Hall.

Commissioner Hall: Thank you, Mr. Chairman. After - - One, I want to thank everybody for coming out here. I thought a lot of you had wonderful comments, obviously very well thought out, and I really appreciate you coming here. And I hope that you will continue your involvement. I also appreciate the input from my fellow commissioners. And based on the information they've provided this evening, I feel comfortable that I concur with the staff's conclusion that the proposal by Fairfax County School Board to retrofit the building, located at 6245 Leesburg Pike, Falls Church, satisfies the criteria of location character and extent as specified in *Virginia Code* Section 15.2-2232, as amended. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION, 2232-M13-14, SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to approve 2232-M13-14, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Hurley votes no.

//

The motion carried by a vote of 9-1. Commissioner Hurley voted no. Commissioners Hedetniemi and Sargeant were absent from the meeting.

JN

# PLANNING DETERMINATION

Section 15.2 -2232 of the Code of Virginia



**Number:** 2232-M13-14

**Acreage:** 3.43 Ac.

**District:** Mason

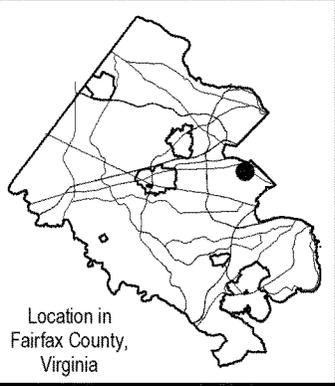
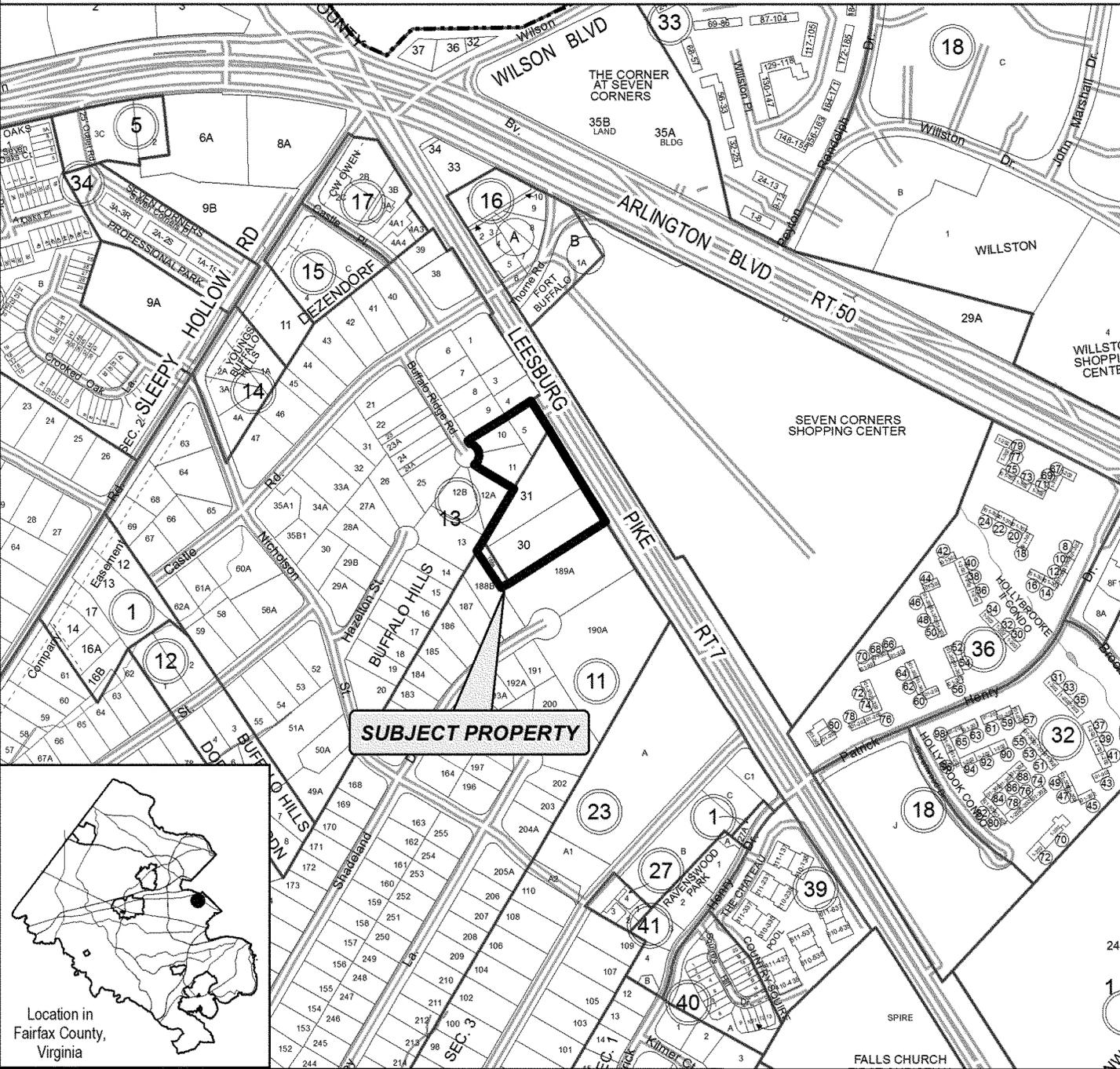
**Tax Map I.D. Number:** 51-3 ((1)) 30, 31;  
51-3 ((11)) 188A; 51-3 ((13)) 5, 10, 11

**Address:** 6245 Leesburg Pike  
Falls Church, VA 22044

**Planned Use:** Office

**Applicant:** Fairfax County School Board

**Proposed Use:** Elementary School



Location in Fairfax County, Virginia

500 FEET



Board Agenda Item  
January 14, 2014

10:50 a.m.

Matters Presented by Board Members

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11:40 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
  - 1. *Louise Root v. County of Fairfax*, Case No. 12-2545 (U.S. Ct of App. for the Fourth Cir.)
  - 2. In Re: February 13, 2013, Decision of the Fairfax County Board of Zoning Appeals; *Trang P. Mai v. Fairfax County Department of Planning and Zoning*, Case No. 131348 (Va. Sup. Ct.) (Mason District)
  - 3. *Carla Thomas v. Fairfax County, Fairfax County Department of Tax Administration, Howard Goodie, and Bruce Schuette*, Case No. CL-2013-0004770 (Fx. Co. Cir. Ct.)
  - 4. In Re: July 31, 2013, Decision of the Fairfax County Board of Zoning Appeals Denying Application of New Cingular Wireless, PCS, LLC, and Parklawn Recreation Association, Inc., for an Amendment to Special Permit No. 76-M-088 (Fx. Co. Cir. Ct.) (Mason District)
  - 5. *Virginia Ann Brown v. County of Fairfax, Brian Joseph Byerson, Delvine John Egan, and John Doe*, Case No. CL13008303-00 (Pr. Wm. Co. Cir. Ct.)
  - 6. *Manuel J. Sandoval v. Fairfax County, Virginia and Officer J. Luety*, Case No. CL-2013-0007609 (Fx. Co. Cir. Ct.)
  - 7. *Kohl's Department Stores, Inc. and Rocks Dulles, LLC v. Board of Supervisors of Fairfax County, Virginia, and Fairfax County, Virginia*, Case No. 2012-0019486 (Fx. Co. Cir. Ct.) (Dranesville District)
  - 8. *MEPT 1660 International Drive LLC v. Board of Supervisors of Fairfax County, Virginia*, Case No. 2013-0015435 (Fx. Co. Cir. Ct.) (Providence District)

9. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Michael Joseph Powers*, Case No. CL-2012-0003924 (Fx. Co. Cir. Ct.) (Lee District)
10. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Reynaldo C. Medrano and Carla Munoz-Lopez*, Case Nos. CL-2006-0010659 and CL-2011-0002181 (Fx. Co. Cir. Ct.) (Mason District)
11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Christine A. Bucierka*, Case No. CL-2007-0004195 (Fx. Co. Cir. Ct.) (Sully District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator and Michael R. Congleton, Property Maintenance Code Official v. Reina Meza and Silvio Meza*, Case No. CL-2012-0014556 (Fx. Co. Cir. Ct.) (Providence District)
13. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Clyde E. Nishimura*, Case No. CL-2012-0005565 (Fx. Co. Cir. Ct.) (Lee District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. George L. Karsadi and Trisha D. Karsadi*, Case No. CL-2012-0010272 (Fx. Co. Cir. Ct.) (Mount Vernon District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. George Daamash*, Case No. CL-2011-0000818 (Fx. Co. Cir. Ct.) (Mount Vernon District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Sidney B. Hill and Wanda C. Hill*, Case No. CL-2012-0011053 (Fx. Co. Cir. Ct.) (Hunter Mill District)
17. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Donald M. Douglas and Louise L. Douglas*, Case No. CL-2013-0003838 (Fx. Co. Cir. Ct.) (Springfield District)
18. *Eileen M. McLane, Fairfax County Zoning Administrator v. Apolonia G. Fuentes*, Case No. CL-2009-0008361 (Fx. Co. Cir. Ct.) (Providence District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Phillip Shane Blevins and Denise Clare Blevins*, Case No. CL-2011-0018229 (Fx. Co. Cir. Ct.) (Springfield District)
20. *Eileen M. McLane, Fairfax County Zoning Administrator v. Sun Ja Yoon*, Case No. CL-2012-0004128 (Fx. Co. Cir. Ct.) (Sully District)

21. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Elise Ann Brandenburger Brown, Case No. CL-2013-0005149 (Fx. Co. Cir. Ct.) (Dranesville District)*
22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Tania Soto-Yapura, Case No. CL-2013-0008359 (Fx. Co. Cir. Ct.) (Mason District)*
23. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Freddie L. Gaskins and Sandra M. Gaskins, Case No. CL-2013-0002780 (Fx. Co. Cir. Ct.) (Providence District)*
24. *Eileen M. McLane, Fairfax County Zoning Administrator and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Francis R. Baffa, Jr., and Shui Ching Kao-Baffa, Case No. CL-2012-0010168 (Fx. Co. Cir. Ct.) (Lee District)*
25. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. John W. Schmeling, Case No. CL-2012-0017864 (Fx. Co. Cir. Ct.) (Mason District)*
26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert E. Barnes and Dale A. Barnes, Case No. CL-2013-0011895 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
27. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Afkhamolmolook Khamnei, and Ming, LLC d/b/a B & M Therapy, Case No. CL-2013-0009085 (Fx. Co. Cir. Ct.) (Providence District)*
28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Milagros B. Iglesias, Trustee, or Successor Trustee(s), as Trustee(s) of The Milagros B. Iglesias Trust 25AUG10, Case No. CL-2012-0018398 (Fx. Co. Cir. Ct.) (Providence District)*
29. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Heirs of Dorothy E. Pounders, Darlyn Elaine Sandgren, Dwight David Pounders, and Lori L. Pounders, Case No. CL-2013-0003258 (Fx. Co. Cir. Ct.) (Dranesville District)*
30. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Adnan A. Ashkar, Case No. CL-2013-0012524 (Fx. Co. Cir. Ct.) (Mason District)*
31. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Francine S. Liem, Case No. CL-2013-0017624 (Fx. Co. Cir. Ct.) (Providence District)*

32. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Albert E. Mays, Case No. CL-2013-0017866 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
33. *In Re: November 6, 2013, Decision of the Board of Zoning Appeals of Fairfax County; Board of Supervisors, Fairfax County, Virginia, and Leslie B. Johnson, Fairfax County Zoning Administrator v. NRG EV Services, LLC, d/b/a eVgo, and Westview Associates, LLC (Fx. Co. Cir. Ct.) (Sully District)*
34. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Helen Ruth Carlson, Trustee of the Helen Ruth Carlson Revocable Trust, and Mark Gunnard Carlson, Trustee of the Helen Ruth Carlson Revocable Trust, Case No. CL-2013-0018743 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
35. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gary S. Pisner, Case No. CL-2013-0018994 (Fx. Co. Cir. Ct.) (Springfield District)*
36. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Ted J. Fares, Case No. CL-2013-0019056 (Fx. Co. Cir. Ct.) (Mason District)*
37. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Richard C. Arnold, Case No. GV13-021384 (Fx. Co. Gen. Dist. Ct.) (Braddock District)*
38. *Leslie B. Johnson, Fairfax County Zoning Administrator, Virginia v. John M. King and Jaime L. Schisler, Case No. GV13-019695 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
39. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Salvador Garcia, Case No. GV13-016925 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
40. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Keun Hoon Lee and Yong Ja Lee, Case No. GV13-024383 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
41. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Orlando Torrez, Case No. GV13-022999 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
42. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Potomac Relocation Services, LLC, Case No. GV13-019826 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*
43. *Noel Arguelles v. Amanda Wallace, Case No. GV13-012458 (Fx. Co. Gen. Dist. Ct.); Amanda Wallace v. Dora Alicia Navarro, Case No. GV13-023570 (Fx. Co. Gen. Dist. Ct.)*

44. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Myla M. Archer*, Case No. GV13-025142 (Fx. Co. Gen. Dist. Ct.) (Mt. Vernon District)
45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Harry F. Kendall, III, and Laura P. Kendall*, Case No. GV13-024608 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
46. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hyung Kon Kim and Eun Hee Kim*, Case No. GV13-024988 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
47. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert T. Hancasky and Marianne L. Hancasky*, Case No. GV13-024607 (Fx. Co. Gen. Dist. Ct.) (Lee District)
48. *Leslie B. Johnson, Fairfax County Zoning Administrator v. William Garcia and Flor Garcia*, Case No. GV13-025141 (Fx. Co. Gen. Dist. Ct.) (Mason District)
49. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Edson J. Barbosa and Michele P. Meloni-Barbosa*, Case No. GV13-025143 (Fx. Co. Gen. Dist. Ct.) (Mason District)
50. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Ali H. Shwikhat and Anisa H. Sayoud*, Case No. GV13-027579 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
51. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Christopher Brinsko*, Case No. GV13-027580 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
52. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Danielle M. Pletka and Stephen G. Rademaker*, Case No. GV13-019696 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
53. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Irving Bernstein, Trustee of the Irving Bernstein Revocable Trust*, Civil Case No. GV13-012357 (Fx. Co. Gen. Dist. Ct.) (Providence District)
54. *Alfred William Massey by GEICO, as subrogee v. Shawn C. Carroll, Fairfax County, and David Bobzien*, Case No. GV13-019232 (Fx. Co. Gen. Dist. Ct.)
55. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Wilfredo Bermudez and Carranza Romero*, Case No. GV13-027015 (Fx. Co. Gen. Dist. Ct.) (Lee District)

56. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Roger W. Webb, Jr.*, Case No. GV13-027242 (Fx. Co. Gen. Dist. Ct.) (Providence District)
57. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gregory A. Hutton and Vera A. Kochanowsky*, Case No. GV13-027244 (Fx. Co. Gen. Dist. Ct.) (Mason District)
58. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Waldo Pinto-Lopez*, Case No. GV13-027243 (Fx. Co. Gen. Dist. Ct.) (Mason District)
59. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ebrahim A. Babazadeh Family Trust*, Case No. GV13-027378 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
60. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Stephanie C. Ataide*, Case No. GV13-027578 (Fx. Co. Gen. Dist. Ct.) (Mason District)
61. *Leslie B. Johnson v. Richard E. During and Eugenia F. During*, Case No. GV13-027244 (Fx. Co. Gen. Dist. Ct.) (Braddock District)

Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on RZ 2009-PR-022 (James M. Hollingsworth) to Rezone from R-1 to R-4 to Permit 3 Single-Family Detached Dwellings at a Density of 2.07 Dwelling Units per Acre, Located on Approximately 1.45 Acres of Land (Providence District)

This property is located on the West side of Cedar Lane, approximately 150 feet North of its intersection with Willowmere Drive. Tax Map 49-1 ((4)) 16A.

The Board of Supervisors deferred this public hearing from December 3, 2013.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, October 30, 2013, the Planning Commission voted (Commissioner Sargeant abstained from the vote) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2009-PR-022, subject to proffers dated October 30, 2013, with editorial corrections.
- Approval of a modification of the Comprehensive Plan Trail Requirement to allow an eight-foot-wide trail.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4391133.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
William Mayland, Planner, DPZ

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Planning Commission Meeting  
October 30, 2013  
Verbatim Excerpt

RZ 2009-PR-022 – JAMES HOLLINGSWORTH

Decision Only during Commission Matters

Commissioner Lawrence: We have had for some time a deferral, -PR-022 [*sic*], under the name of James Hollingsworth. They have been working on the material that needed to be done to the proffers. You may recall that at the public hearing most of the issues we had were proffer related. There was one concerning the location of a line indicating the limits of clearing and grading close to a tree that was on the border of the site with the next site north. We've looked at that and UFM worked with the applicant on locating that line so as to be the best fit. So there is no change in plans because UFM has put their stamp of approval on it. As to proffers, we were able to get in what was needed so that the impact on the neighbors is now, for the residential development criteria all safe. The question of the trail is a cost item for anybody who's going to buy a house there. And that's just going to be part of it. It will be shown to perspective buyers. There will also be a public access easement for the trail. So we think we have gotten the thing to the point where we can send it forward to the Board. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2009-PR-022, SUBJECT TO PROFFERS CONSISTENT WITH THOSE DATED OCTOBER 30<sup>TH</sup>, 2013, WITH EDITORIAL CORRECTIONS BY THE TIME A BOARD DATE IS REACHED. I ALSO MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE COMPREHENSIVE PLAN TRAIL REQUIREMENT TO ALLOW AN EIGHT-FOOT-WIDE TRAIL.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan.

Commissioner Flanagan: Right.

Chairman Murphy: Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2009-PR-022 and a waiver of the modification of the Comprehensive Plan trail requirement to allow an eight-foot-wide trail, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr. Chairman, I will abstain; not present for the public hearing.

Planning Commission Meeting  
October 30, 2013  
RZ 2009-PR-022

Chairman Murphy: Mr. Sargeant abstains.

//

(The motion carried by a vote of 11-0-1. Commissioner Sargeant abstained from the vote.)

Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on SE 2013-SU-018 (The Centreville Pre-School, Inc.) to Permit a Nursery School with a Total Maximum Enrollment of 66 Children, Located on Approximately 1.07 Acres of Land Zoned C-8, R-1, HC, HD, SC and WS (Sully District)

This property is located at 13916 Braddock Road, Centreville, 20120. Tax Map 54-4 ((1)) 32.

PLANNING COMMISSION RECOMMENDATION:

On Wednesday, January 8, 2014, the Planning Commission voted unanimously (Commissioners Hedetniemi and Hurley absent from the meeting) to recommend the following actions to the Board of Supervisors pertinent to the subject application:

- Approval of SE 2013-SU-018, subject to the development conditions dated December 20, 2013; and
- Approval of a waiver of the trail requirement along Braddock Road in favor of the striping of a pedestrian path across the existing pavement, as shown on the Special Exception plat; and
- Approval of a modification of the transitional screening and barrier requirements along the southeastern lot line in favor of the treatment shown on the Special Exception plat; and
- Recommend that the Board of Supervisors direct the Director to waive the dustless surface requirement to allow the continued use of a gravel driveway and parking area.

ENCLOSED DOCUMENTS:

Attachment 1: Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4437186.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Joe Gorney, Planner, DPZ

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Planning Commission Meeting  
January 8, 2014  
Verbatim Excerpt

SE 2013-SU-018 – THE CENTREVILLE PRE-SCHOOL

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Litzenberger.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2013-SU-018, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED DECEMBER 20<sup>TH</sup>, 2013.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2013-SU-018, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE TRAIL REQUIREMENT ALONG BRADDOCK ROAD IN FAVOR OF THE STRIPING OF A PEDESTRIAN PATH ACROSS THE EXISTING PAVEMENT, AS SHOWN ON THE SPECIAL EXCEPTION PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS ALONG THE SOUTHEASTERN LOT LINE IN FAVOR OF THE TREATMENT SHOWN ON THE SPECIAL EXCEPTION PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor, say aye.

Planning Commission Meeting  
January 8, 2014  
SE 2013-SU-018

Page 2

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Lastly, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR TO WAIVE THE DUSTLESS SURFACE REQUIREMENT TO ALLOW THE CONTINUED USE OF A GRAVEL DRIVEWAY AND PARKING AREA.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motions carried unanimously with Commissioners Hedetniemi and Hurley absent from the meeting.)

JN

Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on RZ 2013-PR-007 (EYA Development, LLC) to Rezone from I-5 to PDH-30 to Permit Residential Development with an Overall Density of 22.11 du/ac, Approval of the Conceptual Development Plans, Waiver of Open Space Requirements, Waiver of Minimum District Size and Waiver #561-WPFM-005-1 to Permit the Location of Underground Storm Water Management Facilities in a Residential Area, Located on Approximately 1.07 Acres of Land (Providence District)

This property is located in the North East quadrant of the intersection of Eskridge Road and Merrifield Town Center. Tax Map 49-3 ((1)) 87, 88 and 89B.

On Wednesday, December 4, 2013, the Planning Commission indefinitely deferred its Public Hearing; therefore, this public hearing is to be indefinitely deferred.

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Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on RZ 2013-PR-006 (Fairfax Plaza, LLC) to Rezone from R-2, C-8 and HC to C-8 and HC to Permit Commercial Development and Waiver of Minimum Lot Size Requirement with an Overall Floor Area Ratio of 0.17, Located on Approximately 20,989 Square Feet of Land (Providence District)

This property is located on the West side of Lee Highway approximately 300 feet South of its intersection with Blake Lane. Tax Map 48-3 ((1)) 31.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 7, 2013, the Planning Commission voted 9-0 (Commissioners Hall, Hart, and Lawrence were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2013-PR-006 and the GDP, subject to the execution of proffers consistent with those dated October 9, 2013;
- Modification of Section 13-303 of the Zoning Ordinance for the transitional screening along the western property line to that shown on the GDP;
- Waiver of Section 4-806 of the Zoning Ordinance for the 40,000 square foot minimum lot area requirement of the C-8 district;
- Deviation of the tree preservation target, pursuant to Public Facilities Manual Section 12-0508.3a; and
- Modification of Section 10-104 of the Zoning Ordinance to increase the height of a fence located in the rear yard to that shown on the GDP.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4432171.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Mary Ann Tsai, Planner, DPZ

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Planning Commission Meeting  
November 7, 2013  
Verbatim Excerpt

RZ 2013-PR-006 – FAIRFAX PLAZA, LLC

After Close of the Public Hearing

Chairman Murphy: Without objection, the public hearing is closed; recognize Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. And there will be a sale on donuts in the back after this. Mr. Chairman, with that, I WOULD MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2013-PR-006, AND THE GENERALIZED DEVELOPMENT PLAN, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED OCTOBER 9<sup>TH</sup>, 2013.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-PR-006, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr. Chairman, I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE FOLLOWING WAIVERS AND MODIFICATIONS:

NUMBER 1: MODIFICATION OF SECT. 13-303 OF THE ZONING ORDINANCE FOR THE TRANSITIONAL SCREENING ALONG THE WESTERN PROPERTY LINE TO THAT SHOWN ON THE GENERALIZED DEVELOPMENT PLAN;

NUMBER 2: WAIVER OF SECT. 4-806 OF THE ZONING ORDINANCE FOR THE 40,000 SQUARE FOOT MINIMUM LOT AREA REQUIREMENT OF THE C-8 DISTRICT;

NUMBER 3: DEVIATION OF THE TREE PRESERVATION TARGET, PURSUANT TO PUBLIC FACILITIES MANUAL SECTION 12-0508.3A; AND

NUMBER 4: MODIFICATION OF SECTION 10-104 OF THE ZONING ORDINANCE TO INCREASE THE HEIGHT OF A FENCE LOCATED IN THE REAR YARD TO THAT SHOWN ON THE GDP.

Planning Commission Meeting  
November 7, 2013  
RZ 2013-PR-006

Page 2

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. All those in favor of the motion as articulated by Mr. Sargeant, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motions carried by a vote of 9-0. Commissioners Hall, Hart, and Lawrence were absent from the meeting.)

JN

Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on PCA 86-D-108 (William Weiss) to Amend the Proffers for RZ 86-D-108 Previously Approved for Residential Development to Permit Modification of Approved Proffers at a Density of 1.54 Dwelling Units per Acre with Associated Modifications to Proffers and Site Design, Located on Approximately 36,000 Square Feet of Land Zoned R-2 (Dranesville District)

This property is located at 9416 Atwood Road, Vienna, 22182. Tax Map 19-3 ((17)) 23.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 11-0 (Commissioner Hall was absent from the meeting) to recommend that the Board of Supervisors approve PCA 86-D-108, subject to the execution of proffers consistent with those dated November 6, 2013, and adding one proffer as follows: “install a 10-foot wide landscape berm along the entire rear of the property, planted with evergreen and deciduous trees.”

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim  
Staff Report previously furnished and available online at:  
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4429182.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Megan Duca, Planner, DPZ

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Planning Commission Meeting  
November 21, 2013  
Verbatim Excerpt

PCA 86-D-108 – WILLIAM WEISS

Decision Only During Commission Matters  
(Public Hearing held on October 3, 2013)

Commissioner Donahue: Thank you, Mr. Chairman. A number of weeks ago, we held a public hearing on PCA 86-D-108, the Weiss application on Akron Road. And there were a number of issues we wanted to consider further so we put it off for decision only until this evening. I'm going to move on it, but I would like to call the applicant or the applicant's representative down for a word or two before I do.

Chairman Murphy: Please.

Commissioner Flanagan: Is this on verbatim?

Commissioner de la Fe: Yes.

Chairman Murphy: Are we on verbatim now? Okay, we are on verbatim.

Commissioner Hart: Apparently.

Chairman Murphy: Come on up and identify – come on up and identify yourself for the record.

Gregory Budnik, Civil Engineer, GJB Engineering, Inc.: Greg Budnik, engineer for the application.

Commissioner Donahue: Thank you. Thank you, Mr. Budnik. The report we have and the proffers we have – I want to speak with you about adding one proffer, if we could. And it's something that you initially, I think, posed to some of the neighbors. It was – it's really considered a voluntary situation at heart with the wording of the proffer. And it has to do with the landscape berm at the rear of the property in question. And the wording we would like to have you to consider or add will be the follow: "Install a 10-foot wide landscape berm along the entire rear of the property, planted with evergreen and deciduous trees." Would you have an objection to that type of wording of a proffer or something very close to that?

Mr. Budnik: The applicant would agree to that language.

Commissioner Donahue: Thank you. And that can be worked out and added as it – well, I'll make a motion to add here this evening, but also in the time you have when you go to the board – if it would be worked out with staff, as far as the wording is concerned.

Mr. Budnik: Yes sir.

Planning Commission Meeting  
November 21, 2013  
PCA 86-D-108

Commissioner Donahue: Thank you very much, Mr. Chairman. If that's it, I'm prepared to make a motion.

Chairman Murphy: Okay, go ahead. Thank you, sir.

Mr. Budnik: Thank you.

Commissioner Donahue: Thank you, Mr. Chairman. Mr. Chairman, I WOULD LIKE TO MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PCA 86-D-108, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED NOVEMBER 6<sup>TH</sup>, 2013, AND ADDING ONE PROFFER AS FOLLOWS: "INSTALL A 10-FOOT WIDE LANDSCAPE BERM ALONG THE ENTIRE REAR OF THE PROPERTY, PLANTED WITH EVERGREEN AND DECIDUOUS TREES."

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 86-D-108, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Donahue: Thank you, Mr. Chairman. That's it.

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(The motion carried by a vote of 11-0. Commissioner Hall was absent from the meeting.)

JLC

Board Agenda Item  
January 14, 2014

3:30 p.m.

Public Hearing on SE 2013-HM-012 (Blue Ocean Development, Inc.) to Permit Waiver of the Minimum Lot Width Requirements, Located on Approximately 2.45 Acres of Land Zoned R-1 (Hunter Mill District)

This property is located at 9805 Leesburg Pike, Vienna, 22182. Tax Map 19-1 ((1)) 27.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 8-0-3 (Commissioners Donahue, Lawrence, and Litzenberger abstained. Commissioner Hall was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2013-HM-012, subject to the development conditions dated November 21, 2013; and
- Approval of a waiver of Section 17-201 of the Zoning Ordinance and Section 8-0201 of the Public Facilities Manual requiring a trail along Leesburg Pike.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4432978.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Megan Duca, Planner, DPZ

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Planning Commission Meeting  
November 21, 2013  
Verbatim Excerpt

SE 2013-HM-012 – BLUE OCEAN DEVELOPMENT, INC.

Decision Only During Commission Matters  
(Public Hearing held on November 14, 2013)

Commissioner de la Fe: Thank you, Mr. Chairman. The public hearing on this case was held last week and it really was not a controversial case. However, there – I deferred decision only because the Hunter Mill Land Use Committee had not had a chance to make its final recommendation to us. And they met earlier this week and they did unanimously recommend approval for this. I might add that – although, it really was not raised by anyone except me in the – in my comments, the applicant had an issue with one of the Development Conditions requiring an easement for tree preservation. And during the deferral period, staff and the applicant have worked to attempt to resolve the issue to everyone’s satisfaction. Unfortunately, that has not happened. You received by email and then by hardcopy tonight a change to the easement provision on Development Condition 8J and I had characterized the easement as perhaps part of Fairfax County’s desire to have belts and suspenders because there were an awful lot of tree preservation things for a one-lot case. However, I will, at this time, side with staff because I believe, ultimately, the applicant would rather not have an easement placed at all. And I – staff actually believes, and I agree, that having the easement does make it more enforceable than otherwise. But if the applicants and staff want to continue to work during the period between our recommendation and the Board of Supervisors’ date, which has not been scheduled yet, they can do so. I would not object to that – to see if they can come up with a solution to this case. This is a small case and I commend the applicant for doing an awful lot to meet everything that was requested, and perhaps even more than is usually requested. So with that, Mr. Chairman, as I said, the Land Use Committee did recommend unanimously approval of this case and I **MOVE THAT THE PLANNING COMMISSIONER RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2013-HM-012, SUBJECT TO THE DEVELOPMENT CONDITIONS NOW DATED NOVEMBER 21<sup>ST</sup>, 2013.**

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2013-HM-012, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Litzenberger: Mr. Chairman?

Chairman Murphy: Motion carries.

Commissioner Litzenberger: Not present for the public hearing.  
Chairman Murphy: Okay, Mr. Litzenberger is –

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Lawrence: Not present for the public hearing.

Chairman Murphy: Mr. Litzenberger and Mr. Lawrence abstain.

Commissioner de la Fe: Mr. Donahue wasn't here.

Commissioner Donahue: Also Mr. Chairman.

Chairman Murphy: And Mr. Donahue. Is anybody –

Commissioner de la Fe: There were a lot of people – there were a lot of people that were not here.

Chairman Murphy: A really popular application, I might add. Mr. Donahue, Mr. Litzenberger, and Mr. Litzenberger are not – okay, here we go.

Commissioner de la Fe: Okay. And second motion, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF SECTION 17-201 OF THE ZONING ORDINANCE AND SECTION 8-0201 OF THE Facilities – PUBLIC FACILITIES MANUAL REQUIRING A TRAIL ALONG LEESBURG PIKE.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries, same abstentions.

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(Each motion carried by a vote of 8-0-3. Commissioners Donahue, Lawrence, and Litzenberger abstained. Commissioner Hall was absent from the meeting.)

JLC

4:00 p.m.

Public Hearing on RZ 2013-LE-008 (Penn-Daw Associates Limited Partnership) to Rezone from R-4, C-8, CRD and HC to PDH-40, CRD and HC to Permit Mixed Use Development of 42.2 du/ac and Overall Floor Area Ratio (Including Bonus Density for WDU and ADUs) of 1.36, Waiver of Open Space Requirements and Approval of the Conceptual Development Plans, Located on Approximately 10.45 Acres of Land (Lee District)

This property is located in the South West quadrant of the intersection of Kings Highway and Poag Street. Tax Map 83-3 ((1)) 7.

The Board of Supervisors deferred this public hearing from December 3, 2013.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 9-0-1 (Commissioner Lawrence not present for the vote; Commissioner Hall absent from the meeting; and Commissioner Flanagan abstained) to recommend that the Board of Supervisors approve RZ 2013-LE-008 and the associated CDP, subject to the execution of proffers consistent with those dated November 21, 2013.

In related actions the Planning Commission voted unanimously (Commissioner Lawrence not present for the vote and Commissioner Hall absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Modification of Section 13-303 and 13-304 of the Zoning Ordinance for the transitional screening planting materials and barrier requirement along the northeastern property line; waiver of the transitional screening requirement along the southeastern property line; modification of the transitional screening requirement along the northwest property line; waiver of the transitional screening requirement between the multi-family and single family attached uses; and waiver of the transitional screening requirement between multi-family and retail uses; pursuant to Section 13-305 of the Zoning Ordinance to that shown on the CDP/FDP;
- Waiver of Section 13-202 of the Zoning Ordinance for dispersing of the interior parking landscaping for the surface parking lot area and landscaping on the top level of the parking structure;
- Modification of the Countywide Trails Plan along North Kings Highway to permit six foot wide sidewalks as shown on the CDP/FDP;
- Waiver of Section 2-505 of the Zoning Ordinance on use limitation on corner lots for a corner of a building; and
- Waiver of Section 17-201 of the Zoning Ordinance and Section 7-0104.1 of the Public Facilities Manual for a service drive.

Board Agenda Item  
January 14, 2014

In a related action, the Planning Commission voted unanimously (Commission Lawrence not present for the vote and Commissioner Hall absent from the meeting) to approve FDP 2013-LE-008, subject to the Board's approval of RZ 2013-LE-008 and the Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Attachment: Planning Commission verbatim

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4433830.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Mary Ann Tsai, Planner, DPZ

Planning Commission Meeting  
November 21, 2013  
Verbatim Excerpt

RZ/FDP 2013-LE-008 – PENN-DAW ASSOCIATES LIMITED PARTNERSHIP

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. As we heard, quite a bit tonight, this application will bring a true mixed use to the Penn-Daw CBC and it will help – this project will help keep the revitalization of Penn-Daw on track and hopefully add a much needed grocery store for community members on this side of Route 1. I will briefly go over the items with Mr. Looney to verify that these will indeed become part of the proffer package as we send this up to the Board. The first item is, Mr. Looney, the commitment from the applicant to not allow any accessory use such as dance floor/karaoke. Is that correct?

Mark Looney, Esquire, Attorney/Agent, Cooley, LLP: Yes, sir, we will add a proffer to that effect.

Commissioner Migliaccio: The commitment regarding the Poag/Shaffer connection – that you commit that you are in support of what is in the Comprehensive Plan, as is there is no connection and there will be not – will not be a connection in the future.

Mr. Looney: We will add a proffer that says that, as far as we're concerned, there will not be a connection in the future.

Commissioner Migliaccio: Okay, thank you. Number three, on the tot lot issue, you will change the proffer to at least a minimum of two items in the tot lot, if not more.

Mr. Looney: Correct.

Commissioner Migliaccio: Thank you. You will have a commitment to electrical vehicle charging.

Mr. Looney: We will certainly look at it. Yes sir. – Yes, sir.

Commissioner Migliaccio: Look at or commit? Because we're talking about two or three spaces in a 736-space garage.

Mr. Looney: We have not evaluated it yet, but if – we haven't evaluated it yet and so I can't say for certain exactly what we will do. It could be that we provide a conduit; it could be we provide the spaces there;but we will add a proffer to address the electric vehicle charging stations to the proffers between now and the Board. I just can't speak to exactly what it will say.

Commissioner Migliaccio: Okay. And a proffer regarding that the retail and the HOA for the multi-family housing and townhomes – we'll work out some agreement regarding the spaces that is being used in the garage for overflow parking.

Mr. Looney: We will add a proffer that addresses management of the retail and extra parking spaces for the townhomes. y Yes, sir.

Commissioner Migliaccio: And a commitment regarding the fence that will be along the Kings Garden side – a commitment that it's not going to be cinderblock or chain link fence – that we'll come up with some type of options that will not include those two; that we'll – perhaps, we can make certain that the – we can include the Supervisor's Office in that one to make certain that they're satisfied with the type of material that's being used.

Mr. Looney: Correct.

Commissioner Migliaccio: And lastly, the minimum on the ADU.

Mr. Looney: We will address a proffer looking at the percentage of ADUs that are committed to the project. y Yes, sir.

Commissioner Migliaccio: Okay. That is what I have and I believe we just – we just talked about the fence.

Chairman Murphy: Okay.

Commissioner Migliaccio: Thank you, Commissioner Hurley. The grocery store proffer, but that will be worked out between the applicant and the Supervisor in greater detail. That's the one loose end I'm leaving as we move it forward tonight. With all that being said, Mr. Chairman, once I find my motions, I have a few to make. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2013-LE-008 AND THE ASSOCIATED CDP, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED November 7<sup>th</sup> – NOVEMBER 21<sup>ST</sup>, 2013 – is it 7<sup>th</sup> or 21<sup>st</sup>?

Commissioner Sargeant: 21<sup>st</sup>.

Commissioner Migliaccio: 21<sup>st</sup>, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: You want to say to include the agreements made by the applicant?

Commissioner Migliaccio: Thank you, Mr. Chairman – TO INCLUDE THE PREVIOUSLY AGREED-UPON ADDITIONS TO THE PROFFER.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-LE-008, subject to the proffers as stated in the staff report and also the agreements made by the applicant this evening on the record, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Flanagan: This time, I want to abstain, Mr. Chairman.

Chairman Murphy: Mr. Flanagan abstains.

Commissioner Migliaccio: Okay, thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2013-LE-008, SUBJECT TO THE PROPOSED FINAL DEVELOPMENT PLAN CONDITIONS DATED NOVEMBER 7<sup>TH</sup>, 2013, AND THE BOARD OF SUPERVISORS' APPROVAL OF RZ 2013-LE-008.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion to approve the FDP 2013-LE-008, subject to the Board's approval of the rezoning with the stated proffers and those we agreed to tonight, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: And finally, Mr. Chairman, I'm going to combine all of the waivers and modifications into one motion. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE FIVE WAIVERS AND MODIFICATIONS AS STATED IN THE HANDOUT DATED NOVEMBER 14<sup>TH</sup>, 2013.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries; same abstention, I presume-

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(The first motion carried by a vote of 9-0-1. Commissioner Flanagan abstained. Commissioner Lawrence was not present for the vote. Commissioner Hall was absent from the meeting.)

(The second and third motions carried by a vote of 10-0. Commissioner Lawrence was not present for the vote. Commissioner Hall was absent from the meeting.)

JLC

4:00 p.m.

Public Hearing on RZ 2012-BR-020 (Eastwood Properties, Inc.) to Rezone from R-1 to PDH-3 to Permit Residential Development with an Overall Density of 2.5 du/ac and Approval of the Conceptual Development Plan, Located on Approximately 5.15 Acres of Land (Braddock District)

This property is located on the East side of Ox Road, approximately 100 Feet North of its intersection with Adare Drive. Tax Map 77-1 ((1)) 36, 37 and 38.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 21, 2013, the Planning Commission voted 11-0 (Commissioner Hall was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2012-BR-020, subject to the proffers consistent with those dated November 13, 2013;
- Waiver of the service drive requirement along Route 123 in favor of the frontage improvements shown on the CDP/FDP;
- Modification of the trail requirement along Route 123 in favor of the eight-foot wide asphalt trail shown on the CDP/FDP;
- Waiver of the on-road bike trail requirement along Route 123 in favor of the asphalt trail shown on the CDP/FDP;
- Waiver of the parallel crushed stone pedestrian path along Route 123 in favor of the asphalt path shown on the CDP/FDP; and
- Modification of the sight distance requirement for corner lots to allow the entry feature and sound wall to be located as shown on the CDP/FDP.

In a related action, the Planning Commission voted 11-0 (Commissioner Hall was absent from the meeting) to approve FDP 2012-BR-020, subject to the Board's approval of RZ 2012-LE-013 and the Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Attachment 1 – Planning Commission Verbatim

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4430573.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Brent Krasner, Planner, DPZ

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Decision Only During Commission Matters  
(Public Hearing held on October 16, 2013)

Commissioner Hurley: Thank you, Mr. Chairman. The application under discussion is RD/FDP 2012-020 [sic], Eastwood Properties, or the Ox Road Estates. In response to considerable neighborhood including the very well prepared remarks presented at the public hearing by Middleridge Civic Association President Rick Jones, my remarks this evening will be rather lengthy, but I hope, in time, we'll save time by addressing most of the outstanding questions. First, I mentioned the letter that was distributed this evening. That was from the landowner. Mr. Thompson's family has lived in Fairfax County for 425 years and has lived on this – his family has lived on this particular land for only 56 years. Mr. Thompson points out that this parcel was treeless farmland in the early 70s – make that the early 1970s. Earlier this week, the Braddock Land Use Committee Chair transmitted to this Commission a detailed chronology of its review of this application. The analysis delineates the many community concerns that have been expressed over the last year and highlights many changes, including smaller and fewer houses that the applicant has submitted to the original plans in response to community input. The first major recurring concern of the neighbors is density. The design yields 2.5 houses per acre, mid-way in the Comp Plan recommended range of two to three and compatible with the adjoining neighborhoods. In view of existing stormwater issues, the unusual parcel shape, and to create useful open space areas, the proposed PDH-3 zoning is appropriate for this site. A related concern is the preservation of trees and open space. One of the features of and reasons for this P-District is the creation of common open space, including tree save areas and the resultant smaller individual lots. The 30 percent ten-year tree canopy in the proposal exceeds the requirement of 25 percent. The target of preserving existing trees as required by ordinance standards is exceeded by 1,000 square feet. The 40 percent open space is double the amount required in a P-District. When the commonly-owned open space areas are added to the private yard spaces, then the lot coverage and the effective setbacks around the houses will be similar to or greater than neighboring properties. And thus the proposal is compatible with surrounding neighborhood. As with all new developments, traffic is a concern. The traffic impact analysis indicates no significant cut-through traffic problem at this specific location. The applicant has proffered to request VDOT to examine during the subdivision phase the perceived need to extend the green light time on Adare Drive to clear traffic queues. Cycle and pedestrian crossing of Adare will be made safer by the new "Stop Here on Red" sign on Adare that will also alert cars not to block the service road. Regarding the existing trail along Ox Road and located on public right of way, it will remain eight feet wide and will continue to be maintained by the County until the road is widened, at which time the State would widen and assume responsibility for trail maintenance, as well as address any new stormwater and noise concerns – occasioned by widening Ox Road. While the private roads will need to be maintained by the HOA, they consume less space. It is noted that the developer will initiate funding of this HOA to begin building a reserve for this future expense. The specific concern of one resident pertains to the use of the existing sewer easement on her land, between lots 259 and 260. The Public Facilities Manual states, "Generally, proposed sanitary sewers shall not be located closer than 15 feet from existing or proposed

RZ/FDP 2012-BR-020 – EASTWOOD PROPERTIES, INC.

buildings.” However, as shown in the sketch in the attachment at the end of the staff addendum, the existing easement begins less than four feet from the corner of the house on lot 260. And because the easement is only ten feet wide, the word “generally” applies and the sewer line must be placed closer than 15 feet from the corner of this house. The applicant will be required to place the new sewer line so that the exterior will be at least six feet from the exterior of an existing stormwater line. The sketch indicates the eight-inch sewer line is planned to be located about 10 feet from the house on lot 260 and 6 feet below ground, which is below the two-foot deep foundation of the closest corner of the house. DPWES sanitary sewer personnel have indicated the proposed placement of this sewer line is appropriate. An overarching issue on this site, even without development, is that of managing the stormwater that not only falls directly onto the property, but also drains from the neighboring yards to the south and from Ox Road to the west. Existing issues include ponding in yards downhill from this parcel, downstream stream erosion, and Woodglen – Woodglen Lake siltation. In these latest revised plans, the applicant would access the existing stormwater easement on lot 261 only to connect new lines under the manhole in the northwest corner of their property. As indicated at the bottom of page 2 of the staff addendum, the underground storage area and rain gardens will detain and treat two-year and ten-year storms and will retain a proportion of hundred-year storms. In a significant storm event, delaying a portion of untreated stormwater flowing overland from offsite will improve the downstream situation. This proportional improvement will prevent exacerbating the existing drainage problems downstream. The current 27-inch stormwater line that eventually conveys much of this water off property has been inspected by Maintenance and Stormwater staff using a pole camera. No blockages or other operation or structural issues were found. The lines are functioning adequately and are appropriately sized. Additional flow elsewhere on the property would be controlled by channeling sheet flow through a network of pipes that would carry water to other existing storm drains. Earlier versions of the proposal indicated a small drainage diversion that would require additional overland relief, but that diversion has been eliminated. Therefore, the proposal has been revised to meet overland relief and adequate outfall requirements entirely on-site. The plan continues to exceed the standards required for phosphorous removal by 5 percent. The new Proffer 39 was added at my request and that of the County staff in recognizing the ongoing stormwater concerns of the residents in lots 261 and 262. To alleviate existing drainage issues, the applicant is offering to assist in the re-grading of land on lots 261 and 262, if requested to do so by the neighbors in writing. However, the staff addendum indicates the application fully complies with stormwater regulations and such re-grading is not needed for the applicant to meet any and all requirements. Also at my request, and at the recommendation of DPWES site review staff, the applicant has further engineered its stormwater management design to demonstrate that it can fully detain two and ten-year storms onsite and create a proportional improvement for hundred-year storms that will greatly improve the current situation because it would remove a majority of the surface runoff that currently flows overland to the inlet on the southwest corner of lot 261. The applicant has completed stormwater calculations extensive enough for site plan review, at which time a thorough and rigorous analysis, including review of the rain garden facility, will be conducted by County engineers. Because the applicant has performed these calculations much earlier than usual in the

development process, the community has more months in which to review the computations. I do have a question for the applicant.

Chairman Murphy: Please come forward and identify yourself for the record.

Lori Greenlief, Land Use Planner, McGuireWoods LLP: Good evening. Lori Greenlief with McGuireWoods.

Commissioner Hurley: Thank you. I refer you to Sheets 6 and 7 of the staff addendum and in these, they are talking about saving the trees directly south of Lot 259, especially trees 46 and 47. On one chart, they're shown as being saved. But on the spreadsheet, they're shown as being removed. Can you clarify this discrepancy?

Ms. Greenlief: Yes, both of those trees will be preserved. And that Sheet 7 will be changed to indicate preservation rather than removal.

Commissioner Hurley: Okay, and any other comments on the tree save near Lot 259?

Ms. Greenlief: There is also another tree, I think Lot 39, that was in question. That is on the subject property. It is shown on Sheet 6 as half-shaded because half of its canopy is on the property. Half of its canopy is off of the property and we can only take credit for that part of the canopy that is on the property.

Commissioner Hurley: Thank you. And I also have a question for staff. And Mr. Krasner, can you show – these questions about traffic and cut-through traffic – can you indicate the possible routes of the cut-through traffic that would arrive from this neighborhood.

Brent Krasner, Zoning Evaluation Division, Department of Planning and Zoning: During the public hearing, there was a member of the public who lives on Kipp Court, who came to testify about cut-through traffic concerns. Staff reviewed that issue. Kipp Court is located – a circuitous one and four tenths of a mile away from the subject site. And while we don't doubt there is existing cut-through traffic in this large subdivision of Middleridge, it was staff's opinion that the impact of this site was not going to create a tangible effect on that gentleman's situation, which perhaps could be pursued through other means other than through this application.

Commissioner Hurley: And could you also clarify why staff considers the rain garden, which is not supposed to be played on by little kids, et cetera – why is that considered usable open space?

Mr. Krasner: Well, stormwater facilities are accounted in the 40 percent open space calculation. And in this particular case, you have the situation where there are walking trails that are provided that also – there's also a tot lot. And so that portion of the site is certainly considered usable open space in our opinion, as contrasted with a wooded area with no facilities that would be considered unusable.

Commissioner Hurley: Thank you. And one more question about the driveway length. There was a question from the neighbors about whether 20 feet is sufficient for a driveway.

Mr. Krasner: The County standard is 18 feet – to be considered a parking space. This is 20 feet. So in staff's opinion, it's more than adequate.

Commissioner Hurley: So again, they're exceeding the County standards.

Mr. Krasner: Correct.

Commissioner Hurley: Thank you. I have no further questions. Would with the rest of the Commission?

Chairman Murphy: Go ahead. I don't think so. Oh you do? I'm sorry. I can't hear you. Ms. Hedetniemi.

Commissioner Hedetniemi: I had been critical of the tree preservation plan in this original presentation and I'm not satisfied that they indeed have identified trees that are not healthy enough to be retained and that their offer of planning new growth is a good solution. So I just wanted to clarify that in terms of my original position.

Chairman Murphy: Thank you. Ms. Hurley.

Commissioner Hurley: Thank you. I mentioned at the beginning of my remarks the extensive analysis of this project that has been conducted by the Braddock Land Use Committee. I applaud their efforts and that of the community, who have been extremely involved, and especially the ongoing expert advice of staff, most notably Brent Krasner, Kris Abrahamson, and – from Supervisor John Cook's office – Rosemary Ryan. That being said, no further deferral by the Commission is appropriate. And therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2012-BR-020, SUBJECT TO THE PROFFERS CONSISTENT WITH THOSE DATED 13 NOVEMBER, 2013, CONTAINED IN THE STAFF REPORT ADDENDUM.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2012-BR-020, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries; Ms. Hurley.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2012-BR-020, CONTINGENT ON BOARD APPROVAL OF RZ 2012-BR-020.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2012-BR-020, subject to the Board's approval of the rezoning, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE space – of the SERVICE DRIVE REQUIREMENT ALONG ROUTE 123 IN FAVOR OF THE FRONTAGE IMPROVEMENTS SHOWN ON THE CDP/FDP.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF THE TRAIL REQUIREMENT ALONG ROUTE 123 IN FAVOR OF THE EIGHT-FOOT WIDE ASPHALT TRAIL SHOWN ON THE CDP/FDP.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE ON-ROAD BIKE TRAIL REQUIREMENT ALONG ROUTE 123 IN FAVOR OF THE ASPHALT TRAIL SHOWN ON THE CDP/FDP.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE PARALLEL CRUSHED STONE PEDESTRIAN PATH ALONG ROUTE 123 IN FAVOR OF THE ASPHALT PATH SHOWN ON THE CDP/FDP.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: And finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF THE SIGHT DISTANCE REQUIREMENT FOR CORNER LOTS TO ALLOW THE ENTRY FEATURE AND SOUND WALL TO BE LOCATED AS SHOWN ON THE CDP/FDP.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: Thank you, Mr. Chairman.

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(Each motion carried by a vote of 11-0. Commissioner Hall was absent from the meeting.)

JLC

Board Agenda Item  
January 14, 2014

4:00 pm

Public Hearing on Proposed Area Plans Review Nominations 09-IV-IMV and 09-IV-15MV, Located Northwest of Richmond Highway, and Northeast Huntington Avenue (Mount Vernon District)

ISSUE:

Area Plans Review (APR) Nominations 09-IV-1MV and 09-IV-15MV propose to amend the Comprehensive Plan for Sub-unit A-1 (approximately 15.3 acres) and Sub-unit A-2 (approximately 2.5 acres), respectively, of the North Gateway Community Business Center of the Richmond Highway Corridor. Sub-unit A-1 is planned for retail, office and/or residential uses up to an intensity of .50 Floor Area Ratio (FAR), with an option for mixed-use development to include office, retail and residential uses up to an intensity of 1.0 FAR with conditions relating to consolidation, circulation, urban design, transportation and the environment. There is an alternative option for residential use at a density up to 30 dwelling units per acre (du/ac). Sub-unit A-2 is planned for neighborhood-serving retail use at an intensity up to .25 FAR, with an option for consolidation with Sub-unit A-1 in a unified mixed-use development at an intensity up to 1.0 FAR with conditions. The nominations propose to add an option for mixed-use development to include office, hotel and retail uses at an intensity up to 2.0 FAR with similar conditions and to delete the alternative option for residential use at a density up to 30 du/ac.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 14, 2013, the Planning Commission voted unanimously (Commissioners Donahue, Hall, Hedetniemi, Lawrence and Litzenberger not present for the vote) that the Board of Supervisors adopt an alternative for APR Nominations 09-IV-IMV and 09-IV-15MV. The Planning Commission alternative, as set forth in Attachment 1, supports the staff alternative for residential, office, hotel and retail mixed-use development up to an intensity of 1.65 FAR with additional language recommending: the reevaluation of guidance for Sub-units A-1 and A-2 after upcoming transportation studies have been completed; the access from Sub-unit A-2 be determined at the rezoning stage; and the transportation figures and text in the Plan be revised to show that Old Richmond Highway would be vacated from Cameron Run Terrace to Richmond Highway with redevelopment under the proposed option.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation as shown in the Planning Commission verbatim (Attachment I) and handout (Attachment II).

Board Agenda Item  
January 14, 2014

TIMING:

Planning Commission public hearing – November 14, 2013  
Board of Supervisors public hearing – January 14, 2014

BACKGROUND:

The Board of Supervisors designated 2009-2010 as the years to review and evaluate recommendations contained in the Comprehensive Plan for the southern part of the County.

The Mount Vernon APR Task Force recommended an alternative to the proposed nominations. The task force alternative retained the adopted Comprehensive Plan for a portion of Sub-unit A-1 and supported the nominated change to the Plan for the remainder of Sub-units A-1 and Sub-unit A-2. The alternative resulted in mixed-use development to include residential, office, hotel and retail uses at an overall intensity up to 1.65 FAR.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment I: Planning Commission Verbatim Excerpt  
Attachment II: Planning Commission Handout dated November 14, 2013 with annotations to show the final Planning Commission Recommendations  
Attachment III: Mount Vernon APR Task Force Recommendation, dated April 13, 2010.

Staff Report previously furnished and available online at:

<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/09-iv-1mvand15mv.pdf>

STAFF:

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)  
Marianne Gardner, Director, Planning Division (PD), DPZ  
Meghan Van Dam, Chief, Policy & Plan Development Branch, PD, DPZ  
Aaron Klibaner, Planner II, PD, DPZ

Planning Commission Meeting  
November 14, 2013  
Verbatim Excerpt

APR 09-IV-1MV – COMPREHENSIVE PLAN AMENDMENT (NORTH GATEWAY)  
APR 09-IV-15MV – COMPREHENSIVE PLAN AMENDMENT (NORTH GATEWAY)

After Close of the Public Hearing

Chairman Murphy: All right, we're going to – the public hearing is – public hearing is closed; Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. The Area Plan Review nomination 09-IV-1MV and 09-IV-15MV propose a change in land use and intensity at the northern gateway of the Richmond Highway Corridor, a location that provides an initial impression of the corridor and the County. By the way, this is one of only two commercial business centers that's on the Beltway, the other one being Tysons Corner. On April 3<sup>rd</sup>, 2010, the Mount Vernon APR Task Force recommended an alternative that reduced the overall intensity of the combined nominations and reintroduced residential use into the proposed mix of uses on a portion of the subject area. This recommendation is the basis of the staff alternative. Since the time of the task force recommendations, new transportation studies for the Huntington area and the Richmond Highway Corridor have either recently begun or are starting shortly. These studies may warrant a reexamination of the Plan recommendations. As a result, I support the staff alternative with a modification to encourage the future reevaluation of the subject area after the transportation studies have been completed and funding for improvements has been procured. Therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF AN ALTERNATIVE TO THE STAFF RECOMMENDATIONS, AS SHOWN ON PAGES 1 THROUGH 6 OF MY HANDOUT DATED NOVEMBER 14, 2013. THE ALTERNATIVE SUPPORTS THE STAFF RECOMMENDATIONS WITH ADDITIONAL LANGUAGE THAT RECOGNIZES THE UPCOMING TRANSPORTATION STUDIES AND POSSIBLE FUTURE NEED TO REEXAMINE THE PLAN RECOMMENDATIONS. THE ALTERNATIVE ALSO MODIFIES LANGUAGE ABOUT ACCESS IN SUB-UNIT A-2, TO ALLOW FLEXIBILITY TO DETERMINE THE LOCATION AT REZONING STAGE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: A FRIENDLY AMENDMENT, I hope. THE BOTTOM OF PAGE 2 OF MR. FLANAGAN'S HANDOUT FROM TONIGHT, THE LAST BULLET – THAT BEFORE

Planning Commission Meeting  
November 14, 2013  
APR 09-IV-1MV AND APR 09-IV-15MV

Page 2

THE BOARD, STAFF WAS GOING TO CLARIFY THAT THAT FIRST BLOCK OF OLD RICHMOND HIGHWAY FROM HUNTINGTON AVENUE UP TO CAMERON RUN TERRACE, I GUESS, IS NOT BEING VACATED – THAT THAT WOULD STAY AND IT’S JUST THE PART TO THE RIGHT OF THAT THAT WOULD BE VACATED – in that last bullet on the bottom of page two.

Commissioner Flanagan: YES, I’LL ACCEPT THAT AS A FRIENDLY AMENDMENT.

Commissioner Hart: Thank you.

Chairman Murphy: All right, further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the alternative to these Plan Amendments, as articulated by Mr. Flanagan on items 09-IV-1MV and 09-IV-15MV, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much. Thank you folks for your work on this Plan Amendment. Mr. Klibaner, thank you – Ms. Van Dam – et. al.

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(The motion carried by a vote of 7-0. Commissioners Donahue, Hall, Hedetniemi, Lawrence, and Litzenberger were absent from the meeting.)

JLC

**MOTION**

**November 14, 2013**

**Commissioner Early Flanagan, Mount Vernon District**

**Planning Commission Public Hearing**

**2009-2010 South County Area Plans Review items 09-IV-1MV and 09-IV-15MV**

**Motion:**

Mr. Chairman, Area Plans Review nominations 09-IV-1MV and 09-IV-15MV propose a change in land use and intensity at the northern gateway of the Richmond Highway Corridor, a location that provides an initial impression of the corridor and the county.

On April 3, 2010, the Mount Vernon APR Task Force recommended an alternative that reduced the overall intensity of the combined nominations and reintroduced residential use into the proposed mixture of uses on a portion of the subject areas. This recommendation is the basis for the staff alternative.

Since the time of the task force recommendation, new transportation studies for the Huntington area and the Richmond Highway Corridor have either recently begun or are starting shortly. These studies may warrant a reexamination of the Plan recommendations. As a result, I support the staff alternative with a modification to encourage the future reevaluation of the subject area after the transportation studies have been completed and funding for improvements has been procured.

Therefore, I move that the Planning Commission recommend to the Board of Supervisors the adoption of an alternative to the staff recommendation as shown on pages 1-6 of my handout dated November 14, 2013. The alternative supports the staff recommendation with additional language that recognizes the upcoming transportation studies and a possible future need to reexamine the Plan recommendations. The alternative also modifies language about access in Sub-unit A-2 to allow flexibility to determine the locations at the rezoning stage.

End of Motion

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**PLANNING COMMISSION RECOMMENDED PLAN TEXT  
NOVEMBER 14, 2013**

*(Additional modifications recommended by the Planning Commission during the public hearing are shown in italics.)*

2009-2010 SOUTH COUNTY APR NOMINATIONS 09-IV-1MV & 09-IV-15MV

Text to be added is shown as underlined and text to be deleted is shown as ~~strickethrough~~.

**MODIFY:** Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, amended through 4-9-2013, Richmond Highway Corridor Area, page 31.

Text to be added is shown as underlined and text to be deleted is shown as ~~strickethrough~~.

∴  
**“North Gateway Community Business Center**

Redevelopment in this area is anticipated to occur adjacent to I-495 primarily at the location of the auto dealerships. This area is planned to redevelop as a mixed-use project including residential, office, hotel, and retail uses. ~~or in the alternative as high rise residential use.~~ These planned uses complement the advantageous location near rail transit/transportation-oriented location and are compatible with the surrounding character and density.”

**MODIFY:** Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, Richmond Highway Corridor Area, pages 33-34.

**“Sub-unit A-1**

The area along the northwest side of Richmond Highway between the Capital Beltway and Old Richmond Highway I-495 and northeast of Huntington Avenue is planned for retail, office and/or residential uses up to .50 FAR.

As an option, mixed-use development to include residential, office, hotel and retail uses at an intensity up to 1.065 FAR may be appropriate as part of a unified redevelopment with full consolidation of Sub-units A-1 and A-2. If full consolidation is not achievable, an alternative may be pursued that logically consolidates parcels in Sub-unit A-1 and/or Sub-unit A-2 in order to provide the extension of Fort Hunt Road to Cameron Run Terrace in the initial phase. Further, a master plan for redevelopment of both Sub-units should be prepared to demonstrate how the future integration of unconsolidated parcels can be achieved.

In either option, if the following conditions are should be met:

- ~~A mix of uses, which may include office, retail and residential, is provided;~~
- ~~Substantial and logical parcel consolidation is achieved;~~
- ~~Pedestrian and vehicular connections are provided;~~
- Project Urban design and layout provide a high quality development elements incorporating the recommendations found at the end of the Richmond Highway Corridor section, such as complete streets, public art, pedestrian plazas, cultural/recreation facilities, landscaped open space, landmarks or building designs which will denote this area as a focal point of the North Gateway Community Business Center are included;
- A pedestrian circulation system is provided. Circulation should encourage pedestrian traffic within the development, and to and from adjacent developments, the Huntington Metrorail Station, and existing and planned pedestrian and bicycle routes, such as the Cameron Run Trail and other planned facilities. Streetscaping that includes elements such as space for outdoor dining, pedestrian sidewalks, landscaping, crosswalks, bicycle facilities, on-street parking, lighting, and/or transit accommodations, should be incorporated in the internal transportation network within the development. Adequate, well-positioned and safe pedestrian crossings across Richmond Highway and Huntington Avenue, with ramps, pavement markings and pedestrian countdown signals, should also be provided;
- A parking management program that may include parking reductions, providing less parking than required by code is prepared;
- Parking is consolidated into structures and integrated into the streetscape in order to avoid adverse visual impacts to major pedestrian, bicycle, or vehicular corridors. Façade treatment of parking structures should contribute to the visual appeal of the streetscape. Surface parking lots should be avoided or located in the rear of the buildings when necessary;
- ~~The A thorough traffic impact analysis of the proposed development is conducted with appropriate mitigation identified, thoroughly analyzed and mitigated so that Huntington Avenue and Richmond Highway adjacent to the site will operate at levels of service no less than Level of Service D; Grade-separated interchanges, new or extended roadways, roadway widening, and/or intersection turn lane improvements should be considered to assist in alleviating traffic congestion through the immediate area;~~
- An efficient, pedestrian friendly, internal grid design for vehicular circulation system is provided;
- Old Richmond Highway should be vacated between Cameron Run Terrace and Richmond Highway and the extension of Fort Hunt Road from Richmond Highway to Cameron Run Terrace should be

constructed with any redevelopment of the subject area as shown on Figure 13;

- Access points are should be consolidated, and placed away from existing intersections and operate at levels of service no less than Level of Service D—Adequate storage capacity at the site access points should be provided to accommodate anticipated turn lane demands, into and out of the site;
- Adequate right-of-way is provided for the planned, grade-separated interchange at Richmond Highway and Huntington Avenue/Fort Hunt Road or for suitable, at-grade alternative mitigation developed through further study, and for any adjacent intersection, bicycle/pedestrian improvements, and/or road widenings to be defined through further study;
- Any proposed site design is coordinated with existing and planned transit in the area with bus shelters;
- A substantial Transportation Demand Management (TDM) program should be implemented as a component of the transportation mitigation. The TDM program should consider, but is not limited to, the following elements:
  - A TDM trip reduction goal of 30 percent should be sought for the office component of the site,
  - A TDM coordinator,
  - A commuter center/kiosk,
  - Incentives for residents and office workers to use alternative modes, such as transit, carpools, vanpools, bicycles and walking and to participate in flexible work schedules, alternative work schedules and teleworking,
  - Provision of, or funding for, long-term shuttle service and/or enhanced transit connections between the site, other area development, and the Huntington Metrorail Station, and
  - Covered and secure bicycle storage facilities and shower/locker facilities;
- A contribution for area-wide transportation improvements, including roadway and other multi-modal improvements that are generally proportional to the share of trips generated by the proposed development is provided at each improvement location. The contribution at each improvement location should be calculated based on a comparison of site generated trips versus regional/through trips;
- A pedestrian circulation system which encourages pedestrian traffic within the development, to adjacent developments and to the Huntington Metro Station is provided;

- ~~Adequate measures to mitigate against environmental impact should be provided. The related floodplain and wetland areas should be protected in accordance with Plan objectives, as well as, other applicable guidelines and regulations; and~~
- ~~Urban design elements, such as public art, pedestrian plazas, cultural/recreation facilities, landscaped open space, streetscaping, landmarks or building designs which will denote this area as a focal point of the North Gateway Community Business Center are included. The urban design recommendations found at the end of this Plan should be used as a guide.~~
- A linear park along the shoreline of Cameron Run that includes wayside areas with benches and construction of a portion of the proposed Cameron Run trail is provided;
- The Cameron Run floodplain is re-vegetated and the Resource Protection Area restored to the maximum extent possible;
- The amount of impervious surfaces is reduced to the maximum extent possible; if this is not achievable, there is no net increase in impervious surfaces;
- The total volume of stormwater runoff released from the site post-development for the 2-year, 24-hour storm should be at least 25% less than the total volume of runoff released in the existing condition for the same storm;
- Stormwater runoff is controlled such that either (a) the total phosphorus load for the property is no greater than what would be required for new development pursuant to Virginia's Stormwater Regulations and the County's Stormwater Management Ordinance; or (b) an equivalent level of water quality control is provided;
- As an alternative to the previous two bullets, stormwater management measures may be provided sufficient to attain the Rainwater Management credit(s) of the most current version of LEED-New Construction or LEED-Core and Shell rating system;
- As an alternative to the previous three bullets, stormwater management measures/and or downstream improvements may be pursued to optimize site-specific stormwater management and/or stream protection/restoration efforts, consistent with the adopted watershed management plan(s) that is/are applicable to the site. Such efforts should be designed to protect downstream receiving waters by reducing stormwater runoff volumes and peak flows from existing and proposed impervious surfaces to the maximum extent practicable, consistent with watershed plan goals; and
- A noise study is prepared to determine the extent of noise impacts and appropriate mitigation measures for interior areas of any residential, hotel and office uses and if necessary, outdoor activity areas.

~~As an alternative option, future redevelopment of Sub-unit A-1 northwest of Old Richmond Highway for residential use at a density up to 30 dwelling units per acre to be compatible with the surrounding high-rise residential uses may be appropriate. Substantial parcel consolidation, minimization of access points, provision of an efficient internal circulation pattern and mitigation of environmental and transportation impacts are required. See land use recommendations for Sub-units A-2 and B-2 for additional options.~~

Sub-units A1 and A2 may be appropriate for redevelopment at a higher intensity in the future when areawide transportation issues can be addressed. The plan for the mixture of uses and intensity should be evaluated following the completion of transportation studies for the Huntington area and the Richmond Highway Corridor, when mitigation strategies are identified.

### **Sub-unit A-2**

The redevelopment of the "island" formed by Richmond Highway and Old Richmond Highway would enhance the "gateway" character of this area and should be encouraged. Consolidation of all parcels within this "island" and redevelopment of this area with neighborhood-serving retail use up to .25 FAR is recommended. Building orientation should be to Richmond Highway but access should be to Old Richmond Highway.

As an option, if Sub-unit A-2 is fully consolidated and included in a unified mixed-use development plan with Sub-unit A-1, then Sub-unit A-2 may be appropriate for mixed-use development at an intensity up to 1.065 FAR. If full consolidation with Sub-unit A-1 is not achievable, an alternative option for logical consolidation of Sub-unit A-2 with at least Tax Map Parcel 83-2((1))2A is recommended for a mixed-use development to include residential, office, hotel and retail uses at a lower intensity than the maximum of 1.65 FAR. In addition to meeting the same conditions stated in the land use recommendation for Sub-unit A-1, as part of this mixed-use development, Old Richmond Highway should be vacated between Cameron Run Terrace and Richmond Highway and access should be provided from Sub-unit A-1 Richmond Highway."

**MODIFY FIGURES:** Figure 2, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Overview, Amended through 4-9-2013, page 6.

At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 13, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, Richmond Highway Corridor Area, page 78.

Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 29, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, MV1-Huntington Community Planning Sector, page 123.

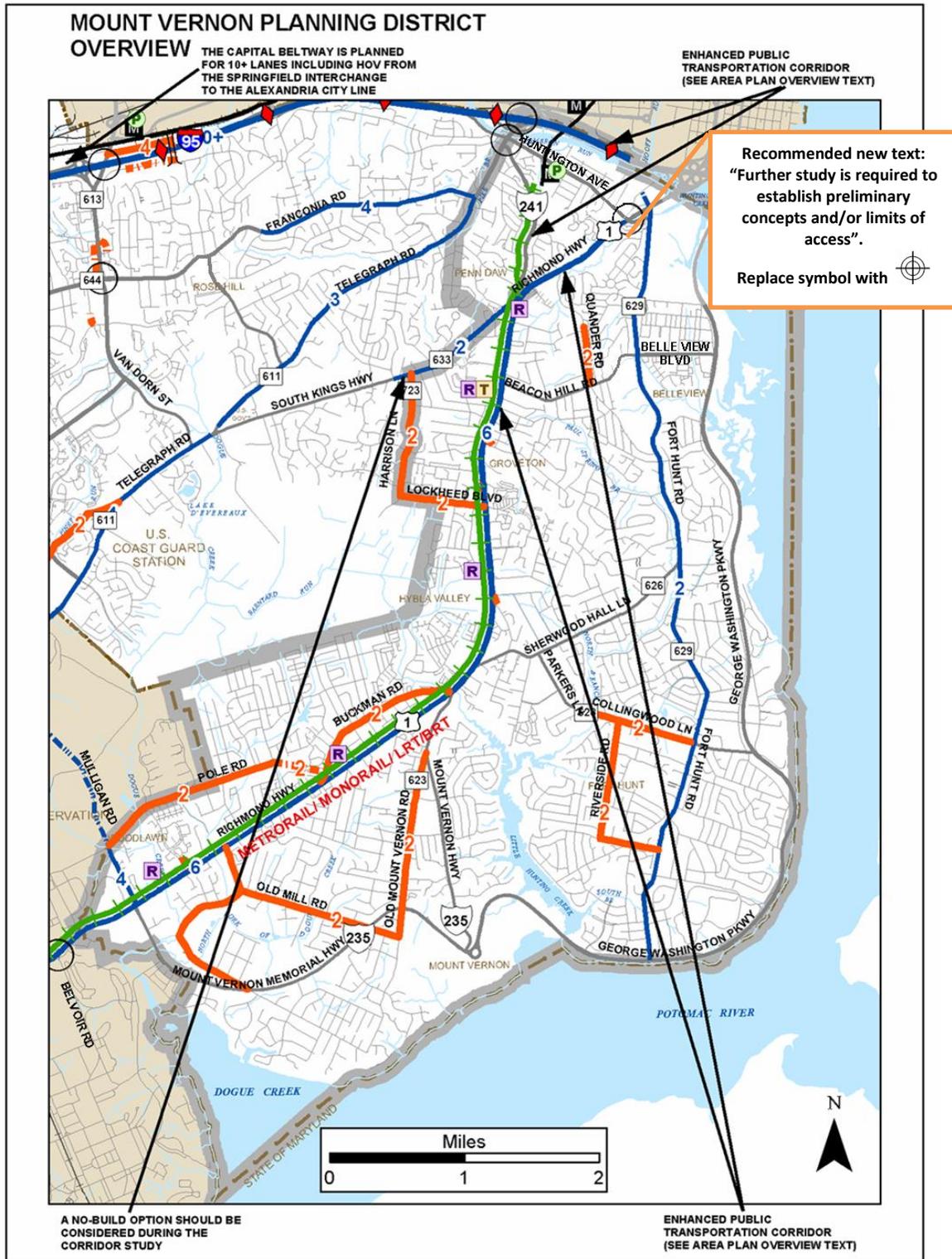
Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

Figure 30, Fairfax County Comprehensive Plan, 2013 Edition, Area IV, Mount Vernon Planning District, Amended through 4-9-2013, MV1-Huntington Community Planning Sector, page 124.

Insert an arrow pointing to Old Richmond Highway with a caption that reads “Vacate Old Richmond Highway”. At the intersection of Richmond Highway and Huntington Avenue, replace the symbol and note that refers to the recommendation of a grade separated interchange, with the symbol and note that explains that further study is required to establish preliminary concepts and/or limits of restricted access.

**PLAN MAP:** The Comprehensive Land Use Plan Map will not change.

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC

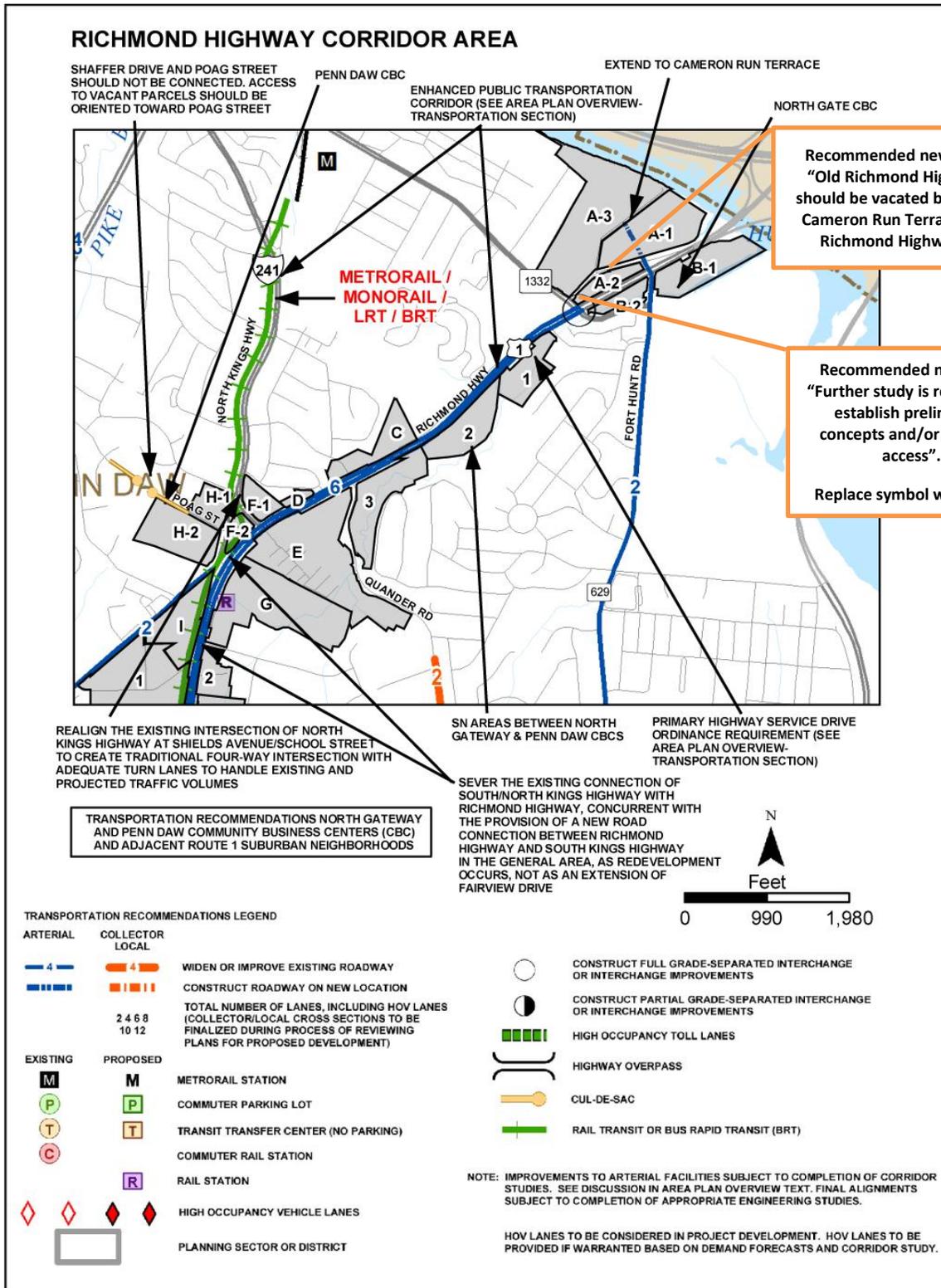


COUNTYWIDE TRANSPORTATION RECOMMENDATIONS  
 MOUNT VERNON PLANNING DISTRICT

FIGURE 2

(SEE SECTOR MAPS FOR DETAILED TRANSPORTATION RECOMMENDATIONS)

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC

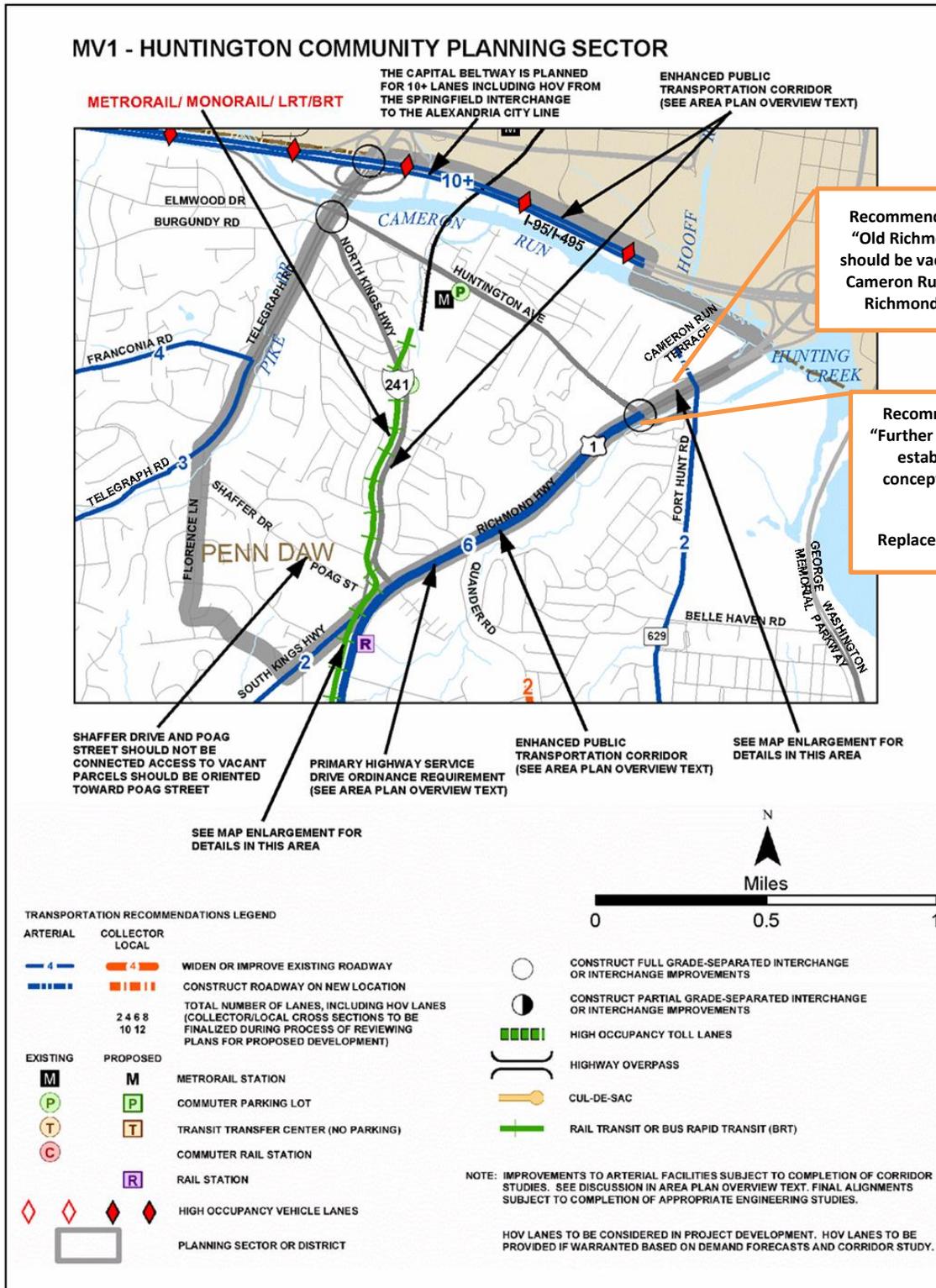


**TRANSPORTATION RECOMMENDATIONS** **FIGURE 13**

**NORTH GATEWAY AND PENN DAW CBCS AND**

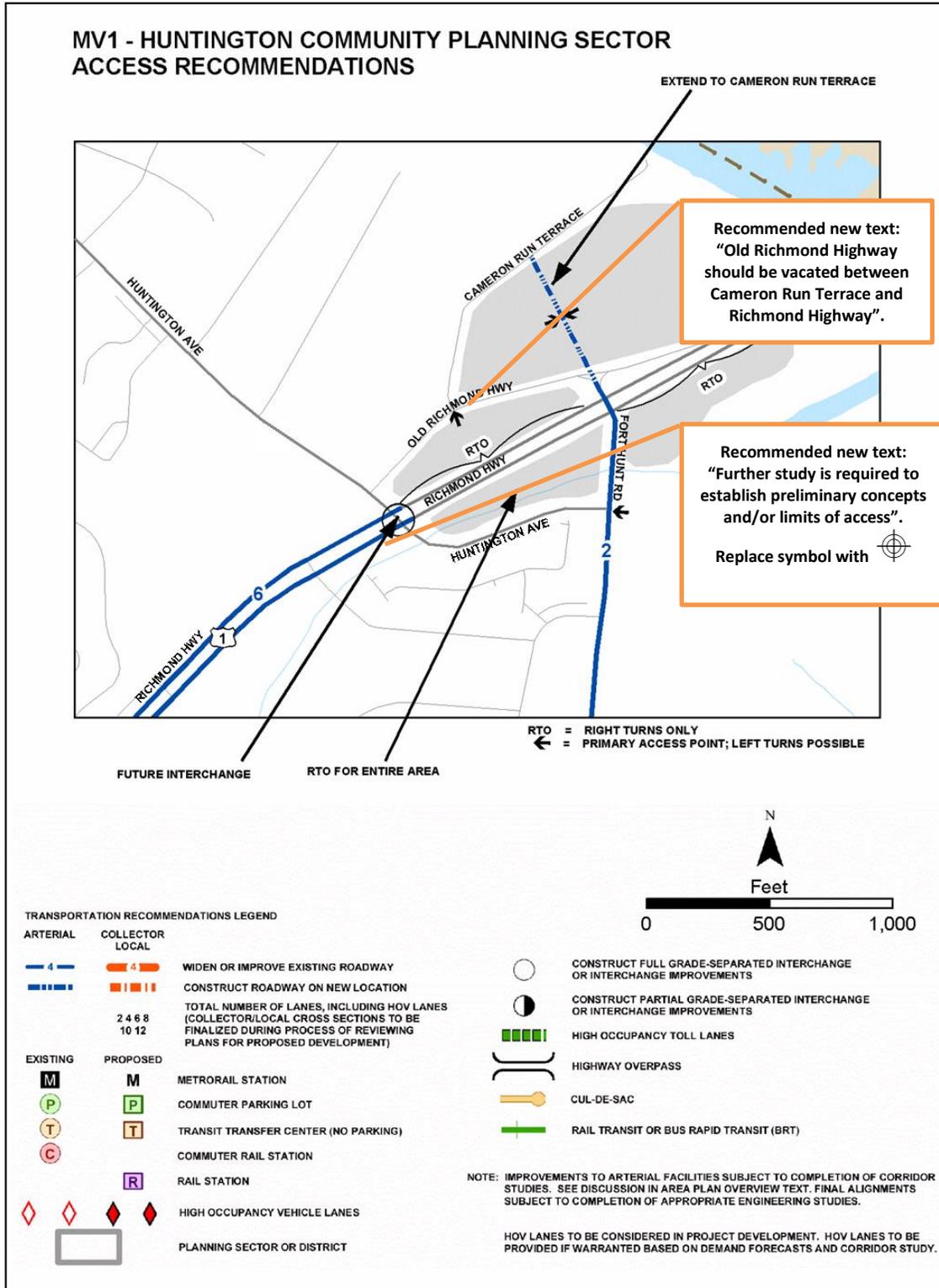
**ADJACENT RICHMOND HIGHWAY SUBURBAN NEIGHBORHOODS**

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC



TRANSPORTATION RECOMMENDATIONS **FIGURE 29**

Proposed Changes To Transportation Figures  
 MV1 Huntington Community Planning Sector and North Gateway CBC



**ACCESS RECOMMENDATIONS  
 MV1 HUNTINGTON COMMUNITY PLANNING SECTOR**

**FIGURE 30**

MOUNT VERNON APR TASK FORCE  
RECOMMENDATION  
2009-2010 SOUTH COUNTY AREA PLANS REVIEW

APR ITEM # APR 1 MV & 15 MV

DATE(S) REVIEWED BY TASK FORCE: Reconciled on 4-13-2010  
NOMINATOR(S):

SUMMARY TASK FORCE RECOMMENDATION:

Approve Nomination as submitted \_\_\_\_\_  
Approve Nomination with Modification \_\_\_\_\_  
Retain Adopted Plan \_\_\_\_\_

see below

VOTE TALLY

In favor: 19  
Opposed: 0  
Abstentions: 0

Task Force member(s) who recused themselves from the vote:

TASK FORCE EXPLANATION/COMMENTS:

Retain the comp plan for Parc. 2A 6.24 Acr.  
and accept the nomination as submitted  
on the remaining parc.

Task Force Chairman (initials): JRB

Board Agenda Item  
January 14, 2014

4:00 p.m.

Public Hearing to Consider Amending Fairfax County Code Section 82-5A and  
Appendix G (Residential Permit Parking Districts) Related to Administration and  
Eligibility

**This public hearing is to be deferred.**

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Board Agenda Item  
January 14, 2014

4:00 p.m.

Public Hearing on a Proposal to Abandon a Part of Lyles Road and Convey the Abandoned Right-of-Way to ECHO, Incorporated (Lee District)

ISSUE:

Public hearing on a proposal to abandon a part of Lyles Road and convey the abandoned right-of-way to ECHO, Incorporated (the Applicant).

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order (Attachment III) for abandonment of a part of Lyles Road and Resolution (Attachment IV) to convey the abandoned right-of-way to the Applicant.

TIMING:

On December 3, 2013, the Board authorized the public hearing to consider the proposed abandonment and conveyance for January 14, 2014, at 4:00 p.m.

BACKGROUND:

The Applicant is requesting that part of Lyles Road be abandoned and that the abandoned parcel be conveyed to it for fair market value. Lyles Road is unimproved; and, therefore, not in the Virginia Department of Transportation (VDOT) State Secondary System.

The request is being made as part of ECHO's long-term planning. As an independent community services nonprofit the applicant is requesting the abandonment and conveyance of part of Lyles Road to incorporate into a future planned development of the site.

The right-of-way is not eligible for vacation under Virginia Code §15.2-2270 or Virginia Code §15.2-2272, because it was acquired through condemnation.

Traffic Circulation and Access

The abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. The applicant has committed to maintain the existing pedestrian and bike access through the right-of-way being abandoned. There is no current through motor vehicle access on this right-of-way.

Board Agenda Item  
January 14, 2014

Easements

Public easement needs have been identified by the Department of Transportation, the Department of Public Works and Environmental Services, and Fairfax Water. Verizon and Dominion Virginia power had also identified facilities within the area to be abandoned. The easement commitments will be executed as part of the final conveyance to the Applicant. No other easement needs were identified.

Conveyance

Since the area to be abandoned is no longer needed for road improvement purposes and since the small size of the parcel (2,713 sq. ft.) makes it unsuitable for any other public use, the County will serve the greater public benefit by conveying the parcel to Applicant for its fair market value of \$2,713.

The proposal to abandon and convey this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:

The proceeds from the sale will be deposited in the County's general fund.

ENCLOSED DOCUMENTS:

Attachment I: Statement of Justification  
Attachment II: Notice of Intent  
Attachment III: Order of Abandonment  
Attachment IV: Resolution to Convey  
Attachment V: Abandonment Plat  
Attachment VI: Metes and Bounds Description  
Attachment VII: Vicinity Map

STAFF:

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Jose Comayagua, Jr., Director, Facilities Management Department  
Donald Stephens, FCDOT



8010 TOWERS CRESCENT DRIVE SUITE 300 VIENNA, VA 22182  
T 703.760.1600 F 703.821.8949 www.Venable.com

David R. Lasso

(703) 760-1678

drlasso@venable.com

August 23, 2011

Mr. Donald Stephens  
FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033-2895

**RE: LETTER OF REQUEST AND JUSTIFICATION FOR THE ABANDONMENT  
OF A PORTION OF THE LYLES ROAD RIGHT-OF-WAY LYING BETWEEN 7205  
AND 7209 OLD KEENE MILL ROAD**

---

Dear Mr. Stephens:

This firm represents Ecumenical Community Helping Others, Inc. ("ECHO" or the "Applicant") on a pro bono basis with regard to the Applicant's real estate and zoning matters. ECHO respectfully requests that Fairfax County abandon that portion of the Lyles Road right-of-way which lies between 7205 Old Keene Mill Road (Tax Map # 0901 ((01)) 0051A) and 7209 Old Keene Mill Road (Tax Map # 0901 ((01)) 0051).

ECHO currently owns the lots on either side of the referenced portion of the Lyles Road right-of-way. ECHO's offices are located at 7205 Old Keene Mill Road and 7209 Old Keene Mill is vacant. ECHO has not yet decided upon the best use of the vacant parcel and will have to raise funds prior to any sort of development. In the interim, ECHO intends to take good care of the vacant parcel, but needs to be able to have full access to this lot. As a consequence, ECHO is requesting that the County eliminate the existing Lyles Road right-of-way that bisects the two parcels.

In anticipation of the abandonment, ECHO agrees to continue to preserve and maintain the existing pedestrian trail through its property, as a substitute for the abandoned Lyles Road, so that pedestrian and bike access to Old Keene Mill Road will remain. ECHO retains the right to traverse the trail for ECHO's uses and, while the Applicant intends for the trail to be located in generally the same area as the Lyles Road right-of-way, will have the right to relocate the trail should a future development require a relocation.

VENABLE<sup>®</sup><sub>LLP</sub>

---

Mr. Donald Stephens  
FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
August 23, 2011  
Page 2 of 2

Thank you for your assistance with this abandonment request. On behalf of ECHO, we look forward to working with the County to secure its approval. Should you have any questions, please feel free to contact the undersigned.

Sincerely,



David R. Lasso

cc: Mr. Bob Diegelman, President  
*Ecumenical Community Helping Others, Inc.*

## NOTICE OF INTENT TO ABANDON AND CONVEY

PORTIONS OF  
LYLES ROAD  
LEE DISTRICT,  
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on January 14, 2013, at 4:00 PM during its regular meeting in the Board Auditorium at the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA, pursuant to Virginia Code 33.1-157, to consider the proposed abandonment of portions of a public road known as Lyles Road in the vicinity of Old Keene Mill Road and, concurrently, the conveyance of the same to ECHO, Incorporated. The road is located on Tax Map 90-1 between Tax Map 90-1 ((1)) Parcel 39 and Tax Map 90-1 ((1)) Parcel 51, and is described and shown on the metes and bounds schedule dated May 13, 2011, and abandonment plat dated March 13, 2012, both prepared by Christopher Consultants and on file in the Fairfax County Department of Transportation, 4050 Legato Road, Ste. 400, Fairfax Virginia, 22033, telephone number 703-877-5600.

All persons wishing to speak on this subject may call the Office of the Clerk to the Board (703-324-3151) to be placed on the Speaker's List, or may appear and be heard.

LEE DISTRICT

ORDER OF ABANDONMENT OF

PORTIONS OF  
LYLES ROAD

LEE DISTRICT,  
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 14th day of January, 2014, it duly moved and seconded that:

WHEREAS, after conducting a public hearing pursuant to notice as required by Virginia Code § 33.1-158, at which meeting a quorum was present and voting, and upon due consideration of the historic value of the road, if any, the Board has determined that no public necessity exists for the continuance of the road and that the welfare of the public will be served best by abandoning the road, therefore

BE IT ORDERED:

That portions of LYLES ROAD in the vicinity of Old Keene Mill Road, located between Tax Map 90-1 ((1)) Parcel 39 and Tax Map 90-1 ((1)) Parcel 51, and described and shown on the metes and bounds schedule dated May 13, 2011, and abandonment plat dated March 13, 2012, both prepared by Christopher Consultants and attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code § 33.1-157.

This abandonment is subject to any right, privilege, permit, license, or easement in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase or decrease in size any facilities in the abandoned roadway, without any permission of the landowner(s).

A Copy Teste:

\_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

**RESOLUTION**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center at Fairfax, Virginia, on Tuesday, January 14, 2014, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, the Board of Supervisors has approved the abandonment of part of Lyles Road located between Tax Map 90-1 ((1)) Parcel 39 and Tax Map 90-1 ((1)) Parcel 51, described and shown on the metes and bounds schedule dated May 13, 2011 and abandonment plat dated March 13, 2012, both prepared by Christopher Consultants,

**WHEREAS**, ECHO, Incorporated, (Applicant) seeks to acquire the fee simple interest in the parcel created by said abandonment for fair market value consideration,

**WHEREAS**, the County has no current or planned use for the parcel created by the abandonment,

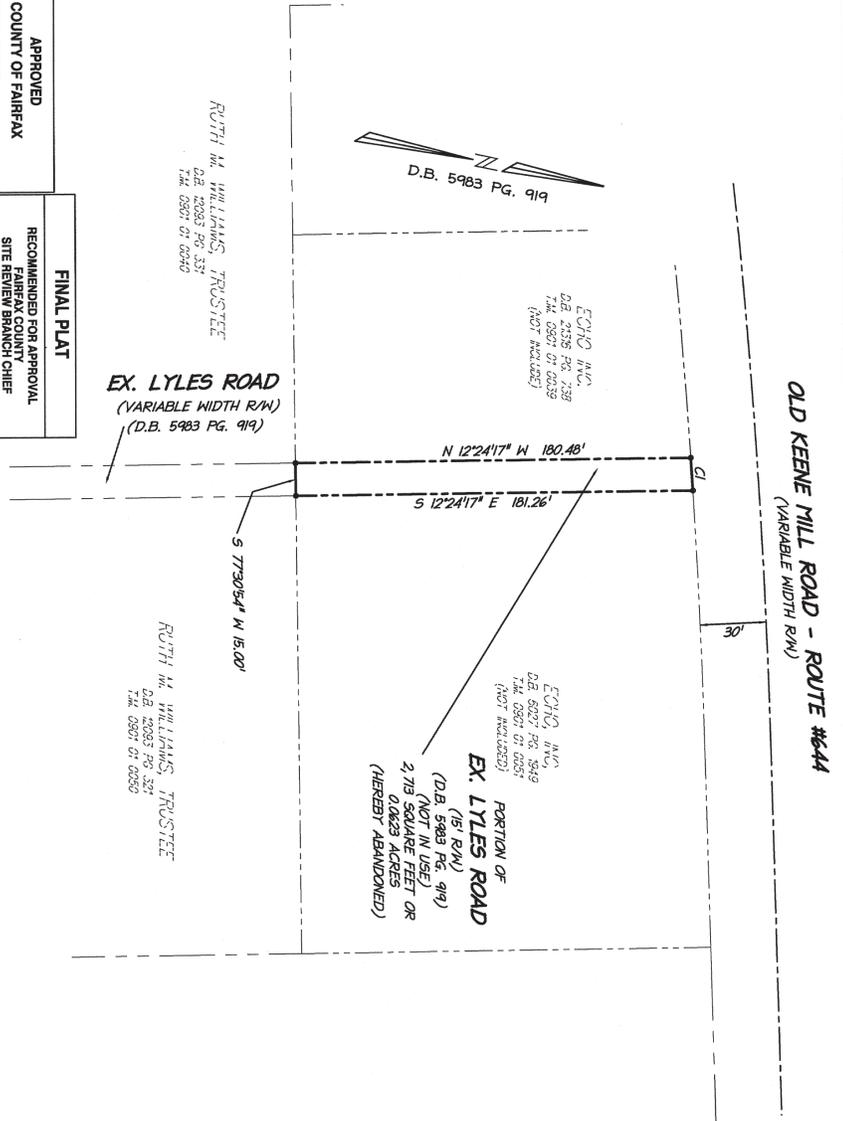
**WHEREAS**, the Board of Supervisors finds that it would be in the best interest of the residents of Fairfax County to convey in consideration of fair market value the real property as described above to the Applicant.

**NOW, THEREFORE**, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the fair market value of the parcel, the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to convey the real property described above to the Applicant.

A Copy Teste:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors



|  |  |
|--|--|
| <p><b>APPROVED</b><br/>                 COUNTY OF FAIRFAX<br/>                 OFFICE OF SITE REGISTRATION<br/>                 SANITARY SEWER SECTION</p> <p>DATE _____ BY _____</p>  | <p><b>APPROVED</b><br/>                 COUNTY OF FAIRFAX<br/>                 BOARD OF SUPERVISORS<br/>                 FAIRFAX COUNTY, VIRGINIA</p> <p>DATE _____ BY _____</p>                   |
| <p><b>APPROVED</b><br/>                 COUNTY OF FAIRFAX<br/>                 OFFICE OF PUBLIC WORKS<br/>                 AND ENVIRONMENTAL SERVICES<br/>                 OFFICE OF PERMITS AND STREET SERVICES<br/>                 FAIRFAX, VIRGINIA</p> <p>DATE _____ BY _____</p> | <p><b>APPROVED</b><br/>                 COUNTY OF FAIRFAX<br/>                 PERMITS DIVISION - SITE PERMITS SECTION<br/>                 STREET ADDRESS FUNCTION</p> <p>DATE _____ BY _____</p> |

**FINAL PLAT**  
 RECOMMENDED FOR APPROVAL  
 FAIRFAX COUNTY  
 SITE REVIEW BRANCH CHIEF

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 FOR  
 BOARD OF SUPERVISORS  
 FAIRFAX COUNTY, VIRGINIA

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

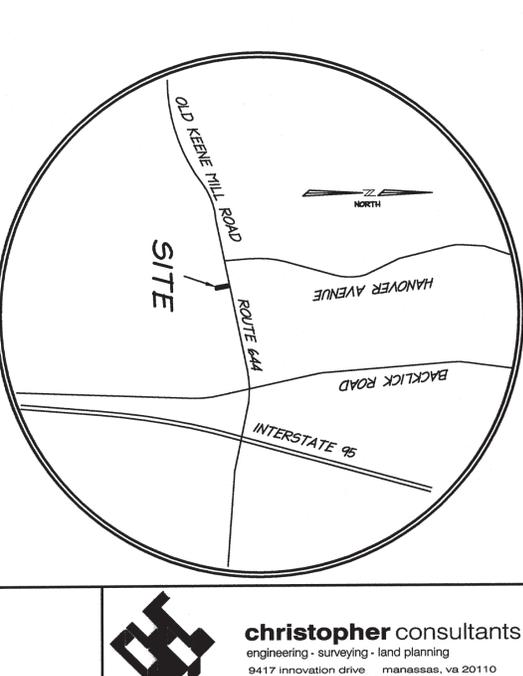
**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**APPROVED**  
 COUNTY OF FAIRFAX  
 OFFICE OF PUBLIC WORKS  
 AND ENVIRONMENTAL SERVICES  
 PERMITS DIVISION - SITE PERMITS SECTION  
 STREET ADDRESS FUNCTION

DATE \_\_\_\_\_ BY \_\_\_\_\_

**FLOOD ZONE NOTE**  
 THE PROPERTY SHOWN HEREON IS LOCATED ON THE FLOOD INSURANCE RATE MAP (FIRM), COMMUNITY PANEL NO. 5802020202, EFFECTIVE DATE SEPTEMBER 17, 2004.  
 A FIELD SURVEY WAS NOT PERFORMED TO DETERMINE THE FLOOD ZONES LISTED HEREON. AN ELEVATION CERTIFICATE MAY BE NEEDED TO VERIFY THIS INFORMATION OR APPLICANT FOR A VARIANCE FROM THE FEDERAL EMBAYMENT (VARIED BY APPLICANT).



**GENERAL NOTES**

- THE ADJOINING PROPERTIES SHOWN HEREON ARE IDENTIFIED ON FAIRFAX COUNTY RECORDS AS DEED BOOK 5983 PAGE 919 AND DEED BOOK 5983 PAGE 917. THE ADJOINING PROPERTIES ARE ZONED R-4.
- TAX MAP 0801-01-001 IS CURRENTLY IN THE NAME OF ECHO, INC. AS RECORDED IN DEED BOOK 6141 PAGE 288. A FIELD SURVEY WAS NOT PERFORMED TO VERIFY THIS INFORMATION OR APPLICANT FOR A VARIANCE FROM THE FEDERAL EMBAYMENT (VARIED BY APPLICANT).
- THE BOUNDARY INCORPORATION SHOWN HEREON IS BASED ON A SURVEY BY THIS FIRM ON APRIL 19, 2011.
- HORIZONTAL DATUM SHOWN HEREON IS RECORD NORTH AS SHOWN IN DEED BOOK 5983, PAGE 919, AROUND THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
- A TITLE REPORT WAS FURNISHED BY WALKER TITLE, LLC AND HAS BEEN INCORPORATED HEREON. REFERENCED UNDER THE TITLE LINES, RIGHT-OF-WAY'S, EASEMENTS, ENCUMBRANCES OR OTHER CIRCUMSTANCES AFFECTING THE SUBJECT PROPERTY AS SHOWN PER DEED NUMBER AROUND EFFECTIVE DATE APRIL 5, 2011 AT 6:00 AM.
- SHOULD ANY OF THE EXISTING UTILITIES LOCATED WITHIN THE EXISTING SITE BOUNDARIES WILL BE GRANTED.

**SURVEYOR'S CERTIFICATE**

I, BRIAN W. SNIER, A DUTY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE PROPERTY DEPICTED BY THIS PLAT IS NOW IN THE NAME OF ECHO, INC. AS RECORDED IN DEED BOOK 5983, PAGE 919, AROUND THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

I FURTHER CERTIFY THAT THE LAND EMPRAGED IN THIS VACATION AND ABANDONMENT HAS BEEN THE WHOLE OF THE ORIGINAL TRACT AND THAT ALL CORNERS ARE REFERENCED TO DEED BOOK 5983 PAGE 919 IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIRFAX COUNTY SUBDIVISION ORDINANCE.

**GENERAL NOTES**

- THE ADJOINING PROPERTIES SHOWN HEREON ARE IDENTIFIED ON FAIRFAX COUNTY RECORDS AS DEED BOOK 5983 PAGE 919 AND DEED BOOK 5983 PAGE 917. THE ADJOINING PROPERTIES ARE ZONED R-4.
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- SHOULD ANY OF THE EXISTING UTILITIES LOCATED WITHIN THE EXISTING SITE BOUNDARIES WILL BE GRANTED.

**SURVEYOR'S CERTIFICATE**

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I FURTHER CERTIFY THAT THE LAND EMPRAGED IN THIS VACATION AND ABANDONMENT HAS BEEN THE WHOLE OF THE ORIGINAL TRACT AND THAT ALL CORNERS ARE REFERENCED TO DEED BOOK 5983 PAGE 919 IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIRFAX COUNTY SUBDIVISION ORDINANCE.

I HEREBY CERTIFY THAT ALL NECESSARY PERMITS REQUIRED BY THE CITY OF FAIRFAX HAVE BEEN OBTAINED FROM THE CITY OF FAIRFAX AND THAT ALL NECESSARY PERMITS REQUIRED BY THE CITY OF FAIRFAX HAVE BEEN OBTAINED FROM THE CITY OF FAIRFAX.

DATE: 3/16/2012

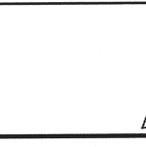
**GRAPHIC SCALE**  
 (IN FEET)  
 1 inch = 40 ft.

| CHORD  | BEARING    | DELTA ANGLE | ARC LENGTH | RADIUS | CHORD  |
|--------|------------|-------------|------------|--------|--------|
| 15.00' | N 73°12' E | 75°         | 15.00'     | 15.00' | 15.00' |

**PLAT SHOWING**  
 THE ABANDONMENT OF A PORTION OF  
**LYLES ROAD**  
 (DEED BOOK 5983 PAGE 919)

LEE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA

SCALE: 1" = 40'  
 DATE: 03/13/12  
 DRAWN: BMS  
 CHECKED: KLS  
 SHEET NO. 1 OF 1



COMMONWEALTH OF VIRGINIA  
 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
 Commission Expires 8-12-13

COMMONWEALTH OF VIRGINIA  
 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
 Commission Expires 8-12-13

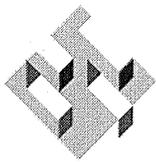
COMMONWEALTH OF VIRGINIA  
 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
 Commission Expires 8-12-13

COMMONWEALTH OF VIRGINIA  
 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
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 State of Virginia  
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 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
 Commission Expires 8-12-13

COMMONWEALTH OF VIRGINIA  
 LICENSED LAND SURVEYOR  
 No. 2891  
 State of Virginia  
 Commission Expires 8-12-13



**Description of  
A portion of Lyles Road  
(to be abandoned)  
Lee Magisterial District  
Fairfax County, Virginia  
May 13, 2011**

Beginning at a point on the southerly right-of-way of Old Keene Mill Road – Route #644 (variable width R/W), said point being the northwesterly corner of the land of Echo, Inc. (Deed Book 5983 Page 1949) (Tax Map 0901-01-0051);

Thence, departing the southerly right-of-way of Old Keene Mill Road and with the land of Echo, Inc. (Tax Map 0901-01-0051) S 12°24'17" E a distance of 181.84 feet (passing over an iron pipe found at 0.57 feet) to a point, said point being the southeasterly corner of the land of Echo, Inc. (Tax Map 0901-01-0051) and the northwesterly corner of the land of Ruth M. Williams, Trustee (Deed Book 12093 page 321) (Tax Map 0901-01-0050);

Thence, departing the land of Echo, Inc. (Tax Map 0901-01-0051) and Ruth M. Williams, Trustee (Tax Map 0901-01-0050) and as to cross and include the existing right-of-way of Lyles Road S 77°30'54" W a distance of 15.00 feet to a point, said point being the northeasterly corner of the land of Ruth M. Williams, Trustee (Deed Book 12093 Page 331) (Tax Map 0901-01-0040) and the southeasterly corner of the land of Echo, Inc. (Deed Book 21316 Page 738) (Tax Map 0901-01-0039);

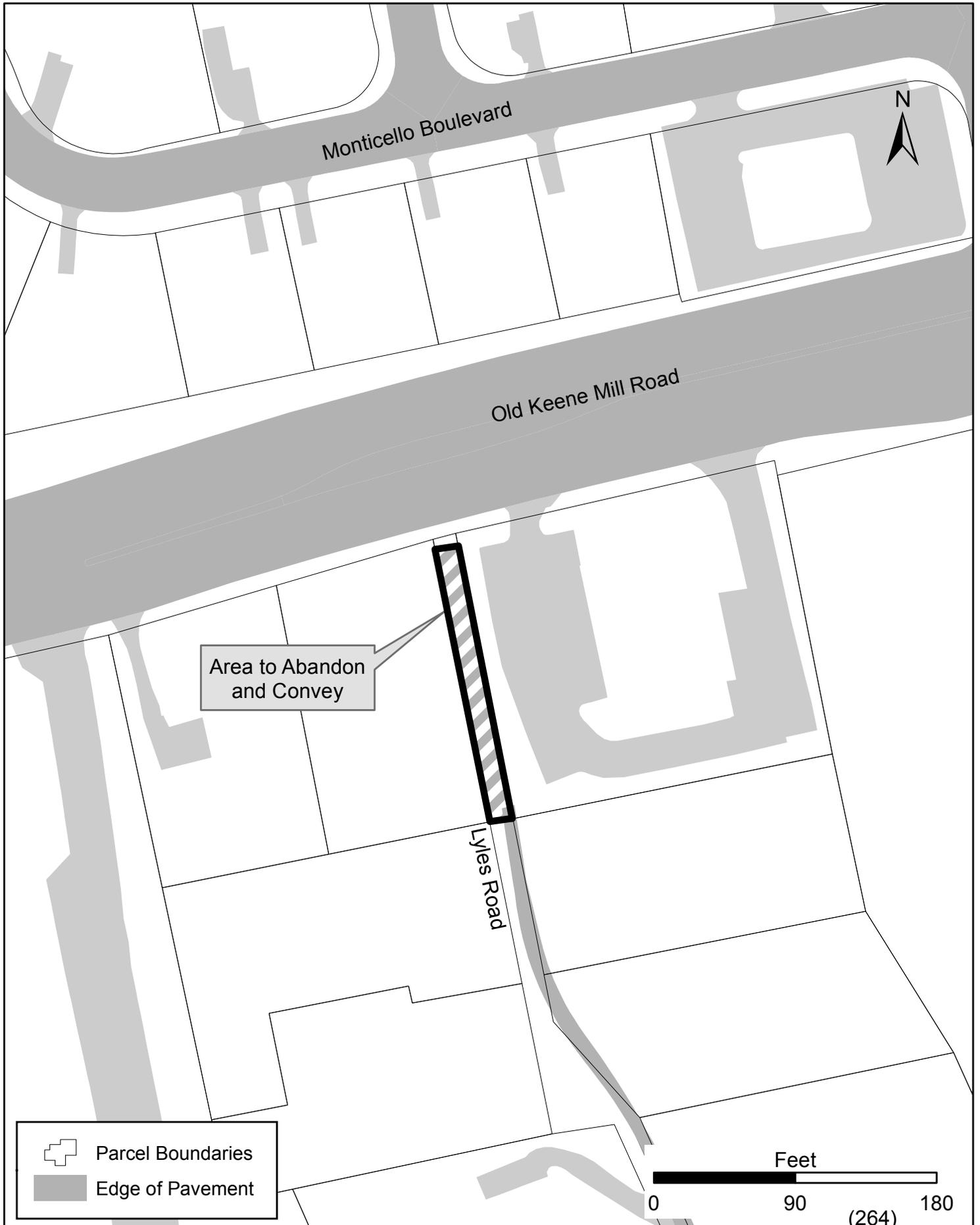
Thence, departing the land of Ruth M. Williams, Trustee (Tax Map 0901-01-0040) and with the land of Echo, Inc. (Tax Map 0901-01-0039) N 12°24'17" W a distance of 180.86 feet to a point on the aforementioned southerly right-of-way of Old Keene Mill Road;

Thence, departing the land of Echo, Inc. (Tax Map 0901-01-0039) and with the southerly right-of-way of Old Keene Mill Road N 77°35'43" E a distance of 15.00 feet to the point of beginning.

**Containing 2,728 square feet or 0.06263 acres, more or less.**



Vicinity Map - Tax Map 80-3 & 90-1



4:00 p.m.

Public Hearing on Amendment to the Code of the County of Fairfax, Chapter 2, Article 2  
(Disposal of Property Seized by Police)

ISSUE:

Public hearing to amend Chapter 2, Article 2 (Disposal of Property) regarding the disposal of weapons by the Police Department.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the proposed amendment to Chapter 2, Article 2 (Disposal of Property).

TIMING:

Board of Supervisors authorized the advertisement of a public hearing on the proposed amendment on November 19, 2013; for January 14, 2014 at 4:00 p.m. If adopted, the provisions of the amendment will become effective immediately.

BACKGROUND:

Fairfax County Code § 2-2-4 (Property seized by police; applicability of Sections 2-2-1 to 2-2-6) currently requires weapons seized or taken possession of by the Police Department to be disposed of pursuant to Virginia State Code § 18.1-269. In 1990, the Virginia General Assembly adopted § 15.1-133.01:1 to address the disposal of weapons by local law enforcement agencies. This state code was later recodified in 1997 as § 15.2-1721. County Code § 2-2-4 is being amended to refer to the appropriate state code section.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Amendment to Fairfax County Code Section 2-2-4  
Attachment 2 – State Code Section 15.2-1721

STAFF:

Colonel Edwin C. Roessler Jr., Chief of Police  
Jamie Greenzweig, Assistant County Attorney

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**Section 2-2-4. Property seized by police; applicability of Sections 2-2-1 to 2-2-6.**

Nothing in Sections 2-2-1 to 2-2-6 shall be held to require the Chief of Police to take possession of or to make disposition of any lost or stolen property, the disposition or possession of which is otherwise provided for by law, and none of the provisions of Sections 2-2-1 to 2-2-6 shall apply to pistols, revolvers, derringers, Bowie knives, dirks, slingshots, metallic knuckles or other deadly weapons of like character, but all such weapons shall be disposed of in accordance with as required by Va. Code Ann § 18.1-269 15.2-1721, ~~Va. Code Ann.~~<sup>4</sup>

*(9-11-57, § 3; 1961 Code, § 17-10; 12-78-2*

<sup>4</sup> As to illegal weapons generally, see Va. Code Ann., §§ ~~18.1-269 to 18.1-272~~ 18.2-308 to 18.2-308.8.

**§ 15.2-1721. Disposal of unclaimed firearms or other weapons in possession of sheriff or police.**

Any locality may destroy unclaimed firearms and other weapons which have been in the possession of law-enforcement agencies for a period of more than sixty days. For the purposes of this section, "unclaimed firearms and other weapons" means any firearm or other weapon belonging to another which has been acquired by a law-enforcement officer pursuant to his duties, which is not needed in any criminal prosecution, which has not been claimed by its rightful owner and which the State Treasurer has indicated will be declined if remitted under the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.).

At the discretion of the chief of police, sheriff, or their duly authorized agents, unclaimed firearms and other weapons may be destroyed by any means which renders the firearms and other weapons permanently inoperable. Prior to the destruction of such firearms and other weapons, the chief of police, sheriff, or their duly authorized agents shall comply with the notice provision contained in § [15.2-1719](#).

(1990, c. 324, § 15.1-133.01:1; 1997, c. [587](#).)