

memorandum

TO	Tracy Gabriel Robert Mandle	DATE	February 12, 2019
FROM	Kedrick Whitmore	EMAIL	knwhitmore@venable.com
CC		PHONE	202.344.4455
RE	Potomac Yard Property Owner's Association		

The purpose of this memorandum is to provide an assessment related to whether, in connection with a potential expansion of its boundaries, the Crystal City Business Improvement District (the "BID") may undertake certain obligations of the Potomac Yard Property Owner's Association (the "POA").

The obligations to be undertaken are described in that certain letter attached hereto as Exhibit A (the "Letter"), and generally fall into two categories: (1) physical enhancements; cleaning; maintenance ("Physical Work") and (2) Transportation Management Plan ("TMP") work. Based on my review, undertaking the Physical Work would not conflict with either the conditions of the Phased Development Site Plan related to Potomac Yard (the "PDSP") or the provisions of the Master Declaration for Potomac Yard-Arlington (the "Declaration"). In order to undertake the TMP work, some amendment to the PDSP would likely be necessary.

The PDSP

On December 11, 2007, the Arlington County Board approved Site Plan #346, approving the PDSP which is applicable to the entirety of Potomac Yard. Attached hereto as Exhibit B are the current conditions associated with the PDSP.

As you can see, nothing in the PDSP conditions prohibits the BID from acting as a party to undertake the Physical Work. Although the PDSP delineates owners of the property as the parties responsible for such work, such owners can and do frequently enter into contracts for third parties to undertake these obligations.

The Letter also references longer-term possibilities of providing services related to the TMP requirements imposed on Potomac Yard. While this appears to be another area in which the BID could undertake work on behalf of the POA, there would likely need to be some amendment to the conditions of the PDSP in order to do so. This would require an application to Arlington County for a PDSP amendment, with consent from all property owners within the PDSP area. Coordination with Arlington County DES staff would also be necessary in order to ensure that

the resulting conditions and obligations of the BID would be sufficient. Following discussions with County staff, the Board would need to approve the proposed amendment.

The Declaration

On December 15, 2003, Crescent Potomac Yard Development, LLC, entered into the Declaration. A copy is attached hereto as Exhibit C.

The Declaration provides for a number of obligations to be undertaken by the Master Association. This Master Association is defined as “The Arlington Potomac Yard Community Association, a Virginia nonstock corporation and its successors”.

Section 2.6 of the Declaration provides that the Board of the Master Association “may employ a management agent or manager...to perform[] such duties and services as the Board may from time to time designate, including...providing such other services as may be consistent with and incidental to the duties of the Master Association in connection with the operation of the Property”.

Based on this provision, the Board of the Master Association has the authority to contract with the BID to undertake the Physical Work consistent with its obligations.

The obligations imposed upon the Master Association by the Declaration include:

- Upkeep of Common Areas (Sec. 6.1) – parks, plazas, courtyards, medians, streets, sidewalks, open space, Transit Corridor, etc.
- Upkeep of Community Features (Sec. 6.2) – trees, landscaping, entrances features, signage, street furniture, bus/transitway shelters, trash cans, irrigation, lighting, etc.
- Upkeep of Lots (Sec. 6.4) – ensure owner compliance with maintenance requirements, and ability to take action if the owner fails to do so; and
- Other services (Sec. 6.6) – broad authority and expertise to address other issues as they arise.

Accordingly, the Master Association has the authority to contract with the BID to provide the services set forth above as part of the Physical Work subject to and consistent with the Corporation’s current services and activities and such other powers as are contained in VA Code § 15.2-2400, et seq., the Service Agreement, and the Corporation’s governing documents.

Please do not hesitate to contact me with any questions or if I can provide any further information.

EXHIBIT A



January 29, 2019

Mr. Mark Schwartz
Arlington County Manager
County Manager's Office
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201
Via e-mail: Mschwartz@arlingtonva.us

Subject: Area-Wide BID Overview

Dear Mr. Schwartz:

In preparation for the January 30th meeting between the Crystal City Business Improvement District (BID) executive committee and the County Manager's Office, this letter provides an overview context for our efforts to pursue changes to the Crystal City BID boundaries as well as specific considerations as it relates to potential future responsibilities in Potomac Yard - Arlington.

In April 2018, the Crystal City BID embarked on a multidimensional strategic planning process to guide the organization's work in continuing the transformation of the area into a lively, walkable urban center. Recognizing Crystal City, Pentagon City, and Potomac Yard – Arlington areas as part of a single downtown, the process embraced an area-wide perspective to defining goals and strategies that would support the economic competitiveness of Crystal City and the County as a whole. As such, the strategic plan's steering committee included representation not only from Crystal City, but also the areas of Pentagon City and Potomac Yard – Arlington.

The Crystal City BID Board concurred with this area-wide perspective by establishing an Area-Wide BID Coordinating Committee by resolution in June 2018. The committee is co-chaired by Nora Dweck-McMullen of Dweck Properties and Brian Grant of Equity, major property owners in both the current and expansion areas. The committee has been charged with exploring the feasibility and process by which to alter the BID's boundaries to formally include Pentagon City, Crystal City, and Potomac Yard - Arlington areas. The group includes major property owners in the expansion areas representing nearly 70% of the total ownership value.

Since June, the Coordinating Committee has met three times and Crystal City BID staff has met or spoken with representatives from all properties in the possible expansion area.

Conversations focused on identifying the value proposition of BID membership for property owners. Virtually all owners agreed with the value proposition as including the ability to:

- Capitalize on momentum to unify the downtown;
- Create market cohesion and area-wide branding;
- Grow amenities and enhance quality of life;
- Establish a collective voice in shaping development;
- Improve connectivity for a seamless district; and

- Deliver core BID services to the entire area.

Based on these key value propositions, Crystal City BID staff initiated a petition drive in early December. The BID has already received signed petitions from 61.5% of the ownership by assessed value in the expansion area alone and expect to receive several others over the course of the next few weeks.

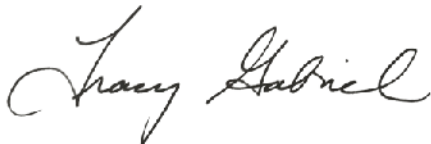
Though nearly all the Potomac Yard – Arlington owners recognized the potential value proposition of an Area-Wide BID, they also expressed concern about the current financial obligation of the Potomac Yard Property Owners Association (POA) assessments and the Transportation Management Program (TMP) outlined in the County Board approved Planned Development Site Plan for the area. For several owners, the BID tax is viewed as an added financial burden while there exists potential overlap in service delivery. Therefore, these property owners have asked the BID to explore taking on those POA responsibilities that align with BID core services as a prerequisite to signing the petition and predicated on some degree of cost reduction in POA assessments enabled by the creation of the Area Wide BID.

Upon review of the POA Master Agreement, the Crystal City BID identified a number of POA activities that align with those outlined in the Crystal City Service Agreement with Arlington County. A number of these activities fall within the “Physical Enhancements” and “Cleaning and Maintenance” service areas of the Service Agreement. Examples include landscaping and other general common area maintenance. To illustrate the BID’s commitment to minimizing the financial burden of the BID expansion on the Potomac Yard Owners, the Crystal City BID board approved a Resolution at the FY 2019 third quarter board meeting on January 24, 2019 expressly directing the BID staff to provide these services and work directly with Arlington County and the POA in furtherance of this effort. A copy of the resolution is included with this letter for your reference. The BID’s goal is to resolve any questions that the County may have on this matter no later than February 28, 2019.

The BID also anticipates collaborating with the Potomac Yard owners and Arlington County to discuss the longer-term possibility of providing the services of the TMP, perhaps through a separate contract. These activities are in line with services other BIDs provide around the country as well as with our Service agreement under the “Transportation, Parking, Pedestrian and Safety Programs” service area.

The Crystal City BID remains committed to attaining a preponderance of support from the properties affected by the expansion. The BID aims to execute the boundary adjustment in the early part of the BID’s fiscal year 2020 with an expectation for new Area-Wide BID budget assessments to be in place by the start of fiscal year 2021 on July 1, 2020. We look forward to continuing this conversation with Arlington County towards a stronger and more fiscally sustainable Crystal City area.

Respectfully Submitted,



Tracy Gabriel
President & Executive Director
Crystal City Business Improvement District

Cc: Glenda MacMullin, Chair, Crystal City BID
Natalie Monkou, Business Development Manager, Arlington Economic Development
Shannon Flanagan-Watson, Deputy County Manager, County Manager's Office

EXHIBIT B

Potomac Yard Phased Development Site Plan
Consolidated PDSP Conditions
Current Through April 25, 2017 Approval

PDSP CONDITIONS

General

1. This Phased Development Site Plan (PDSP) is approved subject to the submitted plans dated February 21, 2000, August 18, 2000, August 30, 2000, and September 1, 2000, and, the Potomac Yard Urban Design Guidelines dated October 3, 2000 and these Conditions. Following approval of the Phased Development Site Plan (PDSP) by the County Board, the developer agrees to submit to the Zoning Administrator revised plans and Potomac Yard Urban Design Guidelines that reflect the changes and additions thereto by the approved PDSP. The developer further agrees that all construction on property covered by the PDSP shall be done in a manner consistent with the Potomac Yard Urban Design Guidelines.
2. For the purpose of these Conditions, the term developer also includes the owner or owners of the land subject to the Phased Development Site Plan, the applicant and all successors and assigns in interest including any property owners' association or associations that may be established. The developer agrees to comply with the plans dated February 21, 2000, August 18, 2000, August 30, 2000, and September 1, 2000, and the Urban Design Guidelines dated October 3, 2000 and reviewed and approved by the County Board and made a part of the public record on October 21, 2000, together with any modifications proposed by the developer and accepted by the County Board or vice versa.

Development Program

3. (a) The developer agrees to reserve and convey to the County, an interest in or right to use, a is determined by the County in its sole discretion, a site approximately 28 acres in size, known as the North Tract, and within it a site known as the Davis Site, the exact extent of which will be determined by the County at the time of conveyance. The North Tract and the Davis Site are located north of Crystal City, as shown on the certified plat dated September 1, 2000 and showing the North Tract (including the Davis Site) and the South Tract. Any conveyance to the County shall be of property that is unencumbered by any interest inconsistent with the County's, including, without limitation, unencumbered by tenants or leases (except as may be approved in writing by the County Manager). Any deed of conveyance may be a special warranty deed or general warranty deed, at the developer's option. The developer acknowledges that the approved density in this PDSP includes additional density of 1,161,000 square feet of Gross Floor Area (GFA) which will be allocated to the South Tract for the development of the PDSP upon conveyance of the North Tract to the County, and fulfillment of the other requirements of this Condition 3. The PDSP for the South Tract shall take effect upon approval of the PDSP by the County Board. However, at the time of such approval, and until conveyance of the North Tract and fulfillment of the other requirements in this Condition 3, the only right the developer may have to proceed with development shall be to develop Land Bays A and/or B (and such infrastructure on Land Bay C as may be needed to support approved development on A and/or B) as approved on the PDSP, but provided that the developer allocates sufficient land in the South Tract to support that development of A and/or B at a Floor Area Ratio (FAR) of 1.5. The developer agrees, in order to assure the County that land allocated to meet this FAR requirement will not otherwise be developed, that the developer will record such covenants or take such other actions as the County may require at the time of Final Site Plan approval for Land Bays A and B. A Final Site Plan or Final Site Plans may be filed and approved, construction may occur, and certificates of occupancy may be issued for development on Land Bays A and B, consistent with these conditions, at any time following approval of the PDSP by the County Board. No Final Site Plan may be filed for any other land bay, and no bonus density may be included in any development, in the PDSP until the Applicant has conveyed the North Tract to the County. At such time as the North Tract is conveyed to the County, and the other

requirements of this condition are met, the bonus density shall be incorporated into the PDSP, which shall then permit development of a total of 4,409,835 square feet of GFA as shown in condition 4. The approved density is based on conveyance of the land in the North Tract including 6.68 acres of land located east of the railway corridor, which totals 32.59 acres. That land shall be conveyed in fee, except for the 4.46 acres in the Davis Site, or such other part of the North Tract as the County may determine at the time of conveyance is in the Davis Site or should not be conveyed in fee. The County shall have the option, at the time of conveyance, to determine the nature of the interest it accepts in the Davis Site. The North Tract (including the Davis Site of an exact size determined by the County at the time of conveyance) shall be conveyed to the County no later than 60 days after a final, unappealable resolution in favor of the developer and/or any governmental defendants, as the case may be, of any and all legal proceedings challenging the validity of these land use approvals, including the Phased Development Site Plan, and or challenging the validity of the Exchange Agreement consummated on March 24, 2000, between the Applicant and the U.S. Government (National Park Service) related to the South Tract and other property owned by developer. In the event of an unfavorable final resolution of any such litigation, the North Tract shall not be conveyed to the County, no bonus density shall be allocated to the South Tract, and the PDSP, including all conditions related to the PDSP, shall be null and void, except that Land Bays A and B and approved infrastructure on C may be developed in accordance with any Final Site Plans that may have been approved under the PDSP for such Land Bays.

- (b) The developer agrees that at the time the North Tract is conveyed to the county, the developer will record a covenant among the land records of the clerk of the Circuit Court of Arlington County, in form and substance acceptable to the County Manager and the County Attorney, that extinguishes any and all remaining rights to density the developer may have on the North Tract.
 - (c) The developer agrees that, prior to conveyance of the North Tract, the County may, at its option, obtain a new environmental study of the property. The developer agrees to pay one half of the cost of that study and search. Such new study and search shall be for the purpose of enabling the County to make a final determination of the size of the Davis Site. Provided, however, that the developer's share of the cost of the environmental study shall not exceed twenty-five thousand dollars (\$25,000.00)
 - (d) The developer agrees that it will, at the time of conveyance of the North Tract, execute a release, in form acceptable to the County Attorney, releasing any obligation the County may have under the "Settlement Agreement Between the County of Arlington, Virginia; Richmond Fredericksburg & Potomac Railroad Company; and RF&P Properties, Inc." to pay to developer or any of its predecessors in interest, two hundred seventy five thousand dollars (\$275,000.00). The execution of that release will also extinguish any right the County may have to recoup up to \$275,000 paid by RF&P on the County's behalf, under the October 22, 1993 Settlement Agreement.
4. The approved uses and densities, after conveyance of the North Tract as specified in Condition #3(a), for each parcel of the Phased Development Site Plan are as follows:

Land Bay	Maximum Office GFA	Minimum Retail GFA	Hotel Rooms GFA	Residential Dwelling GFA	Religious Institutions GFA
A	645,511	8,489			
B		10,000	430,000		
C	1,086,986 1,064,298	18,637 41,325			
D-East		16,503		425,752	
D-West		5,015		385,382	23,906
E-East		4,143		391,714	
E-West	374,379	71,418			
F		30,000		482,000	
Total	2,106,876	164,205	430,000	1,684,848	23,906

Note 1: Pursuant to paragraph (a) under Retail Floor Area below, the total office and hotel GFA includes a balance of 19,442 square feet of GFA of Potential Retail Space as of April 21, 2007.

Note 2: Maximum number of hotel rooms shall be 625.

Note 3: The total number of residential dwelling units shall be no less than 800 dwelling units and no more than 1,575 dwelling units.

Note 4: Land Bay F is approved for 50,000 square feet of grocery store GFA which is not included in the table above. This is GFA over and above the maximum permitted retail GFA in Land Bay F. Pursuant to the approved final site plan for Land Bay F, this GFA is restricted to grocery store use only.

Totals: The total development program shall consist of 2,271,081 square feet of office/commercial GFA (51.50% of total GFA); 2,114,848 square feet of residential/hotel GFA (47.96% of total GFA) unless otherwise adjusted as specifically permitted in these PDSP conditions.

A. Office Floor Area:

Office GFA may be converted to residential GFA (excluding hotel uses) only in accordance with the following schedule and procedure, and shall require submission by the developer to the County Manager of a written analysis of the impact of the conversion on urban and building design, traffic, provision of private recreational amenities and construction of Center Park.

- (a) Up to 294,099 square feet of office GFA (not including 90,000 square feet of potential retail GFA) may be converted to residential GFA, establishing a proportion of 60% office/commercial GFA and 40% residential/hotel GFA, upon administrative application filed by the developer and approved by the County Manager or his designee, provided that the County Manager's review of the developer's analysis of the impact of the conversion on urban and building design, traffic, provision of private recreational amenities and construction of Center Park demonstrates that the conversion will not have any greater impact on the area than the development without the conversion.
- (b) Up to an additional 440,983.5 square feet of office GFA (over and above the initial 294,099 square feet of office GFA referred to in paragraph (a) above) may be converted to residential GFA (excluding hotel uses), establishing a proportion of 50% office/commercial GFA and 50% residential/hotel GFA, upon application for a PDSP Amendment filed by the developer and reviewed and approved by the County Board based upon its review of the developer's analysis of the impact of the conversion on matters including, but not limited to, urban and building design, traffic, provision of private recreational amenities and construction

of Center Park, and the standards for site plan approval as contained in Section 36.H. of the Arlington County Zoning Ordinance.

- (c) Notwithstanding paragraphs (a) and (b) above, the limitations in this subparagraph (c) shall apply to any conversion. In no event shall there be any conversions from office to residential or hotel in Land Bay C nor shall any conversion permit more than 50% of office GFA in Land Bay A to be converted to residential GFA. Nor shall there be any conversion from office to residential or hotel that creates a ratio of residential/hotel GFA to total GFA over the entire PDSP site that is greater than 50%.

B. Retail Floor Area:

- (a) A maximum of 183,647 square feet of floor area shall be constructed so as to be useable as retail space at locations identified on the Retail Location Plan included in the Urban Design Guidelines, or as specified in the approved final site plans. Such floor area in each Land Bay will be referred to as the Potential Retail Space. All Potential Retail Space shall have reasonable access to building service areas and shall be at grade in buildings with minimum floor to floor heights as specified on the Retail Location Plan. A minimum of 164,205 sq. ft. of the Potential Retail Space for all Land Bays shall be used for base retail.
- (b) The developer agrees to develop a retail attraction and marketing plan for each Final Site Plan for the Potential Retail Space. The plan shall set forth the actions that the developer will undertake to attract retail tenants to the space and will identify the Initial Retail space and the floor area where retail uses are optional. The developer shall submit such plan to, and obtain approval of, the County Manager or his representative prior to issuance of the first Certificate of Occupancy for any building within the applicable Final Site Plan.
- (c) Any Potential Retail Space that is not Base Retail Space (19,442 square feet as of April 21, 2007) shall be leased for retail uses unless the developer has been unable to lease such space for retail uses and can establish to the reasonable satisfaction of the County Manager or his designee that the retail attraction efforts for such space, as outlined in the retail marketing plan, have been substantially and diligently followed for at least one year prior to such space being available for lease. The County Manager shall not unreasonably withhold or delay a determination on such efforts following application for such finding by the Applicant. Any Potential Retail Space shall be considered available for lease upon receipt of a certificate of occupancy for the applicable portion of the building in which such space is located or upon expiration of any lease, lease extensions, or lease renewals for such space. Any Potential Retail Space that is not required to be leased for retail uses under this subparagraph may be leased for office or other uses
- (d) Retail uses of the types identified on the Retail Use Schedule (Attachment A hereto) shall be permitted.

- 5. The Developer agrees that, by approval of this PDSP, the County Board has allocated densities and uses over the site and among land bays (as land bays are identified in the Transportation and Land Use Plan drawings dated September 1, 2000, and the Urban Design Guidelines dated (October 3, 2000.) and buildings, all based on an approved density for the entire site. The Developer agrees that no density that is not approved as part of this PDSP will be allowed on any parcel formed by subdivision of the site or any land bay. Density may be reallocated from one land bay to another in the PDSP only with the County Manager's approval if he finds that:
 - (a) such reallocation will not change the overall density in any land bay by more than ten percent (10%); (b) the reallocation does not change the relative proportion of office and residential development within the PDSP, except as may otherwise be specifically permitted by these PDSP conditions; and (c) the Developer submits a written analysis of the reallocation to the Manager, which address the urban and building design, the construction of center park, and the transportation and transit improvements, and upon such review and analysis of that submittal as the Manager deems appropriate, the Manager finds that the reallocation will not adversely affect any of the analyzed factors.

6. The maximum building heights for each parcel of the Phased Development Site Plan shall be as follows:

<u>Parcel</u>	<u>Height Maximum</u> (Excluding Penthouse and subject to National Park Service restrictions)
A	12 stories
B	12 stories, office; 13 stories, hotel
C	12 stories
D	12 stories, office; 13 stories, residential
E	12 stories, office; 13 stories, residential
F	13 stories

The average height of all buildings within the PDSP shall not exceed 12 stories, consistent with the standards of the "C-O-1.5" District.

7. (a) For each of Land Bays D and E, construction of at least 50% of residential gross floor area in the land bay shall have commenced (commencement of construction defined as construction of footing and foundation to grade) before the issuance of a certificate of occupancy for any commercial floor area in such land bay.
- (b) The developer agrees that construction of at least 75% of residential floor area (excluding hotel uses) in the PDSP shall have commenced before the issuance of a Certificate of Occupancy for greater than 75% of the office floor area in the PDSP. Provided however, that this standard need only be met after construction of the Route 1/South Glebe Road intersection improvements and the associated Crystal Drive improvements.

Parking

8. The developer agrees to provide parking for each use in accordance with the following schedule:

- (a) residential: For each unit, a minimum of 1.125 space per dwelling unit and a maximum of 1.5 spaces per 2 bedroom units and 2 spaces per 3 or more bedroom unit.
- (b) hotel: .7 space per room plus an additional 3 spaces for each 1000 sq. ft., or portion thereof, of floor area above 10,000 sq. ft. of function facilities
- The developer agrees to develop and implement a tour bus parking management plan for each Final Site Plan for hotel or conference facilities within the Phased Development Site Plan, which plan shall be implemented in conjunction with the Area Parking Plan and Commuter Bus Parking Plan referred to in Condition #28. The Plan shall address tour bus egress and ingress to and from the site, location of tour bus parking for loading and unloading, and location of tour bus extended parking, whether on-site or off-site. The Plan shall be submitted as a part of the application for Final Site Plan approval for the Phased Development Site Plan hotel or conference facilities.
- (c) retail: -one space per 250 sq. ft. of floor area
- (d) office: -one space per 580 sq. ft. of floor area for the first 500,000 sq. ft. of office development within the PDSP
- one space per 625 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP
- one space per 675 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP
- one space per 725 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP

-one space per 800 sq. ft. of floor area for the next 880,000 sq. ft. of office development within the PDSP

Parking allocated by final site plan approval for one or more uses shall be maintained and available for that use or uses and shall not be leased or otherwise set aside for any other purpose that is inconsistent with those uses.

9. The developer agrees that parking shall be provided for each building according to the approved parking ratios; however, the parking need not be located within the parcel designation of each building but must be located within the overall project as may be approved through the final site plan process, and as illustrated by the conceptual parking garage plan illustrated in the Urban Design Guidelines.
10. The developer agrees that the parking required by the approved Phased Development Site Plan shall be provided coincident with and in direct proportion to the retail, office, hotel, and residential uses at the time of each Final Site Plan.

Infrastructure: Streets and Utilities

11. The Preliminary Infrastructure Plan:

- (a) The developer agrees that the first Final Site Plan that is filed within the PDSP development, excluding Land Bay A, shall be accompanied by a "Preliminary Infrastructure Plan" (the "Infrastructure Plan") for the PDSP which shall be updated and resubmitted with each subsequent Final Site Plan application that seeks approval of one or more buildings or uses within the PDSP development. No such Final Site Plan shall be approved unless the Infrastructure Plan which accompanies the Final Site Plan application has been reviewed and approved by the County Manager or his designee, and approved by the County Board as a part of the Final Site Plan. The initial and each updated Infrastructure Plan is intended to insure that the construction of the infrastructure and transportation/transit systems identified below in subparagraph (b) are consistent with comprehensive plans covering the entire PDSP development, excluding Land Bay A, that have been approved by the County, and meet all requirements of the development and of County systems to which the infrastructure connects. Such Infrastructure Plan shall govern construction in the PDSP except as otherwise approved by the County Board.
- (b) The developer agrees that the initial and each subsequent Infrastructure Plan shall provide, for each of the systems of infrastructure identified below in this subparagraph, the general location and layout of the major components, or the backbone, of the systems. The systems of infrastructure to be addressed are, at a minimum:
 - (i) the streets to be constructed within the PDSP area as identified in paragraph 21;
 - (ii) the sanitary sewer system to be constructed within the PDSP area excluding Land Bay A;
 - (iii) the stormwater conveyance system to be constructed within the PDSP area excluding Land Bay A; and
 - (iv) the utility systems to be constructed within the PDSP area excluding Land Bay A (e.g. electricity, water, gas, phone/communications, and cable).
- (c) The developer agrees to construct, as approved in the individual final site plans, elements included in the Infrastructure Plan.
- (d) The developer agrees to comply with the following infrastructure guidelines:
 - i. Water System:
 - a) A 12" watermain loop system will be required for this project unless a smaller diameter is determined by the Department of Public Works (DPW) to be acceptable at the time of Final Site Plan approval. The water system loop will begin at the intersection of 27th Street and

Crystal Drive. The loop will connect to the existing 12" watermain in this intersection and be extended along Potomac Avenue, South Glebe Road Extended and reconstructed Crystal Drive. The loop shall connect to the existing 12" watermain in Crystal Drive adjacent to the Crystal Station buildings. A 12" connection shall be made to the existing 12" watermain west of U.S. Route 1 in South Glebe Road. This loop system is shown on the master utility plan. At least one east/west connection between the watermain in Potomac Avenue and Crystal Drive shall be made and it shall not be any closer to 27th Street connection or South Glebe Road extended than 1/4 of the distance between the two. More connections shall be made if determined necessary during the approval of individual Final Site Plans. These connections shall be no larger than 12".

All service connections to each building will be from the loop described above. Fire hydrants inside of the central public open space are not required per the Arlington County Fire Marshal. Siamese connections for each building shall be provided along the loop system. Public watermains shall not be over private garages. No public watermains are required in the public open space. Each building shall have one meter maintained by DPW. Submetering for each tenant shall be the responsibility of the property owner.

With each Final Site Plan submission, development conditions shall ensure that an adequate portion of the above loop system is constructed so that no dead end watermain system longer than 500 feet is provided unless the DPW determines that such a dead end watermain is not detrimental to water quality or the adequate supply of fire flow.

- b) In the vicinity of Land Bay A, a 10' wide easement for location of the waterline shall be provided at the time of Final Site Plan approval to service lands east of the site. The waterline will be designed with the Final Site Plan at no cost to the County. Construction of the waterline may occur at the time of building construction or at a later date to be determined in Arlington County's sole discretion, at no cost to the applicant or successors. The location and design of said waterline shall not delay the timing of reviews and approvals of Final Site Plan construction plans. If the location and design of the waterline has not been determined by Arlington County prior to the time of review and approvals of the Final Site Plan, then the design shall no longer be the obligation of the applicant or successors.
- c) The location of water services will be determined at the time of the review of the final engineering plan for each Final Site Plan in accordance with the following standards. Water meter installation shall be located behind and adjacent to the curb line in an area clear of driveways, with a minimum horizontal clearance of five (5) ft. from other utilities and with a minimum clearance of ten (10) ft. clear from all structures unless otherwise approved. A clear space 15 feet wide by 25 feet long by 10 feet deep shall be provided for three (3) inch and four (4) inch water meter installations, and 20 feet wide by 25 feet long by 10 feet deep for six (6) inch and larger meter installations. The location of building walls shall be adjusted as necessary to provide these clearances.
- d) All sanitary sewers and watermains including water services shall be constructed, in general, in locations shown on the Master Utility Plan drawing dated September 1, 2000, and shall have a minimum of 10 feet of horizontal clearance from each other and five feet from all other utilities, and shall have a minimum of 10 feet of horizontal clearance from buildings and other structures. Watermains located deeper than 10 feet from the surface shall have a minimum of 15 feet of horizontal clearance from buildings and other structures; and sanitary sewers 15 inches and larger or sewers located deeper than 10 feet from the surface shall have 15 feet minimum horizontal clearance from buildings and other structures. All watermains and sanitary sewers shall meet County standard design criteria as shown on the final engineering plan approved by the County. The design criteria described above may be modified subject to the approval of the County.
- e) All construction shall be in accordance with the current Arlington County Construction Standards and Specifications.

ii. Sanitary Systems:

The sewer system to collect and convey sewage generated by the development on the site will consist of a pump station, a gravity flow system and a force main. The pump station is required and may be located either onsite or offsite at the developer's option. If the developer seeks to locate the pump station off-site, it may be placed on the Water Pollution Control Plant grounds subject to County Board approval. A decision shall be made by the developer in consultation with the County as to the location of the pump station, prior to the time of the first Final Site Plan submission for any of Land Bays B, C, D, E or F. The pump station and all proposed sewer systems shall be designed in accordance with all applicable state and local regulations.

Virginia State Health Department approval is required prior to approval of a Final Site Plan for the first building or structures requiring use of the pump station. The system shall be capable of carrying the onsite flows projected to be generated by the approved development program. If the pump station is located on the Water Pollution Control Plant grounds, the land shall be made available to the developer at a cost of \$25,000.00, subject to approval by the County Board. The developer shall be responsible for the cost of all design, permitting and construction of the facility.

12. Prior to the issuance of any building permits within any approved final site plan, the developer agrees to dedicate to Arlington County all easements and/or rights of way necessary for the development for which the building permits are to be issued.
13. Street and utility improvements, including service requirements for shuttle buses (such as access options, internal pathways, turns and turn-arounds) consistent with Condition #28 below, shall be shown for each entire Land Bay upon submittal of the first Final Site Plan for any parcel within the Land Bay. Such improvements are subject to the following, and shall be reviewed and approved as a part of the Final Site Plan:
 - Every sub-parcel (defined as any subdivision of any land bay or of any development site of a Final Site Plan) must have at least two points of access to and from public streets for emergency vehicles. One of the access points may be indirect if approved by the Arlington County Board as a part of a Final Site Plan approval.
 - Every sub-parcel developed as a final site plan, except those in Land Bays A, B, and F, must have access to a two-way public street within six hundred (600) feet of the sub-parcel.
 - All roads and streetscape directly surrounding a specific sub-parcel developed as a final site plan must be completed in a manner consistent with all conditions and the approved final landscape plan before issuance of the Certificate of Occupancy that permits occupancy of 50% of the gross floor area in the sub-parcel.
 - At least one-half of each building's parking garage entrances must have direct access to public streets or to private streets with public access easements. All other parking garage entrances must have, at a minimum, indirect access to public streets or to private streets with public access easements.
 - Garage access points shall not be placed where they will cause unreasonable backups of traffic or unsafe vehicular maneuvers by garage users. The on-site streets required to be constructed with each final site plan shall be determined at the time of Final Site Plan approval for each sub-parcel. This phasing of the agreed-upon street changes for this PDSP must reasonably handle traffic generated by the subparcel, any existing traffic and the traffic generated by all PDSP development approved through final site plan approval.
14. Prior to the issuance of any building permit within a final site plan, the developer agrees to execute a surety agreement acceptable to the County to ensure to the County the construction of all facilities required to be constructed within public rights of way or easements as part of that final site plan.

15. Prior to the issuance of any building permits, the developer agrees to obtain the approval of the Department of Public Works for its final engineering plans for all streets, curb and gutter, sidewalks, medians and infrastructure that support the construction for which the building permits are to be issued. Landscaping and construction specifications and details for the sidewalk, streetscape and landscaped medians shall be submitted by the developer for approval by the County Manager or his designee as a part of the landscape plan supporting any construction for which building permits are to be issued. The developer agrees to maintain landscaping and street trees along all sidewalks and medians, and shall submit a landscape maintenance agreement, which shall be approved by the County Manager or his designee prior to the issuance of any building permit for construction on the same parcel, along with the landscape plan supporting construction for which building permits are to be issued. The developer agrees to pay and/or reimburse the County to perform all maintenance, signage and parking control functions on private streets after a reasonable rate has been developed by the two parties.
16. The developer agrees to construct streets, medians, curb and gutter, sidewalk, and streetscape improvements, including landscaped medians, along all public and private street frontages of the Potomac Yard PDSP in accordance with the Potomac Yard Urban Design Guidelines and the Arlington County standards current at the time of the final site plan. Improvements to all public street frontages shall be in accordance with the phasing requirements specified in Condition #21 below.
17. The developer agrees to place underground all existing and proposed utilities within and immediately adjacent to the property included within the PDSP development. This shall not include the electric transition station (or wires extending therefrom) located on the south side of Four Mile Run. Undergrounding shall be done for each final site plan approval as specified therein. In addition, within 10 calendar days after approval of each Final Site Plan, the developer agrees to contribute \$.30 (thirty cents) per square foot of Gross Floor Area approved in the Final Site Plan as a contribution to the County's Utility Undergrounding Fund.
18. All sanitary sewers and water mains, including water services and fire hydrants, shall be constructed in locations shown on the Phased Development Site Plan (unless otherwise approved by the County Board at time of Final Site Plan approval), and shall comply with all standards included in the Infrastructure Guidelines in Condition #11.
19. The developer agrees to connect sewer service to support the development of Land Bay A directly to the existing Arlington County Sanitary sewer in 26th Street. A private ejector pump and forcemain is an acceptable system to convey the sewage to the terminal manhole in 26th Street. Construction of an adequate sewer system to convey the project onsite flows to the Arlington County Water Pollution Control Plant, as described in the Infrastructure Guidelines in Condition #11, shall be completed by the developer prior to issuance of the first certificate of occupancy for any development in any of Land Bays B through F, unless otherwise approved by the County Manager or his designee as providing a system that is equal to or better than what is called for in the Infrastructure Guidelines in Condition #11.
20. The developer agrees to fund the installation of new traffic signals or, at the County's option, the modification of existing traffic signals, in all locations identified for traffic signals on the Transportation and Land Use Plan drawing dated September 1, 2000. The developer agrees to make payments to Arlington County for all signal equipment within 60 days after request therefore, following a determination by the County Manager or his designee that either any such signal is warranted or that street construction is approaching a stage where it is timely to install any such new signal, but not operate it until warranted.

21. The developer agrees to construct the infrastructure identified in the schedule below in accordance with the events identified in the schedule unless a variation from the schedule is approved by the County Board as part of a Final Site Plan approval. Following completion of construction, the new public rights of way and the improvements to existing public rights of way identified in the schedule, including the transitway, shall be dedicated to the County or the County shall be granted a surface easement for public right of way purposes at the County's option.

<u>Infrastructure</u>	<u>Completion Event</u>
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(a) South Glebe Road/ Route 1 Intersection	
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Construction of the improvements to this intersection, as shown on the Transportation and Land Use Plan drawing dated September 1, 2000, may be completed at any time, provided that the improvements are completed before the issuance of Certificates of Occupancy for the earliest of the following:

- i. More than 1,900,000 square feet of office development in the Arlington PDSP area, or
- ii. More than 2,650,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area, or
- iii. More than 1,500,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 1,900,000 square feet of new (new defined as any development in the Alexandria portion of Potomac Yard excluding the existing retail center and buildings housing the GSA and Avis Rental Car uses) office development in the PDSP area and in the Alexandria portion of Potomac Yard west of the heavy rail corridor (collectively, the "PY Total Area"), or
- iv. More than 1,500,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 3,700,000 square feet combined, of any new office, residential, retail and hotel development in both the Arlington and Alexandria PY Total Area.

The developer agrees to plan and construct the full intersection of South Glebe Road and Route 1, consistent with the engineering plans submitted by the developer and reviewed and approved by the Department of Public Works, and consistent with the above timing requirements.

(b) Potomac Avenue	
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Construction of this road from a tie-in with Route 1, in Alexandria south of the Potomac Yard retail center, to a tie-in with Crystal Drive and 27th Street may be completed at any time, provided that it shall be completed before the issuance of certificates of occupancy for the earliest of the following:

- i. More than 2,300,000 square feet of office development in the Arlington PDSP area, or
- ii. More than 3,450,000 square feet combined, of any office, residential, retail and hotel development in the Arlington PDSP area, or
- iii. More than 2,000,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 2,300,000 square feet of new (new defined as any development in the Alexandria portion of Potomac Yard excluding the existing retail center and buildings housing the GSA and Avis Rental Car uses) office development in both the combined Arlington and Alexandria PY Total Area, or

- iv. More than 2,000,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 4,500,000 square feet combined, of any new office, residential, retail and hotel development in both the combined Arlington and Alexandria PY Total Area.

The developer agrees to plan and construct the full cross-section of Potomac Avenue, consistent with engineering plans to be submitted by the developer and reviewed and approved by the Department of Public Works, and consistent with above timing requirements. For the intersection of Potomac Avenue with Crystal Drive opposite 27th Street, the developer agrees to construct the right-turn movement from Potomac Avenue to operate under traffic signal control, rather than as a free-right turn. The developer agrees that it will not construct a finished four lane Potomac Avenue connection to Alexandria until it has constructed an east-west roadway between Potomac Avenue and Route 1, which may be either extended South Glebe Road or 33rd Street built to accommodate minor arterial traffic.

(c)

Crystal Drive The developer agrees to relocate and reconstruct a portion of Crystal Drive right-of-way located along the periphery of the PDSP development. Upon approval and construction of the final site plan for any sub-parcel located adjacent to the existing Crystal Drive, the right-of-way shall be improved with an interim transitway treatment consistent with the Urban Design Guidelines. If Crystal Drive is still being used as a right-of-way at the time of construction of the final site plan for sub-parcels located adjacent to the existing Crystal Drive, and the developer is unable to construct interim transitway improvements, then the developer agrees to make a contribution toward the cost of the interim transitway improvements. If permanent transitway improvements are constructed in lieu of interim transitway improvements, then the contribution that was made toward the interim improvements shall be applied to the permanent improvements.

(d) 33rd Street South

1. The developer agrees to construct all street, curb, gutter, sidewalks, and landscaping improvements and intersection controls for a new 33rd Street South as a minor arterial between (and including connections with) Potomac Avenue and Crystal Drive as described in the Urban Design Guidelines dated October 3, 2000, at such time as 33rd Street South is required pursuant to conditions 13 and 21 (b).

2. If the County decides to construct 33rd Street between U.S. 1 and Crystal Drive as a minor arterial, the developer agrees to provide \$150,000 toward the cost of these improvements and will provide a temporary construction easement in Potomac Yard for the purpose of temporary construction staging related to such improvements, if land is available at that time. The developer agrees that the funds to be paid under this condition will be paid within 60 days after written request therefore by the County Manager, and that the easement will be granted and recorded, in a form acceptable to the County Attorney, and in substance acceptable to the County Manager, within 60 days after written request therefore by the County Manager. The

county shall provide such written request no earlier than six months prior to the anticipated start of construction.

(e) Transit corridor

i. Definition:

The transitway is a shared corridor, defined as a right of way over which vehicular traffic is excluded except for crossing at specific locations. The Transit Corridor shall be reserved upon approval of the PDSP, and shall be constructed by an entity or entities, existing or which may be created, whose purpose is to plan, design, construct and operate transit systems, at a time consistent with the phasing of development and in a manner as to not unreasonably and materially adversely affect construction of the development. The developer agrees to dedicate all or a portion, as the case may be, of such corridor right of way to the County by instruments acceptable to the County Manager and the County Attorney, at such time as

(a) construction of the permanent transitway is commenced on a BRT or LRT or similar transit system, for dedication of the entire corridor right-of-way, or

(b) the County constructs Preliminary Transit Improvements (as described in subparagraph 21.(e) ii) in all or a portion of the corridor right-of-way, for dedication of those portions of the transit corridor in which such improvements are constructed. Until then, no use inconsistent with such transit system may be made of the area.

ii. Improvements:

As Land Bays adjacent to the transit corridor are developed, the areas in the transit corridor, that are adjacent to any such developed land area, shall be improved in accordance with the Urban Design Guidelines. In all cases any interim improvements to the transit corridor shall be easily removable for construction purposes. The specific design of the interim transit corridor improvements, along with permanent streetscape and landscaped median improvements, shall be submitted by the developer, and shall be consistent with the transit corridor plan for the transit corridor and the Urban Design Guidelines, and subject to approval at the time of the first Final Site Plan for a developed area adjacent to the transit corridor. The interim improvements, as well as permanent streetscape and landscaped median improvements, shall be implemented concurrent with construction of the Final Site Plans located adjacent to the transit corridor areas to be improved. In the event that all or a portion of the area to be improved as the transit corridor is still in use as a public right of way at the time of construction of the Final Site Plan, the interim and permanent improvements shall not be constructed, but funds for interim improvements within the transit corridor and permanent improvements in the median strip between the transit corridor and street shall be placed in escrow, at the discretion of the County Manager, for use when the transit corridor becomes available. The County may, at its option, complete the interim transit corridor improvements, and the permanent improvements in the median strip between the transit corridor and the street, on any section of the transit corridor adjacent to undeveloped parcels. The County may could charge the developer for the cost of these improvements at the time of the Final Site Plan approval for the related adjacent property.

At such time as the South Glebe Road/Route 1 Intersection improvements are constructed pursuant to subparagraph 21.(a), the County, in its discretion and at its cost, may construct Preliminary Transit Improvements within the corridor right-of-way. Such Preliminary Transit Improvements shall be street improvements and related improvements adjacent to Route 1, Crystal Drive, and South Glebe Road extended that are determined by the County to be necessary for the operation of the Interim Transit Service described in subparagraph 21.(e)v. Any funds already placed in escrow by the applicant for the construction of interim improvements for the transit corridor pursuant to this subparagraph and that have not already been used for the construction of such interim improvements may be applied by the County to the Preliminary Transit Improvements.

iii. Station Contribution:

Upon approval of each Final Site Plan, the developer agrees to contribute an amount equal to \$0.10 per square foot of GFA (the "Station Contribution") for transit stations and related improvements consistent with the Transit Corridor Plan and located within the PDSP area, such amount to be adjusted annually to reflect changes in the Washington Consumer Price Index for Construction from October 2000 to the time of approval of each Final Site Plan. At the election of the County, this contribution shall be made to Arlington County for (a) the installation of transit stations or shelters outside of the transit corridor to serve the buildings within the PDSP area as part of the interim transit service, which transit stations or shelters shall be designed according to the Urban Design Guidelines; (b) a trust and agency account established and maintained by Arlington County for the construction of LRT or BRT transitway stations and related improvements within the Transit Corridor Plan; or (c) both (a) and (b) as allocated by the County. The developer shall have the right to review and comment on the design of the transit stations within the PDSP area and the County will endeavor to ensure that the designs of the stations are compatible with the buildings and other urban design elements in the vicinity of each such station. In the event a special district is established pursuant to paragraph 29 herein, to the extent permitted by applicable law, the Station Contribution for each Final Site Plan shall be credited to each Final Site Plan's buildings' financial obligations under such special district.

iv. Performance:

In the event it is determined, (a) prior to the later of either December 31, 2010, or the issuance of certificates of occupancy for more than 2,200,000 square feet of GFA within the PDSP, that a BRT or LRT transit system will not be constructed within the Transit Corridor Plan; or, (b) that preliminary engineering or construction of such a BRT or LRT transit system has not commenced by December 31, 2010, then Arlington County shall refund each Station Contribution to the developer of each Final Site Plan less the dollars spent on the interim station improvements. Such amount shall be refunded to the entity defined as the applicant on the application for final site plan approval, irrespective of any change in ownership or control of a development.

v. Interim Transit Service:

Transit related policies and improvements shall be implemented throughout all phases of development. Initial transit service may be provided by extension/expansion of the existing ART system and administered by the County. Initial transit improvements shall include the installation of transit stations or shelters ("initial shelters") at locations required to appropriately serve development until a permanent LRT or BRT transitway and stations are constructed, as determined upon Final Site Plan approvals. Such initial shelters shall be highly visible (including appropriate signage and attractive graphics), accessible in nature, aesthetically attractive and weather protected, as set forth in the Urban Design Guidelines. The cost of construction and maintenance of such initial shelters shall be funded in accordance with paragraph (iii) of this condition. The developer agrees to develop final designs of the initial shelters, in consultation with the County, which shall be submitted at the time of the first Final Site Plan and approved by the County Manager or his designee.

Open Space

22. The developer agrees to construct the open space improvements identified in the schedule below in accordance with the events identified in the schedule unless a variation from the schedule is approved in a Final Site Plan within the Phased Development Site Plan. The developer agrees to grant public use and access easements, in a form acceptable to the County Attorney and the County Manager, over the public open space areas identified in the Potomac Yard Urban Design Guidelines. The exact timing and acceptance of easements shall be determined at the time of each Final Site Plan. However the developer agrees to complete construction of the improvements to the open space areas, as described in the PDSP or Potomac Yard Urban Design Guidelines, prior to the granting of such easements. In addition, the developer agrees to grant temporary public access easements, as needed, in forms acceptable to the County Attorney and the County Manager, over and across interim improvements as described in this condition. The permanent names for all such open space areas in the PDSP shall be determined in accordance with the Arlington County Policy for Naming and Renaming of County Facilities and Parks, adopted by the Arlington County Board on July 10, 1999, or the then-current policy. Upon construction, each open space improvement shall be maintained by the applicant or its successors; and, for each open space, such maintenance shall be the responsibility of one entity only. The developer agrees to submit a final landscape plan for each open space. At the time of submittal of each final landscape plan, a park maintenance plan and events management plan shall be included and approved by the County Manager or his designee as part of the final landscape plan. Upon approval, such plans shall govern maintenance of parks and management of events. The developer further agrees to coordinate with the Department of Parks, Recreation and Community Resources on the programming of the parks.

(a) Center Park

For each building on the east side of Land Bays D and E, by the time of the issuance of the first Certificate of Occupancy for occupancy of the building by tenants, an interim improvement of that portion of the Center Park adjacent to such building, consisting of green lawn with pedestrian paths, extending 50 feet into the Center Park area from the face of such building, shall have been constructed in accordance with the Potomac Yard Urban Design Guidelines. Before the issuance of any Certificate of Occupancy for any building in Land Bay D, the interim improvements on the Center Park shall include a pedestrian path through Land Bay E connecting Land

Bay D and South Glebe Road, provided that (i) South Glebe Road improvements have been completed, and (ii) Land Bay E remains undeveloped to the extent necessary to locate a path. For any building in Land Bay E, the interim improvements shall include a pedestrian path through Land Bay D connecting Land Bay E and North Park, provided that (i) construction of North Park has been completed and (ii) development in Land Bay D remains undeveloped to the extent necessary to locate a path. The interim improvements will not be provided in the event that the portion of the final design plan of the Center Park adjacent to each such building has been implemented. In addition, each such interim improvement area is required to be preserved and maintained only for so long as it is not required by development activities of adjacent subparcels.

The developer agrees to submit a design plan for the entire Center Park, which shall be consistent with the concept plan for the Center Park as described in the Potomac Yard Design Guidelines, at the time of submittal of the first Final Site Plan for any building on the west side of Land Bay D or E. The design plan shall be approved by the County Board as a part of the approval of the first Final Site Plan for any building on the west side of Land Bay D or E.

The developer agrees to submit to the Zoning Administrator, for review and approval by the County Manager or his designee, a final landscape plans for the entire Center Park, which shall be consistent with the approved design plan for the Center Park, and shall be submitted to the County following approval of the first Final Site Plan for any building on the west side of Land Bay D or E. The final landscape plan for the Center Park in Land Bays D and E shall be constructed in sections concurrent with construction of each Final Site Plan on the west side of Land Bays D and E.

(b) North Park

The developer agrees to submit a design plan for the entire North Park Plaza, which shall be consistent with the concept plan for North Park Plaza as described in the Potomac Yard Design Guidelines, at the time of submittal of the first Final Site Plan for any building in Land Bay C. The design plan shall be approved by the County Board as a part of the approval of the first Final Site Plan for any building in Land Bay C.

The developer agrees, prior to approval of the first Final Building Permit for the first building constructed within Land Bay C, to submit to the Zoning Administrator, for review and approval by the County Manager or his designee, a final landscape plan for the entire North Park. Such landscape plan shall be consistent with the approved design plan for the North Park. The developer agrees that construction of the final landscape plan for the North Park Plaza may occur in phases concurrent with construction of the applicable phase of construction of the buildings as follows: North Park Road and all parts of North Park Plaza located west of the road shall be constructed with the construction of Buildings 3 and 4; construction of the portion of North Park Plaza located to the east of North Park Road shall occur concurrent with construction of Buildings 1 and 2.

In the event the developer chooses not to phase construction of North Park Plaza, including installation of all plant materials, landscape and architectural elements, walkways and North Park Road, and North Park Road, then the construction of North Park Plaza and North Park Road shall be completed in their entirety before the issuance of the first Certificate of Occupancy for tenant occupancy for the last building constructed in Land Bay C.

(c) South Park

- (1) The developer agrees to plan and implement a landscape plan for the Four Mile Run area in Land Bay F, extending to the southern bank of the Four Mile Run waterway including the existing bridges and the portions of the Four Mile Run area that are under the jurisdiction of the City of

Alexandria (collectively, "South Park"), before the issuance of certificates of occupancy for buildings in Land Bay F comprising greater than 3/4 of the total permitted development in Land Bay F. Upon construction, South Park, except for any area within the Four Mile Run Channel Easement recorded in the land records of Arlington County and the City of Alexandria, shall be maintained by the applicant or its successors; and such maintenance shall be the responsibility of one entity only. The landscape plan shall provide for permanent improvements as described below for the portions of South Park that extend from the planned building improvements in Land Bay F to a line approximately 140 feet north of the north edge of the Four Mile Run waterway (South Park A") as shown on the Transportation and Land Use Plan drawing dated September 1, 2000. The landscape plan shall provide for base improvements as described below for the portions of South Park that are south of the setback line including the portions of the Four Mile Run area that are in Alexandria ("South Park B") as shown on the Transportation and Land Use Plan drawing dated September 1, 2000.

- (i) The permanent improvements for South Park A, which shall be consistent with the concept plan as described in the Urban Design Guidelines, shall be submitted to the Zoning Administrator for review and approval by the County Manager or his designee.
 - (ii) The base improvements for the portions of South Park B that are in Arlington ("South Park B-Arlington") and Alexandria ("South Park B-Alexandria") shall be consistent with the concept plan as described in the Urban Design Guidelines and shall be submitted to the Zoning Administrator for review by the County Manager or his designee, and approval by the County Manager or his designee for the base improvements in the Arlington portion of South Park B. The base improvements for the portion of South Park B that is in Alexandria ("South Park B-Alexandria") are described in the Urban Design Guidelines, provided that these improvements are consistent with any applicable existing or future requirements by the City of Alexandria. The developer agrees to cooperate with Arlington County and the City of Alexandria to connect the bicycle trail across jurisdictional lines in the vicinity of Four Mile Run, subject to all necessary governmental approvals.
- (2) The developer or its successors shall cooperate with a body, that may be established by Arlington County and the City of Alexandria to advise on the future of Four Mile Run, in the planning and construction of the South Park B enhanced improvements. A landscape concept plan for additional, enhanced improvements for South Park B may be approved by the County Manager of Arlington and the City of Alexandria in consultation with the aforementioned body established by Arlington County and the City of Alexandria. The planning and construction of such additional, enhanced improvements shall be implemented by an entity or entities to be determined in the future following provision of funding for such planning and construction.
- (3) Nothing contained in these Phased Development Site Plan conditions shall interfere with the applicant's obligation to the City of Alexandria or require the applicant to seek any discretionary or administrative approval by the City of Alexandria or to undertake any actions in Alexandria that would be inconsistent with any approval or requirement by the City of Alexandria. Provided, however, that this condition shall not preclude future agreements by the developer to provide improvements that might include such approvals or requirements. In the event that implementation of the base improvements for South Park B-Alexandria would require such an approval by the City of Alexandria or would be inconsistent with any existing or future requirement

of the City of Alexandria, then the base improvements for South Park B-Alexandria shall be modified so as to allow implementation of these improvements without such approval or inconsistency.

(4) Nothing contained in these Phased Development Site Plan conditions shall require the applicant to undertake any actions that would be inconsistent with the National Park Service land exchange agreement, unless such agreement is finally determined by a court of competent jurisdiction to be invalid.

23. The developer agrees to construct a bike trail facility as shown on the Pedestrian Circulation Diagram dated August 30, 2000 or as approved by the County Manager or his designee.

Potomac Yard Design Guidelines

24. The Potomac Yard Design Guidelines, dated October 3, 2000 and submitted as a part of the approved PDSP, shall serve as a guide for the coordinated development of all phases of the Phased Development Site Plan. All Final Site Plans shall include details consistent with the objectives and specifications of the Guidelines, or as approved by the County Board. Each Final Site Plan submission shall include a conceptual landscape plan for the Final Site Plan, including planting, sidewalk and streetscape. Each conceptual landscape plan, unless otherwise approved by the County Board through final site plan approval, will be implemented consistent with a final landscape plan as submitted to and approved by the County Manager or his designee.

Other Requirements

25. The developer agrees to comply with the terms and conditions of the Arlington County Affordable Housing Guidelines for new development in effect at such time as each Final Site Plan is submitted for approval. In the case of commercial development, the developer agrees to contribute to the Housing Reserve Fund in accordance with the then-current guidelines, if any, at the time of Final Site Plan submittal. In the case of residential development, the developer or successors agrees to cooperate with the County or non-profit housing providers to develop onsite affordable housing or, in the event onsite affordable housing is not feasible, contribute to the Housing Reserve Fund, in accordance with the then current guidelines for on-site affordable housing and for such contributions, if any, is applicable at the time of Final Site Plan submittal.
26. For each Final Site Plan, the developer agrees to comply with the then-current Arlington County Chesapeake Bay Preservation Ordinance (CBPO) as applied to all land within each Final Site Plan excluding any land that is within any existing or planned public right-of-way, such planned public right-of-ways to include Potomac Avenue, South Glebe Road, the secondary road that is generally at the junction of Land Bays C and D, and the transit right-of-way, all as shown on the Transportation and Land Use Plan drawing dated September 1, 2000.

For each Final Site Plan with impervious cover that must be mitigated under Arlington County's CBPO or under any other stormwater quality regulation in effect at the time the site plan is filed, a vegetated building roof ("Green Roof") designed to appropriately treat stormwater quality will be considered an acceptable BMP to the extent measured by the standards set forth in CBPO. For each Final Site Plan with approved Green Roof buildings, the stormwater quality requirements for any remaining impervious cover that must otherwise be mitigated under the CBPO may be met by either 1) an approved BMP, or 2) a contribution to the Source Control Fund (or equivalent) at a rate equal to one-half the rate stipulated by the CBPO in effect at the time the Final Site Plan is filed.

27. The developer agrees to complete the U.S. Green Building Council's LEED scorecard for each proposed building in the Final Site Plan and submit the completed LEED scorecard with all Final Site Plan applications, including documentation describing how the elements indicated on the LEED scorecard will be provided.

Transportation Management Program

28. The developer agrees to develop and implement a Transportation Management Program (TMP) consisting of Transportation Demand Management (TDM) and Transportation System Management (TSM) strategies and tactics with the multiple goals of: 1) reducing the number of single occupancy vehicles arriving to the Site; 2) achieving specified travel mode shares; and, 3) providing system performance desired to achieve specific TMP objectives. The specific program objectives will be established in conjunction with the County, and revised as necessary, to achieve the desired transportation system performance outlined in the developer's proposed transportation plan, which was based on a parking supply of approximately 5,900 spaces, achieving a commuter average vehicle occupancy of 1.4 for office, hotel and residential uses and a transit-bike-walk mode share of 40%. The TMP shall consist of five parts: (a) facilities and improvements provided by the applicant or successor developers as the project is constructed; (b) coordinated management of parking by all building owners within the development; (c) funding and ongoing implementation of the TMP program through an owners' association consisting of all building owners within the development; (d) planning and provision of transit and other services, promotions, incentives, additional improvements and facilities, research, and plans necessary to fulfill TDM and TSM objectives; and (e) ongoing evaluation of the effectiveness of the TMP.

Physical Facilities and Improvements

- (a) The developer agrees to provide the following facilities and capital improvements, portion of which will be provided in conjunction with each final site plan, as may be appropriate:
 - (i) Space and build out for a small transit store, TMP staff offices and supply storage.
 - (ii) Garage entrances and exits designed to permit van access to desirable parking locations.
 - (iii) Parking availability display units at garage entrances.
 - (iv) Identification of appropriate locations for taxi stands to serve the development.
 - (v) Wayfinding, directional and advisory signage.
 - (vi) Bike racks, showers and lockers in office buildings to meet County standards as of the time of Final Site Plans.
 - (vii) Installation of electronic kiosks providing access to transit and traffic information and access to the CommuterPage.Com web site in locations to be determined during each Final Site Plan process, provided that the Applicant shall not be required to incur costs for such improvements greater than \$30,000 per building.
 - (viii) Installation of loop detectors, vehicle counters, video cameras and related hardware, communications, and software at key intersections within or adjacent to the PDSP area and as planned in the traffic signal system improvements provided by the Applicant, provided that the Applicant shall not be required to incur costs for such improvements greater than \$250,000. The tabulation of costs against this \$250,000 ceiling shall include only those costs above and beyond the cost of traffic signals required by Condition #20.
 - (ix) A contribution of \$75,000 each for the purchase of two new Arlington Transit buses to enable extension and enhancement of the development's transit services. The contribution for the first bus shall be paid prior to issuance of a certificate of occupancy of the first building of the first Final Site Plan. The contribution for the second bus shall be paid prior to issuance of a certificate of occupancy for the building within the PDSP which increases the amount of total development GFA completed within the PDSP to more than 750,000 square feet.

Coordinated Parking Management

- (b) Each building shall contribute to and participate in the management of parking assets within the development, as appropriate for the use of the building, and consistent with an Area Parking Plan pursuant to Subparagraph 28(d) iii) 5) to include:
- (i) Single occupancy vehicle (SOV) parking at fair market rates
 - (ii) Reserved, conveniently located, and free vanpool parking spaces
 - (iii) Reserved, conveniently located, and discounted carpool parking spaces
 - (iv) Provide convenient retail parking as required
 - (v) Provide convenient residential visitor parking as needed.
 - (vi) Planning and implementation of special strategies related to major event parking relating to the requirements of any hotels or community activities within the PDSP.
 - (vii) Daytime parking for commuter buses serving the office uses in the development subject to availability of appropriate space.
 - (viii) Coordination with tour bus parking management as required for each Final Site Plan for hotel or conference facilities within the Site.

The developer agrees that each of the above elements will be provided in conjunction with final site plan approvals as determined by the County Board.

Transportation Management Program Organization and Funding

- (c) The Potomac Yard TMP will be considered an important component of the Arlington County Commuter Assistance Program and will be coordinated with and receive assistance from the County. The developer agrees to compensate the County, at its option, for such assistance as the County determines is necessary for the efficient and effective performance of the TMP.
- (i) Owners Association. The developer agrees to establish an owners' association (the "TMP Association") at the time of the issuance of the first Certificate of Occupancy for the first final site plan which TMP Association shall be responsible for ongoing operation and management of a TMP on behalf of tenants, residents, guests, and visitors of the South Tract.
 - (ii) Funding. To fund the on-going operation and management of the TMP, the TMP Association shall assess each owner of property, consistent with paragraph 1) below. The assessment shall commence for each building as set forth in a Final Site Plan condition at, or no more than six months before, the issuance of each building's certificate of occupancy. The assessment shall be set to provide the amount of funding required to implement an Annual TMP Work Plan as determined by the TMP Association. The TMP Association shall operate using fiscal years running from July 1 to June 30 of the succeeding year. The TMP assessments shall be set by the TMP Association based upon the funding requirements of the TMP Work Plan.
 - 1) The maximum annual assessments shall not exceed the following (as adjusted annually by the CPI-U-Transportation for the Washington area):
 - a) For office development, the maximum annual assessment shall increase as the amount of development increases. At each threshold, the increased maximum assessment amount shall be applicable to all commercial (except hotel) development within the PDSP for which a Certificate of Occupancy has been issued:
 - i) For up to 500,000 square feet of GFA within the Arlington PDSP, the assessment shall be \$0.200 per square foot of GFA
 - ii) For the next 500,000 square feet, \$0.225 per square foot of GFA
 - iii) For the next 500,000 square feet, \$0.250 per square foot of GFA
 - iv) For the next 500,000 square feet, \$0.275 per square foot of GFA
 - v) For the last 880,000 square feet, \$0.300 per square foot of GFA
 - b) For residential development: \$60 per dwelling unit
 - c) For hotel development: \$60 per hotel room, plus \$60 per additional parking space related to function facilities pursuant to paragraph 8 (b).

- 2) The TMP Association may request other one-time contributions from its members and other entities.
- 3) The TMP Association may request annual funding from the special district established pursuant to Paragraph 29 of these Conditions if such district supports transit promotions. This contribution shall be limited to no more than 20% of the total annual contributions of the TMP Association.
- 4) Any funding received by the TMP Association and not encumbered within the applicable fiscal year, upon completion of an annual close-out audit, may be carried forward to a succeeding fiscal year for programming in the Annual TMP Work Plan.

Services and Program Elements

- (d) The developer agrees that the TMP shall consist of a number of strategies and tactics intended to contribute individually and in combination to achieving identified objectives which may include, but not be limited to, the following elements and services which shall be implemented by the TMP Association to the extent of available funding:
- i) Such staff and contractors as are necessary to coordinate and manage the TMP program.
 - ii) Promotion and marketing efforts implemented and coordinated by the TMP Association staff:
 - 1) Provision of information on a regular basis to each tenant's employees and to residents, visitors, retail customers and hotel guests regarding available transportation alternatives.
 - 2) Provision of access to services such as car and vanpool ride matching, guaranteed ride home program, telework options, variable work hour programs, bicycling, transit and HOV facilities.
 - 3) Coordination of marketing of the local transit systems as part of an information dissemination program.
 - 4) Promotion of the creation of Employer Transportation Benefit Programs among tenants or other occupants of property within the PDSP and utilization of the MetroChek Match Incentive Program as an incentive tool.
 - 5) Provision of a SmarTrip electronic fare card to all residents, guests and employees of tenants to encourage use of transit services and to facilitate distribution of employer transit benefits to qualified users.
 - iii) Market Research, Reports and Planning including:
 - 1) Surveys, parking garage and cordon counts and other marketing research to determine the performance of TMP elements.
 - 2) Submission of quarterly reports to the County regarding TMP Association activities
 - 3) Development of an Annual "State of the Commute" Status Report to the County assessing the mode split, parking ratios, average vehicle occupancy, daily person and vehicle trips to and from the development.
 - 4) Development, in conjunction with the County Manager or his designee prior to April 1 of each year, of an Annual TMP Work Plan including program performance standards and objectives.
 - 5) Development, in conjunction with the County Manager, or his designee, of an Area Parking Plan (APP) to optimize the function and use of parking in the area to make access to the development. The PMP is intended to provide: 1) a summary of parking assets public and private, surface and structured; 2) document parking policies and coordinated strategies for meeting area parking demand; and, 3) through periodic updates, provide for evaluation and resolution of parking-related issues that arise and require multiple-party participation to resolve.

- iv) Development, in conjunction with the County, of a local transit service plan to identify and provide for facilities, equipment and services necessary to supply high quality local transit services to provide access to the development prior to implementation of higher capacity services operating on the dedicated transitway and pursuant to paragraph 29 of these Conditions. Such local transit service will include:
 - 1) Local Arlington Transit service from the Crystal City Metro Station extended to the site with service improved to 5 minute rush period frequencies
 - 2) Contributions to the ART service as a Transit Funding Partner according to the subsidy allocation formula as amended from time-to-time by the Arlington County Board.
 - 3) Special bus services to meet unique programmatic needs of the development (i.e. Lunch shuttles, local charters, group tours, airport connections).
- v) Fare incentive programs including:
 - 1) Contribution to the Metrocheck Match Employer Incentive Program to create subsidy programs for employees of tenants;
 - 2) Residential and hotel employee fare incentive programs;
 - 3) Residential and hotel guest group purchase discounts for transit fare media;
 - 4) Special fare promotions to encourage use of specific transit services, car and van pools and commuter bus services;
 - 5) A program of incentives to those who bike, walk and use other renewable resource modes for commuting.
- vi) Intelligent transportation systems to be integrated into the transportation infrastructure of the development such as:
 - 1) Traffic reporting capabilities to the regional reporting services
 - 2) Use of websites for information dissemination
 - 3) Parking and traffic management information systems.
- vii) Contributions to the Commuter Assistance Program for on-site and off-site services providing:
 - 1) Arlington Transportation Partners Coordination and services
 - 2) Operation of a "Commuter Hut" transit store on-site
 - 3) CommuterPage.com website development and maintenance
 - 4) Preparation of marketing materials and transit service information
 - 5) Participation in County and region-wide initiatives.
- viii) Any other on-going programs, costs, and physical improvements not otherwise provided for in this PDSP condition that are required in connection with the Potomac Yard TMP for the South Tract to fulfill Transportation Demand Management and Transportation System Management objectives as defined by the Annual TMP Work Plan including, but not limited to:
 - 1) Compensation to Arlington County for services.
 - 2) Space rent and operating expenses and staffing costs associated with the transit store.
 - 3) Space rent and operating expenses and staffing costs associated with offices and storage space for TMP staff and programs.

TMP Performance

- (e) Implementation of the TMP elements shall be the responsibility of the TMP Association, and such implementation will be evaluated on an annual basis by the County Manager, or his designee, based on information derived from the surveys, traffic counts, research, quarterly reports, Annual "State of the Commute" Report, during the process of developing an Annual TMP Work Plan as outlined in paragraph 28(d)(iii) pursuant to the following:
 - (i) TMP performance standards and objectives will be identified in conjunction with the County for each element of the TMP by which to measure its performance and cost effectiveness, and revised as necessary to achieve the desired transportation system performance outlined in the developer's proposed transportation plan, which was based on a parking supply of approximately 5,900 spaces, achieving an office, hotel and residential average vehicle occupancy of 1.4 and a transit-bike-walk mode share of 40%.

- (ii) The developer agrees to develop methodologies for approval by the County to monitor the performance of each element of the TMP prior to April 1 of the year immediately after the Certificate of Occupancy is granted.
 - (iii) In the event that: 1) the TMP elements are not implemented to the satisfaction of the County Manager; 2) the County Manager has notified the TMP Association of the specific reasons for such dissatisfaction and the TMP Association has failed to take reasonable corrective actions addressing the reasons stated by the County Manager for two consecutive annual reporting periods; then, at the discretion of the County Manager, the TMP Association may be directed to develop and implement alternative program elements or the Arlington County Commuter Assistance Program shall assume management of the TMP programs under the terms of this PDSP condition.
 - (iii) The developer shall submit an updated Transportation Management Program report with the filing of each Final Site Plan. This report will describe the status of the development in meeting vehicle occupancy and mode share goals, discuss area traffic conditions, analyze the expected impacts of the additional development covered by the Final Site Plan, and describe any additional TDM or TSM actions that might be needed.
29. The developer agrees to cooperate with the County and other property owners in the Crystal City/Route 1 corridor to establish a special district, or an other district or area having a comparable purpose, to assist in the financing of a transit system in the Crystal City/Route 1 corridor.
 30. The developer agrees to undertake no activities (except for those reasonably required for maintenance or as otherwise approved by the County Manager or his designee) in the area within the Phased Development Site Plan designated, and agreed to by the developer, that would preclude construction of a WMATA Rail Station.
 31. The developer agrees to contribute, in two equal payments, \$200,000 in total for a Neighborhood Traffic Calming (NTC) program and to address problems with arterials (for example, South 23rd Street and Arlington Ridge Road) in Arlington Ridge and Aurora Highlands. The developer agrees to make the initial \$100,000 payment to the County prior to approval of the first Final Site Plan and the final \$100,000 payment to be made to the County at such time as the South Glebe Road intersection improvements are constructed in accordance with Condition # 21(a). The funds shall be used by the County for measures described in the County Board's Neighborhood Traffic Calming Program, Process, Criteria and Measures.

Miscellaneous

32. Following the approval of the Phased Development Site Plan by the County Board, and in the advance of any Final Site Plan, but in no event later than 180 days following approval of the PDSP by the County Board, the developer agrees to submit to the Zoning Administrator three (3) copies of a revised Phased Development Site Plan incorporating all aspects of the approved Phased Development Site Plan and revised Urban Design Guidelines.
33. The developer agrees to notify the Zoning Administrator immediately following the sale of any portion of the site as to: (a) square feet of property sold; (b) location and RPC numbers of property sold; (c) use and density committed by the sale; and (d) the name of the person representing the new owner of the property.
34. The conditions assigned to Final Site Plan approvals may include, but shall not be limited to, the conditions of the Phased Development Site Plan approval.
35. The applicant shall submit a final plat certifying the site area of each parcel, including street rights of way, at the time of the submittal of each Final Site Plan.
36. The developer agrees to comply with Administrative Regulation 4.1 for the submission of all Final Site Plan applications. No building permit shall be issued until a Final Site Plan has been approved by the County Board and all conditions to such approval, required to have been satisfied at the time of such issuance, have been met.

37. The developer agrees that all portions of any land may not yet developed, or under construction, shall be fenced, kept free from debris and over seeded with a drought tolerant native wildflower/native warm season grass mix unless otherwise improved as provided in these conditions.
38. This PDSP approval includes the continuous right to continue railroad uses on the relocated track area, identified as the rail corridor on the Deed of Easement dated May 22, 1998 and recorded on December 22, 1998 among the land records of Arlington County, Virginia at DB 2948, p. 1712, on the surface, sub-surface and above surface. Such right includes all existing as well as all needed future uses, future facilities, services, etc., including but not limited to the following: the right to operate engines and trains of all types; the right to receive, assemble switch, inspect, classify, dispatch and repair inbound and outbound passenger and freight trains; the right to maintain, repair, improve, alter, drain, etc., the tracks and the land area related thereto; the right to install, repair, improve, alter, remove and relocate whether above surface, surface or sub-surface, catenary systems, electric lines, poles of various kinds, communication facilities, signals, wires, tubes, conduits, micro wave installations, etc.; any and all other rights necessary or needed to permit full, complete uninterrupted unrestricted operation of freight and passenger trains in the said area. Such right does not permit car barns, garages or shops in the area.

(This condition is intended to authorize, by a modification of use regulations under Sec. 36.H.5.a, those uses described above not permitted by Sec. 23 A. A. B., if any.)
39. This Phased Development Site Plan expires 10 years after the date of County Board approval if the first Final Site Plan has not been vested. Extension of this approval shall be at the sole discretion of the County Board.
40. In the event of a conflict, the PDSP Conditions supercede the Potomac Yard Design Guidelines, including amendments thereto, that may be adopted by the County Board.

Additional Conditions

41. The developer agrees to develop a Public Art Concept Plan for the PDSP which shall be approved by the County Manager or his designee prior to approval of the first Final Site Plan for any buildings located in Land Bays B through F. The developer agrees to retain a professional art consultant to develop the Public Art Concept Plan. At the time of approval of each Final Site Plan in Land Bays B through F, the developer agrees to make a contribution toward public art. The form and/or amount of any such contribution, shall be determined consistent with the Public Art Concept Plan. In Land Bay A, the contribution toward public art, and the form of any such contribution, shall be determined at the time of approval of each Final Site Plan.
42. The developer agrees to contribute the local share of construction costs, up to \$80,000, for a bike trail connection from the Four Mile Run Trail to its development on the Potomac Avenue elevation. The local share is that which is necessary to match any local, state or federal grant or in the case of failure to obtain any such grant, the cost of Arlington County's share of construction cost for said bike trail, up to \$80,000. If at the end of a five year period the Arlington County Manager has not approved the design and location of the bike trail as recommended by staff, developer or any inter-jurisdictional planning body established to determine the design of the park area, the developer or its successors will be relieved of their obligation to contribute up to \$80,000 for construction costs and instead place \$60,000 into an escrow account to be used for the sole purpose of the planning, design and construction of a bike trail connection by Arlington County.
43. The developer agrees to construct a minimum of three (3) east-west streets, in addition to South Glebe Road, within the PDSP connecting Potomac Avenue with Crystal Drive between 27th Street and South Glebe Road. The distance between these streets shall create block faces with a maximum width of 500 feet, except for the block face resulting in Land Bay C, which shall have a maximum width of 600 feet.
44. The developer agrees to design and construct crosswalks within the PDSP at all major intersections and at additional locations to be determined at the time of final site plans. The design of the crosswalks shall be consistent with the standards contained in the Urban Design Guidelines and as determined at the time of final site plan approval.

45. The applicant agrees to rent to the County or to Arlington Public Schools, at the County's option, up to 15,000 square feet of the 90,000 square feet of Potential Retail Space that is not Retail Space pursuant to Condition #4.B.(a), at a 25% discount, for use as space for one or more alternative high school programs; provided that the County exercise this option no later than 12 months after the earlier of these two events:
- a. Issuance of the final certificate of occupancy for the building that brings the level of constructed base-retail space to 40,000 s.f., or
 - b. Notice by the developer that 40,000 s.f. of base-retail space will be constructed and available within 12 months.
46. In the event that the developer, in accordance with condition 3, delays transfer to the County of those property rights on the North Tract prescribed by this PDSP ("property rights"), the developer agrees that the County may, at or after the time of the filing of the first final site plan on the South Tract (including Land Bays A and B) and solely at the County's option, execute a lease for the areas to be leased in the North Tract as specified by the County. Such lease may be requested by the County by giving ninety (90) days written notice to the developer. The developer agrees that the property shall be leased without tenants, unless otherwise approved in writing by the County Manager. Such lease shall be at a rent of one dollar (\$1.00) annually. The developer also agrees that the County may make any improvements on the aforementioned areas, provided that these improvements are consistent with the requirements in the Virginia Department of Environmental Quality (VDEQ) letter of October 10, 2000, as may amended from time to time, and with the avigation-easement restrictions contained in the agreement between Commonwealth Atlantic Properties and the Metropolitan Washington Airports Authority, dated February 3, 2000, The lease provided for in this condition shall terminate either (a) one hundred eighty (180) days after written notice to the County which may be given at any time following an adverse (to developer), unappealable final resolution of any lawsuit delaying transfer of the North Tract to the county, or (b) upon the transfer of the North Tract to the County as is set forth in Condition 3.
47. In completing the Voluntary Remediation Program (VRP) for the Davis site, the developer agrees to use its best efforts to accomplish the capping of the Davis site according to specifications approved by the County Manager or his designee, so long as those specifications are consistent with the requirements outlined in the Virginia Department of Environmental Quality (VDEQ) letter of October 10, 2000 as such letter may be amendment and any requirements imposed as a result of the October 22, 1993 Settlement Agreement and the lawsuit related to the North Tract. The developer agrees to design and install or cause to be designed and installed the required asphalt, soil, or concrete cap diligently and to expedite the work consistent with the required approvals. Within the constraints of that VDEQ letter, the developer shall also include in its design and construction of the cap the County's specifications for related improvements ("related improvements") to that cap (including, but not limited to, pavement striping, stormwater drainage facilities, electrical conduit, and light poles), provided that the County pays the full cost for the related improvements and that the County submits the specification for such improvements within six months of the developer's request therefor or within such time as may be necessary to implement VDEQ's requirements. The developer agrees to use its best efforts to see that the cap is maintained according to the agreement among the parties settling the environmental litigation over the Davis site (October 22, 1993 Settlement Agreement), in perpetuity, provided that the County pays the full cost of maintenance of the related improvements and that share of the maintenance cost for the cap itself which, according to professional engineering standards, are due specifically to the County's use of the capped area and which would not otherwise be necessary or required.

Should the County so request at any later time, the developer or its successors shall design and construct or cause to be designed and constructed (according to County specifications) additional related improvements in the capped area, provided that these are consistent with the aforementioned VDEQ requirements, as may be amended from time to time, and the October 22, 1993 Settlement Agreement, and provided that the County pays fully for their design and construction.

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PDSP Preliminary Infrastructure Plan Approval

April 20, 2002

1. The developer (as used in these conditions, the term developer shall mean the owner, the applicant and all successors and assigns) agrees to comply with the standard conditions set forth in Administrative Regulation 4.1 as outlined below, the conditions of the approved Potomac Yard Phased Development Site Plan (PDSP), the Potomac Yard Urban Design Guidelines, and the Preliminary Infrastructure Plans dated April 3, 2002 and the landscape plan for the pump station dated March 28, 2002, and reviewed and approved by the County Board and made a part of the public record on April 20, 2002, including all renderings, drawings, and presentation boards presented during public hearings, together with any modifications proposed by the developer and accepted by the County Board or vice versa.
2. The developer agrees to produce a photographic record of development, starting with a record of the site as it appears before demolition is begun, including photographic records during construction, and ending with a photographic record of the development as it appears after completion of construction. These photographs shall comply with the following specifications:

All photographic records shall be taken using black and white film. Submission of a photo contact sheet and 8" x 10" prints shall be the minimum acceptable standard. Color photographs on compact disc must be submitted in addition to black and white photographs and the photo contact sheet at the end of the project prior to acceptance by the County of the public right-of-way and improvements. The photographic record shall include the following:

Before Clearing, Grading and Demolition of the site (shall be submitted before issuance of the Clearing, Grading and Demolition Permit) - Views of north, south, east and west facades, as location permits, of buildings to be demolished, as well as at least one photo of the site before any clearing or grading including the existing physical relationship with adjacent buildings and streets.

Site Clearance (shall be submitted before issuance of the Footing to Grade Permit) - Views of cleared site facing north, south, east and west, as location permits, with adjacent buildings and streets included.

Construction Phase (shall be submitted before issuance of the Shell and Core Certificate of Occupancy Permit) - At a minimum, views of the site: during excavation, upon completion of the first floor above grade, at topping out, and during the exterior-cladding phase.

Site Completion (shall be submitted before issuance of the Master Certificate of Occupancy) - North, south, east and west facades of completed building or buildings, as well as at least one view of completed project in context of adjacent buildings and streets.

The photographic record of the site as it appears before demolition shall be delivered to the Zoning Administrator prior to the issuance of a clearing, grading or demolition permit. The remaining records, including the completed compact disc with the entire photographic history, shall be delivered to the Zoning Administrator, before the issuance of a Master Certificate of Occupancy, for placement in the County archives.

3. The developer agrees to develop a plan for temporary relocated bus stops, pedestrian and vehicular circulation during construction. This plan shall identify temporary sidewalks, fencing around the site, construction vehicle routes, and any other feature necessary to ensure safe pedestrian and vehicular travel around the site during construction. The developer agrees to submit to, and obtain approval from, the Department of Public Works (DPW) of this plan as meeting these standards, before the issuance of the Clearing, Grading and Demolition Permit. (DPW has the authority to require the developer to amend the approved plan as conditions warrant.)
4. The developer agrees to comply with all federal, state and local laws and regulations not modified by the County Board's action on this plan and to obtain all necessary permits. The developer further agrees that the County may take actions, to include issuance of a stop work order, when the developer is not in compliance with the agreed-upon conditions.
5. The developer agrees to file three copies of the Preliminary Infrastructure Plan, which complies with the final approval of the County Board and with Administrative Regulation 4.1, with the Zoning Administrator within 90 days of the County Board approval and before the issuance of the first permit for construction of the streets or the pump station, whichever is earlier.

6. The developer agrees to comply with the following before issuance of the Clearing, Grading and Demolition Permit and to remain in compliance with this condition until the Master Certificate of Occupancy is issued.
 - a. The developer agrees to identify a person who will serve as liaison to the community throughout the duration of construction. This individual shall be on the construction site during all hours of construction, including weekends. The name and telephone number of this individual shall be provided in writing to residents, property managers and business owners whose property abuts the site, and to the Zoning Administrator, and shall be posted at the entrance of the project.
 - b. Before commencing any clearing or grading of the site, the developer shall hold a meeting with those whose property abuts the project to review the construction hauling route, location of construction worker parking, plan for temporary pedestrian and vehicular circulation, and hours and overall schedule for construction. The developer agrees to provide documentation to the Zoning Administrator of the date, location and attendance of the meeting before a Clearing, Grading and Demolition Permit is issued. Copies of plans or maps showing the construction hauling route, construction worker parking and temporary pedestrian and vehicular circulation shall be posted in the construction trailer and given to each subcontractor and construction vehicle operator before such subcontractor or operator commences work on the project.
 - c. Throughout construction of the project, the developer agrees to advise abutting property owners in writing of the general timing of utility work in abutting streets or on-site that may affect their services or access to their property.
 - d. At the end of each work day during construction of the project, the developer agrees to ensure that any streets used for hauling construction materials and entrance to the construction site are free of mud, dirt, trash, allaying dust, and debris.
 - e. Throughout construction of the project, construction work shall be in accordance with the Arlington County Noise Ordinance (Section 15 of the Arlington County Code).
 - f. Storage of construction materials, equipment and vehicles shall occur on the site or an approved off-site location, or as approved by the County Manager or his designee.
7. The developer agrees to submit a detailed final site development and landscape plan at a scale of 1 inch = 25 feet, in conjunction with the final site engineering plan as required in Condition #10 below, for the street trees located in the medians and for landscaping adjacent to the pump station. The developer further agrees that both the final site development and landscape plan and the site engineering plan verify by means of survey that there are no conflicts between the street trees in the medians and utilities. The developer shall obtain approval by the County Manager or his designee for both plans as meeting all requirements of the County Board's approval of the Preliminary Infrastructure Plan and all applicable county laws and plans before the issuance of the first permit for the construction of streets or for construction of the pump station, whichever is earlier. The plan shall be consistent with the approved Preliminary Infrastructure Plan, the approved Potomac Yard Urban Design Guidelines, and, at a minimum, shall conform to the landscaping requirements in Condition #8 below; the County's landscaping, planting, and sidewalk and driveway construction specifications; and/or other applicable urban design standards approved by the County Board. In order to facilitate comparison with the final site engineering plan, the landscape plan shall be at a scale of 1 inch = 25 feet; the County may require more detailed plans appropriate to landscape installation at a larger scale (1/16 inch = 1 foot, 1/8 inch = 1 foot, or 1/4 inch = 1 foot). The County may, in its discretion, permit minor changes in street locations and other details of design as necessitated by more detailed planning and engineering studies if such changes are consistent with the provisions of the Zoning Ordinance governing administrative approval and with the intent of the Preliminary Infrastructure Plan approval. The landscape plan shall include a Street Tree Plan for trees in medians, which shall be reviewed by the Department of Parks, Recreation and Community Resources and shall be accompanied, by the site engineering plan. The installation of all plant materials shown on the final landscape plan for trees in medians shall take place before the issuance of permits which allow the developer to utilize the streets; for landscaping adjacent to the pump station, installation of plant materials shall take place before issuance of the Certificate of Occupancy for the pump station. The final site development and landscape plan shall include the following details:
 - a. The location and dimensions of traffic signal poles and control cabinets, utility meters, utility vaults and boxes, mechanical equipment, fire hydrants, standpipes, storm water detention facilities, the location of all existing and proposed utility lines and of all easements. The location of traffic control cabinets shall be shown on the final site engineering plan and placed so as not to obstruct pedestrian travel or be visually obtrusive. Traffic control cabinets shall not be located in the public sidewalk;
 - b. The location and types of light fixtures for streets, parking, walkway and plaza areas;

- c. Topography at two (2) foot intervals;
- d. Landscaping for the pump station, including a listing of plant materials, and details of planting, irrigation and drainage; and
- e. The location and planting details for street trees in medians in accordance with Department of Public Works Standards and Specifications for planting in public rights-of-way and as shown on the approved final site engineering plan.
- f. The developer agrees to submit a maintenance agreement which shall ensure that all landscaping installed adjacent to the pump station is kept in a clean and well-maintained condition after the expiration of the two year guarantee required in condition #8 below and to follow the terms of that maintenance agreement approved for that purpose by the Zoning Administrator, as required in Section 32A of the Zoning Ordinance.

8. The developer agrees that all landscaping shall conform to Department of Public Works Standards and Specifications and to at least the following requirements:

- a. Planting materials shall be of good nursery stock and a nursery guarantee shall be provided by the developer for two years including the replacement, as needed, and maintenance (to include but not be limited to pruning, feeding, spraying, mulching, weeding, and watering) of all landscape materials located in medians and adjacent to the pump station, for the life of the Potomac Yard PDSP;
- b. Plant materials and landscaping shall meet the then-current American Standard for Nursery Stock, and the standards identified in the Potomac Yard Urban Design Guidelines and shall also meet the following standards that are not addressed in the aforementioned standards:
 - (1) Major deciduous trees, other than street trees, (shade or canopy trees such as Oaks, Maples, London Plane Trees, Japanese Zelkovas, etc.) - a height of 12 to 18 feet with a minimum caliper of 4 inches, except as indicated in Condition #16 below.
 - (2) Evergreen trees (such as Scotch Pines, White Pines, Hemlocks, etc.) - a minimum height of 8 to 10 feet.
 - (3) Ornamental deciduous trees (such as Cherries, Dogwoods, Serviceberries, Hornbeams, etc.)- a height of 10 to 14 feet with a minimum caliper of 1 1/2 to 2 inches.
 - (4) Shrubs - a minimum spread of 18 to 24 inches.
 - (5) Groundcover - in 2" pots.
- c. All new lawn areas shall be sodded; however, if judged appropriate by the County Manager or his designee, based on accepted landscaping standards and approved in writing, seeding may be substituted for sod. All sod and seed shall be state certified;
- d. Exposed earth not to be sodded or seeded shall be well-mulched or planted in groundcover. Areas to be mulched may not exceed the normal limits of a planting bed;
- e. Soil depth shall be a minimum of four (4) feet plus 12 inches minimum of drainage material, consistent with the Potomac Yard Urban Design Guidelines, for trees and tall shrubs and three (3) feet for other shrubs. This requirement shall also apply to those trees and tall shrubs in raised planters. Soil depth for raised planters shall be measured from the bottom of the planter to the top of the planter wall. The walls of raised planters shall be no higher than seat-wall height (2 1/2 feet, maximum) above the finished grade adjacent to them.;
- f. Finished grades shall not exceed a slope of three to one or the grade that existed before the site work began.
- g. The developer agrees to maintain the site in a clean and well maintained condition before the issuance of the Clearing, Grading and Demolition Permit and agrees to secure and maintain the site throughout the construction and phasing process.

- h. The developer agrees to notify the Department of Parks, Recreation and Community Resources (DPRCR) Urban Forester at least 72 hours in advance of the scheduled planting of any street trees in the public right-of-way and to be available at the time of planting to meet with staff of DPRCR to inspect the plant material, the tree pit and the technique of planting. Soil used in the tree pit must meet the specifications for street tree planting available from the DPRCR Urban Forester.
 - i. The developer agrees to maintain the trees and landscaping located in the public rights-of-way and adjacent to the pump station for the life of the Potomac Yard PDSP.
9. The developer agrees to contact utility companies, including the electric, telephone and cable television companies, and notify them of their construction schedule. In order to comply with this condition the developer agrees to submit to the Zoning Administrator copies of letters from the developer to the utility companies notifying them of their construction schedule.
10. The developer agrees to submit final site engineering plans to the Department of Public Works. The plans shall be drawn at the scale of 1 inch = 25 feet and be 24 inches by 36 inches in size. Neither the Excavation/Sheeting and Shoring Permit nor the first Permit for the construction of streets shall be issued until final site engineering plans which agree with the approved final site development and landscape plan, and the sequence of construction, has been approved by the Department of Public Works, as consistent with all site plan approval requirements and all County laws and policies.
11. The developer agrees to show, on the final engineering plans, pavement, curb and gutter, water and sanitary sewer mains and stormwater conveyance system, consistent with the Preliminary Infrastructure Plan and the Potomac Yard Design Guidelines, along all frontages on public streets within this site in accordance with the then-current Arlington County and Virginia Department of Transportation Standards for concrete curb and gutter, pavement and utility construction.

The developer agrees to design and construct the following street improvements consistent with the engineering plans submitted by the developer and reviewed by the Department of Public Works and as shown on the final engineering plan approved by the County Manager:

1. Potomac Avenue from the Alexandria/Arlington County line to Crystal Drive
2. South Glebe Road from U. S. Route 1 to Potomac Avenue
3. South Glebe Road/U. S. Route 1 intersection
4. 33rd Street South from Potomac Avenue to Crystal Drive
5. Crystal Drive between U. S. Route 1 and Potomac Avenue

Construction of these improvements, as shown on the Preliminary Infrastructure Plan dated April 3, 2002 and as approved by the County Manager, may be completed at any time, provided that the improvements are completed pursuant to the requirements of condition #21 of the PDSP.

All improvements to curb, gutter, sidewalks and streets for pedestrian and/or vehicular access or circulation shall be in full compliance with the Americans with Disabilities Act (ADA) and any regulations adopted thereunder, as well as any other applicable laws and regulations.

12. The developer agrees to remove and replace any existing curb, gutter and sidewalk along the street frontages of this site which is in poor condition or damaged by the developer according to Arlington County standards and specifications, prior to the issuance of the first Certificate of Occupancy of the immediately adjacent land bay.
13. The developer agrees, at its cost, to purchase and install approved Arlington County street lighting along the Crystal Drive and Route 1 frontages of the site prior to the issuance of the first permit for construction of public streets in the PDSP. In addition, the developer agrees to furnish and install all conduit and junction boxes necessary for the lighting system. All construction shall meet Virginia Power standards. Lighting shall be in accordance with the following:

The developer agrees to purchase and install Virginia Power "Carlyle" standard street lights along all frontages of the site in accordance with adopted County Lighting Policy. The developer agrees, at its cost, to install additional standard thoroughfare lights should the County decide that they are necessary to provide adequate lighting for street safety purposes.

14. The developer agrees to remove or place underground all existing aerial utilities within or along the periphery of the PDSP area prior to the issuance of the final building permit. Any utility improvements necessary to provide adequate utility services to this development or utility work necessary to provide a terminus to the underground facilities shall be paid for by the developer and shall not result in the installation of any additional utility poles, or aerial devices.
15. The developer agrees to provide off-street parking for all construction workers without charge to the workers. In lieu of providing parking, the developer may provide a subsidy for the construction workers in order that they may use Metro, provide a van for van pooling, or use another established method of transportation to provide for construction workers to arrive at the site. Compliance with this condition shall be determined based on a plan which shall be submitted to the Zoning Administrator before the issuance of the Excavation/Sheeting, and Shoring Permit. This plan shall set forth the location of the parking to be provided at various stages of construction, how many spaces will be provided, how many construction workers will be assigned to the work site, and mechanisms which will be used to encourage the use of Metro, carpooling, vanpooling, and other similar efforts. The plan shall also provide for a location on the construction site at which information will be posted regarding Metro schedules and routes, bus schedules and routes, and carpooling and vanpooling information. If the plan is found to be either not implemented or violated during the course of construction, a correction notice will be forwarded to the developer. If the violation is not corrected within ten (10) days, a "stop work order" will be issued, and construction halted until the violation has been corrected.

All required easements and right-of-way agreements shall be submitted to the Department of Public Works, and be approved and recorded among the land records of the Clerk of the Circuit Court of Arlington County, by the developer before the issuance of the Public Right of Way Permit.

16. Upon approval of the final site engineering plan the developer agrees to submit a performance bond estimate for the construction or installation of all facilities (to include street trees and all landscape materials) within the public rights-of-way or easements to the Department of Public Works for review and approval. Upon approval of the performance bond estimate by the Department of Public Works, the developer agrees to submit a performance bond in the approved amount of the estimate and agreement for the construction or installation of all these facilities (to include street trees and all landscape materials) within the public rights-of-way or easements to the Department of Public Works and this bond shall be executed by the developer in favor of the County before the issuance of the Public Right of Way Permit for the respective phases of construction.
17. The developer agrees to be responsible for documenting any historical artifact or historical natural feature uncovered during construction on the site. This documentation shall include written notation describing the artifact or natural feature, color photographs, and mapping of the location and/or depth of the site excavation at which the item was found. The developer agrees to submit a copy of this documentation to Arlington County before acceptance of public of right-of-way and improvements.

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

18. The developer or owner agrees to remove snow from all sidewalks within a reasonable time after the snow has stopped.
19. The developer agrees to maintain the streets until such time as the streets are open to the public or accepted by the County for public maintenance.
20. The developer agrees that the sewer system to collect and convey sewage generated by the development on the site will consist of a pump station, a gravity flow system and a force main. The pump station will be located as shown on

Attachment 3 hereto. No permits shall be issued for construction of the pump station or any sewer lines on County property until the developer has paid \$25,000 to the County for use of County property.

21. The developer agrees that the County Board approved the Preliminary Infrastructure Plan (PIP) in advance of final site plan approval for land bays B – F at the developer's request. In the event elements of the PIP are required to be removed or changed in the future to accommodate any construction on the site or any final site plan, such removal or change shall be made at developer's expense.

EXHIBIT C



2003350072

**Received and Recorded
In the Office of the
Clerk of the Circuit Court
of Arlington County, Virginia**

Document Number:	2003350072	Book/Page:	3637/1511	Clerk ID:	Recorder
Document Type:	DECLARATION	Date Recorded:	12/16/2003	Grantor:	POTOMAC YARD-ARLINGTON
Text Pages:	74	Time Recorded:	12:38:30	Assumption Bal:	\$0.00
Plat Pages:	0	Document Date:		New Amount:	\$0.00
Received Of:	CHICAGO	Original Amount:	\$0.00	Exempt Code:	

Actual Consideration:	\$0.00	Taxable Consideration:	\$0.00
(039) VA Tax:	\$0.00	(214) Falls Church Tax:	\$0.00
(213) Arlington Tax:	\$0.00	(222) Falls Church Transfer:	\$0.00
(212) Arlington Transfer:	\$1.00	(223) Falls Church Grantor:	\$0.00
(038) Va Grantor:	\$0.00		
(220) Arlington Grantor:	\$0.00		
(301) Clerks Fee:	\$48.50		
(145) VA Library:	\$1.50		
(106) Tech Fee:	\$3.00		
(036) Deed Processing Fee:	\$0.00		
Document Total:	\$54.00		

Arlington County, Virginia
Clerk of the Court's Office

This certificate annexed constitutes the
Clerk's endorsement required by sections 17-59,
17-79 and 58.1-802 of the code of Virginia.

David A. Bell
Clerk

**IMPORTANT:
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THE DOCUMENT!**

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MASTER DECLARATION
FOR
POTOMAC YARD-ARLINGTON

THIS MASTER DECLARATION FOR POTOMAC YARD-ARLINGTON (this “**Declaration**”) is made as of the 15th day of December, 2003, by CRESCENT POTOMAC YARD DEVELOPMENT, LLC, a Delaware limited liability company (“**Declarant**”) (Grantor and Grantee for indexing purposes).

RECITALS

A. Declarant owns in fee simple the real property known as the “Potomac Yard South Tract” in Arlington, Virginia, which is subject to a phased development site plan approved by the County Board of Arlington on October 21, 2000, pursuant to Application SP #346.

B. To implement that plan and to enhance and protect the value, desirability and marketability of the property for the benefit of all present and future owners, Declarant wishes to declare, establish, and impose the supplemental covenants, restrictions, reservations, easements, servitudes, liens, and charges set forth in this Declaration.

C. For the same purposes, Declarant has caused “The Arlington Potomac Yard Community Association” to be incorporated under the laws of the Commonwealth of Virginia to exercise the rights and responsibilities of the Master Association specified in this Declaration and Applicable Law.

NOW, THEREFORE, Declarant covenants and declares, on behalf of itself and its successors and assigns, that from the date this Declaration is recorded, the real property shown and designated as Parcel 2 and Parcel 3 (the “**Property**”) on the “Plat Showing Parcels 1A, 1B, 1C, 2 and 3, Potomac Yard, Being the Vacation, Dedication and Resubdivision the Property of Crescent Potomac Yard Development Company, LLC, and Crescent Potomac Properties, LLC, Deed Book 3132, Page 34 and Page 50, Arlington County, Virginia,” attached to and recorded with the Deed of Resubdivision, Dedication and Easement dated November 19, 2003, and recorded in Book 3628, Page 514, and re-recorded in Book 3632, Page 2487, in the Land Records. A reduced copy of the plat is attached as Exhibit A for convenient reference. The Property shall be held, conveyed, acquired, leased, used, occupied, improved and encumbered subject to the terms and conditions of this Declaration, all of which shall run with the land and bind and inure to the benefit of Declarant, the Master Association and all Persons who may own or acquire any right, title, or interest in or to any of the Property or who may occupy or enter any portion of the Property.

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms used in this Declaration shall have the meanings specified below.

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“Act” means the Virginia Nonstock Corporation Act, Chapter 10 of title 13.1 of the Code of Virginia (1950), as amended, supplemented or replaced from time to time.

“Affiliate” means with respect to the Person in question, any other Person that, directly or indirectly, controls, is controlled by or is under common control with, such Person. For the purposes of this definition, the term “control” and its derivations means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person in question, whether by the ownership of voting securities, contract or otherwise. Persons who are investors in an entity who may own more than fifty percent (50%) of the equity interests in such entity, but are not employees, agents or entities which control or under common control with such entity, shall not be deemed to be Affiliates of such entity for purposes of this Declaration.

“Applicable Law” means all statutes, laws, common law, rules, regulations, ordinances, codes and other legal requirements of any Governmental Authority, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any court or Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question.

“Articles of Incorporation” means the Articles of Incorporation of the Master Association, filed with the Virginia State Corporation Commission, as amended from time to time.

“Assessment” means a Common Expense Assessment, Transportation Management Assessment or Individual Assessment, in each case imposed with respect to Lots and Owners in accordance with the Association Documents.

“Assessment Unit” means the number allocated for each 1,000 square feet (or fraction thereof) of Gross Floor Area for the purpose of determining each Owner’s share of Common Expenses and each Member’s voting rights.

“Association Documents” means, collectively, this Declaration, any Supplemental Declarations, the Articles of Incorporation, the Bylaws and the Rules and Regulations, all as amended from time to time. Any exhibit, schedule, certification or amendment to an Association Document is an integral part of that Document.

“Board of Directors” or “Board” means the executive and administrative body established by the Articles of Incorporation as the governing body of the Master Association. A Director is a member of the Board.

“Budget” means the budget adopted by the Board for each fiscal year of the Master Association in accordance with Article III hereof.

“Bylaws” means the bylaws of the Master Association, as amended from time to time.

“Certificate of Occupancy” means (a) with respect to building improvements on a Commercial Lot or for retail uses on a Residential Lot, a temporary or permanent certificate issued by the appropriate Governmental Authority allowing occupancy of the building upon

completion of the core and shell components (which need not include completed tenant improvements) for their intended use, and (b) with respect to building improvements on a Residential Lot (except improvements intended for retail use), a temporary or permanent certificate issued by the appropriate Governmental Authority allowing occupancy for their intended use.

“Commercial Lot” means a Lot for which the principal use authorized under the PDSP is office, commercial, hotel, retail or other nonresidential purpose.

“Common Area” means those areas of the Property (a) owned by the Master Association for the common benefit, use and enjoyment of the Owners, or (b) owned, leased or otherwise dedicated to the County or other Governmental Authority and maintained by the Master Association pursuant to the Entitlements.

“Common Expense Assessment” means the assessment levied or imposed with respect to each Lot, payable by the Members as necessary to pay the Common Expenses in accordance with Section 3.2 hereof.

“Common Expenses” means all expenditures lawfully incurred by or on behalf of the Master Association, together with all funds determined by the Board of Directors to be necessary for the creation and maintenance of reserves pursuant to the provisions of the Association Documents.

“Community Features” means the trees, landscaping, entrance features, signage, street furniture, bus shelters, trash receptacles, irrigation systems, exterior lighting, and similar items which are (i) not maintained by the County or other Governmental Authority and (ii) are located within the Common Area, a Public Easement Area or a Landscape Easement Area.

“Condominium Project” means any portion of the Property submitted to a condominium regime pursuant to the Virginia Condominium Act.

“Cooperative Project” means any portion of the Property owned by a cooperative association created pursuant to the Virginia Real Estate Cooperative Act.

“County” means the County of Arlington, Virginia.

“County Board” means the governing body of the County.

“Declarant” means Crescent Potomac Yard Development, LLC, a Delaware limited liability company, and its successors and assigns pursuant to Section 13.2.

“Declarant Control Period” means the period of time ending on the earliest of: (i) the twentieth (20th) anniversary of the Effective Date; (ii) the date on which final site plans have been approved by the County for all developable Lots, or (iii) the date specified by the Declarant in a written notice to the Master Association.

“Declaration” means this Master Declaration for Potomac Yard-Arlington, as the same may be amended.

"Design Guidelines" means the design guidelines approved by the County Board and made a part of the Entitlements, as the same may be amended from time to time with the approval of the County. The current Design Guidelines are identified as the "Potomac Yard Urban Design Guidelines" and are on file with and available from the County or Declarant.

"Effective Date" means the date on which this Declaration is recorded in the Land Records.

"Entitlements" means the entitlements, permitted land uses, development rights, standards, guidelines, restrictions, conditions, requirements, and obligations created, adopted, or approved by the County or any other Governmental Authority with respect to the Property, including: (i) the PDSP, (ii) the PDSP Conditions, (iii) the Design Guidelines, (iv) the Master Transportation Plan, and (v) all documents incorporated by reference in any of the foregoing, including the County's Bicycle Transportation Plan, Master Transit Plan, Zoning Ordinance, Transportation and Land Use Plan, and Chesapeake Bay Preservation Ordinance, all as the same may be amended from time to time.

"Environmental Laws" means all federal, state and local statutes, regulations, ordinances or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment including, without limitation, all such laws regulating the use, generation, storage or disposal of Hazardous Materials.

"Governmental Authority" means any federal, state, or local government or political subdivision thereof, including, without limitation, any agency or entity exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

"Gross Floor Area" or "GFA" means the maximum area of building improvements allowable on a Lot or, if applicable, on the portion of the Property subject to a Condominium Project or Cooperative Project, determined in accordance with (a) the Entitlements and (b) allocations of density to the Lot by Declarant, whether by deed, plat, Supplemental Declaration or other instrument recorded in the Land Records. The number of square feet of Gross Floor Area shall be calculated in accordance with measurement standards applicable to the PDSP and PDSP Conditions and shall not be based on the number of square feet shown on a site plan submitted to or approved by the County.

"Hazardous Materials" means (i) all waste materials subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, or applicable state law and any other applicable federal, state, or local laws and their regulations now in force or hereafter enacted relating to hazardous waste disposal; and (ii) any materials present on the Property which have been shown to have significant adverse effects on human health or which are subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, applicable state law, or any other applicable federal, state, or local laws now in force or hereafter enacted relating to toxic substances. "Hazardous Materials" include, but are not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum products and lead-based paints.

“Individual Assessment” means an assessment levied against an individual Owner with respect to a Lot in accordance with Section 3.4 hereof.

“Land Records” means the land records in the Clerk’s Office of the Circuit Court of the County.

“Landscape Easement” means any easement granted or reserved by the Declarant, burdening a Landscape Easement Area for the Upkeep of any Community Features located therein.

“Landscape Easement Area” means any portion of the Property identified and described in one or more recorded plats, Supplemental Declarations or other documents granting or reserving a Landscape Easement over portions of the Property and establishing the right of the Master Association to enter such easement area to maintain the Community Features located therein.

“Lot” means a portion of the Property other than the Common Area, including (a) real property designated as a separate subdivided lot of record on a plat of subdivision, resubdivision or consolidation or boundary line adjustment recorded among the Land Records or (b) any other parcel of real property held in separate ownership. “Lot” also means a condominium unit created pursuant to the Virginia Condominium Act and the possessory unit of a proprietary lessee in a cooperative created pursuant to the Virginia Real Estate Cooperative Act.

“Master Association” means The Arlington Potomac Yard Community Association, a Virginia nonstock corporation and its successors.

“Member” has the meaning set forth in Section 2.2.

“Mortgage” means a deed of trust encumbering all or any portion of a Lot.

“Mortgagee” means a beneficiary of a Mortgage who has, in writing, notified the Board of Directors of its status pursuant to Section 9.1 hereof. Only for the purposes of the notice and inspection rights in Article IX hereof, the term “Mortgagee” shall also include any Secondary Mortgage Agency.

“Original Infrastructure” has the meaning set forth in Section 4.2.

“Owner” means one or more Persons who (a) own fee simple title to a Lot, other than as security for an obligation or (b) are proprietary lessees of a cooperative association (created pursuant to the Virginia Real Estate Cooperative Act) that owns fee simple title to a portion of the Property.

“Owners Association” means either (a) a condominium association, created pursuant to the Virginia Condominium Act, whose unit owners are Owners of Lots, or (b) a proprietary lessees’ association, created pursuant to the Virginia Real Estate Cooperative Act, which association owns a portion of the Property and whose proprietary lessees shall be deemed Owners of Lots under this Declaration.

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“Park” means any park required by the Entitlements to be made accessible for use by the general public, currently consisting of the parks described in the PDSP Conditions and the Design Guidelines as “North Park,” “Center Park” and “South Park.”

“PDSP” means the phased development site plan for the Property approved by the County Board on October 21, 2000 pursuant to Application SP #346, as the same may be amended from time to time in accordance with Applicable Law. The PDSP forms a part of the Entitlements.

“PDSP Conditions” means the phased development site plan conditions adopted by the County Board on October 21, 2000 in connection with the County Board’s approval of the PDSP, as the same may be amended from time to time in accordance with Applicable Law. The PDSP Conditions form a part of the Entitlements. The current PDSP Conditions are attached as Exhibit B.

“Person” means a natural person, corporation, partnership, association, trust, limited liability company or other entity capable of holding title to real property or any combination thereof.

“Property” means the real property submitted and subjected to this Declaration, all as described in the declaratory paragraph following the Recitals and shown on the plat referred to therein, a copy of which is attached as Exhibit A.

“Public Easement” means any easement granted or reserved by the Declarant, granting, reserving or dedicating any Public Easement Area for transit ways, public streets, street medians, curbs, street signs, public sidewalks, street lights, street trees, fire hydrants, bus stops, trash receptacles, street fixtures, benches, public open spaces, or access or rights of way to or for the general public.

“Public Easement Area” means those portions of the Property identified and described in one or more recorded documents establishing a Public Easement over portions of the Property to which the general public shall have access, subject to the provisions of the Association Documents and Applicable Law, and includes, for example, (i) travel portions of streets, (ii) medians separating travel portions of streets, (iii) sidewalks adjacent to streets and buildings, (iv) pedestrian and bike trails, (v) transit ways, and (vi) Parks.

“Record Date” means the date specified in or determined in accordance with the Bylaws or this Declaration (a) for identifying the Members entitled to receive notices, vote and take any other action and (b) for making Assessments, which date shall be no earlier than ninety (90) days prior to date of the applicable vote or other action or later than the date of any required notice concerning that vote or other action. If not otherwise provided in the Bylaws, the Record Date for voting or taking other action shall be the close of business on the first day of the calendar month next preceding the month in which the vote or other action is taken.

“Residential Lot” means a Lot for which the principal use authorized under the PDSP is residential, except that for purposes of this Declaration and the other Association Documents hotel use shall be considered a commercial use and not a residential use.

“Rules and Regulations” means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property, as the same may be adopted and amended by the Board of Directors.

“Secondary Mortgage Agency” means the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), and any other public or private secondary mortgage market agency if such Secondary Mortgage Agency is participating in purchasing, guarantying, or insuring Mortgages and has notified the Board of Directors of such participation in writing.

“Subassociation” means any property owners association (other than an Owners Association) whose members are Owners of Lots, formed for the common benefit of such Owners pursuant to a declaration covering a discrete portion of the Property. Subassociations shall not be considered Members or have voting rights in the Master Association; however, the declaration and organizational documents of a Subassociation shall, during the Declarant Control Period, be subject to approval by Declarant.

“Supplemental Declaration” means either (a) a supplemental declaration of covenants, conditions and restrictions applicable to one or more Lots and recorded in the Land Records by Declarant relating or incident to the subdivision or resubdivision of a Lot, the recombination of Lots, or a boundary line adjustment, or (b) a declaration withdrawing real property from the operation and effect of this Declaration.

“Transit Corridor” means the transit way to be reserved and dedicated by Declarant in accordance with the PDSP Conditions and other portions of the Entitlements.

“Transportation Management Assessment” means an assessment against Lots made in respect of the Transportation Management Program pursuant to Section 3.3 hereof.

“Transportation Management Program” or “TMP” means the Transportation Management Program required by the PDSP Conditions.

“Upkeep” means maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement, and reconstruction.

“Utilities” means the facilities for providing any utility or similar service, whether public or private, including, without limitation, water, sanitary or storm sewer, drainage, gas, electricity, steam, chilled water, telephone, television, cablevision or information technology.

“Virginia Condominium Act” means Chapter 4.2 of Title 55 of the Code of Virginia (1950), as amended, supplemented or replaced from time to time.

“Virginia Property Owners’ Association Act” means Chapter 26 of Title 55 of the Code of Virginia (1950), as amended, supplemented or replaced from time to time.

“Virginia Real Estate Cooperative Act” means Chapter 24 of Title 55 of the Code of Virginia (1950), as amended, supplemented or replaced from time to time.

“Voting Representative” means the representative designated by the executive board or other governing body of an Owners Association to cast the votes, or signify approval or disapproval, on behalf of the Owners within a Condominium Project or Cooperative Project with respect to any applicable Master Association election, decision or other matter.

1.2 Undefined Terms. Terms used in this Declaration without definition, which are defined in § 13.1-803 of the Act, shall have the meanings specified for such terms in that section of the Act.

ARTICLE II

MASTER ASSOCIATION

2.1 Formation. The Master Association has been, or within thirty (30) days after the Effective Date shall be, organized as a nonstock corporation under the Act charged with the duties and vested with the powers prescribed by Applicable Law and the Association Documents.

2.2 Membership. The Members of the Master Association shall be all Owners and (during the Declarant Control Period) Declarant. The rights and obligations of the Members are set forth in the Association Documents, which shall be consistent with this Declaration.

2.3 Classes of Membership. The Master Association shall have the following classes of Members:

2.3.1 Class A Members. The Class A Members shall be all Owners of Commercial Lots.

2.3.2 Class B Members. The Class B Members shall be all Owners of Residential Lots.

2.3.3 Class C Member. The Class C Member shall be Declarant. During the Declarant Control Period, Declarant shall not be considered a Class A Member or a Class B Member despite Declarant’s ownership of one or more Lots. At the expiration of the Declarant Control Period, the Class C Member classification shall cease to exist, and Declarant shall thereafter be entitled to membership rights based solely on its status as a Class A Member and/or Class B Member, if applicable.

2.4 Voting Rights. Under the Association Documents, Members shall have the following voting rights:

2.4.1 Declarant Control Period. Except as otherwise provided in the Virginia Property Owners’ Association Act or elsewhere in this Declaration, the Class C Member, alone, shall during the Declarant Control Period be entitled to vote on any matter for which membership voting is permitted or required.

2.4.2 After the Declarant Control Period. After the Declarant Control Period, each Class A Member and Class B Member shall be entitled to one vote for each Assessment

Unit allocated to the Member. Class A Members and Class B Members shall each constitute a separate voting group for the purposes of electing and removing members of the Board of Directors in accordance with Section 2.5.1 hereof.

2.4.3 Votes of Condominium and Cooperative Owners. Members who are Owners by virtue of their ownership of individual condominium units or their status as proprietary lessees of a cooperative association shall exercise their membership voting rights and discharge their Assessment obligations through their respective Owners Association. The votes of such Members shall be determined by the executive board or other governing body of their Owners Associations and shall be cast on their behalf by a Voting Representative of each Owners Association.

2.4.4 Votes of Joint Owners. If a Lot is owned by more than one Person, the votes appurtenant to that Lot shall be exercised in whatever manner those Persons decide and then advise the Association, but in no event shall the number of votes be increased based on the existence of joint or common ownership.

2.5 Board of Directors. The Board of Directors shall be responsible for the management and administration of the business, property, and affairs of the Master Association. Unless otherwise specifically provided in the Act or other Applicable Law or the Association Documents, all rights, powers, obligations, and duties of the Master Association may be performed by the Board in the name of and on behalf of the Master Association. The Board shall have all of the powers specified in the Act, the Virginia Property Owners' Association Act and the Association Documents that are reasonably necessary for the proper management and administration of the business, property and affairs of the Master Association. Without limiting the generality of the foregoing, the Board shall have the power to (a) retain a managing agent and to delegate duties and responsibilities to the managing agent to the extent permitted in the Association Documents and the Act, (b) retain the services of lawyers, accountants, architects, engineers and other professionals, and (c) adopt reasonable, nondiscriminatory Rules and Regulations.

2.5.1 Appointment or Election of Directors. The members of the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws, which shall be consistent with the following:

(a) During the Declarant Control Period, the Board of Directors shall have no fewer than three (3) nor more than nine (9) members, with the number to be specified in or fixed in accordance with the Bylaws. Each Director shall be appointed by the Declarant to serve in accordance with the Articles of Incorporation and Bylaws.

(b) After the expiration of the Declarant Control Period, the Board of Directors shall have no fewer than six (6), nor more than twelve (12), members, with the number to be specified in or fixed in accordance with the Bylaws. The Bylaws shall require that at least one-third (1/3) of the number of Directors be elected by the Class B Members and the remainder, by the Class A Members, each such Class acting as a separate voting group.

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2.5.2 Specific Board Duties. In addition to the duties of the Board arising under other provisions of the Association Documents, the Board shall cause the Master Association to comply with the Act and the Virginia Property Owners' Association Act, including applicable provisions thereof concerning (i) the maintenance of books and records, (ii) access to books and records, (iii) notice of and access to meetings of the Board, (iv) furnishing disclosure packets and other information to prospective Owners, (v) publication of adopted Rules and Regulations, and (vi) filing or furnishing reports, statements, and certifications.

2.5.3 Liability Limitations The Board shall not be obligated to exercise its rights and powers, and the failure or refusal to exercise the same shall not constitute a breach or default by the Board. Neither Declarant nor any Board member, officer, agent or employee of the Master Association shall be personally liable for any debt incurred by the Master Association or for any wrongful conduct by another such member, officer, agent or employee. Neither Declarant nor the Master Association, nor any member of its Board, shall be liable for consequential damages for any act or omission in the discharge of its responsibilities under the Association Documents.

2.6 Management. The Board may employ a management agent or manager, upon such terms as the Board deems commercially reasonable, to perform such duties and services as the Board may from time to time designate, including (a) preparing proposed Budgets, Budget amendments, and other financial information, (b) establishing and implementing procedures for collection of Assessments, (c) hiring, firing, and supervising such personnel as may be required to discharge the Master Association's Upkeep obligations, and (d) providing such other services as may be consistent with and incidental to the duties of the Master Association in connection with the operation of the Property. Any management agreement entered into by the Master Association shall provide for termination for cause by either party upon thirty (30) days' written notice to the other party and shall be for a term not to exceed one (1) year, renewable for successive one-year periods with the mutual agreement of the parties.

ARTICLE III

ASSESSMENTS

3.1 Covenant To Pay Assessments. Declarant (for each Lot owned by it) and each Owner other than Declarant (by acceptance of a deed or other document that creates in such Owner the interest required to be an Owner) covenant and agree to pay to the Master Association (a) Common Expense Assessments, (b) Transportation Management Assessments, and (c) Individual Assessments (collectively, the "Assessments"), which Assessments shall be fixed and collected in accordance with the Association Documents. Payments of the Assessments shall be made as directed by the Board of Directors in accordance with the Association Documents.

3.1.1 Lien and Owner's Personal Liability. Each Assessment (together with any interest, late charges, reasonable attorneys fees, and court costs) shall be a continuing lien on the Lot against which the Assessment is made (to be perfected in accordance with the Virginia Property Owners' Association Act) and shall also be the personal obligation of the Owner of the Lot on the date payment of the Assessment (or applicable installment thereof) becomes due.

3.1.2 Purchaser Liability. No Owner shall be liable for the payment of any part of an Assessment becoming due after the date of recordation of a conveyance in fee by such Owner of the assessed Lot. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid Assessments against the subject Lot accruing on or before the date of the conveyance, but the purchaser shall be entitled to rely on a certificate given in accordance with Section 3.6.

3.1.3 Owners Association Liability. Notwithstanding the foregoing, if any Owner creates a condominium or cooperative for the ownership of its Lot, the Owners Association thereof shall be and remain personally liable to the Master Association for the collection and payment of the aggregate amount of all Assessments attributable to Lots conveyed or transferred to individual unit owners or leased to proprietary lessees. Any such Assessments shall be allocated to and paid by unit owners and proprietary lessees through their Owners Associations, in accordance with the declaration and other documents governing the condominium or cooperative.

3.1.4 Mortgagee Liability. The priority of liens for assessments and charges shall be governed by § 55-516 of the Virginia Property Owners' Association Act, and the liability of the Mortgagees and purchasers at foreclosure of Mortgages shall be established accordingly.

3.2 Common Expense Assessments. The Master Association shall have the right and power to levy and collect annual and special Common Expense Assessments sufficient to pay Common Expenses.

3.2.1 Annual Budgets. Within thirty (30) days after the Effective Date, the Board of Directors shall adopt a Budget for the then current fiscal year of the Master Association. At least sixty (60) days before the beginning of each subsequent fiscal year of the Master Association, the Board shall adopt a Budget for the ensuing fiscal year. The Budget shall contain a reasonably detailed estimate of the Common Expenses anticipated for the applicable fiscal year, including amounts for (a) Upkeep of those portions of the Common Area, Landscape Easement Areas, Public Easement Areas and Community Features for which the Master Association is responsible, (b) Upkeep of the Lots to the limited extent provided in the Association Documents, (c) Upkeep of Utilities within the Common Area or within easements for the benefit of multiple Lots, (d) funding such reserves as the Board may establish for working capital, contingencies, and replacements, (e) discharging other duties and obligations of the Master Association, including the payment of (i) taxes and other impositions by Governmental Authorities with respect to Common Area, (ii) insurance premiums, and (iii) administrative expenses, including management fees, and (e) such other costs and expenses as the Board may deem necessary or appropriate and in the best interest of the Master Association and its Members.

3.2.2 Assessment Shares. Before the beginning of each fiscal year of the Master Association, the Board shall fix the amount of the aggregate annual Common Expense Assessment for the ensuing fiscal year, in an amount sufficient to pay the estimated Common Expenses as set forth in the Annual Budget. Each Lot shall be assessed the product of the aggregate annual Common Expense Assessment multiplied by a fraction, (a) the numerator of

which is the number of Assessment Units allocated to the Lot and (b) the denominator of which is the total number of Assessment Units allocated to all Lots.

3.2.3 Allocation of Assessment Units. The number of Assessment Units allocated to each Lot shall be determined as follows, as of the applicable Record Date:

(a) Six (6) Assessment Units shall be allocated to each Commercial Lot for each 1,000 square feet of Gross Floor Area (or major fraction thereof) permitted for any use and to each Residential Lot for each 1,000 square feet of Gross Floor Area (or major fraction thereof) permitted for retail use; and

(b) Two (2) Assessment Units shall be allocated to each Residential Lot for each 1,000 square feet of Gross Floor Area (or major fraction thereof) permitted on such Lot for any use other than retail.

In the case of a Condominium Project or a Cooperative Project, the Assessment Units shall be allocated based on the aggregate Gross Floor Area of the Property comprising the Project, which shall then be reallocated to the Owners within the Project in accordance with the organizational documents of the Owners Association. If those documents fail to provide for such reallocation, the Assessment Units shall be reallocated according to the same ratios governing the sharing of operating expenses of the Owners Association.

Notwithstanding the foregoing, the number of Assessment Units allocated to a Lot shall be adjusted for periods prior to completion of improvements on the Lot, as follows:

(1) The number of Assessment Units allocated on account of Gross Floor Area for which no building permit has been issued shall be ten percent (10%) of the number determined in accordance with subparagraphs (a) and (b) above;

(2) The number of Assessment Units allocated on account of Gross Floor Area for which a building permit has been issued shall be twenty-five percent (25%) of the number determined in accordance with subparagraphs (a) and (b) above; and

(3) The number of Assessment Units allocated on account of Gross Floor Area on a Commercial Lot or for retail uses on a Residential Lot for which a Certificate of Occupancy has been issued shall be one hundred percent (100%) of the number determined in accordance with subparagraph (a) above; and

(4) The number of Assessment Units allocated on account of Gross Floor Area of a Residential Lot (exclusive of retail use areas) for which a Certificate of Occupancy has been issued shall be one hundred percent (100%) of the number determined in accordance with subparagraph (b) above.

The Record Date for initially determining the number of Assessment Units shall be the Effective Date and, thereafter, shall be the first day of each installment period established for payment of the annual Common Expense Assessment. For example, if the Common Expense Assessment is payable in quarterly installments, the Assessment Units applicable to each Lot shall be determined as of the first day of each quarter based on the best information available to

the Board or its billing agent as of that date. A table illustrating the hypothetical application of Assessment Unit ratios based on the current building densities authorized under the Entitlements is attached as Exhibit C.

Upon each subdivision, resubdivision, recombination, or boundary adjustment of any Lot or Lots, the affected Owners (or Owners Associations in the case of Condominium Projects or Cooperative Projects) shall expressly allocate between or among the resulting Lots all of the Gross Floor Area allowable on such Lot or Lots under the Entitlements. If the affected Owners or Owners Associations fail to do so, the Board of Directors shall have the authority to make the allocation such that, at all times, all of the allowable Gross Floor Area allocated to the Property under the Entitlements shall be allocated to the Lots for the purpose of determining Assessment Units.

3.2.4 Installment Payments and Due Dates. Annual Common Expense Assessments and the lien therefor shall be due and payable in approximately equal periodic installments, as established by the Board of Directors, but such installments shall be due not less frequently than quarterly or more frequently than monthly. The annual Common Expense Assessment for any partial year in which the Lot is subject to the Assessment shall be prorated based on the number of days remaining in the calendar year.

3.2.5 Special Assessments. The Board of Directors may levy additional, special Common Expense Assessments to the extent that actual Common Expenses exceed the estimate of Common Expenses in the Budget. The Board shall give notice of any additional Common Expense Assessments to the Owners or, in the case any Condominium Project or Cooperative Project, to the Owners Associations (who shall, in turn, give notice to their unit owners or proprietary lessees), specifying in reasonable detail (by Budget amendment or otherwise) the amount and reasons for the additional Assessment. Unless otherwise specified in the notice from the Board, the amount of the additional Assessment shall be payable in full with the next periodic installment of the annual Common Expense Assessment which is due more than ten (10) days after the date of the notice.

3.2.6 Failure To Adopt Budget. The failure or delay of the Board of Directors to adopt a Budget or to fix the Common Expense Assessment for any fiscal year shall not constitute a waiver or release of an Owner's obligation to pay the allocable share of Common Expenses whenever the same shall have been determined and, in the absence of a Budget, Owners and Owners Associations (on behalf of their unit owners or proprietary lessees) shall continue to pay installments of the annual Common Expense Assessment at the rates established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which begins more than ten (10) days after such new annual or adjusted Budget is adopted and such notice is given.

3.2.7 Surplus and Deficit. Any amount accumulated in excess of the amount required for actual Common Expenses may, at the option of the Board of Directors, be (a) placed in reserve accounts, (b) placed in a special account to be expended solely for the general welfare of the Owners, (c) credited to the next periodic installments due from Owners under the Budget for the current fiscal year, until exhausted, or (d) be distributed to, or for the benefit of, each Owner (including the Declarant) in proportion to the percentage (if any) of Common Expense

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Assessments paid by or for such Owner. Unless the Budget for the succeeding fiscal year is adjusted to amortize the deficit arising during a current fiscal year, any net shortage in the collected Common Expense Assessments necessary to cover Common Expenses shall be assessed as a special Common Expense Assessment in accordance with Section 3.2.5 hereof.

3.3 Transportation Management Assessments. The Board of Directors of the Master Association, or the governing body of a separate Transportation Management Association established in accordance with the PDSP Conditions, shall annually establish a separate budget (based on a fiscal year for the twelve months ending June 30) to fund the Transportation Management Program required under the Entitlements (especially Condition 28 of the PDSP Conditions). Based on that budget, as the same may be amended from time to time, the Master Association shall levy Transportation Management Assessments in accordance with PDSP Condition 28. The Transportation Management Assessments shall be levied against all Lots in amounts not exceeding the maximum amounts permitted under PDSP Condition 28. Funds collected for the Transportation Management Program shall be deposited in and disbursed from one or more separate accounts established and used solely for that purpose.

3.4 Individual Assessments. The Board of Directors shall have the right and power to levy an Individual Assessment against a Lot and its Owner for the amount of any costs incurred by the Master Association as a result of (a) the Owner's failure to perform its Upkeep obligations under this Declaration, (b) subject to §55-513B of the Virginia Property Owners' Association Act, Owner's failure to perform or observe any other obligation or duty under this Declaration, the Entitlements, or Applicable Law, or (c) the negligence or willful misconduct of the Owner (except to the extent that the right of subrogation has been waived), in each such case after the expiration of any required grace or cure period. Each such Individual Assessment shall be due and shall become a lien ten (10) days after the Board gives notice of levy of the Assessment, unless the notice specifies a later date.

3.5 Collection of Assessments. The Board of Directors, directly or through its agents or representatives, may take action to collect any assessment due from, or with respect to, any Owner that remains unpaid after the due date for payment thereof. Any assessment or installment thereof not paid within fifteen (15) days after the due date shall accrue a late charge in the amount of four percent (4%) of the delinquent Assessment or such other amounts as may be lawfully established from time to time by the Board of Directors, plus interest as provided in Section 11.2.4. If any Owners Association should refuse or fail to pursue diligently the collection of any Assessments levied against or with respect to a constituent Owner, the Master Association may, but shall not be obligated to, seek recovery of the unpaid Assessment directly from such Owner as subrogee and attorney-in-fact of the Owners Association.

3.6 Statement of Assessments. The Board of Directors shall provide any Owner, contract purchaser, transferee or Mortgagee within fourteen (14) days after a written request therefor, with a written statement of all unpaid Assessments due with respect to a specific Lot (or a statement that the amount of unpaid Assessments is zero). No contract purchaser, Mortgagee, or transferee requesting such a statement shall be liable for, nor shall the Lot conveyed to such Person relying on such statement be subject to a lien for any unpaid Assessments due before the date of such statement in excess of the amount set forth in the statement. This section, however, shall not be interpreted to release any Person from liability for any Assessments levied while

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such Person owned the Lot. The Board of Directors may impose a reasonable charge to cover the cost of preparing a statement in an amount not to exceed any maximum established by the Virginia Property Owners' Association Act.

ARTICLE IV

COMMON AREA

4.1 Designation of Common Area. The Property shall consist of Lots and Common Area. In a manner that is consistent with the Entitlements, Declarant shall from time to time designate and delineate, by plat or other document recorded in the Land Records, those areas of the Property that are or will become Common Area. Common Area will include the area of (i) the Parks, (ii) the rights-of-way of all streets described in the Design Guidelines as "Framework Streets," "Secondary Streets," and "Tertiary Streets" (including travel lanes, medians, curbs, planting strips, and sidewalks), and (iii) the Transit Corridor. Property shall not be considered Common Area solely because it is burdened by a Landscape Easement, Public Easement, or an easement for Utilities (except within a street right-of-way) or any other purpose, even though the Master Association may maintain such property.

4.2 Improvements in Common Area. The Master Association shall not be responsible for the original furnishing, installation or construction of Community Features or other infrastructure improvements in the Common Area (the "**Original Infrastructure**"). Declarant may, in connection with the conveyance of Lots, require by express agreement between the parties that the purchasing Owners assume responsibility for some or all of Original Infrastructure, including, for example, all Community Features between the back of curbs to the common boundary line of the street and the purchased Lot. Declarant reserves the right to install, and grant other Persons the right to install, Utilities and other additional improvements in the Common Area after its transfer to the Master Association, County or other Governmental Authority, in accordance with this Declaration and the Entitlements. Declarant shall have the right to borrow money for the Original Infrastructure secured by a lien or encumbrance on the Common Area that is subject and subordinate to all rights, obligations, interests, and privileges established by this Declaration or the Entitlements in favor of any Owner, Mortgagee or Governmental Authority.

4.3 Transfer of Common Area. Common Area shall be transferred or dedicated incrementally to the Master Association or a Governmental Authority, not later than the date on which such transfers or dedications are required by the PDSP, this Declaration, any Supplemental Declaration or Applicable Law. The transfer or dedication shall be by special warranty deed or deed of easement, free of any encumbrance securing the repayment of monetary obligations, including mechanics' liens, but may be transferred subject to all easements, restrictions, and other encumbrances then of record (including this Declaration, but excluding any real estate taxes attributable to open space or common space through the date of transfer) which do not unreasonably interfere with the purpose of the Common Area (including easements for, and title to, duct banks, vaults, meters, and other facilities constituting or relating to Utilities). The Master Association shall accept title to the Common Area when offered by Declarant in the condition required by this Declaration.

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4.4 Upkeep of Common Area. Except to the extent that the County, another Governmental Authority or an Owner has accepted responsibility for Upkeep of the Common Area, the Master Association shall be responsible for such Upkeep. The costs incurred by the Master Association in the discharge of its responsibilities for Upkeep of the Common Area, in accordance with this Declaration, shall be considered Common Expenses. Until accepted for maintenance and other Upkeep by a Governmental Authority, each Owner or other Person using a street or other Common Area shall be responsible to Declarant for any damage to or destruction of curbs, pavement, meters, and other infrastructure improvements caused by such Owner or other Person or their agents or contractors.

4.5 Use of Common Area. Rights to use the Common Area are reserved and granted in Articles V, VI and VII hereof. No provisions of this Declaration or any other Association Documents shall be construed to prevent Declarant or the Master Association from permitting public access to or use of any Common Area as contemplated under the Entitlements; however, no provision of this Declaration or the other Association Documents shall be construed as an implied dedication of any Common Area to public use prior to an express dedication and acceptance thereof. Declarant may, and to the extent required by the County shall, designate each segment of the Common Area as a Public Easement Area upon completion of the Original Infrastructure in such segment. Except to the extent that control is assumed by a Governmental Authority, the Board of Directors shall have the sole and exclusive control and authority over use of the Common Area.

4.6 Boundary Adjustments. Declarant, during the Declarant Control Period, and the Board of Directors thereafter, shall have the power and authority to transfer portions of the Common Area for the purpose of adjusting Lot lines or other lines in connection with the orderly development of the Property, provided that the transfer is consistent with the Entitlements.

4.7 Easements in Common Area. Declarant during its period of ownership and the Master Association thereafter shall have the right to grant easements upon, over, under, and across the Common Area, or to reserve easements or fee title to the real property below the surface for such uses as are consistent with the Entitlements, including parking and other structures under one or more street rights-of-way or Parks.

ARTICLE V

EASEMENTS

5.1 Easements Reserved to Declarant. Declarant hereby reserves to itself and its successors and assigns, the following nonexclusive, blanket easements upon, over, under, and across the Property, as the same may be exercised, delineated, relocated and vacated, in whole or in part, in accordance with Section 5.4

5.1.1 Easements To Facilitate Development. Easements are reserved for all purposes reasonably related to the construction and installation of improvements that are consistent with or required by the Entitlements, including (a) slope easements, (b) temporary construction easements, (c) sedimentation and erosion control easements, (d) storm water

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management easements, (e) lateral support easements, (f) easements for the storage of building materials and equipment, and (g) easements for underground structures.

5.1.2 Easements for Utilities. Easements are reserved for the construction, installation, and Upkeep of Utilities, including pipes, conduits, lines, wires, transformers, meters, and other facilities, and for reasonable ingress, egress, and access incident thereto.

5.1.3 Easements for Surface Drainage. Easements are reserved to correct and maintain the drainage of surface water to comply with reasonable standards of health, safety, and appearance, including any necessary grading of the land and removal of vegetation.

5.1.4 Easements for Community Features. Easements are reserved for the installation and Upkeep of Community Features within the Common Area, Public Easement Areas, and Landscape Easement Areas, and for reasonable ingress, egress, and access incident thereto.

5.2 Easements of Declarant and Master Association. Declarant hereby reserves to itself and its successors and assigns, and grants to the Master Association, the following nonexclusive easements on, upon, over, across, through, and under the Property, as the same may be exercised, delineated, relocated and vacated, in whole or in part, in accordance with Section 5.4.

5.2.1 Easements for Upkeep. Easements are reserved and granted for ingress, egress and access by Persons authorized by Declarant or the Master Association (including utility, landscaping, and property management companies) as necessary or appropriate (a) for the Upkeep of Utilities, Community Features and other improvements on the Property for which Declarant or the Master Association, or their assignees or contractors, are responsible, or (b) for remedying an Owner's failure to discharge its Upkeep obligations.

5.2.2 Easements for Landscaping. Easements are reserved and granted for ingress, egress, and access by Persons authorized by Declarant or the Master Association (including landscaping and property management companies) as necessary or appropriate for the Upkeep of landscaping, irrigation systems, and other Community Features in Landscape Easement Areas.

5.3 Public Easements and Landscape Easements. Declarant, its successors and assigns, shall have the right to designate and describe Public Easement Areas and Landscape Easement Areas and to reserve to itself, and grant to the other Persons including the general public, Public Easements and Landscape Easements that are required by or consistent with the Entitlements.

5.4 Exercise of Rights. The Declarant shall have the power and authority to exercise any right reserved to Declarant or the Master Association with respect to any blanket or general easement described in this Article V by (a) preparing, executing, and recording in the Land Records one or more Supplemental Declarations or one or more plats, deeds or other appropriate documents setting forth with more specificity and detail the purpose, scope, extent, and location of the easement, (b) vacating or relinquishing in whole or in part any such blanket or general easement and/or (c) relocating in whole or in part any such blanket or general or any more

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specific easement established under clause (a). If an easement is vacated or relocated, the cost of vacation or relocation shall be paid by the party requesting the same. All of the rights reserved to Declarant or granted to the Master Association shall be exercised reasonably, equitably, and in furtherance of the purposes of this Declaration and the orderly development and use of the Property in accordance with the Entitlements. Without limiting the generality of the foregoing, Declarant or the Master Association, as applicable, shall in the exercise of its power and authority under this Article V: (i) give reasonable prior notice to all directly affected Owners (except in an emergency), (ii) use commercially reasonable efforts to minimize any economic or aesthetic injury to the affected Lots, (iii) refrain from unreasonably interfering with the use and enjoyment of the affected Lots, and (iv) refrain from any interference with any improvements on the affected Lots that are shown on a final site plan approved by the County. Declarant shall, during the Declarant Control Period only, be entitled to exercise and enjoy the rights reserved to it under this Article V, and to assign to, or share with, another Person such rights.

5.5 Further Assurances. Upon written request of the Declarant or the Master Association, as applicable, each Member or Owner shall execute, acknowledge and deliver such further assurances concerning the rights reserved and granted under this Article V as may be necessary or appropriate to create, confirm or acknowledge such rights or the exercise thereof.

5.6 Easements for Use of Common Area. Each Owner and each other Person lawfully occupying a Lot is hereby granted a nonexclusive right and easement to use and enjoy the Common Area in accordance with this Declaration, the Association Documents, and Applicable Law, subject to any reasonable and uniform admission or use charge imposed by and for the benefit of the Master Association. Such right and easement shall be appurtenant to each Lot and may not be severed from the Lot. Prior to the dedication or transfer necessary for portions of the Property to become Common Area, each Owner and other Person lawfully occupying a Lot shall have a nonexclusive easement for ingress, egress, and regress as necessary to provide reasonable vehicular and pedestrian access over the Property to such Lot. Such easement shall be as designated and described by Declarant and shall be used and enjoyed in such manner as will not unreasonably interfere with Declarant's construction and installation of streets, Utilities, and other improvements.

5.7 Easements for Encroachments. Declarant hereby reserves to itself and its successors and assigns and grants to the Master Association, and each Owner, easements for the continuation and Upkeep of encroachments resulting from (a) minor, unintentional inaccuracies in survey, construction, or reconstruction, or (b) settlement or movement of the land or improvements. This encroachment easement is not intended to relieve any Person from liability for its negligence or willful misconduct.

5.8 Easements for Support. To the extent that any portion of the Property supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and adjacent support of the latter. This is intended to be in addition to any common law or statutory lateral support rights.

5.9 No Merger of Easements. The easements established or authorized in this Article 5 shall not be terminated or extinguished by merger or otherwise, except upon execution and recordation in the Land Records of an instrument specifically terminating the easement.

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5.10 Assignment of Easements. Declarant shall have the right to assign, in whole or in part, the easements reserved hereunder or granted pursuant hereto.

ARTICLE VI

UPKEEP AND OPERATION OF THE PROPERTY

6.1 Upkeep of Common Area. The Common Area shall be maintained in accordance with the Entitlements and with standards established by the Board of Directors; provided that all Upkeep shall be of first-class quality, and all replacement property shall be as good as or better than the Original Infrastructure. Notwithstanding the general provisions for maintenance set forth in this section, specific maintenance responsibilities and allocations of maintenance costs may be determined and controlled by provisions in a Supplemental Declaration or on a plat recorded in the Land Records.

6.1.1 Upkeep by the Master Association. Except as set forth below or in a Supplemental Declaration, the Master Association shall be responsible for the Upkeep of all of the Common Area, the cost of which shall be assessed against all Lots as a Common Expense. Declarant anticipates that the Master Association will, at a minimum, be responsible for Upkeep of the Parks and the private streets and sidewalks described in the Design Guidelines as "Secondary Streets" and "Tertiary Streets." If the Board of Directors determines that any Upkeep was necessitated by the negligence, misuse, or neglect of an Owner or for which an Owner is responsible, the cost of such Upkeep may be assessed against such Owner's Lot pursuant to Section 3.4. If the Board of Directors determines that the County has failed to discharge its Upkeep responsibilities, the Master Association may perform the Upkeep and assess the costs thereof as a Common Expense.

6.1.2 Upkeep by Governmental Authority. To the extent provided in the Entitlements or any Supplemental Declaration approved by the County, the County, or some other Governmental Authority shall be responsible for the Upkeep of the following components of the Common Area upon their acceptance for Upkeep by the County or other Governmental Authority: (a) public streets and sidewalks (except landscaped medians and planting strips) described in the Design Guidelines as "Framework Streets," (b) private streets and sidewalks described as "Secondary Streets" and "Tertiary Streets," subject to and conditioned upon agreements with the Master Association for reimbursement of the cost thereof as a Common Expense, and (c) the Transit Corridor.

6.1.3 Upkeep by Owners Associations and Subassociations. Portions of the Property designated and described in Supplemental Declarations or plats recorded in the Land Records may be identified as common areas or common elements exclusively or predominantly benefiting members of an Owners Association or Subassociation. Upkeep of such areas may be designated as the responsibility of the applicable Owners Association or Subassociation.

6.2 Upkeep of Community Features. Except to the extent otherwise provided in this Declaration or in an applicable Supplemental Declaration or plat recorded in the Land Records, the Master Association shall be responsible for Upkeep of all Community Features, the cost of which shall be assessed against all Lots as a Common Expense.

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6.3 Transportation Management Program. The Master Association shall be responsible for the establishment and operation of a Transportation Management Program that complies with the requirements of the Entitlements, the cost of which shall be assessed against all Lots as a Transportation Management Assessment.

6.4 Upkeep of Lots. Each Owner shall, directly or through an Owners Association, keep any Lot owned by it (a) in good order, condition, and repair, (b) in clean, sanitary, and safe condition, and (c) in compliance with this Declaration, any applicable Supplemental Declaration, the Entitlements and other Applicable Law. To the extent that Upkeep of a Lot is not the express responsibility of Declarant, the Master Association, a Governmental Authority or a Person supplying Utilities, each Owner shall be responsible for the Upkeep of any area of its Lot burdened with an easement. If an Owner shall fail to discharge its Upkeep responsibilities, and such failure shall continue for thirty (30) days after notice of default, the Master Association may remedy the default and recover the cost thereof as an Individual Assessment in accordance with Section 3.4.

6.5 Additions and Alterations by the Master Association. The Board of Directors may from time to time determine that it is in the best interest of the Master Association and the Owners to make capital improvements, additions or alterations in or to the Common Area or the Community Features. after completion of the applicable portions of the Original Infrastructure. The cost of furnishing and installing the same shall be assessed to the Owners as a Common Expense, provided that such cost shall not exceed, in the aggregate, twenty percent (20%) of the annual Common Expense Assessment for the current fiscal year of the Master Association.

6.6 Services by the Master Association. Except as expressly required by this Declaration, a Supplemental Declaration or the Entitlements, the Master Association shall not be obligated to provide any services to the Owners. However, the Master Association, in the sole discretion of its Board, may contract with any Owners, Owners Association or Subassociation to provide such Person's additional services upon mutually acceptable terms and conditions, including (a) Upkeep of any common area or common elements, (b) enforcement of any declaration creating or governing an Owners Association or Subassociation, (c) collection of assessments under the declaration creating or governing an Owners Association or Subassociation, (d) financial and property management services, and (e) obtaining and maintaining insurance for an Owners Association or Subassociation. The cost of providing any such services shall not be considered a Common Expense.

6.7 Limitation of Liability. Neither Declarant nor the Master Association shall be liable for any failure or interruption of any Utilities or other services to be furnished by the Master Association or for personal injury (including death) or the loss of or damage to property, unless caused by the gross negligence or willful misconduct of the Declarant or Master Association, as applicable. In no event shall either the Declarant or the Master Association be liable for consequential damages. This provision shall not be construed to relieve any insurer of its contractual or indemnification obligations under any policy obtained for the benefit of Declarant, the Master Association or any Member or Owner.

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ARTICLE VII

USE OF THE PROPERTY

7.1 Permitted Uses. The Property shall be owned, used, and occupied only in accordance with the Entitlements, other Applicable Law and the Association Documents and in accordance with any permits or approvals issued pursuant to the foregoing. Declarant, for itself and its successors and assigns, reserves the right to use its Lots for promotional, marketing, sales, display, customer service (such as a visitor center), management, and construction administration purposes, to the extent permitted by Applicable Law.

7.2 Restrictions. The Property shall be owned, used, and occupied subject to the following restrictions:

7.2.1 Noise. No Person shall cause any unreasonably loud noise anywhere on the Property (except for security devices). This provision shall not be construed as prohibiting construction or Upkeep, but all such activities shall be undertaken in a commercially reasonable manner that minimizes the disturbance of and interference with the permitted use of the Property by all other Persons.

7.2.2 Nuisance. No Person shall engage in any activity, practice, or behavior that would constitute a nuisance, unreasonable disturbance or noxious or offensive trade or activity. Each Owner shall make commercially reasonable efforts to prevent the creation of any unclean, unhealthy, unsightly or unkempt condition on its Lot.

7.2.3 Trash. No Person shall burn any trash, leaves, debris, or other material outside on the Property. Each Owner shall be responsible for the proper collection, storage and disposal of garbage, solid waste, bulk materials and building materials on its Lot in accordance with the Rules and Regulations and Applicable Law.

7.2.4 Utilities. Except as provided in this section, all pipes, cables, transmission lines, and other Utilities on the Lots shall be located underground. Transformers, meters, and other apparatus may be located above ground at locations approved by Declarant during the Declarant Control Period and by the Master Association thereafter.

7.2.5 Construction. With respect to the installation or construction of improvements on the Property, the responsible Owner shall:

(a) keep all construction, staging, and storage areas in good order and clean condition;

(b) dispose of all debris in dumpsters or other containers that shall be emptied as necessary to avoid spillage;

(c) use commercially reasonable efforts to screen the locations of construction materials, chemical toilets, dumpsters, and other unsightly items;

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(d) clean frequently (approximately once each week) construction dirt, mud, and gravel from streets deposited by construction vehicles;

(e) refrain from parking overnight, on any street within the Property, any vehicle with carrying capacity greater than three-fourths of a ton that is not engaged in construction activity;

(f) implement adequate sediment control measures (which may include the installation of silt fences, straw bale fences, storm water inlet protection, and temporary seeding), including measures required by Governmental Authorities;

(g) engage in construction activities only between 7:00 a.m. and 8:00 p.m., Monday through Saturday, if such activities are within 300 feet of any occupied Residential Lot;

(h) refrain from changing oil of any vehicle or other equipment;

(i) repair and replace, or pay the cost of repairing or replacing, curbs, gutters, meters, pavement, and landscaping installed by others in street rights-of-way or other Common Area; and

(j) diligently prosecute the work.

7.2.6 Obstructions. No trees, hedges, improvements, or other obstructions shall be installed, placed, or maintained in violation of any minimum building setback or sight-line area of a Lot, as designated and described on a plat or other instrument in the Land Records or Applicable Law. No Person shall obstruct the proper access to, or use of any portion of, the Common Area.

7.2.7 Hazardous Materials. No Hazardous Materials shall be used, generated, stored, or disposed of on the Property in violation of any applicable Environmental Laws.

7.2.8 Parking. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on the Property for more than thirty (30) days. All vehicles shall be parked in a street or in other portions of the Common Area only in accordance with the applicable provisions of the Rules and Regulations and the requirements of Governmental Authorities having jurisdiction.

7.2.9 Animals. No livestock, poultry, or other animals shall be raised, bred, or kept on any portion of the Property. Dogs, cats, or other customary household pets (as determined by the Board), only, may be kept for personal enjoyment, protection, or assistance, so long as they do not create a nuisance (including noise, odor, damage, or threat to safety). All household pets shall be registered, licensed, and inoculated as required by Applicable Law and shall be kept on a leash or otherwise appropriately restrained outside any building. The Board of Directors may, in their reasonable discretion, adopt and publish supplemental Rules and Regulations concerning animals on the Property.

7.2.10 Decorative Lighting. Decorative exterior lighting, including seasonal lighting displays, may be made subject to limitations and conditions specified in Rules and Regulations adopted by the Board of Directors.

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7.3 Lessees and Guests. Each Owner leasing space in a building constructed on any portion of its Lot shall do so using a written lease (a) requiring the tenant and its guests and invitees not to violate the Rules and Regulations or other Association Documents, (b) specifying the Master Association shall have the right to enforce the Rules and Regulations and other Association Documents against the tenant and its guests and invitee, and (c) providing that the violation of the Rules and Regulations or other Association Documents by the tenant shall constitute a default under the lease. Each Owner leasing any portion of its Lot shall use commercially reasonable efforts to enforce the provision of the lease referred to in this section.

7.4 Rules and Regulations. Subject to the provisions of §55-513 of the Virginia Property Owners' Association Act, the Board of Directors may adopt, amend, repeal, publish, and enforce reasonable, nondiscriminatory Rules and Regulations further restricting and regulating the use and enjoyment of the Property or any portion thereof, including rules and regulations relating to use of the Common Area (including parking and use of Parks) or the enhancement and protection of the value, desirability and marketability of the Property for the benefit of the Owners. Copies of the Rules and Regulations shall, upon request, be furnished to each Member and shall otherwise be made available as required by Applicable Law.

7.5 Subdivision. During the Declarant Control Period, no Lot shall be subdivided or resubdivided without the approval of Declarant. This provision does not apply to the creation of units in a Condominium Project or Cooperative Project which otherwise complies with this Declaration, any applicable Supplemental Declaration and the Entitlements.

ARTICLE VIII

INSURANCE

8.1 Association Coverage. The Board shall cause the Master Association to obtain and maintain in force (a) property insurance, (b) commercial general liability insurance, and (c) fidelity insurance, with reputable companies licensed in the Commonwealth of Virginia under policies having the following minimum limits and coverage. The premiums for such insurance, any underinsured losses, and any losses attributable to a policy deductible or self-insured retention shall be considered Common Expenses:

8.1.1 Property Insurance. The Master Association shall obtain and maintain in force "all-risk" or similar coverage on any buildings or other insurable property owned by the Master Association or on any buildings or other insurable property which the Master Association is obligated to maintain or insure. The required coverage shall be maintained in amounts sufficient to cover the full replacement cost of the covered property, subject to such deductibles or self-insured retention amounts as the Board of Directors deems prudent. The policies shall include standard provisions for waiving subrogation.

8.1.2 Commercial General Liability Insurance. The Master Association shall obtain and maintain in force commercial general liability coverage for legal liability resulting from bodily injury (including death) or property damage that results from the ownership, operation, maintenance or use of the Common Area or other property owned by the Master Association or

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for which the Master Association may be liable. The coverage shall be maintained in a policy or policies having a combined single limit of at least \$1,000,000.

8.1.3 Fidelity Insurance. To the extent reasonably available, the Master Association shall obtain and maintain blanket fidelity insurance for all officers, directors, managers, and employees of the Master Association and all other persons handling or responsible for funds held or administered by the Master Association. The amount of the coverage shall be sufficient to cover the maximum amount of the funds (including reserve funds) that will be in the custody of the Master Association or its management agent at any time while the policy is in force and shall be not less than the sum of all Assessments for any three (3) months during the policy period plus any funded reserves. Where the Board has delegated to a management agent some or all of the responsibility for handling funds, the management agent shall be required to maintain fidelity insurance providing coverage that equals or exceeds the coverage maintained by the Master Association.

8.1.4 Supplemental Coverages. The Board, in its discretion, may cause the Master Association to obtain and maintain coverage against additional risks and in additional amounts (including directors and officers liability insurance, employers' liability insurance, workers' compensation insurance, and flood insurance), and the premiums for such insurance and any losses attributable to a policy deductible or self-insured retention shall be considered Common Expense. The form of all policies, including insuring clauses, limits, deductibles, self-insured retentions, notice provisions, cancellation privileges, mortgagee protection, and exclusions shall be relegated to the discretion of the Board.

8.1.5 Insurance Proceeds. Subject to any limitations imposed by applicable financing documents or resulting from the inadequacy of the insurance proceeds, the Master Association shall use the net proceeds of its property insurance to repair or replace any damage to or destruction of property covered by the insurance. Any balance from the proceeds of casualty insurance paid to the Master Association shall be transferred to its general reserve for repair and replacement of the Common Area.

8.2 Individual Owner Coverage. Each Owner covenants and agrees with all other Owners to obtain and maintain in force "all-risk" or similar coverage on any buildings or other insurable property on its Lot, which coverage may in the case of a Condominium Project or Cooperative Project be maintained by the Owners Association. The required coverage shall be maintained in amounts sufficient to cover the full replacement cost of the covered property, subject to commercially reasonable deductibles or self-insured retention amounts. Each such policy shall require notice to the Master Association at least thirty (30) days prior to cancellation or substantial modification. Each such policy shall be obtained from a reputable company licensed in the Commonwealth of Virginia. Certificates of the required insurance shall be promptly furnished to the Master Association upon its request.

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ARTICLE IX

RIGHTS OF MORTGAGEES AND SECONDARY MORTGAGE AGENCIES

9.1 Notices to Mortgagees. Any Mortgagee who shall have given written notice to the Master Association (by certified mail, return receipt requested, in accordance with Section 13.1 hereof) adequately identifying the portion of the Property covered by its Mortgage, the name and address of the Lot Owner, and the name and address to which notices shall be sent to the Mortgagee, shall be entitled to receive from the Master Association prompt notice of each of the following with respect to the Lot encumbered by the Mortgage:

9.1.1 Notice of Default. Any default in the payment of Assessments or other amounts owed to the Master Association or any other material default under the Association Documents, which default continues for sixty (60) days;

9.1.2 Lapse of Insurance. Any termination, lapse, or material adverse modification of an insurance policy or fidelity bond held by the Master Association;

9.1.3 Casualty or Condemnation. Any material damage (*i.e.*, requiring repairs in excess of \$100,000) to the Common Area and any material taking (*i.e.*, having a value in excess of \$100,000) of a portion of the Common Area by eminent domain or deed in lieu thereof, except for the dedication of Common Area to a Governmental Authority as contemplated by the Entitlements or the Association Documents;

9.1.4 Annual Financial Statements. The right to receive the annual financial statement of the Master Association, if any.

9.1.5 Books and Records. The right to inspect the books and records of the Master Association at a reasonable time and place and in a reasonable manner.

ARTICLE X

ARCHITECTURAL CONTROL

10.1 Design Guidelines. All improvements on the Property shall conform to the concepts and requirements set forth in the PDSP and Design Guidelines, as the same may be amended by the County or with the County's approval. Before constructing or altering any such improvements, the Owner shall obtain all necessary approvals from the County, other Governmental Authorities having jurisdiction, and any design or site plan review committee established by the County. If the County permits the appointment of any representatives to serve on a site plan or design review committee, the Master Association shall make the appointment.

10.2 New and Supplemental Design Guidelines. If the PDSP and Design Guidelines are no longer in effect and not replaced by the County with a new set of similarly detailed site and exterior building requirements, the Board may establish, publish and enforce (directly or through an Architectural Control Committee appointed by the Board) its own architectural guidelines to preserve and enhance the architectural harmony and physical attractiveness of improvements constructed, reconstructed, or altered on the Property. Any such guidelines of the

APR 10 11 38 AM '12

Board shall be consistent with, or logical extension of, the most recent iteration of the County's Design Guidelines. During the effectiveness of the PDSP and the Design Guidelines, the Board may also adopt and enforce (directly or through an Architectural Control Committee) reasonable, supplemental design guidelines governing the exterior appearance and location of buildings, landscaping, signage, and other improvements on the Property. Any such replacement or supplemental architectural guidelines shall prescribe reasonable procedures for fairly implementing and enforcing the guidelines, including procedures for the orderly and timely submission, review, and approval of plans and specifications, and procedures and parameters for granting variances.

10.3 Limitation of Liability. No member or other representative of the Board of Directors or of any Architectural Review Committee appointed by the Board shall be liable for claims, costs, expenses, or liabilities arising out of services performed pursuant to Section 11.2, except for willful misconduct. Without limiting the generality of the foregoing, no liability shall accrue by reason of mistake of judgment or failure to approve or disapprove of any plans or specifications submitted to the Board or the Architectural Review Committee. Approval of plans and specifications shall not be construed as a representation or warranty concerning the structural soundness, quality, durability, suitability, fitness, or proper functioning of the improvements or that improvements constructed in accordance with such plans and specifications will comply with all Applicable Law.

ARTICLE XI

DEFAULT AND ENFORCEMENT

11.1 Right To Enforce. Declarant, the Master Association, and any Owner or Owners Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and the other Association Documents against any Person violating or threatening to violate such provisions. Each Owners Association and each Subassociation shall have the concurrent right, but not the obligation, to enforce the provisions of this Declaration and the other Association Documents, against its members, unit owners, or proprietary lessees, as applicable. The Master Association shall have the right, but not the obligation, to enforce any Rules and Regulations and any architectural guidelines promulgated by the Board.

11.2 Remedies. In furtherance of the enforcement rights described in Section 11.1, the Master Association and, where applicable, each Owners Association and Subassociation, may exercise any remedy available at law or in equity for the violation of or noncompliance with the obligations referred to in Section 11.1. Without limiting the generality of the foregoing, available remedies shall include the following:

11.2.1 Injunctive Relief. With respect to the violation of any restriction, condition or covenant governing the use or occupancy of any portion of the Property, it shall be presumed that there exists no adequate remedy at law, and the Master Association (and any Owners Association or Subassociation with respect to its members, unit owners, or proprietary lessees) shall be entitled to appropriate preliminary and permanent injunctive relief as necessary to obtain compliance by the noncompliant Person.

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11.2.2 Damages. Each Owner shall be liable to the Master Association for all Assessments and for any costs incurred in performing Upkeep rendered necessary by such Owner's wrongful act or omission or for loss or damage resulting from the negligence or willful misconduct of the Owner or any Persons for whom the Owner is legally responsible. The foregoing shall not be construed as modifying any waiver of subrogation given by or with the approval of any insurance company.

11.2.3 Costs and Attorneys' Fees. In any civil action or other adjudicatory proceedings arising out of an alleged violation of the Rules and Regulations or other Association Documents, the prevailing party shall be entitled to recover the costs of the proceeding, including reasonable attorneys' fees.

11.2.4 Interest. Any amount owed to the Master Association under or pursuant to the Declaration that is not paid when due, shall bear interest at the legal rate from the fifteenth (15th) day after the due date until paid.

11.2.5 Limited Self-Help. If any Owner fails to perform its Upkeep obligations with respect to any portion of the Common Area, Landscape Easement Area, Public Easement Area or Community Features, the Master Association may, after giving such Owner notice and opportunity to cure the default, enter the applicable area in a reasonable manner for the limited purpose of curing the default. Thereafter, the Master Association shall be entitled to recover from such Owner the cost of curing the default through the imposition of an Individual Assessment.

11.2.6 Liens for Assessments. Each Assessment with respect to a Lot made pursuant to the Association Documents is hereby declared to be a lien levied against such Lot. Until fully paid and satisfied, the lien shall apply to and encumber the Lot. With respect to annual Common Expense Assessments, the lien is effective on the Effective Date and on the first day of each fiscal year of the Master Association beginning after the Effective Date. With respect to any additional Assessments, including Transportation Management Assessments, Individual Assessments, and special Common Expense Assessments, the lien is effective on the first day of the next installment payment period which begins more than ten (10) days after the date of notice to the affected Owner or Owners. The Board of Directors, or its managing agent, may file or record such other or further notice of any such lien, or such other or further document, as may be required to perfect such lien in accordance with §55-516 of the Virginia Property Owners' Association Act. The lien created by this section shall have the priority set forth in §55-516 of the Virginia Property Owners' Association Act. The personal obligation of an Owner to pay such Assessment shall remain such Owner's personal obligation, and a suit to recover a money judgment for nonpayment of any Assessment or installment thereof, levied pursuant hereto, may be maintained without foreclosing or waiving the lien herein created to secure the same. In any case where the Assessment is payable in installments, upon a default in the timely payment of any two consecutive installments, the Board or its managing agent may, at its option, accelerate the remaining unpaid installments, all of which shall thereupon become immediately due and payable. The lien for Assessments may be enforced or foreclosed in any manner permitted by Applicable Law, including a civil action instituted by the Master Association, acting through its Board or the Board's managing agent. The Master Association

APR 10 10:30 AM '02

shall be entitled to bid on the Lot at foreclosure or other legal sale of the Lot and to acquire, hold, lease, mortgage, convey and otherwise deal with the Lot.

11.2.7 Fines. The Board of Directors may from time to time establish, impose, and collect fines for violation of obligations under or pursuant to this Declaration, provided that the amount of the fine is reasonable and the manner in which the fine is collected complies with Applicable Law and fundamental fairness.

11.3 Nondisturbance Agreements. The Master Association shall have the power and authority, with respect to its Assessment lien, to enter into recognition, nondisturbance and attornment agreements with tenants of Commercial Lots, upon such terms and conditions as the Board may deem proper. The execution of any such agreement shall not relieve an Owner of such Owner's obligation to pay Assessments.

11.4 Remedies Cumulative; Nonwaiver. All rights and remedies granted to the Master Association, any Owner, Owners Association or any Subassociation by any provision of the Association Documents shall be deemed to be cumulative and in addition to all other available rights and remedies, and the exercise of any one or more right or remedy shall not be considered to be an election of remedies. The failure of the Master Association or any Owner, Owners Association or Subassociation to enforce any right, remedy, or privilege shall not constitute a waiver thereof.

ARTICLE XII

TERM AND AMENDMENT

12.1 Term. This Declaration and the controls, covenants, restrictions, and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner, including Declarant, and their respective heirs, successors, and assigns, for a term of forty (40) years beginning on the Effective Date. Thereafter, the term of this Declaration shall be extended automatically for successive periods of ten (10) years unless prior to the expiration of the then current term the Members of the Master Association shall, by two-thirds (2/3) vote of its Members, adopt a resolution and record a memorandum in the Land Records terminating this Declaration as of the end of the current term. Notwithstanding the foregoing, easements granted pursuant to this Declaration shall be perpetual unless expressly limited by the terms of the instruments creating them. Any action to terminate this Declaration shall include adequate provision for assumption of the obligations of the Master Association under the Entitlements and the Association Documents.

12.2 Perpetuities. If any of the covenants, restrictions, or other provisions of this Declaration shall be deemed void or voidable by reason of the Rule Against Perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the descendants of Elizabeth II, Queen of England, living on the Effective Date.

12.3 Amendment. Subject to the conditions and limitations set forth herein, this Declaration may be amended or modified at any time (a) by resolution adopted, at a meeting of the Members called for that purpose, by two-thirds (2/3) of all votes entitled to be cast by all Members or (b) by an instrument signed by Members entitled to cast two-thirds (2/3) of all votes

APR 11 2006 13

entitled to be cast by all Members. During the Declarant Control Period, any amendment to this Declaration shall also require Declarant's approval. Any amendment that purports to diminish obligations to the County under the Entitlements shall require the County's approval. In addition, Declarant may, during the Declarant Control Period, unilaterally amend this Declaration by recording an instrument in the Land Records for the purpose of (a) making technical corrections or clarifications in accordance with §55-515.2 of the Virginia Property Owners' Association Act, or (b) causing this Declaration to comply with the requirements of any Secondary Mortgage Agency, Governmental Authority, or Applicable Law. No amendment to this Declaration shall remove, revoke, or adversely modify any right, reservation, or privilege of Declarant without the prior written consent of Declarant. Any amendment to this Declaration shall become effective upon the recordation in the Land Records of an appropriate instrument setting forth the amendment with a certification by the secretary of the Master Association attesting to its due adoption. By acceptance of a deed to any Lot or by acceptance of any other legal or equitable interest in the Lot, each and every contract purchaser of a Lot, Owner, Mortgagee, or other Person having an interest in a Lot, automatically and irrevocably names, constitutes, appoints, and confirms Declarant during the Declarant Control Period and the Master Association thereafter as attorney-in-fact for the purpose of executing any such amendment complying with the requirements set forth herein.

12.4 Withdrawing Property. Declarant reserves during the Declarant Control Period the right to withdraw portions of the Property from the operation and effect of this Declaration by executing and recording in the Land Records a Supplemental Declaration for that purpose. No such withdrawal shall be effected if, as a consequence, the burdens of other Owners were materially, adversely affected or the objectives and requirements of the PDSP were frustrated. Declarant may, during the Declarant Control Period, withdraw any portion of the Property from this Declaration for the purpose of dedicating the land to a public use consistent with the Entitlements.

ARTICLE XIII

GENERAL

13.1 Notices. All notices, requests, demands, and other communications to Declarant or the Master Association pursuant to this Declaration shall be delivered by certified mail, return receipt requested, to its last-known address, or if none is known, then to its registered agent in the Commonwealth of Virginia. The current address for the Declarant and the Master Association is: c/o Crescent Potomac Yard Development, LLC, 2805 S. Crystal Drive, Arlington, Virginia 22202, Attn: President.

13.2 Transfer of Declarant Rights. Declarant may transfer some or all of its rights under the Association Documents to any Person acquiring a portion of the Property by an instrument executed and acknowledged by both parties evidencing the transfer recorded in the Land Records.

13.3 Captions and Gender. The captions are inserted only for reference, and are not intended to describe, limit, or enlarge the scope of any provision. The use of the neuter gender shall be deemed to include the feminine and masculine genders, and vice versa.

13.4 Singular and Plural. Singular words shall be deemed to include the plural, and vice versa.

13.5 Severability. Each provision of an Association Document is severable from every other provision, and the invalidity of any one or more provisions shall not change the meaning of or otherwise affect any other provision. To the extent that any provision of the Association Documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent practicable, the provision shall be enforced.

13.6 Interpretation. If there is any conflict among the Association Documents, first, the Declaration and then the applicable Supplemental Declaration shall control, except as to matters of compliance with the Act or the Virginia Property Owners' Association Act, in which case the Act or the Virginia Property Owners' Association Act shall control. Particular provisions shall control general provisions, except that a construction consistent with the Act or the Virginia Property Owners' Association Act shall in all cases control over any construction inconsistent therewith. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents. The term "include" shall be construed as "including, but not limited to."

13.7 Complementary Construction. The Association Documents shall be construed together and shall be deemed to incorporate one another in full. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others.

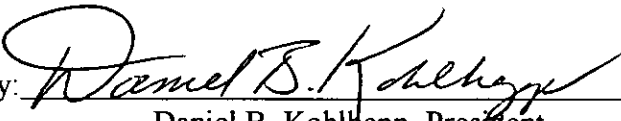
13.8 Implied Rights. The Master Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws or any lease, easement, or other agreement or document affecting the Master Association, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed pursuant to due and proper authority, as of the date first above written.

[Signatures begin on the following page]

10/10/06 10:30 AM

CRESCENT POTOMAC YARD DEVELOPMENT, LLC,
a Delaware limited liability company

By: 
Daniel B. Kohlhepp, President

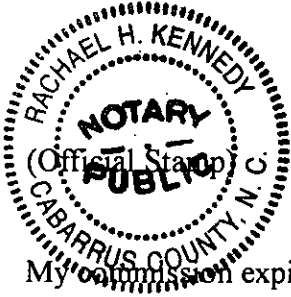
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ACKNOWLEDGMENT

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Rachael H. Kennedy, a Notary Public in and for the jurisdiction stated above, do certify that Daniel B. Kohlhepp, President of Crescent Potomac Yard Development, LLC, a Delaware limited liability company, whose name is signed to the foregoing Declaration, bearing date December 15, 2003, has acknowledged the same before me in the jurisdiction stated above as a duly authorized officer and representative of the limited liability company.

Given under my hand and seal this 12th day of December, 2003.



Rachael H. Kennedy

Notary Public

My commission expires: September 17, 2005

11/18/03 10:00 AM

SCHEDULE OF EXHIBITS

- Exhibit A Plat of the Property
- Exhibit B PDSP Conditions
- Exhibit C Illustrative allocation of Assessment Units

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EXHIBIT A

PLAT OF THE PROPERTY

Recorded in Land Records



Arlington County, Virginia

RECORDED
13

SURVEYOR'S CERTIFICATE

ERNEST S. HOLZMORTH, A DUTY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE PROPERTY DELINEATED BY THIS PLAN IS ACCORDING TO THE RECORDS OF ARRLINGTON COUNTY, VIRGINIA.

I, ERNEST S. HOLZMORTH, CERTIFY THAT THE LAND EMBRACED IN THIS SURVEY IS IDENTIFIED WITHIN THE BOUNDS OF THE ORIGINAL TRACT AND THAT THE SURVEY IS ACCORDING TO THE RECORDS OF ARRLINGTON COUNTY, VIRGINIA. ALL COUSERS ARE REFERENCED TO THE VIRGINIA STATE GRID NORTH IN ACCORDANCE WITH THE REQUIREMENTS OF THE ARRLINGTON COUNTY SUBDIVISION ORDINANCE.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 2003.

ERNEST S. HOLZMORTH



OWNER'S STATEMENT OF CONSENT

THE PLATTING OR DEDICATION OF THE LAND SHOWN HEREON, AND AS DESCRIBED IN THE SURVEYOR'S CERTIFICATE IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE UNDERIGNED OWNER, PROPRIETORS, AND TRUSTEES, IF ANY, OF THE PROPERTY SHOWN HEREON. THE DEDICATION OF ANY EASEMENTS OR RIGHTS OF PUBLIC RIGHTS AND TO THE DEDICATION OF ANY EASEMENTS INDICATED ON SUCH PLAN FOR THE INSTALLATION OF SEWER, WATER OR OTHER UTILITY LINES, OR FOR ACCESS THEREBY, IS HEREBY MADE BY THE OWNER, PROPRIETORS, AND TRUSTEES, IF ANY, OF THE PROPERTY SHOWN HEREON, AND IS HEREBY MADE IN FULL KNOWLEDGE OF THE NATURE AND EXTENT OF THE SAME, AND IS HEREBY MADE FOR THE BENEFIT OF THE PUBLIC.

CRESCENT POTOMAC YARD DEVELOPMENT, LLC

CRESCENT POTOMAC PROPERTIES, LLC

NAME: _____
TITLE: _____

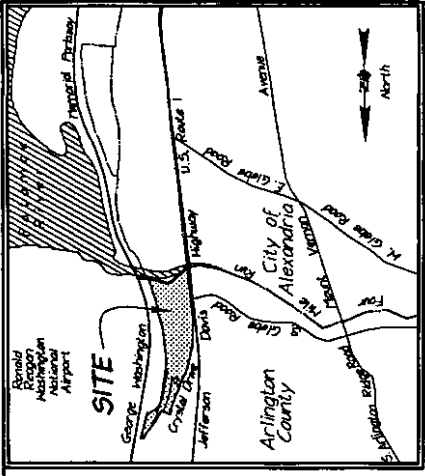
NAME: _____
TITLE: _____

CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD	BEARINGS	TANGENT
C1	200.00'	64.28'	273.54'	S 89° 58' 00" W	64.28'
C2	4570.50'	171.40'	1070.20'	S 12° 34' 55" E	65.71'
C3	14804.57'	200.24'	1074.30'	S 44° 02' 20" E	100.10'
C4	3774.00'	476.34'	1791.20'	S 40° 02' 20" E	248.54'
C5	3775.00'	1091.53'	1091.53'	S 22° 55' 22" E	54.77'
C6	640.70'	328.57'	328.56'	S 75° 04' 05" E	164.28'
C7	247.37'	207.75'	177.48'	S 57° 41' 05" W	77.20'
C8	2008.40'	545.34'	1378.34'	S 24° 02' 33" W	294.70'
C9	2008.36'	560.30'	1522.88'	S 22° 28' 00" W	291.00'
C10	5655.00'	374.72'	1037.48'	S 74° 45' 00" E	187.43'
C11	1031.20'	285.61'	1072.40'	S 75° 45' 00" E	71.61'
C12	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C13	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C14	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C15	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C16	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C17	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C18	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C19	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C20	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C21	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C22	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C23	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C24	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C25	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'
C26	1461.70'	216.93'	1072.40'	S 75° 45' 00" E	120.35'

AREA TABULATION

NUMBER OF PARCELS	AREA
PARCEL 1A	102,646.50 FT. OR 2.3549 ACRES
PARCEL 1B	20,160.50 FT. OR 0.4646 ACRES
PARCEL 1C	33,013.50 FT. OR 0.7578 ACRES
PARCEL 2 (LAND BAY "A")	126,410.50 FT. OR 2.9022 ACRES
PARCEL 3	1,840,587.50 FT. OR 42.2541 ACRES
RIGHT-OF-WAY	30,200.50 FT. OR 0.6906 ACRES
TOTAL	2,323,518.00 FT. OR 53.2202 ACRES



VICINITY MAP

SCALE: 1" = 2000'

PLAT SHOWING PARCELS 1A, 1B, 1C, 2, AND 3

POTOMAC YARD

BEING THE VACATION, DEDICATION AND RESUBDIVISION OF THE PROPERTY OF

CRESCENT POTOMAC YARD DEVELOPMENT, LLC

AND CRESCENT POTOMAC PROPERTIES, LLC

DEED BOOK 3132, PAGE 34 AND PAGE 50

ARLINGTON COUNTY, VIRGINIA

SCALE: 1" = 100'

DATE: 04/13/03

REV: 07/18/03

REF: 110503

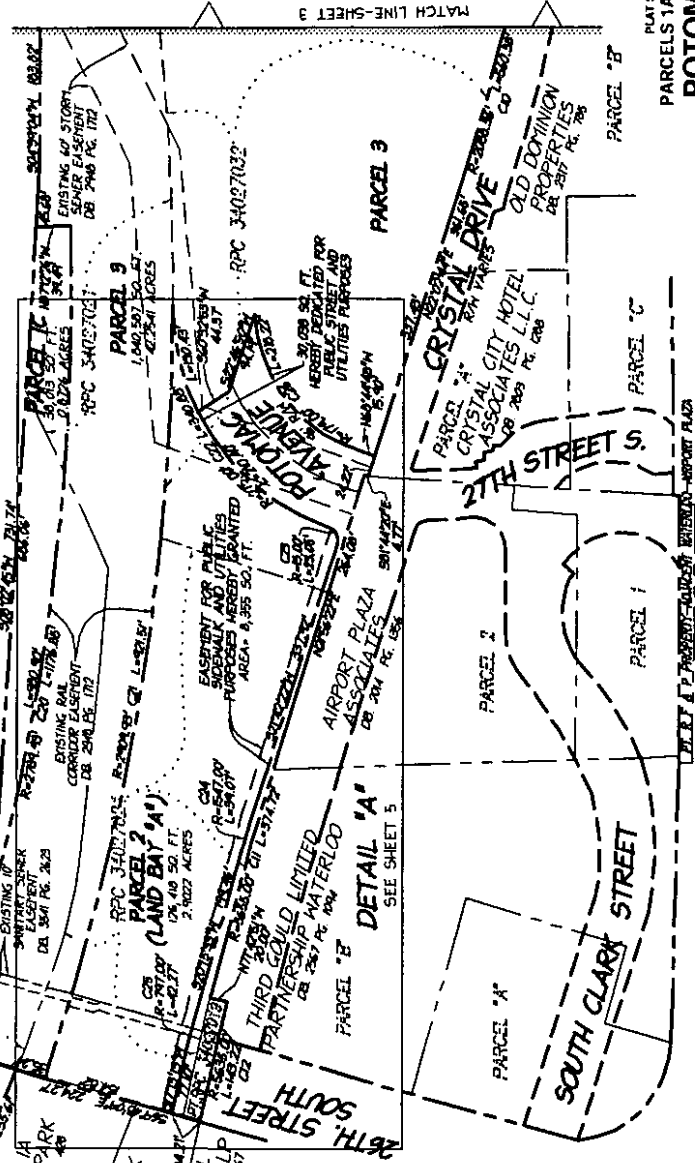


Christopher Consultants, Inc.
Virginia Licensed Professional Surveyor
110503

GEORGE WASHINGTON MEMORIAL PARKWAY
RW VARIES

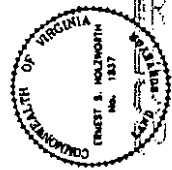


UNITED STATES OF AMERICA
DB 241 PG 144



JEFFERSON DAVIS HIGHWAY
RW VARIES

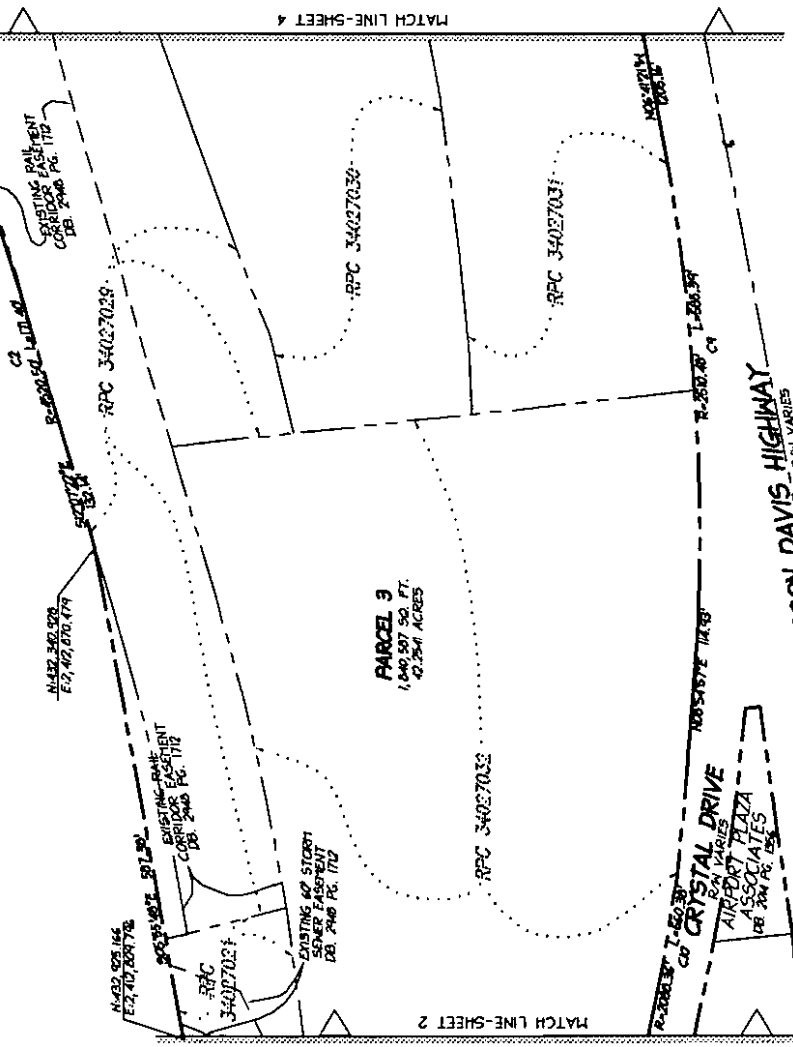
PLAT SHOWING
PARCELS 1A, 1B, 1C, 2, AND 3
POTOMAC YARD
BEING THE VACATION, DEDICATION AND RESUBDIVISION OF
THE PROPERTY OF
**CRESCENT POTOMAC YARD
DEVELOPMENT, LLC
AND CRESCENT
POTOMAC PROPERTIES, LLC**
DEED BOOK 3132, PAGE 34 AND PAGE 80
ARLINGTON COUNTY, VIRGINIA
DATE: 06/13/03
REC: 07/15/03
REF: 1106601



GEORGE WASHINGTON MEMORIAL PARKWAY
RUN VARIES



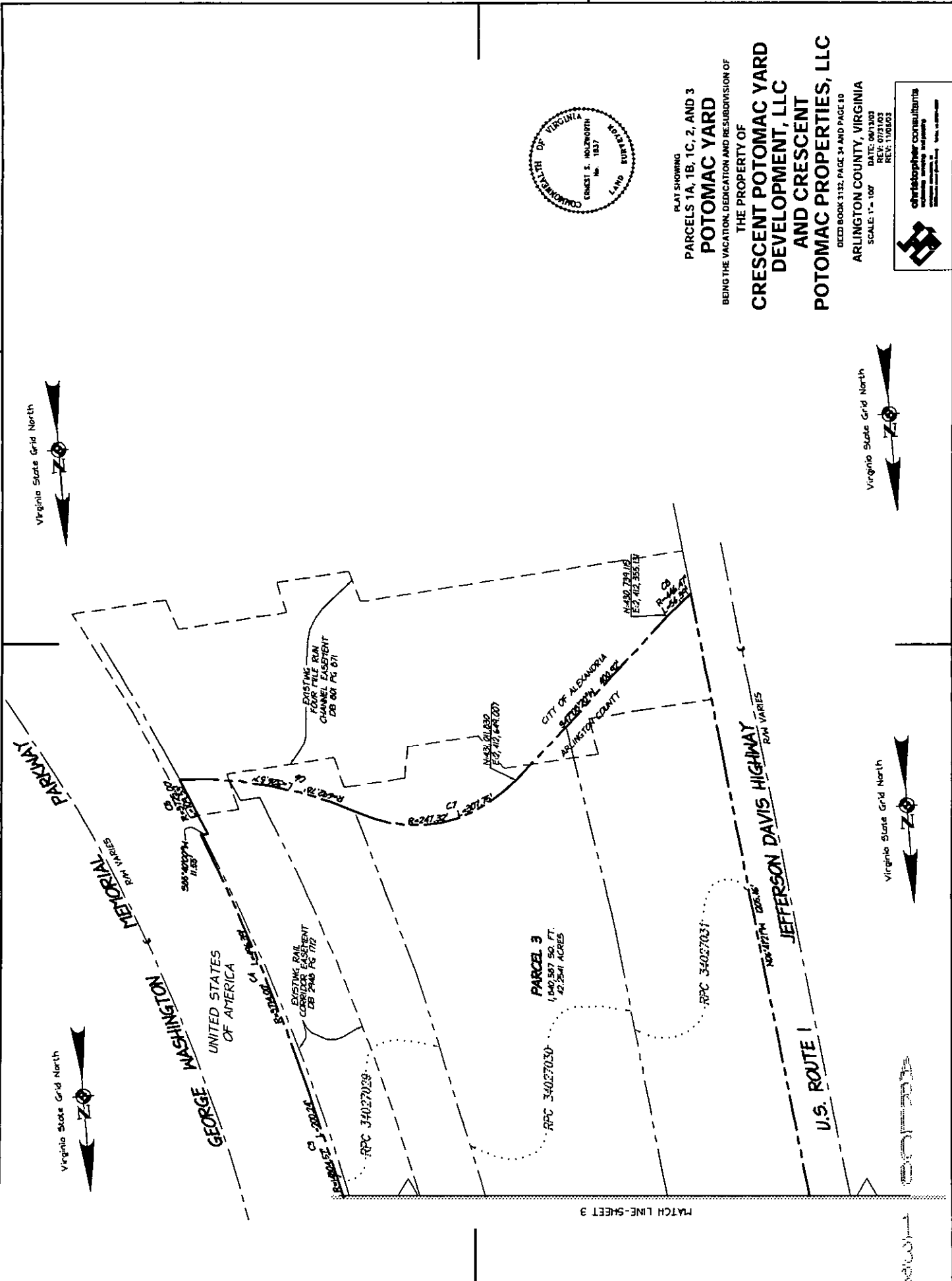
UNITED STATES OF AMERICA
DB 2411 PG 1449



PLAT SHOWING
POTOMAC YARD
 PARCELS 1A, 1B, 1C, 2, AND 3
 BEING THE VACATION, DEDICATION AND RESUBDIVISION OF
 THE PROPERTY OF
**CRESCENT POTOMAC YARD
 DEVELOPMENT, LLC
 AND CRESCENT
 POTOMAC PROPERTIES, LLC**

DEED BOOK 3132, PAGE 34 AND PAGE 30
 ARLINGTON COUNTY, VIRGINIA
 SCALE: 1" = 100'
 DATE: 06/13/03
 REV: 11/08/03





Virginia State Grid North

Virginia State Grid North

Virginia State Grid North

Virginia State Grid North



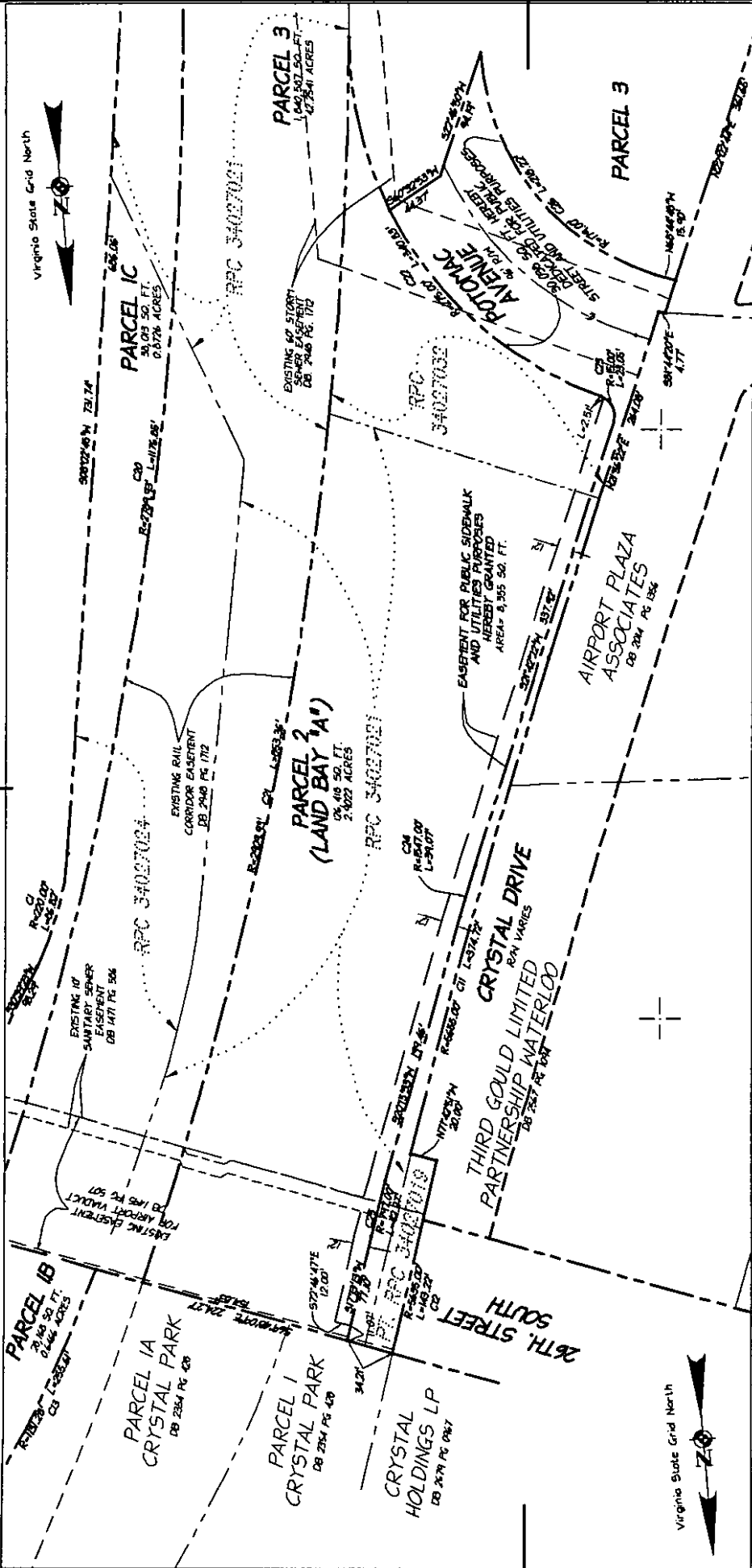
PLAN SHOWING
POTOMAC YARD
 PARCELS 1A, 1B, 1C, 2, AND 3
 BEING THE VACATION, DEDICATION AND RESUBDIVISION OF
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 AND CRESCENT
 POTOMAC PROPERTIES, LLC**

DEED BOOK 3132, PAGE 34 AND PAGE 80
 ARLINGTON COUNTY, VIRGINIA
 SCALE: 1" = 100'
 DATE: 06/30/03
 REV: 11/03/03



Virginia State Grid North

Virginia State Grid North

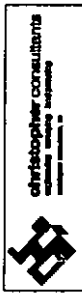


DETAIL "A"
SCALE: 1"=50'



PLAT SHOWING
POTOMAC YARD
PARCELS 1A, 1B, 1C, 2, AND 3
BEING THE VACATION, DEDICATION AND RESUBDIVISION OF
THE PROPERTY OF
CRESCENT POTOMAC YARD DEVELOPMENT, LLC
AND CRESCENT POTOMAC PROPERTIES, LLC

DEED BOOK 3132, PAGE 34 AND PAGE 80
ARLINGTON COUNTY, VIRGINIA
DATE: 08/13/03
SCALE: 1"=50'
REV: 1/15/03



Virginia State Grid North

EXHIBIT B
PDSP CONDITONS

Recorded in Land Records



Arlington County, Virginia



SUSAN INGRAHAM BELL
DIRECTOR

ARLINGTON COUNTY, VIRGINIA
DEPARTMENT OF COMMUNITY PLANNING,
HOUSING AND DEVELOPMENT
PLANNING DIVISION
ZONING ADMINISTRATION
*1 COURTHOUSE PLAZA, SUITE 812
2100 CLARENDON BOULEVARD
ARLINGTON, VIRGINIA 22201
(703) 228-3883 • FAX (703) 228-3896



EMORY C. RUSSELL, JR.
ZONING ADMINISTRATOR

March 26 2001

BY FAX AND MAIL

Chicago Title Insurance Co.
c/o Charles Menges
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030

Re: Potomac Yard Arlington, Properties Known as the South Tract on
Jefferson Davis Highway (SP#346)

Dear Sirs:

The following information is provided in reply to your request for information on the current zoning and status of the above referenced property. The subject properties are further identified by the following Real Property Code numbers: 34027029, 34027030, 34027031, 34027021, 34027032, 34027024, 34020244, and 34027019.

The subject properties are zoned "C-O-1.5", Commercial Office Building, Hotel and Apartment Districts. The "C-O-1.5" classification provides for limited office building land use, and, under appropriate conditions, office building, hotel, apartment, commercial and/or institutional redevelopment of older commercial and industrial areas.

A Site Plan (SP#346) and Rezoning (Z-2472-00-1) and General Land Use Plan Amendment (GP-269-00-1) for the subject properties (except 34020244) was approved by the Arlington County Board on October 21, 2000. The property identified as 34020244 is zoned "C-O-1.5, but was not a part of Site Plan 346.

ARLINGTON COUNTY
VIRGINIA

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To the best of my knowledge, there are no zoning violations on the premises.

Sincerely,



Tony M. Burnette
Deputy Zoning Administrator

cc: zoc-0351
address file
SP#346

APR 00

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§ 63-7. Effective date.

(a) The tax levied or imposed under this chapter shall become effective on the later of July 1, 1989, or on the day immediately after sixty (60) days' written notice by certified mail to the registered agent of the service provider required to collect the tax.

(b) The tax calculated on kWh or CCF levied under this chapter shall become effective for the first meter reading after December 31, 2000, prior to which time the tax previously imposed shall be in effect.

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TEMPORARY CLOSING OF A PORTION OF THE NORTH EDGEWOOD STREET BETWEEN WILSON BOULEVARD AND CLARENDON BOULEVARD FOR USE BY CLARENDON/EDGEWOOD 3, L.L.C., FOR OTHER THAN PUBLIC PURPOSES.

On motion by Mr. Fissette, seconded by Ms. Favola and carried by a vote of 4 to 1, the voting recorded as follows: Ms. Favola - Aye, Mr. Ferguson - Aye, Mr. Fissette - Aye, Mr. Monroe - Aye, and Mr. Zimmerman - Nay, the Board, pursuant to section 15.2-2013 of the Code of Virginia, agreed to: (1) permit the temporary use by Clarendon/Edgewood 3, L.L.C., ("CE"), for other than public purposes, of a portion of the public right-of-way on the east side of North Edgewood Street between Wilson Boulevard and Clarendon Boulevard as more fully shown on a plat entitled "Temporary Use Area," dated October 21, 2000, prepared by the County Department of Public Works; and (2) authorized that such right-of-way be closed for public use and travel during such temporary use, which initial temporary use period shall begin on October 30, 2000 at 8:00am o'clock, shall end on March 29, 2001 at 8:00am o'clock, and which temporary use period may be extended by the County Manager for up to two months; (3) approved an Agreement between the County Board and CE regarding the temporary use and temporary closure of a portion of North Edgewood Street; and, (4) authorized the County Manager to execute the Agreement on behalf of the County Board, subject to approval of the Agreement as to form by the County Attorney; subject to the following two additional conditions:

1. Clarendon/Edgewood 3, LLC (CE), will allow open public parking during times when Fresh Fields is not open. CE will include information on any signage posted as to the specific hours when open public parking is authorized.
2. Any towing contract concluded by CE for the purpose of parking enforcement in the

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APPROVAL OF POTOMAC YARD DEVELOPMENT PLAN.

After duly advertised public hearings at which the public spoke, the Board took the following actions:

GENERAL LAND USE PLAN AMENDMENTS GP-269-00-1.

On motion by Mr. Zimmerman, seconded by Ms. Favola and carried by a vote of 5 to 0, the voting recorded as follows: Ms. Favola - Aye, Mr. Ferguson - Aye, Mr. Fissette - Aye, Mr. Monroe - Aye, and Mr. Zimmerman - Aye, the Board approved the following General Land Use Plan Amendments GP-269-00-1:

APR 10 2001

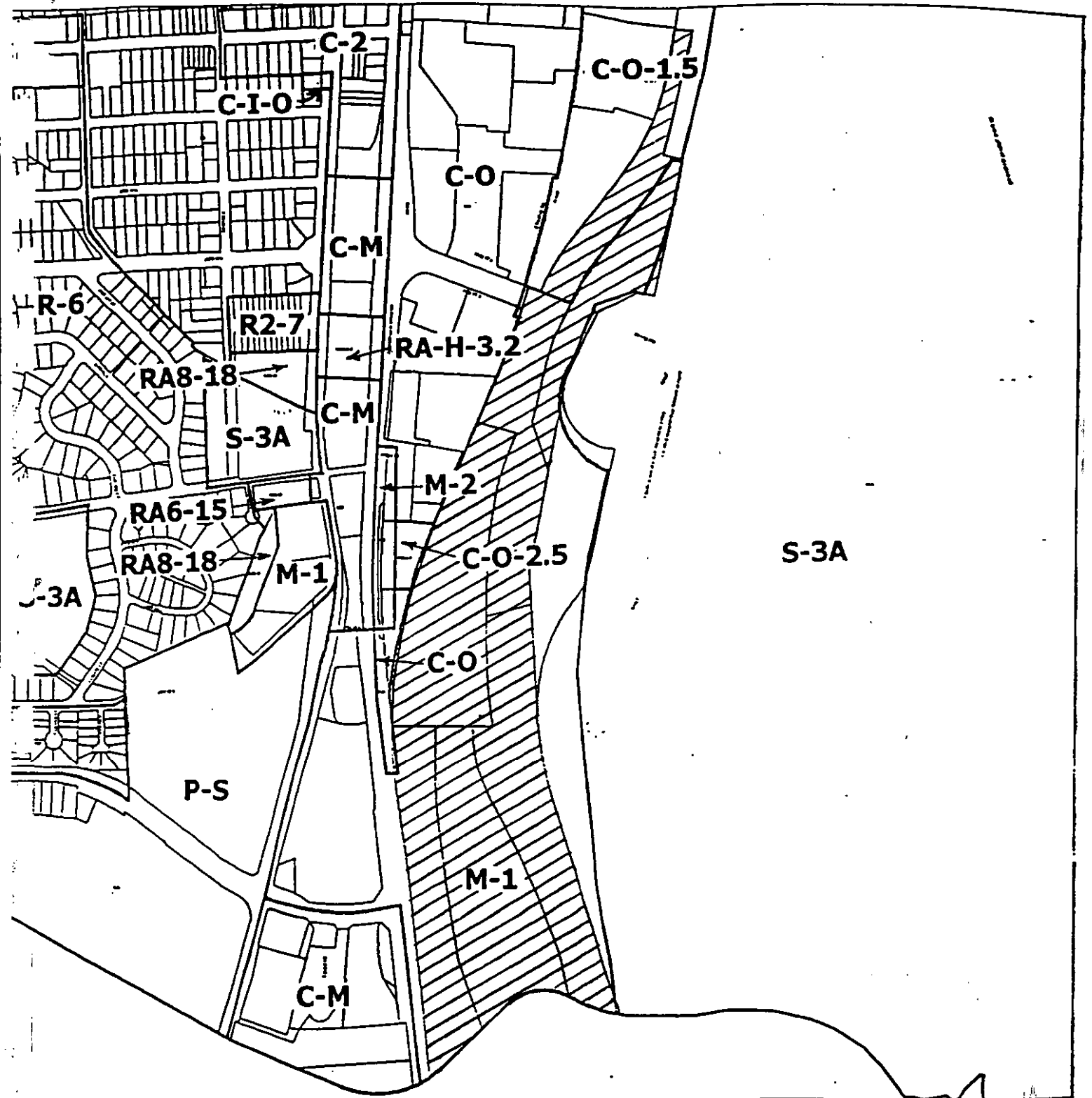
- a) North Tract - area north of 6th Street South: From "Service Industry" (Wholesale, storage, and light manufacturing uses, including those related to building construction activity) to "Public" (Local, regional, and federal parks; public schools; parkways, major unpaved rights-of-ways; libraries and cultural facilities) for the area generally bounded by 6th Street South, Old Jefferson Davis Highway, the former "Twin Bridges" site and the Waterfowl Sanctuary.
- b) North Tract - area south of 6th Street South: From "Service Industry" to "Low" Office-Apartment-Hotel (Office density up to 1.5 FAR; Apartment density of up to 72 units/acre; Hotel density of up to 110 units/acre) for the area generally bounded by 6th Street South, the Waterfowl Sanctuary, 10th Street South and Old Jefferson Davis Highway.
- c) South Tract: From "Service Industry" to a striped pattern of 1/3 "Medium" Residential (37-72 units per acre) and 2/3 "Low" Office-Apartment-Hotel for the area generally bounded by the Airport Viaduct, George Washington Parkway (the eastern edge of the railway corridor), Four Mile Run, Jefferson Davis Highway and Crystal Drive: with the addition of a note stating:
Note 18: "The County Board has designated this area as eligible for an additional gross floor area of up to 1.161 million square feet over and above the base density of the site, which may be granted upon fee conveyance to the County of a sufficient amount of property, as determined by the County Board, for park, open space, and community recreation use, in accordance with Section 36.H.5. of the Zoning Ordinance. The total base and additional densities shall include a minimum of 1/3 for residential use, including hotel, and a maximum of 2/3 for office and commercial uses."

APPROVAL OF COMPREHENSIVE PLAN AMENDMENTS.

On motion by Mr. Fiset, seconded by Mr. Zimmerman and carried by a vote of 5 to 0, the voting recorded as follows: Ms. Favola - Aye, Mr. Ferguson - Aye, Mr. Fiset - Aye, Mr. Monroe - Aye, and Mr. Zimmerman - Aye, the Board approved the following Comprehensive Plan amendments:

- a) Master Transportation Plan—Part 1: to add the following eight additional streets; Potomac Avenue, as a four-lane, minor arterial, from the Alexandria City Line to Crystal Drive; South Glebe Road as a four-lane, minor arterial, from Jefferson Davis Highway (U.S.1) to Potomac Avenue; 33rd Street South, as a four-lane, minor arterial, between U.S. 1 and Potomac Avenue; 29th Street South, as a two-lane, neighborhood-minor street, between Crystal Drive and Potomac Avenue; 35th Street South, as a two-lane, neighborhood-minor street, between U.S. 1 and Potomac Avenue; 39th Street South, as a two-lane, neighborhood-minor street, between South Clark Street and Potomac Avenue; South Ball Street, as a two-lane, neighborhood-minor street, between South Glebe Road and 33rd Street South; and South Clark Street, as a two-lane neighborhood-minor street, between 39th Street South and 33rd Street South.
- b) Arlington Bicycle Transportation Plan: to add on-street bicycle lanes to Potomac Avenue, and connections between the Four Mile Run trail and both the Potomac Avenue bicycle lanes and the trail along U.S.1 into Alexandria.
- c) Arlington County Pedestrian Transportation Plan: to add a pedestrian corridor, in conjunction with open space, between 29th Street and Four Mile Run, with a connection to Alexandria.
- d) Master Transit Plan: to establish a transitway from the Pentagon via Crystal City and Potomac Yard to the City of Alexandria.

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-2472-00-1 Rezoning

Potomac Yard

RPC # 34-027-019,- 021,- 024,- 029,- 030,- 031,- 032]

From: "M-1" To "C-O-1.5"


North
 Scale
 1" = 600'

 Case Location(s)

NOTE: These maps are for property location assistance only. They may not represent the latest survey, and other information.

AN ORDINANCE PURSUANT TO ZONING APPLICATION Z-2472-00-1 TO AMEND THE ZONING DISTRICT CLASSIFICATION OF CERTAIN PARCEL OF LAND KNOWN AS POTOMAC YARD (RPC #34-027-019, -021, -024, -029, -030, -031, -032).

On motion by Mr. Ferguson, seconded by Mr. Fisetto and carried by a vote of 5 to 0, the voting recorded as follows: Ms. Favola - Aye, Mr. Fisetto - Aye, Mr. Ferguson - Aye, Mr. Monroe - Aye, and Mr. Zimmerman - Aye, the Board adopted the following ordinance:

BE IT ORDAINED that, in order to serve the public necessity, convenience, general welfare, and good zoning practice, the parcels of real property known as Potomac Yard Potomac Yard. (RPC # 34-027-019, -021, -024, -029, -030, -031, -032) is hereby reclassified from zoning district "M-1" Light Industrial District, to "C-O-1.5" Commercial Office Building, Hotel and Apartment Districts, pursuant to application Z-2470-00-2 on file in the Office of the Zoning Administrator and the zoning map is hereby amended to show this reclassification.

AN ORDINANCE PURSUANT TO APPLICATION SP #346 TO GRANT AN AMENDMENT TO A SPECIAL EXCEPTION FOR A PHASED DEVELOPMENT SITE PLAN (PDSP) ON CERTAIN PARCELS OF LAND KNOWN AS POTOMAC YARD (RPC #34-027-019, -021, -024, -029, -030, -031, -032).

On motion by Ms. Favola, seconded by Mr. Zimmerman and carried by a vote of 5 to 0, the voting recorded as follows: Ms. Favola - Aye, Mr. Ferguson - Aye, Mr. Fisetto - Aye, Mr. Monroe - Aye, and Mr. Zimmerman - Aye, the Board adopted the following ordinance:

BE IT ORDAINED that, pursuant to application SP #346 on file in the Office of the Zoning Administrator for a special exception for a phased development site plan amendment (PDSP) containing 2,940,000 square feet of office/commercial uses and 1,469,835 square feet of residential/hotel uses on the south tract for the parcels of real property known as Potomac Yard (RPC # 34-027-019, -021, -024, -029, -030, -031, -032), approval is granted and the parcels so described shall be used according to the approval requested by the application, subject to the following conditions and modifications:

VI. PDSP CONDITIONS

General

1. This Phased Development Site Plan (PDSP) is approved subject to the submitted plans dated February 21, 2000, August 18, 2000, August 30, 2000, and September 1, 2000, and the Potomac Yard Urban Design Guidelines dated October 3, 2000 and these Conditions. Following approval of the Phased Development Site Plan (PDSP) by the County Board, the developer agrees to submit to the Zoning Administrator revised plans and Potomac Yard Urban Design Guidelines that reflect the changes and additions thereto by the approved PDSP. The developer further agrees that all construction on property covered by the PDSP shall be done in a manner consistent with the Potomac Yard Urban Design Guidelines.
2. For the purpose of these Conditions, the term developer also includes the owner or owners of the land subject to the Phased Development Site Plan, the applicant and all successors and assigns in interest including any property owners' association or associations that may be established. The developer agrees to comply with the plans dated February 21, 2000, August 18, 2000, August 30, 2000, and September 1, 2000, and the Urban Design Guidelines dated October 3, 2000 and reviewed and approved by the County Board and made a part of the public record on October 21, 2000, together with any modifications proposed by the developer and accepted by the County Board or vice versa.

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Development Program

3. (a) The developer agrees to reserve and convey to the County, an interest in or right to use, a site determined by the County in its sole discretion, a site approximately 28 acres in size, known as the North Tract, and within it a site known as the Davis Site, the exact extent of which will be determined by the County at the time of conveyance. The North Tract and the Davis Site are located north of Crystal City, as shown on the certified plat dated September 1, 2000 and showing the North Tract (including the Davis Site) and the South Tract. Any conveyance to the County shall be of property that is unencumbered by any interest inconsistent with the County's, including, without limitation, unencumbered by tenants or leases (except as may be approved in writing by the County Manager). Any deed of conveyance may be a special warranty deed or general warranty deed, at the developer's option. The developer acknowledges that the approved density in this PDSP includes additional density of 1,161,000 square feet of Gross Floor Area (GFA) which will be allocated to the South Tract for the development of the PDSP upon conveyance of the North Tract to the County, and fulfillment of the other requirements of this Condition 3. The PDSP for the South Tract shall take effect upon approval of the PDSP by the County Board. However, at the time of such approval, and until conveyance of the North Tract and fulfillment of the other requirements in this Condition 3, the only right the developer may have to proceed with development shall be to develop Land Bays A and/or B (and such infrastructure on Land Bay C as may be needed to support approved development on A and/or B) as approved on the PDSP, but provided that the developer allocates sufficient land in the South Tract to support that development of A and/or B at a Floor Area Ratio (FAR) of 1.5. The developer agrees, in order to assure the County that land allocated to meet this FAR requirement will not otherwise be developed, that the developer will record such covenants or take such other actions as the County may require at the time of Final Site Plan approval for Land Bays A and B. A Final Site Plan or Final Site Plans may be filed and approved, construction may occur, and certificates of occupancy may be issued for development on Land Bays A and B, consistent with these conditions, at any time following approval of the PDSP by the County Board. No Final Site Plan may be filed for any other land bay, and no bonus density may be included in any development, in the PDSP until the Applicant has conveyed the North Tract to the County. At such time as the North Tract is conveyed to the County, and the other requirements of this condition are met, the bonus density shall be incorporated into the PDSP, which shall then permit development of a total of 4,409,835 square feet of GFA as shown in condition 4. The approved density is based on conveyance of the land in the North Tract including 6.68 acres of land located east of the railway corridor, which totals 32.59 acres. That land shall be conveyed in fee, except for the 4.46 acres in the Davis Site, or such other part of the North Tract as the County may determine at the time of conveyance is in the Davis Site or should not be conveyed in fee. The County shall have the option, at the time of conveyance, to determine the nature of the interest it accepts in the Davis Site. The North Tract (including the Davis Site of an exact size determined by the County at the time of conveyance) shall be conveyed to the County no later than 60 days after a final, unappealable resolution in favor of the developer and/or any governmental defendants, as the case may be, of any and all legal proceedings challenging the validity of these land use approvals, including the Phased Development Site Plan, and or challenging the validity of the Exchange Agreement consummated on March 24, 2000, between the Applicant and the U.S. Government (National Park Service) related to the South Tract and other property owned by developer. In the event of an unfavorable final resolution of any such litigation, the North Tract shall not be conveyed to the County, no bonus density shall be allocated to the South Tract, and the PDSP, including all conditions related to the PDSP, shall be null and void, except that Land Bays A and B and approved infrastructure on C may be developed in accordance with any Final Site Plans that may have been approved under the PDSP for such Land Bays.
- (b) The developer agrees that at the time the North Tract is conveyed to the county, the developer will record a covenant among the land records of the clerk of the Circuit Court of Arlington County, in form and substance acceptable to the County Manager and the County Attorney, that extinguishes any and all remaining rights to density the developer may have on the North Tract.

- (c) The developer agrees that, prior to conveyance of the North Tract, the County may, at its option, obtain a new environmental study of the property. The developer agrees to pay one half of the cost of that study and search. Such new study and search shall be for the purpose of enabling the County to make a final determination of the size of the Davis Site. Provided, however, that the developer's share of the cost of the environmental study shall not exceed twenty-five thousand dollars (\$25,000.00)
- (d) The developer agrees that it will, at the time of conveyance of the North Tract, execute a release, in form acceptable to the County Attorney, releasing any obligation the County may have under the "Settlement Agreement Between the County of Arlington, Virginia; Richmond Fredericksburg & Potomac Railroad Company; and RF&P Properties, Inc." to pay to developer or any of its predecessors in interest, two hundred seventy five thousand dollars (\$275,000.00). The execution of that release will also extinguish any right the County may have to recoup up to \$275,000 paid by RF&P on the County's behalf, under the October 22, 1993 Settlement Agreement.

4. The approved uses and densities, after conveyance of the North Tract as specified in Condition #3(a), for each parcel of the Phased Development Site Plan are as follows:

Land Bay	Maximum Office GFA	Minimum Retail GFA	Hotel Rooms GFA	Residential Dwelling GFA
A	650,000	4,000		
B		10,000	469,835	
C	1,200,000	14,000		
D	515,000	10,000		250,000
E	515,000	10,000		250,000
F		12,000		500,000
	<u>2,880,000</u>	<u>60,000</u>	<u>469,835</u>	<u>1,000,000</u>

- Note 1: Pursuant to paragraph (a) under Retail Floor Area below, the total office GFA includes 90,000 square feet of GFA of Potential Retail Space.
- Note 2: Maximum number of hotel rooms shall be 625.
- Note 3: The total number of residential dwelling units shall be no less than 800 dwelling units and no more than 1200 dwelling units.
- Totals: The total development program shall consist of 2,940,000 square feet of office/commercial GFA (66 2/3% of total GFA); 1,469,835 square feet of residential/hotel GFA (33 1/3% of total GFA) unless otherwise adjusted as specifically permitted in these PDSP conditions.

A. Office Floor Area:

Office GFA may be converted to residential GFA (excluding hotel uses) only in accordance with the following schedule and procedure, and shall require submission by the developer to the County Manager of a written analysis of the impact of the conversion on urban and building design, traffic, provision of private recreational amenities and construction of Center Park.

- (a) Up to 294,099 square feet of office GFA (not including 90,000 square feet of potential retail GFA) may be converted to residential GFA, establishing a proportion of 60% office/commercial GFA and 40% residential/hotel GFA, upon administrative application filed by the developer and approved by the County Manager or his designee, provided that the County Manager's review of the developer's analysis of the impact of the conversion on urban and building design, traffic, provision of private recreational amenities and construction of Center Park demonstrates that the conversion will not have any greater impact on the area than the development without the conversion.

- (b) Up to an additional 440,983.5 square feet of office GFA (over and above the initial 294,099 square feet of office GFA referred to in paragraph (a) above) may be converted to residential GFA (excluding hotel uses), establishing a proportion of 50% office/commercial GFA and 50% residential/hotel GFA, upon application for a PDSP Amendment filed by the developer and reviewed and approved by the County Board based upon its review of the developer's analysis of the impact of the conversion on matters including, but not limited to, urban and building design, traffic, provision of private recreational amenities and construction of Center Park, and the standards for site plan approval as contained in Section 36.H. of the Arlington County Zoning Ordinance.
- (c) Notwithstanding paragraphs (a) and (b) above, the limitations in this subparagraph (c) shall apply to any conversion. In no event shall there be any conversions from office to residential or hotel in Land Bay C nor shall any conversion permit more than 50% of office GFA in Land Bay A to be converted to residential GFA. Nor shall there be any conversion from office to residential or hotel that creates a ratio of residential/hotel GFA to total GFA over the entire PDSP site that is greater than 50%.

B. Retail Floor Area:

- (a) A minimum of 150,000 square feet of floor area shall be constructed so as to be useable as retail space at locations identified on the Retail Location Plan included in the Urban Design Guidelines. Such floor area in each Land Bay will be referred to as the Potential Retail Space. All Potential Retail Space shall have reasonable access to building service areas and shall be at grade in buildings with minimum floor to floor heights as specified on the Retail Location Plan. A minimum of 60,000 sq. ft. of the Potential Retail Space for all Land Bays shall be used for retail (Initial Retail Space). Each Land Bay shall have an initial minimum amount of retail floor area equal to 40% of the Potential Retail Space for each Land Bay. In the event the retail floor area for any Land Bay exceeds the Initial Retail Space specified for that Land Bay, the amount by which the retail floor area exceeds such Initial Retail Space shall be deducted from the Initial Retail Space required for other Land Bays to be developed later.
- (b) The developer agrees to develop a retail attraction and marketing plan for each Final Site Plan for the Potential Retail Space. The plan shall set forth the actions that the developer will undertake to attract retail tenants to the space and will identify the Initial Retail space and the floor area where retail uses are optional. The developer shall submit such plan to, and obtain approval of, the County Manager or his representative prior to issuance of the first Certificate of Occupancy for any building within the applicable Final Site Plan.
- (c) Any Potential Retail Space that is not Initial Retail Space shall be leased for retail uses unless the developer has been unable to lease such space for retail uses and can establish to the reasonable satisfaction of the County Manager or his designee that the retail attraction efforts for such space, as outlined in the retail marketing plan, have been substantially and diligently followed for at least one year prior to such space being available for lease. The County Manager shall not unreasonably withhold or delay a determination on such efforts following application for such finding by the Applicant. Any Potential Retail Space shall be considered available for lease upon receipt of a certificate of occupancy for the applicable portion of the building in which such space is located or upon expiration of any lease, lease extensions, or lease renewals for such space. Any Potential Retail Space that is not required to be leased for retail uses under this subparagraph may be leased for office or other uses.
- (d) Retail uses of the types identified on the Retail Use Schedule (Attachment A hereto) shall be permitted.

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5. The Developer agrees that, by approval of this PDSP, the County Board has allocated densities and uses over the site and among land bays (as land bays are identified in the Transportation and Land Use Plan drawings dated September 1, 2000, and the Urban Design Guidelines dated (October 3, 2000.) and buildings, all based on an approved density for the entire site. The Developer agrees that no density that is not approved as part of this PDSP will be allowed on any parcel formed by subdivision of the site or any land bay. Density may be reallocated from one land bay to another in the PDSP only with the County Manager's approval if he finds that: (a) such reallocation will not change the overall density in any land bay by more than ten percent (10%); (b) the reallocation does not change the relative proportion of office and residential development within the PDSP, except as may otherwise be specifically permitted by these PDSP conditions; and (c) the Developer submits a written analysis of the reallocation to the Manager, which address the urban and building design, the construction of center park, and the transportation and transit improvements, and upon such review and analysis of that submittal as the Manager deems appropriate, the Manager finds that the reallocation will not adversely affect any of the analyzed factors.
6. The maximum building heights for each parcel of the Phased Development Site Plan shall be as follows:

<u>Parcel</u>	<u>Height Maximum</u> (Excluding Penthouse and subject to National Park Service restrictions)
A	12 stories
B	12 stories, office; 13 stories, hotel
C	12 stories
D	12 stories, office; 13 stories, residential
E	12 stories, office; 13 stories, residential
F	13 stories

The average height of all buildings within the PDSP shall not exceed 12 stories, consistent with the standards of the "C-O-1.5" District.

7. (a) For each of Land Bays D and E, construction of at least 50% of residential gross floor area in the land bay shall have commenced (commencement of construction defined as construction of footing and foundation to grade) before the issuance of a certificate of occupancy for any commercial floor area in such land bay.
- (b) The developer agrees that construction of at least 75% of residential floor area (excluding hotel uses) in the PDSP shall have commenced before the issuance of a Certificate of Occupancy for greater than 75% of the office floor area in the PDSP. Provided however, that this standard need only be met after construction of the Route 1/South Glebe Road intersection improvements and the associated Crystal Drive improvements.

Parking

8. The developer agrees to provide parking for each use in accordance with the following schedule:
- (a) residential: For each unit, a minimum of 1.125 space per dwelling unit and a maximum of 1.5 spaces per 2 bedroom units and 2 spaces per 3 or more bedroom unit.

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(b) hotel: .7 space per room plus an additional 3 spaces for each 1000 sq. ft., or portion thereof, of floor area above 10,000 sq. ft. of function facilities

The developer agrees to develop and implement a tour bus parking management plan for each Final Site Plan for hotel or conference facilities within the Phased Development Site Plan, which plan shall be implemented in conjunction with the Area Parking Plan and Commuter Bus Parking Plan referred to in Condition #28. The Plan shall address tour bus egress and ingress to and from the site, location of tour bus parking for loading and unloading, and location of tour bus extended parking, whether on-site or off-site. The Plan shall be submitted as a part of the application for Final Site Plan approval for the Phased Development Site Plan hotel or conference facilities.

(c) retail: -one space per 250 sq. ft. of floor area

(d) office: -one space per 580 sq. ft. of floor area for the first 500,000 sq. ft. of office development within the PDSP

-one space per 625 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP

-one space per 675 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP

-one space per 725 sq. ft. of floor area for the next 500,000 sq. ft. of office development within the PDSP

-one space per 800 sq. ft. of floor area for the next 880,000 sq. ft. of office development within the PDSP

Parking allocated by final site plan approval for one or more uses shall be maintained and available for that use or uses and shall not be leased or otherwise set aside for any other purpose that is inconsistent with those uses.

9. The developer agrees that parking shall be provided for each building according to the approved parking ratios; however, the parking need not be located within the parcel designation of each building but must be located within the overall project as may be approved through the final site plan process, and as illustrated by the conceptual parking garage plan illustrated in the Urban Design Guidelines.
10. The developer agrees that the parking required by the approved Phased Development Site Plan shall be provided coincident with and in direct proportion to the retail, office, hotel, and residential uses at the time of each Final Site Plan.

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Infrastructure: Streets and Utilities

11. The Preliminary Infrastructure Plan:

- (a) The developer agrees that the first Final Site Plan that is filed within the PDSP development, excluding Land Bay A, shall be accompanied by a "Preliminary Infrastructure Plan" (the "Infrastructure Plan") for the PDSP which shall be updated and resubmitted with each subsequent Final Site Plan application that seeks approval of one or more buildings or uses within the PDSP development. No such Final Site Plan shall be approved unless the Infrastructure Plan which accompanies the Final Site Plan application has been reviewed and approved by the County Manager or his designee, and approved by the County Board as a part of the Final Site Plan. The initial and each updated Infrastructure Plan is intended to insure that the construction of the infrastructure ~~and transportation/transit systems~~ identified below in subparagraph (b) are consistent with comprehensive plans covering the entire PDSP development, excluding Land Bay A, that have been approved by the County, and meet all requirements of the development and of County systems to which the infrastructure connects. Such Infrastructure Plan shall govern construction in the PDSP except as otherwise approved by the County Board.
- (b) The developer agrees that the initial and each subsequent Infrastructure Plan shall provide, for each of the systems of infrastructure identified below in this subparagraph, the general location and layout of the major components, or the backbone, of the systems. The systems of infrastructure to be addressed are, at a minimum:
 - (i) the streets to be constructed within the PDSP area as identified in paragraph 21;
 - (ii) the sanitary sewer system to be constructed within the PDSP area excluding Land Bay A;
 - (iii) the stormwater conveyance system to be constructed within the PDSP area excluding Land Bay A; and
 - (iv) the utility systems to be constructed within the PDSP area excluding Land Bay A (e.g. electricity, water, gas, phone/communications, and cable).
- (c) The developer agrees to construct, as approved in the individual final site plans, elements included in the Infrastructure Plan.
- (d) The developer agrees to comply with the following infrastructure guidelines:
 - I. Water System:
 - a) A 12" watermain loop system will be required for this project unless a smaller diameter is determined by the Department of Public Works (DPW) to be acceptable at the time of Final Site Plan approval. The water system loop will begin at the intersection of 27th Street and Crystal Drive. The loop will connect to the existing 12" watermain in this intersection and be extended along Potomac Avenue, South Glebe Road Extended and reconstructed Crystal Drive. The loop shall connect to the existing 12" watermain in Crystal Drive adjacent to the Crystal Station buildings. A 12" connection shall be made to the existing 12" watermain west of U.S. Route 1 in South Glebe Road. This loop system is shown on the master utility plan. At least one east/west connection between the watermain in Potomac Avenue and Crystal Drive shall be made and it shall not be any closer to 27th Street connection or South Glebe Road extended than 1/4 of the distance between the two. More connections shall be made if determined necessary during the approval of individual Final Site Plans. These connections shall be no larger than 12".

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All service connections to each building will be from the loop described above. Fire hydrants inside of the central public open space are not required per the Arlington County Fire Marshal. Siamese connections for each building shall be provided along the loop system. Public watermains shall not be over private garages. No public watermains are required in the public open space. Each building shall have one meter maintained by DPW. Submetering for each tenant shall be the responsibility of the property owner.

With each Final Site Plan submission, development conditions shall ensure that an adequate portion of the above loop system is constructed so that no dead end watermain system longer than 500 feet is provided unless the DPW determines that such a dead end watermain is not detrimental to water quality or the adequate supply of fire flow.

- b) In the vicinity of Land Bay A, a 10' wide easement for location of the waterline shall be provided at the time of Final Site Plan approval to service lands east of the site. The waterline will be designed with the Final Site Plan at no cost to the County. Construction of the waterline may occur at the time of building construction or at a later date to be determined in Arlington County's sole discretion, at no cost to the applicant or successors. The location and design of said waterline shall not delay the timing of reviews and approvals of Final Site Plan construction plans. If the location and design of the waterline has not been determined by Arlington County prior to the time of review and approvals of the Final Site Plan, then the design shall no longer be the obligation of the applicant or successors.
- c) The location of water services will be determined at the time of the review of the final engineering plan for each Final Site Plan in accordance with the following standards. Water meter installation shall be located behind and adjacent to the curb line in an area clear of driveways, with a minimum horizontal clearance of five (5) ft. from other utilities and with a minimum clearance of ten (10) ft. clear from all structures unless otherwise approved. A clear space 15 feet wide by 25 feet long by 10 feet deep shall be provided for three (3) inch and four (4) inch water meter installations, and 20 feet wide by 25 feet long by 10 feet deep for six (6) inch and larger meter installations. The location of building walls shall be adjusted as necessary to provide these clearances.
- d) All sanitary sewers and watermains including water services shall be constructed, in general, in locations shown on the Master Utility Plan drawing dated September 1, 2000, and shall have a minimum of 10 feet of horizontal clearance from each other and five feet from all other utilities, and shall have a minimum of 10 feet of horizontal clearance from buildings and other structures. Watermains located deeper than 10 feet from the surface shall have a minimum of 15 feet of horizontal clearance from buildings and other structures; and sanitary sewers 15 inches and larger or sewers located deeper than 10 feet from the surface shall have 15 feet minimum horizontal clearance from buildings and other structures. All watermains and sanitary sewers shall meet County standard design criteria as shown on the final engineering plan approved by the County. The design criteria described above may be modified subject to the approval of the County.
- e) All construction shall be in accordance with the current Arlington County Construction Standards and Specifications.

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ii. Sanitary Systems:

The sewer system to collect and convey sewage generated by the development on the site will consist of a pump station, a gravity flow system and a force main. The pump station is required and may be located either onsite or offsite at the developer's option. If the developer seeks to locate the pump station off-site, it may be placed on the Water Pollution Control Plant grounds subject to County Board approval. A decision shall be made by the developer in consultation with the County as to the location of the pump station, prior to the time of the first Final Site Plan submission for any of Land Bays B, C, D, E or F. The pump station and all proposed sewer systems shall be designed in accordance with all applicable state and local regulations. Virginia State Health Department approval is required prior to approval of a Final Site Plan for the first building or structures requiring use of the pump station. The system shall be capable of carrying the onsite flows projected to be generated by the approved development program. If the pump station is located on the Water Pollution Control Plant grounds, the land shall be made available to the developer at a cost of \$25,000.00, subject to approval by the County Board. The developer shall be responsible for the cost of all design, permitting and construction of the facility.

12. Prior to the issuance of any building permits within any approved final site plan, the developer agrees to dedicate to Arlington County all easements and/or rights of way necessary for the development for which the building permits are to be issued.
13. Street and utility improvements, including service requirements for shuttle buses (such as access options, internal pathways, turns and turn-arounds) consistent with Condition #28 below, shall be shown for each entire Land Bay upon submittal of the first Final Site Plan for any parcel within the Land Bay. Such improvements are subject to the following, and shall be reviewed and approved as a part of the Final Site Plan:
 - Every sub-parcel (defined as any subdivision of any land bay or of any development site of a Final Site Plan) must have at least two points of access to and from public streets for emergency vehicles. One of the access points may be indirect if approved by the Arlington County Board as a part of a Final Site Plan approval.
 - Every sub-parcel developed as a final site plan, except those in Land Bays A, B, and F, must have access to a two-way public street within six hundred (600) feet of the sub-parcel.
 - All roads and streetscape directly surrounding a specific sub-parcel developed as a final site plan must be completed in a manner consistent with all conditions and the approved final landscape plan before issuance of the Certificate of Occupancy that permits occupancy of 50% of the gross floor area in the sub-parcel.
 - At least one-half of each building's parking garage entrances must have direct access to public streets or to private streets with public access easements. All other parking garage entrances must have, at a minimum, indirect access to public streets or to private streets with public access easements.
 - Garage access points shall not be placed where they will cause unreasonable backups of traffic or unsafe vehicular maneuvers by garage users. The on-site streets required to be constructed with each final site plan shall be determined at the time of Final Site Plan approval for each sub-parcel. This phasing of the agreed-upon street changes for this PDSP must reasonably handle traffic generated by the subparcel, any existing traffic and the traffic generated by all PDSP development approved through final site plan approval.
14. Prior to the issuance of any building permit within a final site plan, the developer agrees to execute a surety agreement acceptable to the County to ensure to the County the construction of all facilities required to be constructed within public rights of way or easements as part of that final site plan.

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15. Prior to the issuance of any building permits, the developer agrees to obtain the approval of the Department of Public Works for its final engineering plans for all streets, curb and gutter, sidewalks, medians and infrastructure that support the construction for which the building permits are to be issued. Landscaping and construction specifications and details for the sidewalk, streetscape and landscaped medians shall be submitted by the developer for approval by the County Manager or his designee as a part of the landscape plan supporting any construction for which building permits are to be issued. The developer agrees to maintain landscaping and street trees along all sidewalks and medians, and shall submit a landscape maintenance agreement, which shall be approved by the County Manager or his designee prior to the issuance of any building permit for construction on the same parcel, along with the landscape plan supporting construction for which building permits are to be issued. The developer agrees to pay and/or reimburse the County to perform all maintenance, signage and parking control functions on private streets after a reasonable rate has been developed by the two parties.
16. The developer agrees to construct streets, medians, curb and gutter, sidewalk, and streetscape improvements, including landscaped medians, along all public and private street frontages of the Potomac Yard PDSP in accordance with the Potomac Yard Urban Design Guidelines and the Arlington County standards current at the time of the final site plan. Improvements to all public street frontages shall be in accordance with the phasing requirements specified in Condition #21 below.
17. The developer agrees to place underground all existing and proposed utilities within and immediately adjacent to the property included within the PDSP development. This shall not include the electric transition station (or wires extending therefrom) located on the south side of Four Mile Run. Undergrounding shall be done for each final site plan approval as specified therein. In addition, within 10 calendar days after approval of each Final Site Plan, the developer agrees to contribute \$.30 (thirty cents) per square foot of Gross Floor Area approved in the Final Site Plan as a contribution to the County's Utility Undergrounding Fund.
18. All sanitary sewers and water mains, including water services and fire hydrants, shall be constructed in locations shown on the Phased Development Site Plan (unless otherwise approved by the County Board at time of Final Site Plan approval), and shall comply with all standards included in the Infrastructure Guidelines in Condition #11.
19. The developer agrees to connect sewer service to support the development of Land Bay A directly to the existing Arlington County Sanitary sewer in 26th Street. A private ejector pump and forcemain is an acceptable system to convey the sewage to the terminal manhole in 26th Street. Construction of an adequate sewer system to convey the project onsite flows to the Arlington County Water Pollution Control Plant, as described in the Infrastructure Guidelines in Condition #11, shall be completed by the developer prior to issuance of the first certificate of occupancy for any development in any of Land Bays B through F, unless otherwise approved by the County Manager or his designee as providing a system that is equal to or better than what is called for in the Infrastructure Guidelines in Condition #11.
20. The developer agrees to fund the installation of new traffic signals or, at the County's option, the modification of existing traffic signals, in all locations identified for traffic signals on the Transportation and Land Use Plan drawing dated September 1, 2000. The developer agrees to make payments to Arlington County for all signal equipment within 60 days after request therefore, following a determination by the County Manager or his designee that either any such signal is warranted or that street construction is approaching a stage where it is timely to install any such new signal, but not operate it until warranted.

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21. The developer agrees to construct the infrastructure identified in the schedule below in accordance with the events identified in the schedule unless a variation from the schedule is approved by the County Board as part of a Final Site Plan approval. Following completion of construction, the new public rights of way and the improvements to existing public rights of way identified in the schedule, including the transitway, shall be dedicated to the County or the County shall be granted a surface easement for public right of way purposes at the County's option.

Infrastructure

Completion Event

(a) South Glebe Road/
Route 1 Intersection

Construction of the improvements to this intersection, as shown on the Transportation and Land Use Plan drawing dated September 1, 2000, may be completed at any time, provided that the improvements are completed before the issuance of Certificates of Occupancy for the earliest of the following:

- i. More than 1,900,000 square feet of office development in the Arlington PDSP area, or
- ii. More than 2,650,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area, or
- iii. More than 1,500,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 1,900,000 square feet of new (new defined as any development in the Alexandria portion of Potomac Yard excluding the existing retail center and buildings housing the GSA and Avis Rental Car uses) office development in the PDSP area and in the Alexandria portion of Potomac Yard west of the heavy rail corridor (collectively, the "PY Total Area"), or
- iv. More than 1,500,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 3,700,000 square feet combined, of any new office, residential, retail and hotel development in both the Arlington and Alexandria PY Total Area.

The developer agrees to plan and construct the full intersection of South Glebe Road and Route 1, consistent with the engineering plans submitted by the developer and reviewed and approved by the Department of Public Works, and consistent with the above timing requirements.

(b) Potomac Avenue

Construction of this road from a tie-in with Route 1, in Alexandria south of the Potomac Yard retail center, to a tie-in with Crystal Drive and 27th Street may be completed at any time, provided that it shall be completed before the issuance of certificates of occupancy for the earliest of the following:

- i. More than 2,300,000 square feet of office development in the Arlington PDSP area, or
- ii. More than 3,450,000 square feet combined, of any office, residential, retail and hotel development in the Arlington PDSP area, or
- iii. More than 2,000,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 2,300,000 square feet of new (new defined as any development in the Alexandria portion of Potomac Yard excluding the existing retail center and buildings housing the GSA and Avis Rental Car uses) office development in both the combined Arlington and Alexandria PY Total Area, or

- iv. More than 2,000,000 square feet combined, of office, residential, retail and hotel development in the Arlington PDSP area and more than 4,500,000 square feet combined, of any new office, residential, retail and hotel development in both the combined Arlington and Alexandria PY Total Area.

The developer agrees to plan and construct the full cross-section of Potomac Avenue, consistent with engineering plans to be submitted by the developer and reviewed and approved by the Department of Public Works, and consistent with above timing requirements. For the intersection of Potomac Avenue with Crystal Drive opposite 27th Street, the developer agrees to construct the right-turn movement from Potomac Avenue to operate under traffic signal control, rather than as a free-right turn. The developer agrees that it will not construct a finished four lane Potomac Avenue connection to Alexandria until it has constructed an east-west roadway between Potomac Avenue and Route 1, which may be either extended South Glebe Road or 33rd Street built to accommodate minor arterial traffic.

(c) Crystal Drive

The developer agrees to relocate and reconstruct a portion of Crystal Drive right-of-way located along the periphery of the PDSP development. Upon approval and construction of the final site plan for any sub-parcel located adjacent to the existing Crystal Drive, the right-of-way shall be improved with an interim transitway treatment consistent with the Urban Design Guidelines. If Crystal Drive is still being used as a right-of-way at the time of construction of the final site plan for sub-parcels located adjacent to the existing Crystal Drive, and the developer is unable to construct interim transitway improvements, then the developer agrees to make a contribution toward the cost of the interim transitway improvements. If permanent transitway improvements are constructed in lieu of interim transitway improvements, then the contribution that was made toward the interim improvements shall be applied to the permanent improvements.

(d) 33rd Street South

1. The developer agrees to construct all street, curb, gutter, sidewalks, and landscaping improvements and intersection controls for a new 33rd Street South as a minor arterial between (and including connections with) Potomac Avenue and Crystal Drive as described in the Urban Design Guidelines dated October 3, 2000, at such time as 33rd Street South is required pursuant to conditions 13 and 21 (b).
2. If the County decides to construct 33rd Street between U.S. 1 and Crystal Drive as a minor arterial, the developer agrees to provide \$150,000 toward the cost of these improvements and will provide a temporary construction easement in Potomac Yard for the purpose of temporary construction staging related to such improvements, if land is available at that time. The developer agrees that the funds to be paid under this condition will be paid within 60 days after written request therefore by the County Manager, and that the easement will be granted and recorded, in a form acceptable to the County Attorney, and in substance acceptable to the County Manager, within 60 days after written request therefore by the County Manager. The county shall provide such written request no earlier than six months prior to the anticipated start of construction.

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(e) Transit corridor

i. Definition:

The transitway is a shared corridor, defined as a right of way over which vehicular traffic is excluded except for crossing at specific locations. The Transit Corridor shall be reserved upon approval of the PDSP, and shall be constructed by an entity or entities, existing or which may be created, whose purpose is to plan, design, construct and operate transit systems, at a time consistent with the phasing of development and in a manner as to not unreasonably and materially adversely affect construction of the development. The developer agrees to dedicate all or a portion, as the case may be, of such corridor right of way to the County by instruments acceptable to the County Manager and the County Attorney, at such time as (a) construction of the permanent transitway is commenced on a BRT or LRT or similar transit system, for dedication of the entire corridor right-of-way, or (b) the County constructs Preliminary Transit Improvements (as described in subparagraph 21.(e) ii) in all or a portion of the corridor right-of-way, for dedication of those portions of the transit corridor in which such improvements are constructed. Until then, no use inconsistent with such transit system may be made of the area.

ii. Improvements:

As Land Bays adjacent to the transit corridor are developed, the areas in the transit corridor, that are adjacent to any such developed land area, shall be improved in accordance with the Urban Design Guidelines. In all cases any interim improvements to the transit corridor shall be easily removable for construction purposes. The specific design of the interim transit corridor improvements, along with permanent streetscape and landscaped median improvements, shall be submitted by the developer, and shall be consistent with the transit corridor plan for the transit corridor and the Urban Design Guidelines, and subject to approval at the time of the first Final Site Plan for a developed area adjacent to the transit corridor. The interim improvements, as well as permanent streetscape and landscaped median improvements, shall be implemented concurrent with construction of the Final Site Plans located adjacent to the transit corridor areas to be improved. In the event that all or a portion of the area to be improved as the transit corridor is still in use as a public right of way at the time of construction of the Final Site Plan, the interim and permanent improvements shall not be constructed, but funds for interim improvements within the transit corridor and permanent improvements in the median strip between the transit corridor and street shall be placed in escrow, at the discretion of the County Manager, for use when the transit corridor becomes available. The County may, at its option, complete the interim transit corridor improvements, and the permanent improvements in the median strip between the transit corridor and the street, on any section of the transit corridor adjacent to undeveloped parcels. The County ~~may~~ could charge the developer for the cost of these improvements at the time of the Final Site Plan approval for the related adjacent property.

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At such time as the South Glebe Road/Route 1 Intersection improvements are constructed pursuant to subparagraph 21.(a), the County, in its discretion and at its cost, may construct Preliminary Transit Improvements within the corridor right-of-way. Such Preliminary Transit Improvements shall be street improvements and related improvements adjacent to Route 1, Crystal Drive, and South Glebe Road extended that are determined by the County to be necessary for the operation of the Interim Transit Service described in subparagraph 21.(e)v. Any funds already placed in escrow by the applicant for the construction of interim improvements for the transit corridor pursuant to this subparagraph and that have not already been used for the construction of such interim improvements may be applied by the County to the Preliminary Transit Improvements.

iii. Station Contribution:

Upon approval of each Final Site Plan, the developer agrees to contribute an amount equal to \$0.10 per square foot of GFA (the "Station Contribution") for transit stations and related improvements consistent with the Transit Corridor Plan and located within the PDSP area, such amount to be adjusted annually to reflect changes in the Washington Consumer Price Index for Construction from October 2000 to the time of approval of each Final Site Plan. At the election of the County, this contribution shall be made to Arlington County for (a) the installation of transit stations or shelters outside of the transit corridor to serve the buildings within the PDSP area as part of the interim transit service, which transit stations or shelters shall be designed according to the Urban Design Guidelines; (b) a trust and agency account established and maintained by Arlington County for the construction of LRT or BRT transitway stations and related improvements within the Transit Corridor Plan; or (c) both (a) and (b) as allocated by the County. The developer shall have the right to review and comment on the design of the transit stations within the PDSP area and the County will endeavor to ensure that the designs of the stations are compatible with the buildings and other urban design elements in the vicinity of each such station. In the event a special district is established pursuant to paragraph 29 herein, to the extent permitted by applicable law, the Station Contribution for each Final Site Plan shall be credited to each Final Site Plan's buildings' financial obligations under such special district.

iv. Performance:

In the event it is determined, (a) prior to the later of either December 31, 2010, or the issuance of certificates of occupancy for more than 2,200,000 square feet of GFA within the PDSP, that a BRT or LRT transit system will not be constructed within the Transit Corridor Plan; or, (b) that preliminary engineering or construction of such a BRT or LRT transit system has not commenced by December 31, 2010, then Arlington County shall refund each Station Contribution to the developer of each Final Site Plan less the dollars spent on the interim station improvements. Such amount shall be refunded to the entity defined as the applicant on the application for final site plan approval, irrespective of any change in ownership or control of a development.

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v. Interim Transit Service:

Transit related policies and improvements shall be implemented throughout all phases of development. Initial transit service may be provided by extension/expansion of the existing ART system and administered by the County. Initial transit improvements shall include the installation of transit stations or shelters ("initial shelters") at locations required to appropriately serve development until a permanent LRT or BRT transitway and stations are constructed, as determined upon Final Site Plan approvals. Such initial shelters shall be highly visible (including appropriate signage and attractive graphics), accessible in nature, aesthetically attractive and weather protected, as set forth in the Urban Design Guidelines. The cost of construction and maintenance of such initial shelters shall be funded in accordance with paragraph (iii) of this condition. The developer agrees to develop final designs of the initial shelters, in consultation with the County, which shall be submitted at the time of the first Final Site Plan and approved by the County Manager or his designee.

Open Space

22. The developer agrees to construct the open space improvements identified in the schedule below in accordance with the events identified in the schedule unless a variation from the schedule is approved in a Final Site Plan within the Phased Development Site Plan. The developer agrees to grant public use and access easements, in a form acceptable to the County Attorney and the County Manager, over the public open space areas identified in the Potomac Yard Urban Design Guidelines. The exact timing and acceptance of easements shall be determined at the time of each Final Site Plan. However the developer agrees to complete construction of the improvements to the open space areas, as described in the PDSP or Potomac Yard Urban Design Guidelines, prior to the granting of such easements. In addition, the developer agrees to grant temporary public access easements, as needed, in forms acceptable to the County Attorney and the County Manager, over and across interim improvements as described in this condition. The permanent names for all such open space areas in the PDSP shall be determined in accordance with the Arlington County Policy for Naming and Renaming of County Facilities and Parks, adopted by the Arlington County Board on July 10, 1999, or the then-current policy. Upon construction, each open space improvement shall be maintained by the applicant or its successors; and, for each open space, such maintenance shall be the responsibility of one entity only. The developer agrees to submit a final landscape plan for each open space. At the time of submittal of each final landscape plan, a park maintenance plan and events management plan shall be included and approved by the County Manager or his designee as part of the final landscape plan. Upon approval, such plans shall govern maintenance of parks and management of events. The developer further agrees to coordinate with the Department of Parks, Recreation and Community Resources on the programming of the parks.

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(a) Center Park

For each building on the east side of Land Bays D and E, by the time of the issuance of the first Certificate of Occupancy for occupancy of the building by tenants, an interim improvement of that portion of the Center Park adjacent to such building, consisting of green lawn with pedestrian paths, extending 50 feet into the Center Park area from the face of such building, shall have been constructed in accordance with the Potomac Yard Urban Design Guidelines. Before the issuance of any Certificate of Occupancy for any building in Land Bay D, the interim improvements on the Center Park shall include a pedestrian path through Land Bay E connecting Land Bay D and South Glebe Road, provided that (i) South Glebe Road improvements have been completed, and (ii) Land Bay E remains undeveloped to the extent necessary to locate a path. For any building in Land Bay E, the interim improvements shall include a pedestrian path through Land Bay D connecting Land Bay E and North Park, provided that (i) construction of North Park has been completed and (ii) development in Land Bay D remains undeveloped to the extent necessary to locate a path. The interim improvements will not be provided in the event that the portion of the final design plan of the Center Park adjacent to each such building has been implemented. In addition, each such interim improvement area is required to be preserved and maintained only for so long as it is not required by development activities of adjacent subparcels.

The developer agrees to submit a design plan for the entire Center Park, which shall be consistent with the concept plan for the Center Park as described in the Potomac Yard Design Guidelines, at the time of submittal of the first Final Site Plan for any building on the west side of Land Bay D or E. The design plan shall be approved by the County Board as a part of the approval of the first Final Site Plan for any building on the west side of Land Bay D or E.

The developer agrees to submit to the Zoning Administrator, for review and approval by the County Manager or his designee, a final landscape plans for the entire Center Park, which shall be consistent with the approved design plan for the Center Park, and shall be submitted to the County following approval of the first Final Site Plan for any building on the west side of Land Bay D or E. The final landscape plan for the Center Park in Land Bays D and E shall be constructed in sections concurrent with construction of each Final Site Plan on the west side of Land Bays D and E.

(b) North Park

The developer agrees to submit a design plan for the entire North Park, which shall be consistent with the concept plan for the North Park as described in the Potomac Yard Design Guidelines, at the time of submittal of the first Final Site Plan for any building in Land Bay C. The design plan shall be approved by the County Board as a part of the approval of the first Final Site Plan for any building in Land Bay C.

The developer agrees, prior to approval of the first Final Site Plan for any property located within Land Bay C, to submit to the Zoning Administrator, for review and approval by the County Manager or his designee, a final landscape plans for the entire North Park. Such landscape plans shall be consistent with the approved design plan for the North. The developer agrees to construct the final landscape plan for the North Park in sections, concurrent with construction of the below-grade parking structure in each section.

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(c) South Park

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- (1) The developer agrees to plan and implement a landscape plan for the Four Mile Run area in Land Bay F, extending to the southern bank of the Four Mile Run waterway including the existing bridges and the portions of the Four Mile Run area that are under the jurisdiction of the City of Alexandria (collectively, "South Park"), before the issuance of certificates of occupancy for buildings in Land Bay F comprising greater than 3/4 of the total permitted development in Land Bay F. Upon construction, South Park, except for any area within the Four Mile Run Channel Easement recorded in the land records of Arlington County and the City of Alexandria, shall be maintained by the applicant or its successors; and such maintenance shall be the responsibility of one entity only. The landscape plan shall provide for permanent improvements as described below for the portions of South Park that extend from the planned building improvements in Land Bay F to a line approximately 140 feet north of the north edge of the Four Mile Run waterway (South Park A") as shown on the Transportation and Land Use Plan drawing dated September 1, 2000. The landscape plan shall provide for base improvements as described below for the portions of South Park that are south of the setback line including the portions of the Four Mile Run area that are in Alexandria ("South Park B") as shown on the Transportation and Land Use Plan drawing dated September 1, 2000.
 - (i) The permanent improvements for South Park A, which shall be consistent with the concept plan as described in the Urban Design Guidelines, shall be submitted to the Zoning Administrator for review and approval by the County Manager or his designee.
 - (ii) The base improvements for the portions of South Park B that are in Arlington ("South Park B-Arlington") and Alexandria ("South Park B-Alexandria") shall be consistent with the concept plan as described in the Urban Design Guidelines and shall be submitted to the Zoning Administrator for review by the County Manager or his designee, and approval by the County Manager or his designee for the base improvements in the Arlington portion of South Park B. The base improvements for the portion of South Park B that is in Alexandria ("South Park B-Alexandria") are described in the Urban Design Guidelines, provided that these improvements are consistent with any applicable existing or future requirements by the City of Alexandria. The developer agrees to cooperate with Arlington County and the City of Alexandria to connect the bicycle trail across jurisdictional lines in the vicinity of Four Mile Run, subject to all necessary governmental approvals.
 - (2) The developer or its successors shall cooperate with a body, that may be established by Arlington County and the City of Alexandria to advise on the future of Four Mile Run, in the planning and construction of the South Park B enhanced improvements. A landscape concept plan for additional, enhanced improvements for South Park B may be approved by the County Manager of Arlington and the City of Alexandria in consultation with the aforementioned body established by Arlington County and the City of Alexandria. The planning and construction of such additional, enhanced improvements shall be implemented by an entity or entities to be determined in the future following provision of funding for such planning and construction.
 - (3) Nothing contained in these Phased Development Site Plan conditions shall interfere with the applicant's obligation to the City of Alexandria or require the applicant to seek any discretionary or administrative approval by the City of Alexandria or to undertake any actions in Alexandria that would be inconsistent with any approval or requirement by the City of Alexandria. Provided, however, that this condition shall not preclude future agreements by the developer to provide improvements that might include such approvals or requirements. In the event that implementation of the base improvements for South Park B-Alexandria would require such an approval by the City of Alexandria or would be inconsistent with any existing or future requirement of the City of Alexandria, then the base improvements for South Park B-Alexandria shall be modified so as to allow implementation of these improvements without such approval or inconsistency.

- (4) Nothing contained in these Phased Development Site Plan conditions shall require the applicant to undertake any actions that would be inconsistent with the National Park Service land exchange agreement, unless such agreement is finally determined by a court of competent jurisdiction to be invalid.

23. The developer agrees to construct a bike trail facility as shown on the Pedestrian Circulation Diagram dated August 30, 2000 or as approved by the County Manager or his designee.

Potomac Yard Design Guidelines

24. The Potomac Yard Design Guidelines, dated October 3, 2000 and submitted as a part of the approved PDSP, shall serve as a guide for the coordinated development of all phases of the Phased Development Site Plan. All Final Site Plans shall include details consistent with the objectives and specifications of the Guidelines, or as approved by the County Board. Each Final Site Plan submission shall include a conceptual landscape plan for the Final Site Plan, including planting, sidewalk and streetscape. Each conceptual landscape plan, unless otherwise approved by the County Board through final site plan approval, will be implemented consistent with a final landscape plan as submitted to and approved by the County Manager or his designee.

Other Requirements

25. The developer agrees to comply with the terms and conditions of the Arlington County Affordable Housing Guidelines for new development in effect at such time as each Final Site Plan is submitted for approval. In the case of commercial development, the developer agrees to contribute to the Housing Reserve Fund in accordance with the then-current guidelines, if any, at the time of Final Site Plan submittal. In the case of residential development, the developer or successors agrees to cooperate with the County or non-profit housing providers to develop onsite affordable housing or, in the event onsite affordable housing is not feasible, contribute to the Housing Reserve Fund, in accordance with the then current guidelines for on-site affordable housing and for such contributions, if any, is applicable at the time of Final Site Plan submittal.
26. For each Final Site Plan, the developer agrees to comply with the then-current Arlington County Chesapeake Bay Preservation Ordinance (CBPO) as applied to all land within each Final Site Plan excluding any land that is within any existing or planned public right-of-way, such planned public right-of-ways to include Potomac Avenue, South Glebe Road, the secondary road that is generally at the junction of Land Bays C and D, and the transit right-of-way, all as shown on the Transportation and Land Use Plan drawing dated September 1, 2000.

For each Final Site Plan with impervious cover that must be mitigated under Arlington County's CBPO or under any other stormwater quality regulation in effect at the time the site plan is filed, a vegetated building roof ("Green Roof") designed to appropriately treat stormwater quality will be considered an acceptable BMP to the extent measured by the standards set forth in CBPO. For each Final Site Plan with approved Green Roof buildings, the stormwater quality requirements for any remaining impervious cover that must otherwise be mitigated under the CBPO may be met by either 1) an approved BMP, or 2) a contribution to the Source Control Fund (or equivalent) at a rate equal to one-half the rate stipulated by the CBPO in effect at the time the Final Site Plan is filed.

27. The developer agrees to complete the U.S. Green Building Council's LEED scorecard for each proposed building in the Final Site Plan and submit the completed LEED scorecard with all Final Site Plan applications, including documentation describing how the elements indicated on the LEED scorecard will be provided.

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Transportation Management Program

28. The developer agrees to develop and implement a Transportation Management Program (TMP) consisting of Transportation Demand Management (TDM) and Transportation System Management (TSM) strategies and tactics with the multiple goals of: 1) reducing the number of single occupancy vehicles arriving to the Site; 2) achieving specified travel mode shares; and, 3) providing system performance desired to achieve specific TMP objectives. The specific program objectives will be established in conjunction with the County, and revised as necessary, to achieve the desired transportation system performance outlined in the developer's proposed transportation plan, which was based on a parking supply of approximately 5,900 spaces, achieving a commuter average vehicle occupancy of 1.4 for office, hotel and residential uses and a transit-bike-walk mode share of 40%. The TMP shall consist of five parts: (a) facilities and improvements provided by the applicant or successor developers as the project is constructed; (b) coordinated management of parking by all building owners within the development; c) funding and ongoing implementation of the TMP program through an owners' association consisting of all building owners within the development; (d) planning and provision of transit and other services, promotions, incentives, additional improvements and facilities, research, and plans necessary to fulfill TDM and TSM objectives; and (e) ongoing evaluation of the effectiveness of the TMP.

Physical Facilities and Improvements

- (a) The developer agrees to provide the following facilities and capital improvements, portion of which will be provided in conjunction with each final site plan, as may be appropriate:
 - (i) Space and build out for a small transit store, TMP staff offices and supply storage.
 - (ii) Garage entrances and exits designed to permit van access to desirable parking locations.
 - (iii) Parking availability display units at garage entrances.
 - (iv) Identification of appropriate locations for taxi stands to serve the development.
 - (v) Wayfinding, directional and advisory signage.
 - (vi) Bike racks, showers and lockers in office buildings to meet County standards as of the time of Final Site Plans.
 - (vii) Installation of electronic kiosks providing access to transit and traffic information and access to the CommuterPage.Com web site in locations to be determined during each Final Site Plan process, provided that the Applicant shall not be required to incur costs for such improvements greater than \$30,000 per building.
 - (viii) Installation of loop detectors, vehicle counters, video cameras and related hardware, communications, and software at key intersections within or adjacent to the PDSP area and as planned in the traffic signal system improvements provided by the Applicant, provided that the Applicant shall not be required to incur costs for such improvements greater than \$250,000. The tabulation of costs against this \$250,000 ceiling shall include only those costs above and beyond the cost of traffic signals required by Condition #20.
 - (ix) A contribution of \$75,000 each for the purchase of two new Arlington Transit buses to enable extension and enhancement of the development's transit services. The contribution for the first bus shall be paid prior to issuance of a certificate of occupancy of the first building of the first Final Site Plan. The contribution for the second bus shall be paid prior to issuance of a certificate of occupancy for the building within the PDSP which increases the amount of total development GFA completed within the PDSP to more than 750,000 square feet.

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Coordinated Parking Management

- (b) Each building shall contribute to and participate in the management of parking assets within the development, as appropriate for the use of the building, and consistent with an Area Parking Plan pursuant to Subparagraph 28(d) iii) 5) to include:
- (i) Single occupancy vehicle (SOV) parking at fair market rates
 - (ii) Reserved, conveniently located, and free vanpool parking spaces
 - (iii) Reserved, conveniently located, and discounted carpool parking spaces
 - (iv) Provide convenient retail parking as required
 - (v) Provide convenient residential visitor parking as needed.
 - (vi) Planning and implementation of special strategies related to major event parking relating to the requirements of any hotels or community activities within the PDSP.
 - (vii) Daytime parking for commuter buses serving the office uses in the development subject to availability of appropriate space.
 - (viii) Coordination with tour bus parking management as required for each Final Site Plan for hotel or conference facilities within the Site.

The developer agrees that each of the above elements will be provided in conjunction with final site plan approvals as determined by the County Board.

Transportation Management Program Organization and Funding

- (c) The Potomac Yard TMP will be considered an important component of the Arlington County Commuter Assistance Program and will be coordinated with and receive assistance from the County. The developer agrees to compensate the County, at its option, for such assistance as the County determines is necessary for the efficient and effective performance of the TMP.
- (i) Owners Association. The developer agrees to establish an owners' association (the "TMP Association") at the time of the issuance of the first Certificate of Occupancy for the first final site plan which TMP Association shall be responsible for ongoing operation and management of a TMP on behalf of tenants, residents, guests, and visitors of the South Tract.
 - (ii) Funding. To fund the on-going operation and management of the TMP, the TMP Association shall assess each owner of property, consistent with paragraph 1) below. The assessment shall commence for each building as set forth in a Final Site Plan condition at, or no more than six months before, the issuance of each building's certificate of occupancy. The assessment shall be set to provide the amount of funding required to implement an Annual TMP Work Plan as determined by the TMP Association. The TMP Association shall operate using fiscal years running from July 1 to June 30 of the succeeding year. The TMP assessments shall be set by the TMP Association based upon the funding requirements of the TMP Work Plan.
 - 1) The maximum annual assessments shall not exceed the following (as adjusted annually by the CPI-U-Transportation for the Washington area):
 - a) For office development, the maximum annual assessment shall increase as the amount of development increases. At each threshold, the increased maximum assessment amount shall be applicable to all commercial (except hotel) development within the PDSP for which a Certificate of Occupancy has been issued:
 - i) For up to 500,000 square feet of GFA within the Arlington PDSP, the assessment shall be \$0.200 per square foot of GFA
 - ii) For the next 500,000 square feet, \$0.225 per square foot of GFA
 - iii) For the next 500,000 square feet, \$0.250 per square foot of GFA
 - iv) For the next 500,000 square feet, \$0.275 per square foot of GFA
 - v) For the last 880,000 square feet, \$0.300 per square foot of GFA
 - b) For residential development: \$60 per dwelling unit
 - c) For hotel development: \$60 per hotel room, plus \$60 per additional parking space related to function facilities pursuant to paragraph 8 (b).

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- 2) The TMP Association may request other one-time contributions from its members and other entities.
- 3) The TMP Association may request annual funding from the special district established pursuant to Paragraph 29 of these Conditions if such district supports transit promotions. This contribution shall be limited to no more than 20% of the total annual contributions of the TMP Association.
- 4) Any funding received by the TMP Association and not encumbered within the applicable fiscal year, upon completion of an annual close-out audit, may be carried forward to a succeeding fiscal year for programming in the Annual TMP Work Plan.

Services and Program Elements

(d) The developer agrees that the TMP shall consist of a number of strategies and tactics intended to contribute individually and in combination to achieving identified objectives which may include, but not be limited to, the following elements and services which shall be implemented by the TMP Association to the extent of available funding:

- i) Such staff and contractors as are necessary to coordinate and manage the TMP program.
- ii) Promotion and marketing efforts implemented and coordinated by the TMP Association staff:
 - 1) Provision of information on a regular basis to each tenant's employees and to residents, visitors, retail customers and hotel guests regarding available transportation alternatives.
 - 2) Provision of access to services such as car and vanpool ride matching, guaranteed ride home program, telework options, variable work hour programs, bicycling, transit and HOV facilities.
 - 3) Coordination of marketing of the local transit systems as part of an information dissemination program.
 - 4) Promotion of the creation of Employer Transportation Benefit Programs among tenants or other occupants of property within the PDSP and utilization of the MetroChek Match Incentive Program as an incentive tool.
 - 5) Provision of a SmarTrip electronic fare card to all residents, guests and employees of tenants to encourage use of transit services and to facilitate distribution of employer transit benefits to qualified users.
- iii) Market Research, Reports and Planning including:
 - 1) Surveys, parking garage and cordon counts and other marketing research to determine the performance of TMP elements.
 - 2) Submission of quarterly reports to the County regarding TMP Association activities
 - 3) Development of an Annual "State of the Commute" Status Report to the County assessing the mode split, parking ratios, average vehicle occupancy, daily person and vehicle trips to and from the development.
 - 4) Development, in conjunction with the County Manager or his designee prior to April 1 of each year, of an Annual TMP Work Plan including program performance standards and objectives.
 - 5) Development, in conjunction with the County Manager, or his designee, of an Area Parking Plan (APP) to optimize the function and use of parking in the area to make access to the development. The PMP is intended to provide: 1) a summary of parking assets public and private, surface and structured; 2) document parking policies and coordinated strategies for meeting area parking demand; and, 3) through periodic updates, provide for evaluation and resolution of parking-related issues that arise and require multiple-party participation to resolve.

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- iv) Development, in conjunction with the County, of a local transit service plan to identify and provide for facilities, equipment and services necessary to supply high quality local transit services to provide access to the development prior to implementation of higher capacity services operating on the dedicated transitway and pursuant to paragraph 29 of these Conditions. Such local transit service will include:
 - 1) Local Arlington Transit service from the Crystal City Metro Station extended to the site with service improved to 5 minute rush period frequencies
 - 2) Contributions to the ART service as a Transit Funding Partner according to the subsidy allocation formula as amended from time-to-time by the Arlington County Board.
 - 3) Special bus services to meet unique programmatic needs of the development (i.e. Lunch shuttles, local charters, group tours, airport connections).
- v) Fare incentive programs including:
 - 1) Contribution to the Metrocheck Match Employer Incentive Program to create subsidy programs for employees of tenants;
 - 2) Residential and hotel employee fare incentive programs;
 - 3) Residential and hotel guest group purchase discounts for transit fare media;
 - 4) Special fare promotions to encourage use of specific transit services, car and van pools and commuter bus services;
 - 5) A program of incentives to those who bike, walk and use other renewable resource modes for commuting.
- vi) Intelligent transportation systems to be integrated into the transportation infrastructure of the development such as:
 - 1) Traffic reporting capabilities to the regional reporting services
 - 2) Use of websites for information dissemination
 - 3) Parking and traffic management information systems.
- vii) Contributions to the Commuter Assistance Program for on-site and off-site services providing:
 - 1) Arlington Transportation Partners Coordination and services
 - 2) Operation of a "Commuter Hut" transit store on-site
 - 3) CommuterPage.com website development and maintenance
 - 4) Preparation of marketing materials and transit service information
 - 5) Participation in County and region-wide initiatives.
- viii) Any other on-going programs, costs, and physical improvements not otherwise provided for in this PDSP condition that are required in connection with the Potomac Yard TMP for the South Tract to fulfill Transportation Demand Management and Transportation System Management objectives as defined by the Annual TMP Work Plan including, but not limited to:
 - 1) Compensation to Arlington County for services.
 - 2) Space rent and operating expenses and staffing costs associated with the transit store.
 - 3) Space rent and operating expenses and staffing costs associated with offices and storage space for TMP staff and programs.

TMP Performance

- (e) Implementation of the TMP elements shall be the responsibility of the TMP Association, and such implementation will be evaluated on an annual basis by the County Manager, or his designee, based on information derived from the surveys, traffic counts, research, quarterly reports, Annual "State of the Commute" Report, during the process of developing an Annual TMP Work Plan as outlined in paragraph 28(d)(iii) pursuant to the following:
 - (i) TMP performance standards and objectives will be identified in conjunction with the County for each element of the TMP by which to measure its performance and cost effectiveness, and revised as necessary to achieve the desired transportation system performance outlined in the developer's proposed transportation plan, which was based on a parking supply of approximately 5,900 spaces, achieving an office, hotel and residential average vehicle occupancy of 1.4 and a transit-bike-walk mode share of 40%.

- (ii) The developer agrees to develop methodologies for approval by the County to monitor the performance of each element of the TMP prior to April 1 of the year immediately after the Certificate of Occupancy is granted.
 - (iii) In the event that: 1) the TMP elements are not implemented to the satisfaction of the County Manager; 2) the County Manager has notified the TMP Association of the specific reasons for such dissatisfaction and the TMP Association has failed to take reasonable corrective actions addressing the reasons stated by the County Manager for two consecutive annual reporting periods; then, at the discretion of the County Manager, the TMP Association may be directed to develop and implement alternative program elements or the Arlington County Commuter Assistance Program shall assume management of the TMP programs under the terms of this PDSP condition.
 - (iii) The developer shall submit an updated Transportation Management Program report with the filing of each Final Site Plan. This report will describe the status of the development in meeting vehicle occupancy and mode share goals, discuss area traffic conditions, analyze the expected impacts of the additional development covered by the Final Site Plan, and describe any additional TDM or TSM actions that might be needed.
29. The developer agrees to cooperate with the County and other property owners in the Crystal City/Route 1 corridor to establish a special district, or an other district or area having a comparable purpose, to assist in the financing of a transit system in the Crystal City/Route 1 corridor.
30. The developer agrees to undertake no activities (except for those reasonably required for maintenance or as otherwise approved by the County Manager or his designee) in the area within the Phased Development Site Plan designated, and agreed to by the developer, that would preclude construction of a WMATA Rail Station.
31. The developer agrees to contribute, in two equal payments, \$200,000 in total for a Neighborhood Traffic Calming (NTC) program and to address problems with arterials (for example, South 23rd Street and Arlington Ridge Road) in Arlington Ridge and Aurora Highlands. The developer agrees to make the initial \$100,000 payment to the County prior to approval of the first Final Site Plan and the final \$100,000 payment to be made to the County at such time as the South Glebe Road intersection improvements are constructed in accordance with Condition # 21(a). The funds shall be used by the County for measures described in the County Board's Neighborhood Traffic Calming Program, Process, Criteria and Measures.

Miscellaneous

32. Following the approval of the Phased Development Site Plan by the County Board, and in the advance of any Final Site Plan, but in no event later than 180 days following approval of the PDSP by the County Board, the developer agrees to submit to the Zoning Administrator three (3) copies of a revised Phased Development Site Plan incorporating all aspects of the approved Phased Development Site Plan and revised Urban Design Guidelines.
33. The developer agrees to notify the Zoning Administrator immediately following the sale of any portion of the site as to: (a) square feet of property sold; (b) location and RPC numbers of property sold; (c) use and density committed by the sale; and (d) the name of the person representing the new owner of the property.
34. The conditions assigned to Final Site Plan approvals may include, but shall not be limited to, the conditions of the Phased Development Site Plan approval.
35. The applicant shall submit a final plat certifying the site area of each parcel, including street rights of way, at the time of the submittal of each Final Site Plan.
36. The developer agrees to comply with Administrative Regulation 4.1 for the submission of all Final Site Plan applications. No building permit shall be issued until a Final Site Plan has been approved by the County Board and all conditions to such approval, required to have been satisfied at the time of such issuance, have been met.

37. The developer agrees that all portions of any land may not yet developed, or under construction, shall be fenced, kept free from debris and over seeded with a drought tolerant native wildflower/native warm season grass mix unless otherwise improved as provided in these conditions.
38. This PDSP approval includes the continuous right to continue railroad uses on the relocated track area, identified as the rail corridor on the Deed of Easement dated May 22, 1998 and recorded on December 22, 1998 among the land records of Arlington County, Virginia at DB 2948, p. 1712, on the surface, sub-surface and above surface. Such right includes all existing as well as all needed future uses, future facilities, services, etc., including but not limited to the following: the right to operate engines and trains of all types; the right to receive, assemble switch, inspect, classify, dispatch and repair inbound and outbound passenger and freight trains; the right to maintain, repair, improve, alter, drain, etc., the tracks and the land area related thereto; the right to install, repair, improve, alter, remove and relocate whether above surface, surface or sub-surface, catenary systems, electric lines, poles of various kinds, communication facilities, signals, wires, tubes, conduits, micro wave installations, etc.; any and all other rights necessary or needed to permit full, complete uninterrupted unrestricted operation of freight and passenger trains in the said area. Such right does not permit car barns, garages or shops in the area.

(This condition is intended to authorize, by a modification of use regulations under Sec. 36.H.5.a, those uses described above not permitted by Sec. 23 A. A. B., if any.)
39. This Phased Development Site Plan expires 10 years after the date of County Board approval if the first Final Site Plan has not been vested. Extension of this approval shall be at the sole discretion of the County Board.
40. In the event of a conflict, the PDSP Conditions supercede the Potomac Yard Design Guidelines, including amendments thereto, that may be adopted by the County Board.

Additional Conditions

41. The developer agrees to develop a Public Art Concept Plan for the PDSP which shall be approved by the County Manager or his designee prior to approval of the first Final Site Plan for any buildings located in Land Bays B through F. The developer agrees to retain a professional art consultant to develop the Public Art Concept Plan. At the time of approval of each Final Site Plan in Land Bays B through F, the developer agrees to make a contribution toward public art. The form and/or amount of any such contribution, shall be determined consistent with the Public Art Concept Plan. In Land Bay A, the contribution toward public art, and the form of any such contribution, shall be determined at the time of approval of each Final Site Plan.
42. The developer agrees to contribute the local share of construction costs, up to \$80,000, for a bike trail connection from the Four Mile Run Trail to its development on the Potomac Avenue elevation. The local share is that which is necessary to match any local, state or federal grant or in the case of failure to obtain any such grant, the cost of Arlington County's share of construction cost for said bike trail, up to \$80,000. If at the end of a five year period the Arlington County Manager has not approved the design and location of the bike trail as recommended by staff, developer or any inter-jurisdictional planning body established to determine the design of the park area, the developer or its successors will be relieved of their obligation to contribute up to \$80,000 for construction costs and instead place \$60,000 into an escrow account to be used for the sole purpose of the planning, design and construction of a bike trail connection by Arlington County.
43. The developer agrees to construct a minimum of three (3) east-west streets, in addition to South Glebe Road, within the PDSP connecting Potomac Avenue with Crystal Drive between 27th Street and South Glebe Road. The distance between these streets shall create block faces with a maximum width of 500 feet, except for the block face resulting in Land Bay C, which shall have a maximum width of 600 feet.
44. The developer agrees to design and construct crosswalks within the PDSP at all major intersections and at additional locations to be determined at the time of final site plans. The design of the crosswalks shall be consistent with the standards contained in the Urban Design Guidelines and as determined at the time of final site plan approval.

45. The applicant agrees to rent to the County or to Arlington Public Schools, at the County's option, up to 15,000 square feet of the 90,000 square feet of Potential Retail Space that is not Retail Space pursuant to Condition #4.B.(a), at a 25% discount, for use as space for one or more alternative high school programs; provided that the County exercise this option no later than 12 months after the earlier of these two events:
- a. Issuance of the final certificate of occupancy for the building that brings the level of constructed base-retail space to 40,000 s.f., or
 - b. Notice by the developer that 40,000 s.f. of base-retail space will be constructed and available within 12 months.

46. In the event that the developer, in accordance with condition 3, delays transfer to the County of those property rights on the North Tract prescribed by this PDSP ("property rights"), the developer agrees that the County may, at or after the time of the filing of the first final site plan on the South Tract (including Land Bays A and B) and solely at the County's option, execute a lease for the areas to be leased in the North Tract as specified by the County. Such lease may be requested by the County by giving ninety (90) days written notice to the developer. The developer agrees that the property shall be leased without tenants, unless otherwise approved in writing by the County Manager. Such lease shall be at a rent of one dollar (\$1.00) annually. The developer also agrees that the County may make any improvements on the aforementioned areas, provided that these improvements are consistent with the requirements in the Virginia Department of Environmental Quality (VDEQ) letter of October 10, 2000, as may amended from time to time, and with the avigation-easement restrictions contained in the agreement between Commonwealth Atlantic Properties and the Metropolitan Washington Airports Authority, dated February 3, 2000. The lease provided for in this condition shall terminate either (a) one hundred eighty (180) days after written notice to the County which may be given at any time following an adverse (to developer), unappealable final resolution of any lawsuit delaying transfer of the North Tract to the county, or (b) upon the transfer of the North Tract to the County as is set forth in Condition 3.

47. In completing the Voluntary Remediation Program (VRP) for the Davis site, the developer agrees to use its best efforts to accomplish the capping of the Davis site according to specifications approved by the County Manager or his designee, so long as those specifications are consistent with the requirements outlined in the Virginia Department of Environmental Quality (VDEQ) letter of October 10, 2000 as such letter may be amendment and any requirements imposed as a result of the October 22, 1993 Settlement Agreement and the lawsuit related to the North Tract. The developer agrees to design and install or cause to be designed and installed the required asphalt, soil, or concrete cap diligently and to expedite the work consistent with the required approvals. Within the constraints of that VDEQ letter, the developer shall also include in its design and construction of the cap the County's specifications for related improvements ("related improvements") to that cap (including, but not limited to, pavement striping, stormwater drainage facilities, electrical conduit, and light poles), provided that the County pays the full cost for the related improvements and that the County submits the specification for such improvements within six months of the developer's request therefor or within such time as may be necessary to implement VDEQ's requirements.

The developer agrees to use its best efforts to see that the cap is maintained according to the agreement among the parties settling the environmental litigation over the Davis site (October 22, 1993 Settlement Agreement), in perpetuity, provided that the County pays the full cost of maintenance of the related improvements and that share of the maintenance cost for the cap itself which, according to professional engineering standards, are due specifically to the County's use of the capped area and which would not otherwise be necessary or required.

Should the County so request at any later time, the developer or its successors shall design and construct or cause to be designed and constructed (according to County specifications) additional related improvements in the capped area, provided that these are consistent with the aforementioned VDEQ requirements, as may be amended from time to time, and the October 22, 1993 Settlement Agreement, and provided that the County pays fully for their design and construction.

EXHIBIT C

ILLUSTRATIVE ALLOCATION OF ASSESSMENT UNITS

The table accompanying this Exhibit is included to illustrate a hypothetical allocation of Assessment Units on a hypothetical Record Date, January 1, 2008, made in accordance with the provisions of Article III of the Master Declaration. All of the numbers are for illustration purposes only and do not constitute a representation or prediction of the aggregate amount of the Common Expense Assessment on that Record Date or the allocation of that amount.

The illustration is based on the following assumptions and applications:

(a) The total Common Expense Assessment for 2008 (the calendar and fiscal year of the Master Association) is \$400,000.

(b) The Common Expense Assessment will be allocated to the Commercial Lots and Residential Lots, in accordance with the Entitlements which prescribe permitted development densities, subject to partial reductions as discussed in (c) through (f) below.

For example, the Commercial Lot comprising the land described as "Landbay A" on the PDSP may theoretically be developed with 654,000 square feet of Gross Floor Area, and the Residential Lot comprising the land described as "Landbay F" on the PDSP may theoretically be developed with 500,000 square feet of Gross Floor Area for residential use and 62,000 square feet of Gross Floor Area for retail (including grocery) use.

(c) 6 Assessment Units will be allocated to a Commercial Lot for each 1,000 square feet of Gross Floor Area permitted for any use and to a Residential Lot for each 1,000 square feet of Gross Floor Area permitted for retail use; and 2 Assessment Units will be allocated to a Residential Lot for each 1,000 square feet of Gross Floor Area permitted on any use except retail.

For example, the Commercial Lot comprising the land described as "Landbay A" on the PDSP would be allocated 3,924 Assessment Units:

$$654,000 \text{ s.f. of GFA} \div 1,000 = 654 \times 6 = 3,924$$

(e) However, a separate calculation is made for a more equitable allocation between unimproved and improved land.

For example, some of the Lots (such as "Landbay B") remain unimproved; other Lots (such as "Landbay D") have received building permits for some or all of their permitted development densities; and some of the Lots (such as "Landbay A" and "Landbay F") have received Certificates of Occupancy for some or all of their development densities.

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Thus, Lots that have not received a building permit for any of their improvements (such as "Landbay B") will be allocated only **10%** of the Assessment Units that would otherwise be allocated for the same Gross Floor Area if based on maximum theoretical development densities permitted under the Entitlements.

Lots that have received building permits for their improvements (such as "Landbay D Residential") will, for the Gross Floor Area covered by the permits, be allocated **25%** of the Assessment Units that would otherwise be allocated for the same Gross Floor Area if based solely on maximum theoretical development densities permitted under the Entitlements.

Lots that have received Certificates of Occupancy for their improvements (such as "Landbay F Residential") will, for the Gross Floor Area covered by the Certificates of Occupancy, be allocated **100%** of the Assessment Units that would otherwise be allocated for the same Gross Floor Area if based on maximum theoretical development densities permitted under the Entitlements.

A single Lot may have some Assessment Units allocated (at **10%**) as unimproved land; some, (at **25%**) as land with building permits; and some, (at **100%**) as land with buildings for which Certificates of Occupancy have been issued.

(f) The total amount of the Common Expense Assessment will be allocated, for the period following the Record Date, based on a weighted number of Assessment Units, with each Lot bearing a portion of the burden in the ratio that the weighted number of Assessment Units allocated to a Lot bears to the total weighted number of Assessment Units allocated to all Lots.

For example, if the weighted number of Assessment Units allocated to the Lot comprising "Landbay E Office" is 2,184 (for improvements with Certificates of Occupancy) and the total weighted number of Assessment Units allocated to all of the Lots is 10,048, then that Lot is assessed 21.74% of the Common Expense Assessment or \$86,946, as follows:

$$2,184 / 10,048 = 0.2174 \times \$400,000 = \$86,946$$

[The illustrative table follows]

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Exhibit C Illustrative Allocation - Example/Specimen Only

Bay	GFA(000)	Units Assessed per 1000	Total Assessed Units
A-Ofc	648	6	3,888
A-Retail	6	6	36
B-Ofc	469	6	2,814
B-Retail	10	6	60
C-Ofc	1200	6	7,200
C-Retail	14	6	84
D-Ofc	373	6	2,238
D-Res	428	2	856
D-Retail	10	6	60
E-Ofc	364	6	2,184
E-Res	365	2	730
E-Retail	10	6	60
F-Res	500	2	1,000
F-Grocery	50	6	300
F-Retail	12	6	72
Total	4,459		21,582

Applicable Thresholds	
Until Building Permit	10%
Until CO	25%
After CO	100%

Assume Record Date:	1-Jan-2008
Assume Approved Expense to be Assessed	\$ 400,000

Bay	Assessed Units	Weighted Units	%	Assessed Cost
Threshold				
A-Ofc	3,888	3,888	38.70%	\$154,783
A-Retail	36	36	0.36%	\$1,433
After CO	100%			
B-Ofc	2,814	281	2.80%	\$11,203
B-Retail	6	1	0.01%	\$24
Until Building Permit	10%			
C-Ofc	7,200	720	7.17%	\$28,664
C-Retail	6	1	0.01%	\$24
Until Building Permit	10%			
D-Ofc	2,238	560	5.57%	\$22,274
D-Res	856	214	2.13%	\$8,519
D-Retail	6	2	0.01%	\$60
Until CO	25%			
E-Ofc	2,184	2,184	21.74%	\$86,946
E-Res	730	730	7.27%	\$29,062
E-Retail	60	60	0.60%	\$2,389
After CO	100%			
F-Res	1,000	1,000	9.95%	\$39,811
F-Grocery	300	300	2.99%	\$11,943
F-Retail	72	72	0.72%	\$2,866
After CO	100%			
Total	21,399	10,048	100.00%	400,000

A 11 11 03 7



2004155251

**Received and Recorded
In the Office of the
Clerk of the Circuit Court
of Arlington County, Virginia**

Document Number:	2004155251	Book/Page:	3710/1769	Clerk ID:	RECORDER
Document Type:	DECLARATION	Date Recorded:	06/03/2004	Grantor:	CRESCENT POTOMAC YARD
Text Pages:	4	Time Recorded:	13:34:14	Assumption Bal:	\$0.00
Plat Pages:	0	Document Date:		New Amount:	\$0.00
Received Of:	WALSH ET AL	Original Amount:	\$0.00	Exempt Code:	

Actual Consideration:	\$0.00	Taxable Consideration:	\$0.00
(039) VA Tax:	\$0.00	(214) Falls Church Tax:	\$0.00
(213) Arlington Tax:	\$0.00	(222) Falls Church Transfer:	\$0.00
(212) Arlington Transfer:	\$0.00	(223) Falls Church Grantor:	\$0.00
(038) Va Grantor:	\$0.00		
(220) Arlington Grantor:	\$0.00		
(301) Clerks Fee:	\$14.50		
(145) VA Library:	\$1.50		
(106) Tech Fee:	\$3.00		
(036) Deed Processing Fee:	\$0.00		
Document Total:	\$19.00		

Arlington County, Virginia
Clerk of the Court's Office

This certificate annexed constitutes the
Clerk's endorsement required by sections 17-59,
17-79 and 58.1-802 of the code of Virginia.

David A. Bell
Clerk

**IMPORTANT:
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Charlotte, NC 28246

RPC numbers 34027038, 34027040 and 34027041

FIRST AMENDMENT TO MASTER DECLARATION
FOR
POTOMAC YARD-ARLINGTON

THIS FIRST AMENDMENT TO MASTER DECLARATION FOR POTOMAC YARD-ARLINGTON (this "**Amendment**") is made as of the 21st day of May, 2004, by CRESCENT POTOMAC YARD DEVELOPMENT, LLC, a Delaware limited liability company ("**Declarant**") (Grantor and Grantee for indexing purposes).

RECITALS

A. Declarant executed a Master Declaration for Potomac Yard-Arlington (the "**Declaration**") dated December 15, 2003, which was recorded on December 16, 2003, in Deed Book 3637, Page 1511, in the Clerk's Office, Circuit Court, Arlington County, Virginia.

B. Declarant owns in fee simple all of the land subjected to the Declaration, except for that certain parcel of land containing approximately 4.8313 acres acquired and owned in fee simple by Comstock Potomac Yard, L.C., a Virginia limited liability company ("**Comstock**").

C. Pursuant to Section 2.4.1 of the Declaration, Declarant, alone, is entitled to vote during the Declarant Control Period (as defined in the Declaration) on any matter for which membership voting is permitted or required, subject to exceptions not applicable here.

D. Without regard to Section 2.4.1, the Declaration may be amended at any time by an instrument signed by Members (as defined in the Declaration) entitled to cast two-thirds (2/3) of all votes entitled to be cast by all Members, subject to approval by Declarant and subject to exceptions not applicable here.

E. Declarant wishes to amend the Declaration as set forth in this instrument and is entitled to cast more than two-thirds (2/3) of all votes entitled to be cast by all Members.

F. Moreover, Comstock, as the only other fee owner of land benefited and burdened by the Declaration, has joined in the execution of this Amendment to evidence its approval.

NOW, THEREFORE, in consideration of the Recitals and the benefits to be derived from this amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares and agrees as follows:

1. Capitalized terms used in this Amendment, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Declaration.

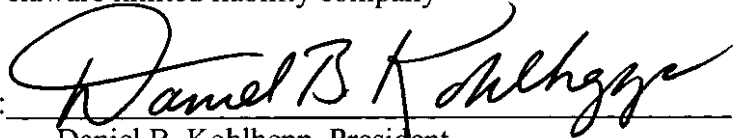
2. Section 12.3 is hereby amended by adding at the end of the section the following:

Notwithstanding anything herein to the contrary, this Declaration may not be amended to (a) diminish the voting rights of a Member under Section 2.4.1 or (b) increase a Member's allocable share of the aggregate annual Common Expense Assessment under Section 3.2 without the approval of such Member's class of Members acting as a separate voting group. Such approval may be evidenced (i) by a resolution adopted, at a meeting of the Members of the class (convened for that purpose in the manner of a meeting of all Members) by two-thirds (2/3) of all votes entitled to be cast by all Members of the adversely affected class or (ii) by an instrument signed by Members entitled to cast two-thirds (2/3) of all votes entitled to be cast by all Members of the adversely affected class.

3. The Declaration, as amended by this Amendment, is ratified and declared to be in full force and effect.

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to be executed pursuant to due and proper authority, as of the date first above written.

CRESCENT POTOMAC YARD DEVELOPMENT, LLC,
a Delaware limited liability company

By: 
Daniel B. Kohlhepp, President

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

I, Kylie W. Cuthbertson, a Notary Public in and for the jurisdiction stated above, do certify that Daniel B. Kohlhepp, President of Crescent Potomac Yard Development, LLC, a Delaware limited liability company, whose name is signed to the foregoing Declaration, bearing date as of May 21, 2004, has acknowledged the same before me in the jurisdiction stated above as a duly authorized officer and representative of the limited liability company.

Given under my hand and seal this 21 day of May, 2004.



Kylie W. Cuthbertson
Notary Public

My commission expires:
March 31, 2006

[consent and acknowledgment on following page]

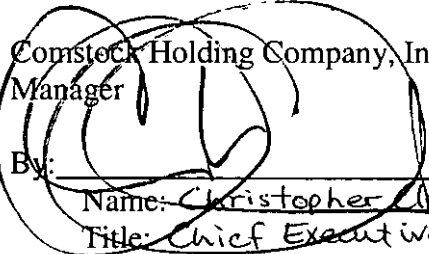
CONSENT TO FIRST AMENDMENT

The undersigned, Comstock Potomac Yard, L.C., a Virginia limited liability company, as the fee simple owner of a parcel of Land containing approximately 4.8313 acres (by virtue of Special Warranty Deed recorded in Deed Book 3637, page 1601, in the Clerk's Office, Circuit Court, Arlington County) which parcel is subject to the Declaration, hereby consents to and approves the foregoing First Amendment.

IN WITNESS WHEREOF, the undersigned has caused this Consent to First Amendment to be executed pursuant to due and proper authority, as of the date first above written.

COMSTOCK POTOMAC YARD, L.C., a
Virginia limited liability company

By: Comstock Holding Company, Inc.,
Manager

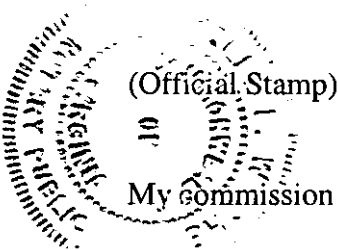
By: 
Name: Christopher Clemente
Title: Chief Executive Officer

ACKNOWLEDGMENT

STATE/Commonwealth of Virginia
COUNTY OF Fairfax

I, Kelly L. Wyche, a Notary Public in and for the jurisdiction stated above, do certify that Christopher D. Clemente, the Chief Executive Officer of Comstock Holding Company, Inc., the Manager of Comstock Potomac Yard, L.C., a Virginia limited liability company, whose name is signed to the foregoing Declaration, bearing date as of May 21, 2004, has acknowledged the same before me in the jurisdiction stated above as a duly authorized officer and representative of the limited liability company.

Given under my hand and seal this 21 day of May, 2004.



My commission expires: 11-30-04


Notary Public