



Fairchild Apartments: Site Plan.820180220 and Germantown Town Center East: Site Plan Amendment 81999001H

BCB

Benjamin Berbert, Planner Coordinator, Area 3, Benjamin.Berbert@Montgomeryplanning.org 301-495-4644

SP

Sandra Pereira, Supervisor, Area 3, Sandra.Pereira@Montgomeryplanning.org 301-495-2186

RAW

Richard Weaver, Chief, Area 3, Richard.Weaver@Montgomeryplanning.org 301-495-4544

Completed: 12/07/18

Description

A. Fairchild Apartments: Site Plan No. 820180220: Request for a new multi-family residential building 201,720 square feet in size with 212 multi-family dwelling units, and to retain 20,933 square feet of existing commercial restaurant uses in three one-story buildings; located on the south side of Century Blvd, approximately 150 feet east of the intersection with Aircraft Drive; 5.49 acres, CR 2.0, C-1.5 R-1.5 H-145T and Germantown Transit Mixed Use Overlay Zone; 2009 Germantown Employment Area Master Plan.



B. Germantown Town Center East: Site Plan Amendment No. 81999001H: Request to remove approximately 5.49 acres of land, 20,933 square feet of existing commercial density and 25,758 square feet of approved but unbuilt density from this site plan area, leaving 19.25 acres of land, 176,715 square feet of existing mixed commercial density and 31,500 square feet of unbuilt commercial density. Located on the northeast, southeast and southwest corners of the intersection of Century Blvd and Aircraft Dr; currently zoned CR 2.0, C-1.5 R-1.5 H-145T and CR 2.0, C-0.5 R-1.5 H-180T but reviewed under the TS zone, 2009 Germantown Employment Area Master Plan.

Recommendation – Approval with conditions

Applicant: GTTCE Owner LLC, (Peter Henry)

Applications Accepted: May 31, 2018

Review Basis: Chapter 59, Chapter 22a, Chapter 19

Summary

These two applications amend an existing site plan (Germantown Town Center East) to remove a 5.49-acre parcel and its associated development, and replace it with a new site plan (Fairchild Apartments) to permit construction of a new multi-family building for up to 212 residential units. See the Executive Summary on page 2 for more information.

SECTION 1 - EXECUTIVE SUMMARY

This Staff Report provides the description, analysis, and necessary findings for the amendment of the existing Germantown Town Center East (GTTCE) Site Plan, No. 819990010, as amended, and for the new Site Plan for the Fairchild Apartments No. 820180020.

The Site Plan for the Fairchild Apartments encompasses 5.49 acres, which is all of Parcel V as identified on Plat No. 22590, and will allow for construction of 201,720 sq. ft. of new residential development. The Fairchild Site Plan geography is a part of the current GTTCE Site Plan geography which also includes land on two adjacent blocks. The Fairchild Apartments are reviewed as a new Site Plan rather than an amendment because Staff and the Applicant agreed to have the redevelopment in Germantown utilize the current CR zone and the 2009 Germantown Employment Area Sector Plan, rather than the old TS Zone implemented by Local Map Amendment based on the old 1989 Germantown Master Plan. The GTTCE Site Plan is being amended to remove the 5.49 acre Parcel V and its associated development density, leaving the remaining geography and density as the new size and scope of that Site Plan. Other than an accounting of the site area, remaining density, parking, and green area, there is no proposed change to the GTTCE Site Plan conditions or findings. The Adequate Public Facility (APF) approval that the GTTCE Site Plan utilizes is still valid and is being amended by the Fairchild Site Plan to convert some of the approved but unbuilt retail space within that approval to residential use. This is possible because the two Site Plans share a common Applicant, and because the APF was approved with building permits and tied to density, not to a specific Preliminary or Site Plan approval.

Staff is recommending approval with conditions of the new Fairchild Site Plan, and of the GTTCE Site Plan.

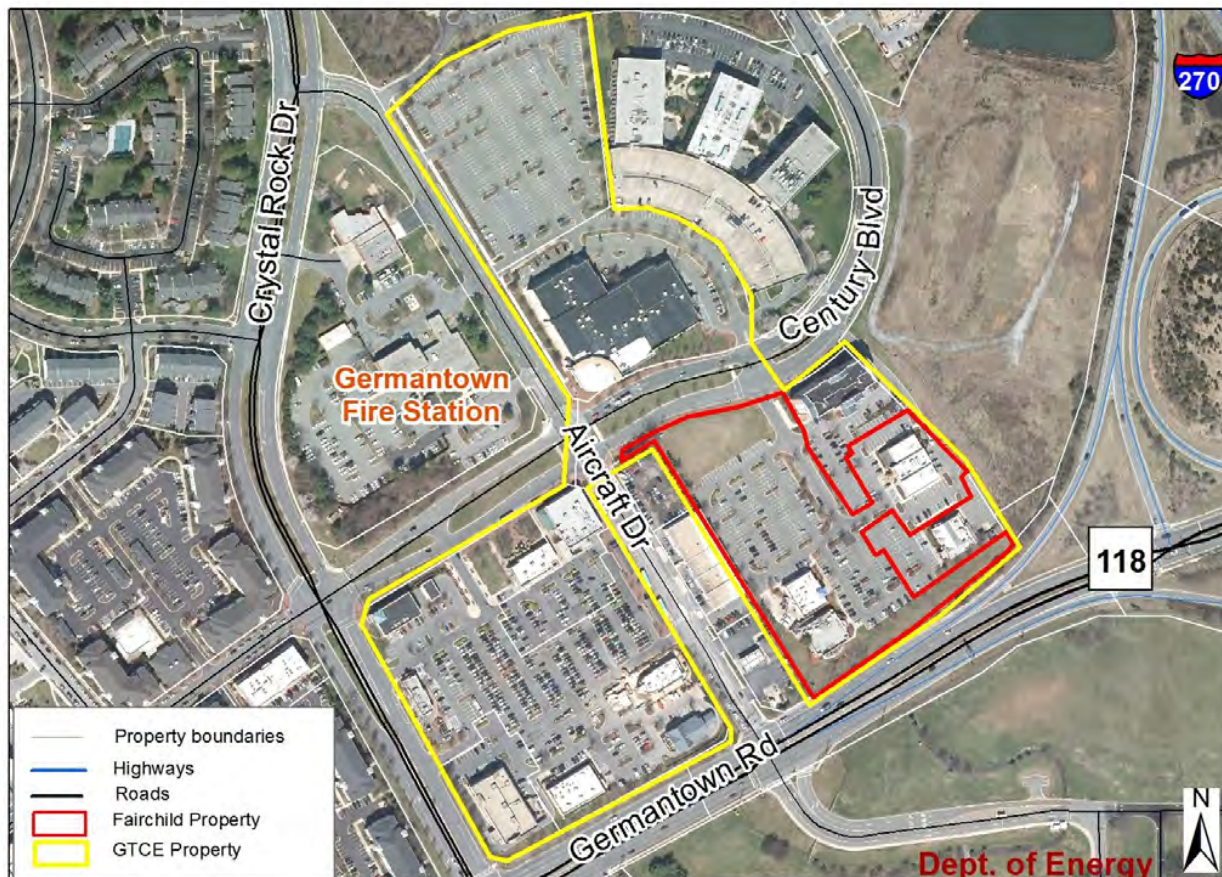


Figure 1 – Vicinity and Property Map

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SECTION 2: RECOMMENDATIONS AND CONDITIONS

A. Site Plan No. 820180220

Staff recommends approval of Site Plan 820180220. The development must comply with the binding elements and conditions of approval for Sketch Plan as listed in the MCPB Resolution No. 18-078 dated July 31, 2018. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.¹

Density, Height & Housing

1. Density

The Site Plan is limited to a maximum of 222,653 square feet of total development on the Subject Property, including 201,720 square feet of new residential uses, for up to 212 dwelling units including 12.5% MPDUs, and 20,933 square feet of existing commercial uses.

2. Height

The development is limited to a maximum height of 80 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

3. Building Lot Terminations (BLTs)

Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 1.4351 BLTs to the Department of Permitting Services (DPS).

4. Moderately Priced Dwelling Units (MPDUs)

The Planning Board accepts the recommendations of Montgomery County Department of Housing and Community Affairs (DHCA) in its letter dated October 22, 2018, and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a) The development must provide 12.5 percent MPDUs or DHCA -approved equivalent on-site consistent in compliance with Chapter 25A and the applicable Master Plan.
- b) Before issuance of any building permit for any residential unit(s), the MPDU agreement to build between the Applicant and the DHCA must be executed.

Open Space, Facilities and Amenities

5. Public Open Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 23,955 square feet of Public Open Space (10% of net lot area) on-site.
- b. The Applicant must coordinate with MCDPS right-of-way permitting to ensure replacement of any dead or missing trees in the existing streetscape along the Subject Property frontage on Century Boulevard.
- c. Before the issuance of any use and occupancy certificates for the residential development, all Public Open Space areas on the Subject Property must be completed.

¹ For the purposes of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor (s) in interest to the terms of this approval.

6. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the CR Zone Incentive Density Implementation Guidelines for each one.

- a) Major Public Facilities – Before issuance of the first above grade building permit for the multi-family building, the Applicant must provide MCDPS verification that the Applicant reconstructed the portion of Century Boulevard adjacent to the Fairchild Property.
- b) Transit Proximity
- c) Diversity of Uses and Activities
 - i. Adaptive Buildings – The Applicant must provide, at a minimum, floor-to-floor heights of at least 15 feet on the first floor facing Century Boulevard, and at least 12 feet on the upper level of the parking structure.
 - ii. Enhanced Accessibility for the Disabled – The Applicant must construct 15 dwelling units that satisfy American National Standards Institute A117.1 Residential Type A standards or an equivalent County standard.
- d) Quality Building and Site Design
 - i. Structured Parking – The Applicant must provide a minimum of 166 parking spaces within an above grade structure and 73 spaces within a below grade structure.
- e) Protection and Enhancement of the Natural Environment
 - i. Building Lot Terminations (BLTs) – Before issuance of the any building permit, the Applicant must provide proof of purchase and/or payment of 1.4132 BLTs to the MCDPS.
 - ii. Cool Roof – The Applicant must provide a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12 as shown on the Certified Site Plan.

7. Recreation Facilities

- a) Before Certified Site Plan approval, the Applicant must meet the square footage requirements for all of the applicable recreational elements and demonstrate to Staff that each element meets M-NCPPC Recreation Guidelines.
- b) The Applicant must provide the minimum required recreation facilities as shown on the Certified Site Plan.

8. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to bike racks, trash receptacles, benches, seating walls, interpretative signage, sculptures and artwork, and outdoor musical play instruments.

Site Plan

9. Site Design

The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the submitted architectural drawings, as determined by Staff. The design must also include at a minimum the following elements:

- a) The ground floor façade facing Century Boulevard shall include architectural elements distinct from the remainder of the building that provide a commercial appearance, as shown on the Certified Site Plan.

- b) The Applicant shall use murals, tiles, decorative screens or other decorative treatments approved by Staff to cover the ground floor blank walls, ventilation covers, and garage doors located across the southern facade of the building.

10. Lighting

- a) Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off fixtures or Backlight Uplight and Glare equivalent.
- c) Deflectors will be installed on the proposed fixtures along the western façade of the building to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line except for those located within the shared parking area or along the western Property boundary.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- f) On the rooftop of the building, the light pole height must not exceed the height illustrated on the Certified Site Plan.

Environment

11. Noise Attenuation

- a) Before issuance of the any building permit, the Applicant must provide certification to Staff from an engineer who specializes in acoustical treatment that the building shell for residential dwelling units affected by exterior noise levels projected above 60 dBA Ldn will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b) If the Site Plan changes in any manner that affects the validity of the noise analysis dated December 19, 2017 for acoustical certifications and noise attenuation features, the Applicant must conduct a new noise analysis to reflect the revised plans, and new noise attenuation features may be required.
- c) Before issuance of any Use and Occupancy Certificate, the Applicant must certify to Staff that the noise impacted units have been constructed in accordance with the certification of an engineer that specializes in acoustical treatments.

12. Stormwater Management

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (MCDPS) Water Resources Section in its stormwater management concept letter dated December 6, 2018 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.

Transportation & Circulation/ Adequate Public Facilities (APF)

13. Pedestrian & Bicycle Circulation

- a) The Applicant must provide 95 long-term and 6 short-term bicycle parking spaces.

- b) The long-term spaces must be in a secured, well-lit bicycle room adjacent to the covered parking area, and the short-term spaces must be inverted-U racks (or staff approved equivalent) installed within the Public Open Space along Century Boulevard. The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.
- c) The Applicant must provide a minimum five-foot wide sidewalk connection along the internal drive isle creating a continuous pedestrian connection between Century Boulevard and MD 118, as shown on the Certified Site Plan.
- d) The Applicant must provide a one-foot wide public improvement easement along Century Boulevard to accommodate its share of the recommended 136-foot wide cross-section for Century Boulevard, which will accommodate the CCT and two way separated bike lanes on both sides of the road.

14. Validity

The Adequate Public Facility Review (APF) will remain valid until April 27, 2020, consistent with the current APF validity period initiated at building permit for the density associated with the Germantown Town Center East Site Plan No. 819990010, which this Site Plan is utilizing.

15. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated October 22, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.

16. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of the any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

17. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

18. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, Fire Department Access and Water Supply approval letter, DHCA approval letter, development program, and Site Plan resolution on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that “M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading.”
- c) Add a note stating that “Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Ensure a total of 10 motorcycle spaces spread across the site and three electric vehicle charging stations in the parking garage or in the surface parking lot immediately south of the multi-family building.

B. Site Plan Amendment No. 81999001H

Staff recommends approval of Site Plan Amendment No. 81999001H to decrease the Site Plan size by approximately 5.49 acres, and to deduct 20,933 square feet of existing commercial density and 25,758 of approved unbuilt density, leaving 19.25 acres of land, 176,715 square feet of previously built mixed commercial density and 31,500 square feet of approved and unbuilt commercial density on land zoned CR 2.0, C-1.5 R-1.5 H-145T and CR 2.0, C-0.5 R-1.5 H-180T and within the Germantown Transit Mixed Use Overlay Zone, but reviewed under the development standards of the TS zone. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by conditions. All conditions from the previous approvals of the Site Plan Amendment remain in full force and effect, except as modified below by the following new conditions.

- 18. Density on the site is limited to 208,215 square feet of development, including 60,000 square feet of hotel use, 58,782 square feet of cinema and 89,433 square feet of retail and restaurant use.

SECTION 3: SITE DESCRIPTION

Site Vicinity and Analysis

Fairchild Apartment Property

The subject site for the Fairchild Apartments Site Plan is located on the south side of Century Boulevard and the north side of Germantown Road (MD 118), approximately 150 feet east of the intersection with Aircraft Drive. The site is 5.49 acres in size and is identified as Parcel V on Plat No. 22590 ("Fairchild Property")(Attachment A 1). The Property is located on the eastern edge of the Germantown Town Center, and is within the 2009 Germantown Employment Area Sector Plan ("Sector Plan"). The current zoning of the Property is CR 2.0, C-1.5 R-1.5 H-145T, and is also located within the Germantown Transit Mixed Use Overlay Zone.

Germantown Town Center East Subject Property

The subject site for the GTTCE Site Plan Amendment is located on the southwest, southeast and northeast quadrants of the intersection of Aircraft Drive and Century Boulevard, excluding the properties that are immediately adjacent to the east side of Aircraft Drive south of Century Boulevard. Currently the GTTCE properties include Parcels U, V and W as shown on Plat No. 22243, Parcels Q, R and S shown on Plat No. 21607, and Parcels B and C on Plat No. 13752 (Attachments A 2 and 3). The GTTCE Property is currently 24.74 acres in size, however the property size will be reduced to 19.25 acres as part of the subject Site Plan Amendment ("GTTCE Property"). The GTTCE Property is also located within the same Sector Plan and is zoned CR 2.0, C-1.5 R-1.5 H-145T and CR 2.0, C-0.5 R-1.5 H-180T, and is located within the Germantown Transit Mixed Use Overlay Zone.

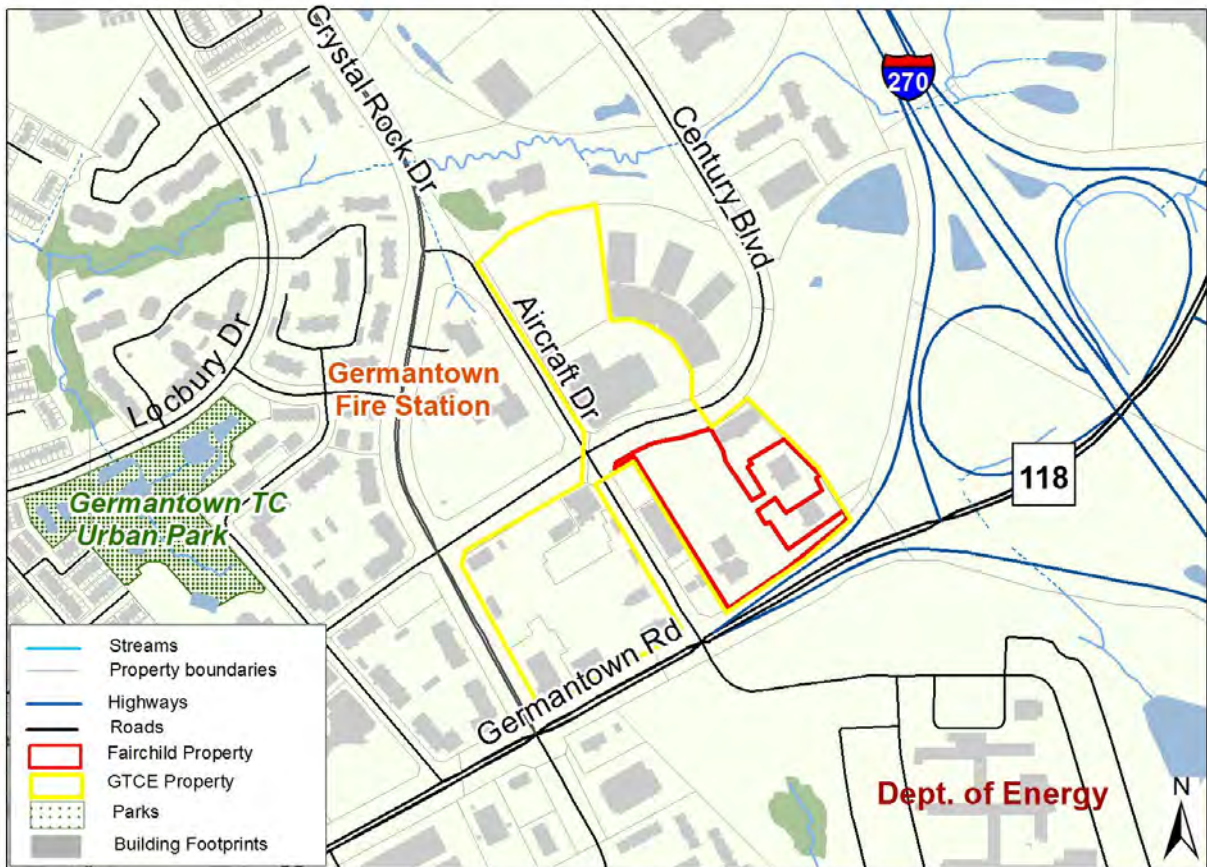


Figure 2 – Vicinity Map

Vicinity

Both the Fairchild Property and the GTTCE Property are part of the larger Germantown Town Center area, which is comprised of a mix of mostly commercial, office, retail, hotel and entertainment venues immediately along Century Boulevard, with multi-family and one-family attached dwelling communities one block off Century Boulevard. Within the same block of the Fairchild Property is a hotel and other restaurant uses that are not part of the Fairchild Site Plan but are part of the GTTCE Site Plan Amendment. Directly opposite Century Boulevard from the Fairchild Property is the Regal Cinemas, to the northeast is the approved Top Golf location, to the south across MD 118 is the US Department of Energy campus, and to the west is the core of the Germantown Town Center, and areas of residential multi-family development. Adjacent to the GTTCE Property include existing multi-family housing, the Germantown Fire Station and existing office uses. The zoning within the Town Center area is all CR, with FAR limits ranging from 0.5 to 2.0, and heights between 60 and 180 feet, depending on the block. Also, within the Town Center are the Germantown Library and the Black Rock Center for the Performing Arts, and the Germantown Town Center Urban Park.

Site Analysis Fairchild Property

Currently, the Fairchild Property is comprised of Parcel V, on Block U, V, W, and is mostly developed with one-story pad-site restaurant uses (IHOP, Red Robin, Señor Tequilas), surface parking lots, and one cleared and graded grass 'pad' that has yet to be developed. Parcel V shares the block with two other recorded parcels which are part of the GTTCE Property, including Parcel W with a Fairfield Marriot Hotel, and Parcel U with a Lonestar Steakhouse restaurant. The entire block is developed as one interconnected network of pedestrian and vehicle circulation and parking, including shared use and access agreements. There is currently one direct point of access to Century Boulevard centered on the block, and there is a second shared access location on the Top Golf site located east of the hotel. Other than trees and grass in parking lot islands, there is little existing vegetation and no identifiable environmental resources on the Fairchild Property.

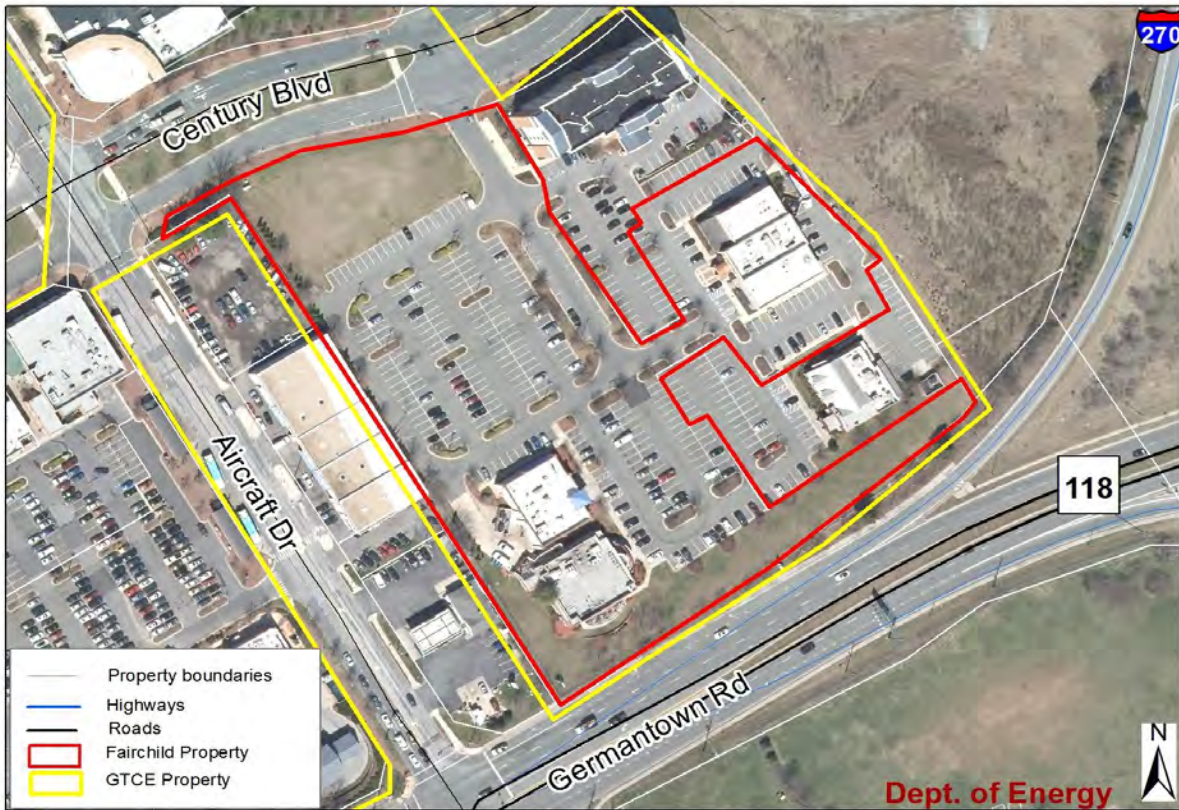


Figure 3 – Aerial Map Fairchild Property

Site Analysis GTTCE Property

The GTTCE Property is a large, predominantly commercial development spanning over three blocks and includes numerous fast food restaurants, sit-down restaurants, a hotel, a convenience store and a movie theater. The commercial buildings are predominantly one story tall and are located closer to the road edges, with large areas of surface parking located behind the buildings and to the interior of the blocks. The parking lot in the southwestern block includes 175 park-and-ride parking spaces by an agreement with the Department of Transportation. The GTTCE Property has been built out in phases over the past 20 years and limited commercial density remains approved but unbuilt. Adjacent to the GTTCE Property is the Germantown Transit Center which includes bus-bays along parts of Century Boulevard and Aircraft Drive. One sliver of land on the immediate east side of Aircraft Drive between MD 118 and Century Boulevard is not part of the current GTTCE Property, and includes a gas station and automotive repair uses.

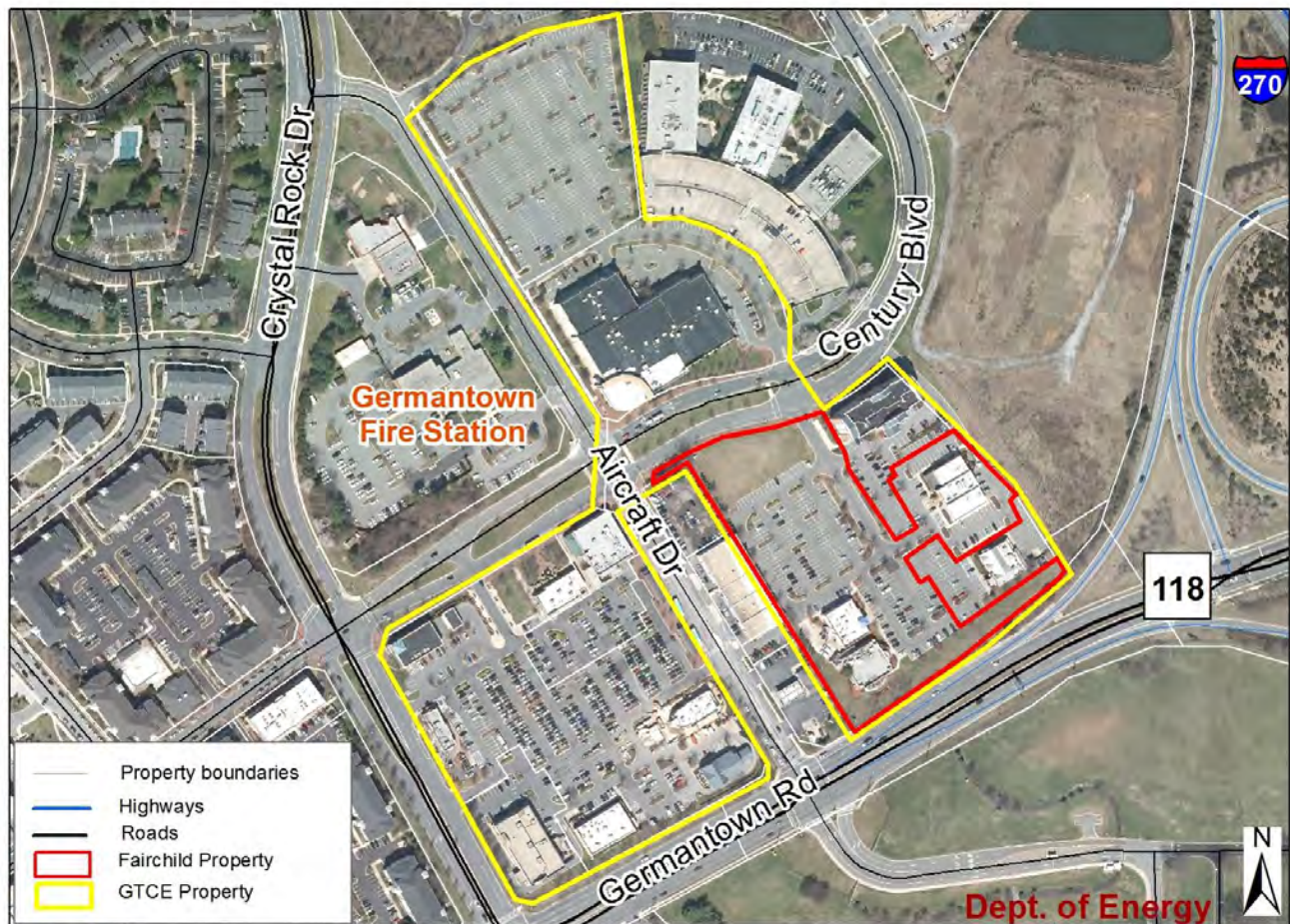


Figure 4 – Aerial Map GTTCE Property

SECTION 4: PROJECT DESCRIPTION

History

Preliminary Plan No. 119783190

Preliminary Plan No. 119783190, 270 Executive Park, was approved on January 11, 1979, to create 11 lots and the initial right-of-way to allow for the construction of Century Boulevard. The total project size was approximately 40 acres, and allowed for up to 538,000 square feet of office space. This Preliminary Plan led to subsequent plats, including Plat No. 13750, which first recorded Parcels E and F. Together, these two parcels were approximately the same size as block as Parcels U, V, and W.

Local Map Amendment G-742 – Germantown Town Center East

Local Map Amendment (“LMA”) No. G-742 rezoned approximately 24 acres of land to the Town Sector Zone including the Subject Property. This was the last section of Germantown to come into the Town Sector Zone, and was approved as 100% commercial retail development in phase one, with the option to add residential uses to a portion of the project area in phase two.

Site Plan No. 819990010 (as amended)

Site Plan No. 819990010 was first approved by Opinion dated March 15, 1999 for up to 181,900 square feet of commercial uses and 98,559 square feet of hotel use on 24.74 acres. This site plan implemented LMA G-742’s Town Sector Zone and conditions. The site plan covers three mega-blocks centered around the intersection of Century Boulevard and Aircraft Drive. As part of this Site Plan, the applicant was required to substantially reconstruct Century Boulevard from a four-lane undivided roadway into a four-lane divided highway with a 50-foot wide median capable of accommodating the future Corridor Cities Transitway (“CCT”). Several plats have been recorded creating lots and parcels as a result of this site plan, including the Fairchild Property Parcel V.

The following table 1 summarizes the A – F amendments to Site Plan 819990010. Many of these amendments are administrative and only apply to portions of the GTCE Property.

Table 1 – Previous History

Amendment Number	Approval Type and Date	Description
81999001A – Fairfield Marriott	Admin approval, April 10, 2003	Design changes for Fairfield Marriott
81999001B – Baileys Pub	Admin approval, December 12, 2004	Design changes specific to the restaurant user
81999001C - IHOP	Admin approval, December 1, 2005	Modification for a 5,500 sq ft IHOP
81999001D – Commerce Bank	MCPB No. 06-012, November 13, 2006	Change building from 2 story – 10,100 sq ft to 1 story 4,100 sq ft bank building
81999001E – Commerce Bank	MCPB No. 07-28, April 5, 2007	Increase building from 4,100 sq ft to 5,100 sq ft.
81999001F – Panera	MCPB No. 11-67, August 9, 2011	Approve a 5,097 sq ft. Panera
81999001G – Chick Fil A	MCPB No. 16-045, April 26, 2016	Add 344 sq ft. of kitchen area and supplement landscaping along the drive-through aisle

APF at Building Permit

On April 27, 2000, the Planning Board held a hearing to transmit comments to the Department of Permitting Services recommending approval of an adequate public facility (“APF”) review at the time of building permit for the Germantown Town Center (Site Plan No. 819990010) (Attachment C). The APF was for 127,026 square feet of restaurant uses, 67,880 square feet of movie theater and an 89-room hotel. The approval of the APF was conditioned on making transportation improvements including finishing Century Boulevard between Aircraft Drive and Crystal Rock Drive, widening Aircraft Drive between Century Boulevard and Crystal Rock Drive, and participating in intersection reconstruction at Crystal Rock Drive and Father Hurley Boulevard (Attachment D). The APF approval was originally valid for 12 years, and has been extended as part of the County Council automatic APF extensions an additional eight years, extending validity to April 27, 2020.

Sketch Plan No. 320180130

Sketch Plan No. 320180130 was approved by Resolution No. 18-078 dated July 31, 2018 (Attachment B), to allow up to 206,102 square feet of new construction including up to 206,102 square feet of residential uses and up to 5,900 square feet of commercial use, and to retain up to 29,915 square feet of commercial use on the 5.49 acre Parcel V Fairchild Property. The Sketch Plan set the general massing and location of the new building, the general location of the Public Open Spaces and the Public Benefit Point categories for achieving optional method incentive density, to be refined with future site plans.

Proposal

Fairchild Apartments

Site Plan No. 820180220 was accepted on May 31, 2018, to allow for one new 201,720 square foot residential building, and the retention of 20,933 square feet of existing commercial uses in three structures on the 5.49 acre Fairchild Property (“Fairchild Site Plan”).

Structures

The new residential building proposed for the northwest portion of the Fairchild Property adjacent to Century Boulevard will be five stories tall, with parking accommodated in a parking garage, partially above grade and partially below grade. The above grade parking will be wrapped by the residential uses. Private outdoor amenity space will be provided in an interior courtyard on level two, which is the roof of the parking structure below. The building will be set back approximately 13 feet on average from the existing right-of-way for Century Boulevard, remaining outside of the existing 10-foot wide public utility easement, creating an opportunity for public open space. The building will front on both Century Boulevard and the private drive isle into the Fairchild Property with doors and high amounts of building transparency. The façade along Century Boulevard will have ceiling heights and architecture designed to make the ground level look like commercial storefronts, and the service side of the building will install either decorative art panels or a mural to activate the black walls and garage doors.

The Fairchild Site Plan also retains three existing stand-alone restaurant buildings on the Fairchild Property, currently leased by an IHOP, a Red Robin and a Senor Tequila’s. These restaurant uses are oriented toward the existing surface parking lots and have service and loading areas toward the perimeter of the Fairchild Property. The Fairchild Site Plan proposes no changes to the size, location or design of these buildings and this Staff Report’s primary focus is on the new residential building described above.



Figure 5 – Century Blvd Perspective



Figure 6 – Rear Perspective

Circulation and Access

Vehicle and pedestrian access to the Fairchild Property is through an existing shared access drive that will be located on the east side of the future residential building. While technically a parking lot drive isle, this access is taking on the form and function of a Private Street and will likely be designated as such when the Fairchild Property redevelops further. Sidewalks along the western side of this access drive will be upgraded as part of the Fairchild Site Plan and will connect to existing sidewalks to create a continuous pedestrian connection from Century Boulevard through to MD 118 through the Fairchild Property. Except for the parking and parking drive isles removed for construction of the new residential building, the vehicle circulation will remain the same, and remains integrated with the circulation with the GTTCE Site Plan Property.

The ground floor of the residential building has two primary pedestrian entrances, one on the building's northeast corner at the intersection of Century Boulevard and the Property's main access drive, and the other on the building's southeast corner, facing the main access drive near the remaining surface parking lots and existing restaurant uses. A third pedestrian access is located on the building's western side, which serves as an emergency exit from the parking garage. In addition, the six ground floor units that front on Century Boulevard each have an exterior access door into the open space and sidewalk along Century Boulevard. Primary access to the residential building's parking garage is on the south side of the building, and a secondary emergency access is provided just to the left of the main access.

Open Spaces and Amenities

The Application is proposing two areas of Public Open Space on the Fairchild Property. The first area of Public Open Space is located between the new residential building and Century Boulevard (Figure 7). This space will be approximately 13 feet wide and is approximately 3,000 sq. ft. in size. Portions of this open space are located over an existing public utility easement therefore, the amenities proposed for this space have been designed to be portable. The space will be landscaped and include multiple sitting areas, interpretative signs on the history of Fairchild Aviation, a bike rack, and places for sculpture and art. All of these elements will be on concrete slabs that can be temporarily relocated if access to the utilities is necessary. The second area of Public Open Space is proposed along the southern portion of the Fairchild Property, between the existing restaurant uses and MD 118 (Figure 8). This area is an existing hill rising from the parking lot up to the right-of-way for MD 118. The design and function of this space has taken into account the topography, noise, proximity to the roadway and the proximity to the existing restaurants. About half of the space is being heavily designed with multiple seating areas and multiple activities for families with young children to do before or after a meal or while waiting for a seat at a restaurant. These include in-place musical instruments, hopscotch and tic-tac-toe being built into the hardscape, and a butterfly garden. The remainder of the space will be left more passive, maintaining the existing trees and providing an opportunity to connect off-site restaurants to the open space area if an agreement is made with the neighboring property.

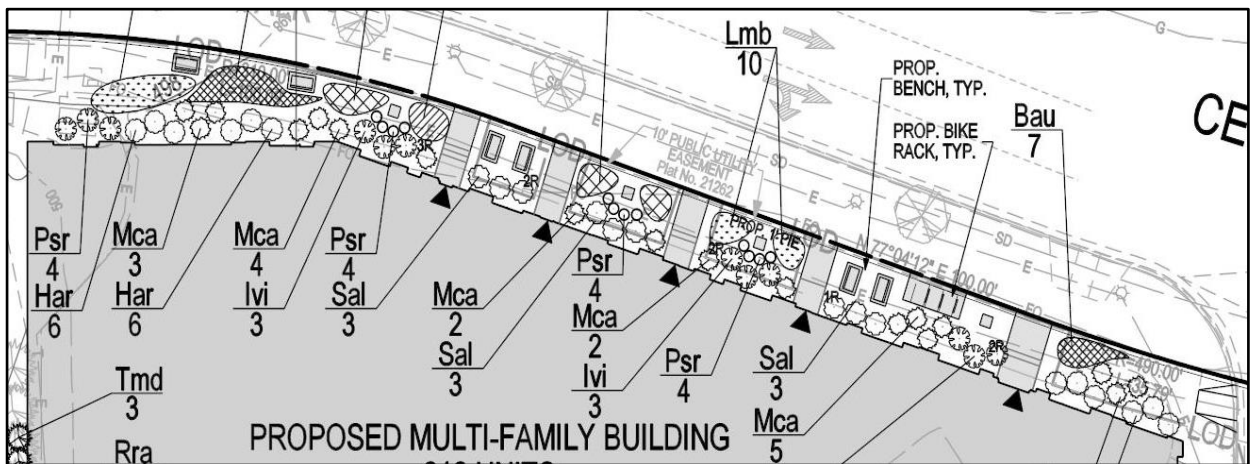


Figure 7 – Public Open Space along Century Blvd

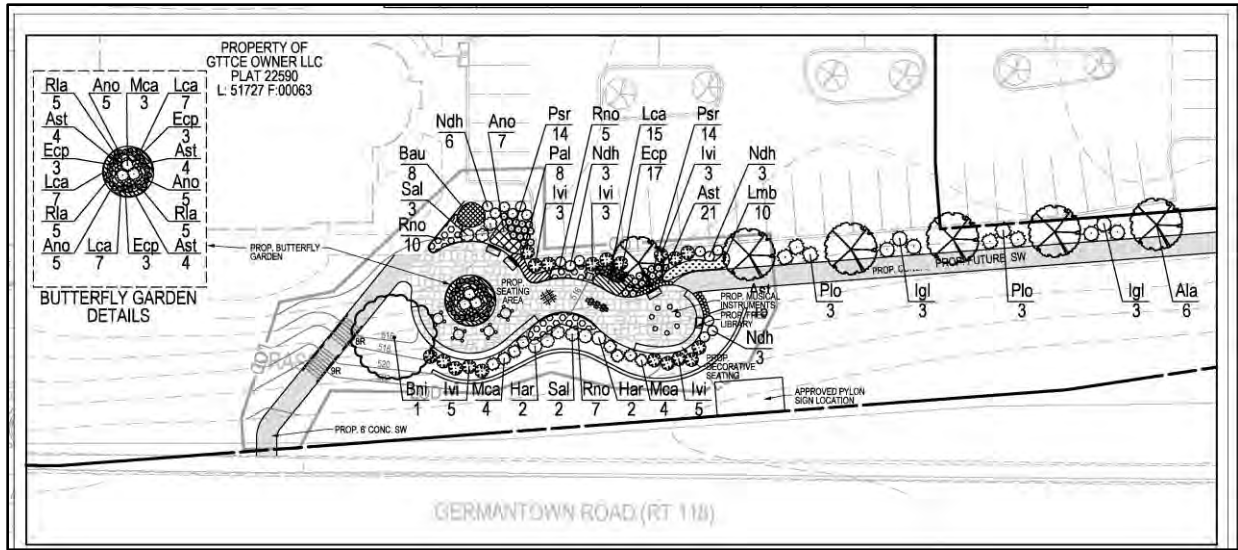


Figure 8 – Public Open Space along MD 118

The indoor amenity areas for the future residents will be located on the ground floor of the new multi-family building, providing opportunities for building transparency and activation along the sidewalk adjacent to the drive aisle. Amenities include a fitness room, yoga room, community room and resident lounge. On level two of the courtyard is another private amenity area that includes a pool, outdoor lounging space and a grilling area with seating.

GTTCE Amendment

Site Plan Amendment No. 81999001H was accepted on May 31, 2018 to remove approximately 5.49 acres of land, 20,933 square feet of existing commercial density and 25,758 square feet of approved but unbuilt density, leaving 19.25 acres of land, 176,715 square feet of existing mixed commercial density and 31,500 square feet of unbuilt commercial density (“GTTCE Amendment”). There are no proposed changes to any physical Site Plan elements such as circulation, buildings or landscaping as part of the GTTCE Amendment. Rather the changes are solely to reduce the project size and density and to appropriately modify the parking data tables. The 25,758 square feet of unbuilt density being removed from the GTTCE Site Plan is a combination of accounting for the approved APF vehicle trips being used by the new multi-family development associated with the Fairchild Site Plan, and is to ensure the GTTCE Site Plan continues to meet the minimum parking requirements, with the shared parking ratios as originally approved.

SECTION 5: COMMUNITY OUTREACH

The Applicant has met all noticing requirements for a Site Plan and a Site Plan Amendment. Notice was sent to all adjacent and confronting property owners and registered homeowners and community associations within one mile. A pre-submittal public meeting was held at the Majestic Apartments in Gaithersburg on Thursday June 7, 2018. According to the submitted minutes of the meeting, no one from the public attended the meeting and it was adjourned after the Applicant waited one hour. As of the posting of this Staff Report, Staff has not received any correspondence regarding the Site Plan or Site Plan Amendment.

SECTION 6: ANALYSIS AND FINDINGS - SITE PLAN 820180220

Findings – Chapter 59

1. *When reviewing an application, the approval findings apply only to the site covered by the application.*

The Approval of the Site Plan findings will only apply to the Fairchild Property being reviewed as part of this Application.

2. *To approve a site plan, the Planning Board must find that the proposed development:*

- a. *satisfies any previous approval that applies to the site;*

The Site Plan conforms to all conditions of Sketch Plan No. 320180130 which was approved by Resolution No. 18-078 dated July 31, 2018, in terms of density, massing, public open spaces and Public Benefit Point categories, and requested design and amenity details.

- b. *satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

- c. *satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

The Property’s zoning classification on October 29, 2014 did not have a required green area requirement.

- d. *satisfies applicable use standards, development standards, and general requirements under this Chapter;*

Division 4.5. Commercial/Residential Zones

Use and Development Standards

The Fairchild Property is a 6.14 gross tract area including the areas dedicated for Century Boulevard by the Applicant during the initial GTTCE Site Plan (Attachment L), and a 5.49 net acres in size after dedication. The tract is zoned CR 2.0, C-1.5 R-1.5 H-145T and is located within the Germantown Transit Mixed Use Overlay Zone. The Fairchild Property will have three existing restaurant uses and one new multi-family building sharing the same recorded parcel. There are no specific use standards for the proposed uses in the CR zone. The following table, Table 2 contains the Development Standards from Section 59.4.5 under Optional Method of Development, and the Parking Standards from Section 59.6.2.

TABLE 2 - Section 4.5 Zoning Data Table: CR 2.0, C-1.5 R-1.5 H-145T		
<u>Development Standard</u>	<u>Required/Allowed</u>	<u>Provided</u>
Site		
Public Open Space, Site >10,000 sq. ft.	10% (23,914 sq. ft.)	10% (23,955 sq. ft.)
Lot and Density		
Gross Tract Area	N/A	6.14 acres (267,248 sq ft)

TABLE 2 - Section 4.5 Zoning Data Table: CR 2.0, C-1.5 R-1.5 H-145T		
<u>Development Standard</u>	<u>Required/Allowed</u>	<u>Provided</u>
Net Tract (Parcel V) Area	N/A	5.49 acres (239,198 sq. ft.)
CRT Density Max	CR 2.0 (534,496)	0.83 FAR (222,653 sq. ft.)
Commercial	C-1.5 (400,872 sq ft.)	C – 0.078 (20,933 sq. ft.)
Residential	R-1.5 (400,872 sq ft.)	R - 0.75 (201,720 sq. ft.)
MPDUs	12.5% min (27 units)	27 units
Placement		
Front Setback Century Blvd	Determined By Site Plan	11 ft min., 13 ft avg.
Setback from MD 118	Determined By Site Plan	390 ft. min.
Side Setback, western boundary	Determined By Site Plan	10 ft min.
Side setback, eastern boundary	Determined By Site Plan.	50 ft. min.
Height		
Principal Building	145 ft.	80 ft.
Form		
Entrance facing street or open space	required	provided
Transparency, Ground story, front	Determined By Site Plan	37% Min. along access drive, 42% Min. along Century Blvd.
Transparency, Ground story, side/rear	Determined By Site Plan	16% min. south facade, 8% min. west facade
Transparency, Upper story	Determined By Site Plan	31% min.
Blank Wall, front	Determined By Site Plan	8 ft. max
Blank Wall, side/rear	Determined By Site Plan	27 ft. max south façade, 170 ft max west façade ¹
Section 6.2 Parking		
Vehicle Spaces Total	296 - 635	465
Commercial (4 – 12/1,000 sq.ft.)	84 - 359	204
Residential ² (min – max)	212 – 276	261
Bicycle Spaces (95% long term)	100 (95 L.T., 5 S.T.)	101 (95 L.T. 6 S.T.)
Motorcycle spaces	10	10
Electric Vehicle spaces	3	3

Division 4.7. Optional Method Public Benefits

As an optional method development project in the CR Zone, The Fairchild Site Plan must provide public benefits to achieve the incentive density. This Site Plan is required to provide a minimum of 100 public benefit points in a minimum of four categories to achieve compliance with the Zoning Code. The Fairchild Sketch Plan No. 320180130 identified six categories the Applicant intended to receive benefit

¹ The western façade of the building is designed with a long blank wall because the interior is parking and it is adjacent to an existing industrial building.

² Residential minimum parking is 1 space/unit regardless of number of bedrooms. The maximum residential parking is 1 space/unit for a studio, 1.25/ unit for a 1br, 1.5 space/unit for a 2 bedroom and the number of parking spaces shown for the max are based on the proposed unit mix.

points from and are shown in Table 3 below. The Fairchild Site Plan is eligible to receive credit for five of the six categories identified at Sketch Plan, with points unable to be awarded for wayfinding. Table 3 shows the number of points requested by the Applicant and also provides Staff’s Recommended points for the five requested categories. The total points recommended by Staff is 130.91 from five categories, which is in excess of the 100 minimum from four categories.

Table 3 - Public Benefits Calculations			
Public Benefit	Incentive Density Points		
	Max Allowed	Requested	Recommended
59.4.7.3A: Major Public Facilities			
Major Public Facility	70	51.28	51.28
59.4.7.3C: Transit Proximity			
Transit Proximity	25	25	25
59.4.7.3C: Connectivity and Mobility			
Wayfinding	10	0	0
59.4.7.3D: Diversity of Uses and Activities			
Adaptive Buildings	15	10	10
Enhanced Accessibility for the Disabled	20	20	20
59.4.7.3E: Quality of Building and Site Design			
Structured Parking	20	6.71	6.71
59.4.7.3F: Protection and Enhancement of the Natural Environment			
Cool Roof	10	5	5
BLTs	30	12.72	12.72
TOTAL		130.71	130.71

Major Public Facility

Major Public Facility: The Applicant requests 51.28 points for providing a major public facility. The Zoning Ordinance defines a major public facility as including but not limited to schools, libraries, recreation centers, parks, service centers, bike share stations, public transportation or utility upgrades, or other resources delineated in a Master Plan. The Applicant is requesting credit for the reconstruction of Century Boulevard across the Property frontage, including the 50-foot wide median for the Corridor Cities Transitway, that was previously required and completed as part of the GTTCE Site Plan No. 819990010.

Typically Staff only recommends awarding points for public benefits that are provided as a direct result of an application, however in this instance, the approved Sketch Plan and Site Plan are relying on Adequate Public Facilities that were approved at building permit for the density approved by Site Plan No. 819990010. Because the proposed multi-family development is using APF approvals granted in part for the expansion to Century Boulevard in front of the Fairchild Property, and because the Site Plan is utilizing existing density and APF entitlements developed under the old GTTCE Site Plan, Staff is recommending in this instance that the major public facility category be considered for incentive density.

The available points are calculated based on the following formula $\{(((L+F)/N)*2)+[(C/N)*4]\}*100$ where N is net lot area, L is land area conveyed, F is floor area conveyed and C is constructed area. Because the improvements to Century Boulevard were constructed to serve the entire block and not just the Fairchild Site, Staff recommends that only a proportion of the total points produced

by the formula be available, based on the proportion of vehicle trips on the block that are attributed to the Fairchild Site Plan. The Fairchild Site Plan accounts for 73% of the total trips within the block, therefore the Applicant reduced the land area conveyed and constructed area accordingly. The resulting formula is $\{[(20,439+0)/239,144]*2\}+[(20,439/239,144)*4]*100 = 51.28$. Therefore, Staff recommends the Applicant be awarded 51.28 points in the category of Major Public Facility. If future amendments occur to the underlying Sketch Plan or the Fairchild Site Plan adding density, the reconstruction of Century Boulevard as a Major Public Amenity cannot be included in the incentive density points calculations for the additional density.

Transit Proximity

Transit Proximity: The Applicant requests 25 points for the category of transit proximity. Transit proximity points are available based on the existing or planned transit level of service, the property zoning, and proximity to the transit facility. The Fairchild Property is in a CR zone, is within ¼ mile of a planned Corridor City Transitway stop, and the transit level of service is Level 2 (planned bus line with a dedicated path). The points available for transit proximity are 25 based on the table in the Zoning Ordinance, and Staff recommends the Applicant receive the full 25 points.

Connectivity and Mobility

Wayfinding: The Applicant during Sketch Plan review had requested five points for providing wayfinding on the Fairchild Property. The Applicant does still intend to provide directional signage as part of the Site Plan, however it will not receive incentive points because it was determined the public benefit from the signage did not warrant public benefit points. The Fairchild Site Plan still meets the minimum categories and points necessary without this category and Staff recommends not awarding points for wayfinding.

Diversity of Uses and Activities

Adaptive Buildings: The Applicant requests 10 points for providing an adaptive building with a 15-foot floor-to-floor height at the ground floor, and a 12-foot high second floor including the parking garage. The first 7.5 points available for meeting the basic code requirements for adaptive buildings, and an additional 7.5 points are available if the structure is designed to accommodate additional density and height in the future, and has an internal layout that allows changes between use with only minor modifications. The ground floor facing Century Boulevard is designed with 15-foot floor-to-floor heights and will only require minimal plumbing changes to convert the space from residential to retail use. Additionally, the Applicant has designed the above grade portion of the parking garage with 12-foot ceilings to be convertible to future residential use when, or if parking requirements are reduced in the future because of underutilization or a change in transportation technology. Staff supports the request for 10 of the 15 possible points in this category, which is more than the baseline of 7.5, because both the ground floor and a portion of the parking garage are being designed to be convertible in the future, but the remaining upper floors are not intended to be convertible.

Enhanced Accessibility for the Disabled: The Applicant requests 20 points for providing at least 7% of the Project's units in accordance with ANSI A117.1 Residential Type A standards. The Applicant is providing 7.5% (15) units that will be designed as accessible for the disabled. Staff supports the Applicant's request for the full 20 points allowed by this category.

Quality of Building and Site Design

Structured Parking: The Applicant requests 6.71 points for providing structured parking of the Fairchild Site Plan. The points available for structured parking are based on the following formula $[(A/T)*10]+[(B/T)*20]$ where A is the number of above ground garage spaces, B is the number of below ground garage spaces, and T is the total number of spaces. The new multi-family building provides all its parking in a garage is a mix of above and below ground spaces, and retains the existing surface parking remaining for the restaurant uses. The formula for the Fairchild Site Plan works out to be $[(166/465)*10]+[(73/465)*20] = 6.71$. Staff supports the request for points for structured parking with 6.71 points for this category.

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT): The Applicant requests 12.72 points for the purchase of BLT easements or equivalent payment. BLTs are generally required for every 31,500 square feet of gross floor area comprising the 7.5% incentive density floor area. Because this Application is in the Germantown Transit Mixed Use Overlay, the Zoning Ordinance requires that BLTs be purchased for 50% of the incentive density floor area. The formula that would apply here would be the following $(\{[T-(G*.5)]*.5\}/31,500)*9$ where T is the total density and G is the gross tract area. The formula required is as follows $(\{[222,635-(267,248*.5)]*.5\}/31,500) = 1.4132$. The allowed points are calculated by taking $1.4132 *9 = 12.72$. Staff therefore recommends 12.72 points be granted for the purchase of 1.4132 BLTs as part of the Fairchild Site Plan.

Cool Roof: The Applicant has requested five points for providing a cool roof. A cool roof must not be vegetated and have a minimum solar reflectance index of 75 on roof slopes below a ratio of 2:12. The Zoning Ordinance suggests a maximum of five points for providing a cool roof on properties greater than one acre in size. The Applicant plans to treat all areas of roof not directly covered with air compressors with cool roof material, therefore, Staff supports the request of five points in this category.

Division 6 – General Development Standards

The following sections describe how the Fairchild Site Plan meets the applicable General Development Standards in Division 6 of the Zoning Ordinance.

i. Division 6.1. Site Access

Access to the existing and proposed uses on the Fairchild Site Plan is adequate. The existing drive isle and intersection with Century Boulevard will remain unchanged, providing vehicles access onto the Fairchild Property. The width of the drive isle near Century Boulevard is 30 feet, and as part of the Fairchild Site Plan, the drive isle will be striped to show one inbound lane, one outbound left turn lane and one outbound through/right turn lane. Additional access to Century Boulevard is also available through a drive isle shared between all users on the block including the future Top Golf, located just east of the Fairchild Property. Sidewalks will be upgraded along the main drive isle improving pedestrian access and connectivity to the sidewalks along Century Boulevard and along MD 118. As required by the approved Sketch Plan, the Applicant reached out to MDSHA and had an existing fence removed along the MD 118 frontage allowing for the new sidewalk connection onto the Fairchild Property from the public sidewalk along MD 118.

ii. *Division 6.2. Parking, Queuing, and Loading*

The Fairchild Site Plan provides adequate vehicle and bicycle parking to serve the proposed development. Currently all available vehicle parking is in one large surface parking lot that crosses parcel boundaries. For the development of the new multi-family building, the Applicant is proposing a parking structure that can accommodate 261 vehicles, which is within the range of parking allowed by the CR zone for that use (Min 212, Max 276). Additionally, there will be 204 spaces remaining in the surface parking lots for the existing retail uses, which is within the allowed range of 84 – 359 spaces. All vehicle parking spaces both on the Fairchild Property, and the adjacent GTTCE Property are under a shared parking agreement because the two properties are so highly interconnected. In addition to standard vehicle parking, a total of 10 motorcycle and 13 electric vehicle charging spaces are provided. The Applicant is providing 101 new bicycle parking spaces, six of which are in outdoor bike racks, and the remaining 95 in a long-term bike parking room integrated within the parking garage of the multi-family building.

iii. *Division 6.3. Open Space and Recreation*

The Fairchild Site Plan provides adequate Public Open Space on the Fairchild Property. The requirement for Public Open Space is based on tract size and development type. For tracts larger than 10,000 sq. ft. utilizing both Apartment and General building types there is a 10% requirement for Public Open Space. The 10% requirement for the Fairchild Property yields a minimum of 23,914 sq. ft. and the Fairchild Site Plan provides just over the minimum at 23,995 sq. ft. The Public Open Space is divided into two areas, one that is approximately 3,000 square feet that is located adjacent to the new multi-family building along Century Boulevard. This area of Public Open Space will be landscaped and includes areas for sitting, interpretive signage on the history of Fairchild Aviation and Germantown, areas for art/sculptures and a bike rack. The design of this space helps to activate the front of the building and to provide an amenity to pedestrians walking along Century Boulevard. The other area of Public Open Space makes up the balance of the open space requirement and is located in the south adjacent to the existing restaurant uses and MD 118. This space is designed with the location and likely user in mind and consists of seating, landscaping, and amenities for people to enjoy while waiting to eat at one of the existing restaurant uses. This southern area of Public Open Space will also include a new pedestrian connection up to MD 118 which does not exist today improving access to the open space and the Fairchild building. The area of enhanced landscaping, hardscape and activities does not utilize the entire area of Public Open Space however a new pedestrian path to the adjacent Longhorn Steakhouse and landscaping is being provided, and the area around the path will remain grass with existing canopy trees open to the public. Staff finds the improvements adequate because the proposed development intensity on the Fairchild Property is well under the maximum allowed density, and the expectation is for future amendments to increase the density and likely change the size, form and function of the Public Open Spaces.

The Fairchild Site Plan must also meet the requirements of the 2017 Recreation Guidelines. These guidelines require the Applicant to determine based on unit type how much recreation demand is created by age group by the new multi-family dwellings, and how the Applicant will adequately supply recreation to each of these age groups. The Site Plan's recreational supply and demand table shown in Attachment E demonstrates this analysis. Based on the eleven different on-site facilities proposed including the outdoor courtyard with a pool and grilling area, and the indoor spaces such as the gym, yoga room and community room, and the limited off-site credit received

for existing parks in the vicinity, the Fairchild Site Plan is providing adequate recreation for the enjoyment of the future residents.

iv. *Division 6.4. General Landscaping and Outdoor Lighting*

The Fairchild Site Plan provides adequate landscaping and lighting pursuant to division 6.4 of the Zoning Ordinance. The Fairchild Site Plan is providing adequate landscaping in the two Public Open Space areas using shrubs and flowering perennials to create defined spaces for seating, and using trees to provide shade and to buffer the new multi-family building and the existing industrial uses to the west. The existing surface parking lot has trees already located within landscape islands which provides canopy cover. Some of these trees are being removed to accommodate new sidewalks and stormwater management but new plantings will replace them maintaining canopy coverage of the parking lot.

Alternative Compliance for Lighting – Division 6.8

The proposed lighting is adequate to illuminate the outdoor parking areas, pedestrian walkways and all entrances to the proposed multi-family building. The Fairchild Site Plan however does propose lighting that would constitute excessive illumination, as defined by Section 59.6.4.4.D of the Zoning Ordinance because it creates illumination exceeding 0.5 footcandles at the lot line. Alternative Compliance allows the Planning Board to approve an alternative method of compliance for lighting in Division 6.4 if it determines that there is a unique site, a use characteristic, or a development constraint that precludes safe or efficient development under the requirements. In this instance, the Fairchild Property is an irregularly shaped parcel, where the parcel boundaries cut through the middle of a parking facility shared with two other parcels on the same block. Additionally, there is adjacent industrial development immediately to west which presents a blank façade toward the Fairchild Property, between which the Applicant is showing a pedestrian walkway for emergency building egress. In ultimately approving an alternative compliance method, the Board must find that the design will:

a. *Satisfy the intent of the applicable Division;*

The intent of Division 6.4 is to preserve property values, preserve and strengthen the character of communities, and improve water and air quality. Modifying the compliance of Section 59.6.4.4.D to allow illumination over 0.5 footcandles at the lot line within the shared parking lot, and along the western façade of the building maintains and strengthens the intent because the illumination in both instances is for pedestrian and vehicular safety. The areas on adjacent properties are either other parking facilities that are not residential in use, are also illuminated, and the adjacent industrial building provides a blank wall toward the light. Therefore, there is no detriment to community in allowing this modification.

b. *Modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;*

The amount of modification of the excessive illumination provision necessary to accommodate the constraints is to allow for illumination in excess of 0.5 footcandles at the lot line within the shared parking lot, shared access drive isle, and along the western façade of the multi-family building where a pedestrian exit and walkway are located.

c. *Provide necessary mitigation alleviating any adverse impacts;*

Staff does not find that any mitigation is necessary because there are no identified adverse impacts to allowing this alternative compliance measure.

d. And be in the public interest

Allowing the modification to the excessive illumination provision is within the public interest because the illumination is being provided for the public's safety within the parking lot, and in the event of an emergency evacuation of the new multi-family building.

Staff finds, with the granting of an alternative method of compliance for Division 59.6.4.4.D Excessive Illumination, that the outdoor lighting is adequate and satisfy' s the intent of the Zoning Ordinance.

e. satisfies the applicable requirements of:

i. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and

A combined Stormwater Concept Plan and Site Development Stormwater Management Plan was approved with conditions by the Montgomery County Department of Permitting Services on December 6, 2018. Applications will meet as much as practicable on-site ESD goals with micro-bioretenion facilities and green roofs. The remaining stormwater will be temporarily met through a waiver and a fee for the untreated stormwater volume. The fee may be refunded at the time that an off-site facility which will ultimately treat the remaining water volume is finished being constructed by others on an adjacent property.

ii. Chapter 22A, Forest Conservation.

The Fairchild Site Plan meets the requirements of Chapter 22A. The land that in part includes the Fairchild Property had previously satisfied Chapter 22A, Forest Conservation Law as part of the review and approval of the GTTCE Site Plan 819990010, however the subsequent rezoning of the Property to the CR zone negated all previous forest conservation approvals. On May 1, 2018, a Forest Conservation Plan Exemption No. 4018017E was granted under Chapter 22A-5(t) for the Fairchild Property (Attachment I), located on Parcel V, Block UVW. The Fairchild Property is located within the Little Seneca Creek watershed, classified by the State of Maryland as Use I-P waters. The Fairchild Property is not located within a Special Protection Area or the Patuxent River Primary Management Area, and does not contain any forest, streams, wetlands, 100-floodplain, stream buffer, or trees greater than 24 inches in diameter at breast height.

Staff finds that the Application is in compliance with the Environmental Guidelines and all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

f. provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;

i. Parking and circulation

The Fairchild Site Plan provides for safe and well-integrated parking and circulation patterns on the Fairchild Property. The existing primary and secondary vehicle access points to Century Boulevard are already established and are integrated into the existing development within the block. Other than the removal of two drive isles of existing parking, the circulation on the Fairchild Site remains the same, keeping the interconnectivity. The pedestrian access from Century Boulevard will be upgraded along the frontage of the new multi-family building, and enhanced within the block to provide improved pedestrian access to the existing restaurants and a new sidewalk connection to MD 118.

ii. Building massing

The Fairchild Site Plan proposes safe and well-integrated building massing. The new multi-family building is located in an undeveloped part of the Fairchild Property which is located along the site's frontage with Century Boulevard. The building location will help create a building edge along Century Boulevard and along the existing site access drive isle. The new building is also similar in height to the existing hotel located off-site to the east. While most existing development in Germantown is not as tall or large as the proposed building, the Sector Plan envisions that change and encourages the development of more urban-formed buildings. The existing restaurant buildings are all one story tall, and are situated on the Fairchild Property in a way that allows efficient sharing of parking, and is compatible with the existing predominant one story development in this part of Germantown.

iii. Open space, and site amenities

The Site Plan provides for safe and well-integrated open spaces and site amenities. As discussed previously in the analysis of Division 6.3 Open Space and Recreation, the Applicant is providing both Public Open Space which is accessible to the public and satisfies a requirement of the CR zone, and an area of private open space made available to residents in the new multi-family building. The Public Open Spaces are located in areas accessible to the public realm and help activate the streetscape of Century Boulevard, and provide a valuable new pedestrian connection between the sidewalk along MD 118 and the Fairchild Property. The new multi-family building has both outdoor and indoor amenity space for the residents to enjoy, including an outdoor courtyard with a pool, lounging areas and a grill, and indoor spaces including a gym, a yoga studio and a resident lounge. These spaces are accessible by all residents of the building.

- g. *substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

Germantown Employment Area Sector Plan

The Fairchild Site Plan substantially conforms to the recommendations of the 2009 Germantown Employment Area Sector Plan ("Sector Plan"). The Sector Plan's vision statement states "This Plan establishes a vision that will transform Germantown's central employment corridor into a vibrant town center and mixed-use uptown districts. The Germantown of the future will be the center of business and community life in upper Montgomery County". The Sector Plan further envisions Germantown completing an economic core, increasing employment, and organizing development around transit. Further areawide recommendations include a zoning strategy for mixed use development and a vision for establishing an urban form which includes interconnecting transportation options, creating gathering spaces, establishing centers, and creating meaningful street character. The Subject Property is specifically located in the Town Center district of Germantown which provides district specific recommendations including to "have a mix of uses such as offices, restaurants, hotels, housing and civic facilities close to shopping, transit and jobs". The Sector Plan's Land Use map and accompanying text on page 50 of the Sector Plan identifies the Fairchild Property and surrounding block as appropriate for a commercial mixed-use area. The Sector Plan places emphasis on creating a continuous building line along Century Boulevard, and public open space should not be located in front of the buildings without a tie to pedestrian circulation. Century Boulevard should be a promenade street with wide sidewalks and the median-running transitway.

The Fairchild Site Plan substantially conforms to the Sector Plan goals and recommendations mentioned above. The proposed building will help establish a building line along Century Boulevard being set back approximately 13 feet from the right-of-way, which is similar to the setback of the existing hotel

immediately east of the proposed building. Public Open Space is proposed in front of the building, on top of an existing public utility easement, and while the Sector Plan generally discourages the placement of open space between buildings and the street, the proposed space has the potential to enhance pedestrian and bicycle circulation by helping accommodate wider sidewalks and a separated bicycle facility. Programming the space with landscaping, art, benches and signage also helps activate and utilize the public utility easement which would otherwise be left as grass.

The Fairchild Property is part of a larger block identified in the Sector Plan as commercial mixed use. All of the existing uses within this block are 100% commercial or hotel use. Therefore, adding some residential development is essential for achieving the overarching goals of creating a mixed-use district, a complete economic core, and for providing housing close to transit and jobs. The ground floor of the multi-family building is designed with 15-foot floor-to-floor heights, and an interior configuration that would allow the dwelling units proposed along Century Boulevard to convert to retail space once the surrounding properties also redevelop. The design of the ground floor has also been treated with design and materials providing a commercial character, furthering the activation of Century Boulevard and the Town Center. The reconstruction of Century Boulevard to accommodate the future transitway was already completed by the Applicant during the previous site plan process and needs no further upgrade at this time.

Noise Analysis

The Environmental section of the 1993 General Plan Refinement for Montgomery County contains multiple objectives directing Staff to protect future residents and workers from unacceptable noise levels. The 1983 Staff Guidelines for the Consideration of Transportation Noise (“Noise Guidelines”) contain strategies for mitigating the impact of transportation noise on new development. The Fairchild Property falls under these guidelines because it is within 1,000 feet of a freeway (I-270), 600 feet of a major highway with an average daily trip (ADT) over 20,000 (MD 118) and within 300 feet of a road with an ADT of over 5,000 (Century Blvd). A Phase I Noise Analysis was prepared by Phoenix Noise and Vibration, and the results provided in a report dated December 19, 2017 (Attachment J). The Analysis indicates that noise levels will meet or exceed 60 dBA on most exterior portions of the proposed multi-family building except for the facades facing interior to the courtyard. The amenity courtyard itself is not projected to exceed the Montgomery County maximum recommendation of 60 dBA Ldn for exterior noise levels due to the shielding provided by the building and no further mitigation is required. However, the Analysis indicates noise levels using standard building materials may exceed Montgomery County’s recommendations of 45 dBA Ldn for interior noise levels for many of the proposed units that face outward. The Analysis recommends a future Building Shell Analysis be prepared when the details of the proposed architecture are known and that indoor noise levels can be maintained below 45 dBA Ldn by using exterior building components with a higher sound transmission class rating. The remaining outdoor amenity space on the Fairchild Property is Public Use Space, and the desired accessibility of these spaces to the public make mitigation of noise not desirable. Staff is recommending conditions of approval requiring certification from an engineer that specializes in acoustical treatment that the building shell for residential dwelling units meet Montgomery County’s noise recommendations.

- h. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

The Fairchild Site Plan will be serviced by adequate public facilities including schools, police and fire, water and sanitary sewer, roads, and storm drainage. The Fairchild Site Plan is located on an existing recorded parcel that is currently part of the GTTCE Site Plan. The existing development has a currently valid APF, and that existing APF is being amended as part of this Site Plan review, to change between approved unbuilt commercial use to a residential use. The existing APF expires on April 27, 2020 and there is no extension proposed as part of this amendment to the APF.

Schools

Overview and Applicable School Test

Site plan application #820180220 for Fairchild Apartments is scheduled to come before the Planning Board for review in FY19, therefore the applicable annual school test is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. The application proposes development of 212 multifamily high-rise dwelling units on land with no dwelling units currently.

Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Fairchild Property is located in the upcounty region of the County.

Table 4 - Student Generation Rate – Upcounty Region

	Elementary School	Middle School	High School
SF Detached	0.214	0.123	0.168
SF Attached	0.251	0.116	0.151
MF Low- to Mid-Rise	0.204	0.074	0.099
MF High-Rise	0.074	0.031	0.037

With a net of 212 multifamily high-rise units, the proposed project is estimated to generate the following number of students:

Table 5 - Students Generated by Fairchild Site Plan

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
MF High-Rise	212	0.074	15.688	0.031	6.572	0.037	7.844
TOTAL	212		15		6		7

This project is estimated to generate 15 new elementary school students, 6 new middle school students, and 7 new high school students.

Cluster Adequacy Test

The project is located in the Seneca Valley High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Seneca Valley Cluster are noted in the following table:

Table 6 - Cluster Level Capacity

School Level	Projected Cluster Totals, September 2023			Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	2,189	2,396	91.4%	2,876	2,204
Middle	1,161	1,336	86.9%	1,604	1,167
High	2,362 ¹	2,423	97.5%	2,908	2,369

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the last column, the projected enrollment plus the estimated impact of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Waters Landing ES and Martin Luther King, Jr. MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 7 - Individual School Capacity

School	Projected School Totals, September 2023				Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus/ Deficit	120% Utilization	Surplus/ Deficit	
Waters Landing ES	647	776	83.4%	+129	932	886	662
MLK, Jr. MS	704	905	77.8%	+201	1,087	1,085	710

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and if the school seat deficit meets or exceeds 110 seats for the elementary school or 180 seats for the middle school. If a school’s projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the last column, the projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for both Waters Landing ES and Martin Luther King, Jr. MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

¹ The projected cluster high school enrollment of 1,462 has been modified to reflect the estimated impact of a future boundary change that will reassign students from Clarksburg HS and Northwest HS to Seneca Valley HS upon completion of the programmed revitalization/expansion project at Seneca Valley HS in September 2020.

Analysis Conclusion

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application.

Police and Fire

According to the Subdivision Staging Policy, Police and Fire services are adequate in the area to service the Subject Property. The MCDPS Fire Department Access and Water Supply division has issued a memorandum dated October 22, 2018 (Attachment G) finding that the design of the proposed new building is satisfactory for access by fire personnel and equipment under a performance based design standard.

Water and Sewer

The Fairchild Property is located in the W1 and S1 public water and sewer categories. There is existing public utilities on the Fairchild Property and there is adequate capacity in the adjacent main lines to accommodate the proposed multi-family dwellings.

Transportation

Transportation infrastructure and capacity will be adequate for the new residential density proposed by the Fairchild Site Plan. The Fairchild Site Plan is utilizing unused transportation capacity that remains as part of an APF approval for the GTTCE Site Plan at the time of building permit, on April 27, 2000. The initial APF approval was for 127,026 sq. ft. of retail and restaurant use, an 89-room hotel and 67,880 square feet of movie theater development, with a validity period of 12 years. Although the mix of commercial uses has changed with subsequent Site Plan amendments, the total number of assumed trips has been kept constant. The County Council granted four automatic two-year extensions of APF validity in 2009, 2011, 2013 and 2015; as a result, the approved APF remains valid through April of 2020.

To satisfy the LATR guidelines, the Applicant submitted a traffic statement outlining the relationship between the existing APF approval, the amount of approved but undeveloped commercial density, and the impacts of the proposed multi-family development. Based on this statement, there is still 45,092 sq. ft. of approved but undeveloped commercial space on the GTTCE Site Plan Property as well as 12,166 sq. ft. for high turnover restaurant use. Combined, these commercial uses if developed are projected to generate 229 AM peak hour trips and 272 PM peak hour trips. The development of 212 new multi-family housing units would generate a total of 64 AM peak hour trips and 82 PM peak hour trips which will be subtracted from the trips remaining in the APF approval. This results in a remaining APF trip credit of 165 AM peak hour trips and 190 PM peak hour trips that can support up to 42,500 sq. ft. of additional general retail uses for future building permits on the GTTCE Property.

The GTTCE Site Plan is being concurrently amended to limit future development on the site plan accounting for the trips being utilized from the existing APF approval. Because the trips are part of an existing APF approval with an expiration date, the APF approval should still expire in April 2020 as currently scheduled. Failure by the Applicant to secure a building permit by this time shall result in a necessary Fairchild Site Plan Amendment to test for new transportation impacts.

- i. *on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

The Property is not located in a Rural Residential or Residential zone.

- j. on a property in all other zones, is compatible with existing and approved or pending adjacent development.*

The proposed development on the Fairchild Property is compatible with existing, approved, and pending adjacent development. The Fairchild Property is surrounded by existing commercial development including a mix of retail, hospitality and office uses and the proposed multi-family building will enhance these uses by establishing the start of a mixed-use area. While the new building will be taller than existing buildings, it's similar in height to the adjacent hotel use, and the Sector Plan fully supports the incremental increases in density. It is anticipated that adjacent properties will also re-develop in the future to a scale similar to that proposed in the Fairchild Site Plan.

- 3. To approve a site plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.*

Not applicable, this Site Plan does not include a restaurant with a drive-thru.

- 4. For a property zoned C-1 or C-2 on October 29, 2014 that has not been rezoned by Sectional Map Amendment or Local Map Amendment after October 30, 2014, if the proposed development includes less gross floor area for Retail/Service Establishment uses than the existing development, the Planning Board must consider if the decrease in gross floor area will have an adverse impact on the surrounding area.*

Not applicable, the Subject Property is not zoned C-1 or C-2.

SECTION 7: ANALYSIS AND FINDINGS – SITE PLAN AMENDMENT 81999001H

The following findings pertain to the Site Plan Amendment for Germantown Town Center East No. 81999001H. The Site Plan is reviewed under the Zoning Ordinance in effect on October 29, 2014 subject to the exemption in Section 59.7.7.1.B.3. Therefore, the following findings are those located in the Zoning Ordinance in effect October 29, 2014 under Section 59-D-3.4(c). All previous findings made for the GTTCE Property and Site Plan remain in effect except as modified by the following findings.

2. *The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The amendment to the GTTCE Site Plan continues to meet the requirements of the TS zone which it has been reviewed under. The results of the GTTCE Site Plan amendment do not alter the types of uses on the GTTCE Property but reduces the quantity of allowed commercial density, and removes 5.49 acres, leaving behind a 19.25-acre Property. The height and setback limits are not being changed and the existing buildings continue to conform with the new boundaries. The table 8 below illustrates the changes that are proposed to tract area, green area and most importantly the modifications to the Site Plan development density and parking calculations.

Table 8 – Zoning Data Table TS Zone

Development Standard	Required by TS Zone	Approved with 81999001G	Provided by 81999001H
Gross Tract Area	¹	24.74 acres	19.25 acres
Development Density	²		
Restaurant/Retail		136,124 sq. ft.	89,433 sq. ft.
Cinema		58,782 sq. ft.	58,782 sq. ft.
Lodging		60,000 sq. ft.	60,000 sq. ft.
Green Area	³	5.68 acres (22.96%)	4.03 acres (20.94%)
Parking⁴			
Weekday 6a-6p	N/A	1,462	1,160
Weekday 6p - midnight	N/A	1,662	1,355
Weekend 6a – 6p	N/A	1,637	1,355
Weekend 6p – midnight	N/A	1,637	1,355
Overnight midnight – 6a	N/A	1,637	1,355

The GTTCE Site Plan was approved utilizing the shared parking adjustments found in section 59-E-3.1 of the Zoning Code. The Applicant will continue to utilize the same parking ratios as originally approved for, and the above shown parking calculations are modified based on the new GTTCE Site Plan Property boundary and mix of uses built or approved on the site. The provided parking during the weekday 6a – 6p period is less than other periods because 175 spaces in phase block D are utilized by MCDOT for park-and-ride during weekdays but are available for general use in evenings and weekends.

¹ Minimum tract area of a TS zone is 1,500 acres, however smaller projects may be approved that are adjacent to or part of a larger TS zone. The GTTCE Site Plan was part of a larger Churchill TS zone implemented in Germantown.

² Development Density limitations are driven by LMA G-742, which was found to be conforming to the TS Zone.

³ Open space requirements are based on an entire TS zone area. The Churchill TS Zone is approximately 37%. The GTTCE Site Plan has always provided around 21% of the site as Green Area.

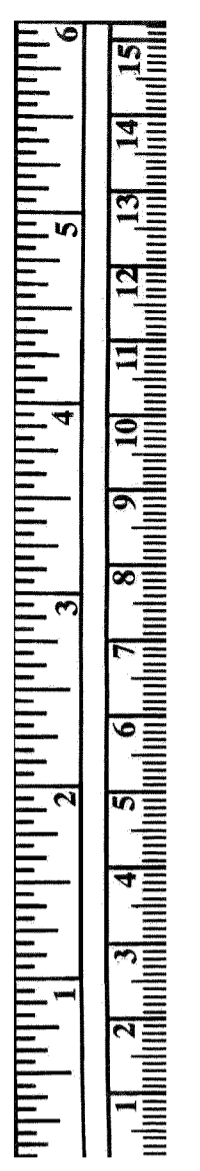
⁴ Subject to shared parking as allowed by 59-E-3.1.

SECTION 8: CONCLUSION

The Fairchild Apartments Site Plan and Germantown Town Center East Site Plan Amendment satisfy the findings under Section 59.4.5.4 and 59-D-3.4(c) of the respective Zoning Ordinances and substantially conforms to the recommendations of the 2009 Germantown Employment Area Sector Plan. Both plans have also received all necessary approvals from outside review agencies. Therefore, Staff recommends approval of the Fairchild Apartments Site Plan and the Germantown Town Center East Site Plan Amendment, with the conditions as enumerated in the Staff Report.

ATTACHMENTS:

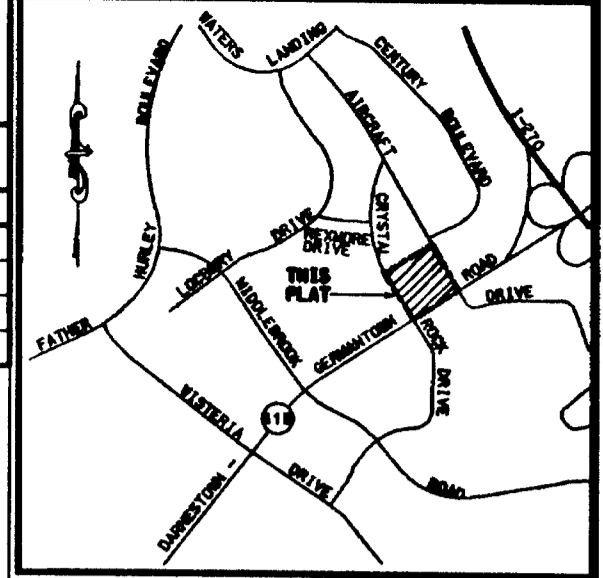
- A. 1 – Plat No. 22590
2 – Plat No. 22243
3 – Plat No. 13752
- B. Resolution MCB 18-078
- C. APF at Building Permit
- D. APF Report and Improvements
- E. Recreation Demand and Supply
- F. DPS Stormwater
- G. DPS Fire and Rescue
- H. DPS Right-of-Way
- I. Forest Conservation Exemption
- J. Noise Analysis
- K. DHCA Approval
- L. Applicant Declaration of Ownership



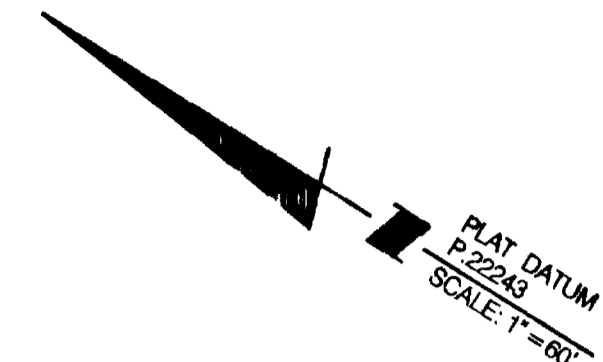
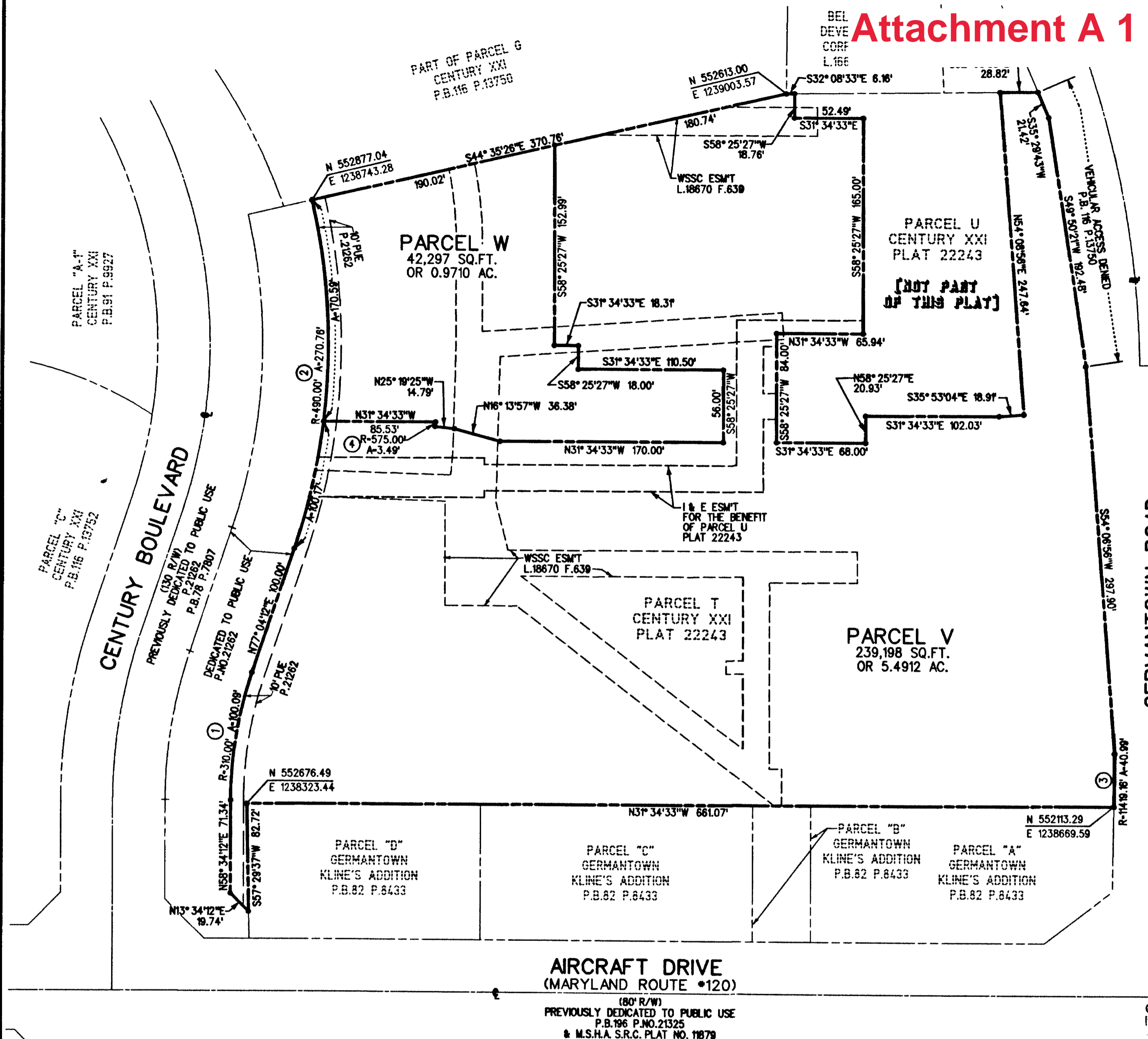
Attachment A 1

PLAT NO. 22590

CURVE TABLE						
No.	DELTA	TANGENT	ARC	RADIUS	CHORD	CHORD BRG
1	18° 30' 00"	50.49'	100.09'	310.00'	99.66'	N 67° 49' 12" E
2	31° 39' 35"	138.93'	270.76'	490.00'	267.33'	N 61° 14' 25" E
3	0° 12' 20"	20.50'	40.99'	11419.16'	40.99'	S 59° 12' 04" W
4	0° 20' 53"	1.75'	3.49'	575.00'	3.49'	N 64° 30' 09" E



VICINITY MAP
SCALE: 1"=2000'



OWNER'S CERTIFICATE

WE, THE UNDERSIGNED, OWNER(S) OF THE PROPERTY DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF RESUBDIVISION, AND ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN, ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS, AGENTS AND ASSIGNS WILL CAUSE ALL PROPERTY CORNER MARKERS AND ANY OTHER REQUIRED MONUMENTATION TO BE SET BY A REGISTERED SURVEYOR IN ACCORDANCE WITH SECTION 50-24 (a) (2) OF THE MONTGOMERY COUNTY CODE.

THERE ARE NO RECORDED SUITS, ACTIONS AT LAW, LIENS, LEASES, MORTGAGES OR TRUSTS AFFECTING THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION.

BELLEMEAD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION

James F. Meiler
WITNESS/ATTEST

5/6/03
DATE

Adrian Sloomaker
ADRIAN SLOOTMAKER, VICE PRESIDENT
Senior

NOTES:

- 1.) THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE, OF THIS PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPICT OR NOTE ALL MATTERS AFFECTING TITLE.
- 2.) THIS PROPERTY IS ZONED: TS - TOWN SECTOR, DISTRICT COUNCIL AMENDMENT TO THE ZONING MAP, RESOLUTION NO. 13-1071, APPLICATION NO. G-742, ADOPTED: OCTOBER 7, 1997.
- 3.) TAX MAP: EU562.
- 4.) THIS PLAT CONFORMS WITH THE REQUIREMENTS OF SECTION 50-35 A OF THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS, BEING CHAPTER 50 OF THE CODE. THIS PLAT INVOLVES FURTHER SUBDIVISION OF A COMMERCIAL LOT AS PROVIDED FOR IN SECTION 50-35 A (a) (4).
- 5.) THIS PLAT IS COVERED BY PRELIMINARY PLAN NOS. 1-78319, 1-79121 & 1-79122.
- 6.) SITE PLAN 8-99001 WAS APPROVED ON MARCH 15, 1999.
- 7.) DEVELOPMENT IS SUBJECT TO THE TERMS OF A SITE PLAN ENFORCEMENT AGREEMENT WITH MONTGOMERY COUNTY PLANNING BOARD (FILE NO. 8-99001).

FILED

JUN 5 - 2003

Clara L. O'Connell, Clerk
Montgomery County, Md.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THAT IT IS A RESUBDIVISION OF PARCEL T AS SHOWN ON A SUBDIVISION RECORD PLAT ENTITLED "SUBDIVISION RECORD PLAT PARCELS T AND U, CENTURY XXI" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN AS PLAT NO. 22243, SAID PROPERTY ALSO BEING PART OF THE LAND CONVEYED BY SHELL OIL COMPANY, A DELAWARE CORPORATION, TO BELLEMEAD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, BY SPECIAL WARRANTY DEED DATED OCTOBER 9, 1981 AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 5782 AT FOLIO 15.

AND THAT, ONCE ENGAGED AS DESCRIBED IN THE OWNER'S CERTIFICATE HEREON, ALL PROPERTY MARKERS SHOWN THIS PLAT WILL BE SET AS DELINEATED HEREON IN ACCORDANCE WITH SECTION 50-24 (a) (2) OF THE MONTGOMERY COUNTY CODE.

THE TOTAL AREA OF THIS MINOR PLAT OF RESUBDIVISION IS 281,495 SQUARE FEET OR 6.4622 ACRES OF LAND, THERE IS NO STREET DEDICATION BY THIS PLAT.

5-8-03
DATE

Kenneth L. Dye
KENNETH L. DYE
PROPERTY LINE SURVEYOR
MARYLAND REGISTRATION NO. 558

PARCEL "B"
GERMANTOWN
POLICE STATION
P.B. 806 P. 12240

PARCEL Q
P. 21607

PARCEL R
P. 21607



THE APPROVAL OF THIS PLAT IS PREDICATED ON THE ADEQUACY AND AVAILABILITY OF PUBLIC SEWER AND WATER.

RECORDED _____
PLAT _____

FOR PUBLIC SEWER AND WATER SYSTEMS ONLY 203041733191791111 79 12299001

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING BOARD

APPROVED - September 12, 2003
David Berke CHAIRMAN
Barbara R. Ouellet SECRETARY TREASURER

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF PERMITTING SERVICES

APPROVED - May 10, 2003
BY *John H. ...* DIRECTOR

M.N.C.P. & P.C. RECORD FILE NO. - 621-11

SUBDIVISION RECORD PLAT
PARCELS V AND W
CENTURY XXI
(RESUBDIVISION OF PARCEL "T")
CLARKSBURG (2ND) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND
SCALE: 1" = 60' DATE: NOVEMBER, 2002

Loiederman Soltesz Associates

Civil Engineering Land Planning Land Surveying Environmental Sciences
170 Piccard Drive, Rockville, Maryland 20850 301-948-2750 Fax: 301-748-9067

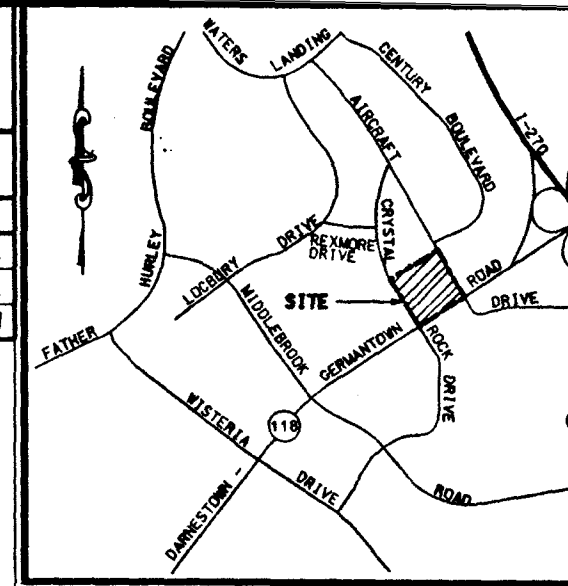
MSA 55U 1249-28426

3/5/03

Attachment A 2

PLAT NO. 22243

No.	DELTA	TANGENT	ARC	RADIUS	CHORD	CHORD BRG
1	18°30'00"	50.49'	100.09'	310.00'	99.66'	N 67°49'12" E
2	31°39'35"	138.93'	270.76'	490.00'	267.33'	N 61°14'25" E
3	0°12'20"	20.50'	40.99'	11419.16'	40.99'	S 59°12'04" W



VICINITY MAP
SCALE: 1"=2000'

OWNER'S CERTIFICATE

WE, THE UNDERSIGNED, OWNER(S) OF THE PROPERTY DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF RESUBDIVISION, AND ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN OR OTHER PLAN, ALLOWING DEVELOPMENT OF THIS PROPERTY, APPROVED BY MONTGOMERY COUNTY PLANNING BOARD ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL PUBLIC FILES FOR ANY SUCH PLAN ARE MAINTAINED BY THE PLANNING BOARD AND AVAILABLE FOR PUBLIC REVIEW DURING NORMAL BUSINESS HOURS.

FURTHER, WE ESTABLISH AN INGRESS AND EGRESS EASEMENT, OVER THE AREAS DESIGNATED HEREON AS "I & E ESM'T", SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN A DOCUMENT(S) TO BE RECORDED HEREAFTER.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS, AGENTS AND ASSIGNS WILL CAUSE ALL PROPERTY CORNER MARKERS AND ANY OTHER REQUIRED MONUMENTATION TO BE SET BY A REGISTERED SURVEYOR IN ACCORDANCE WITH SECTION 50-24 (e) (2) OF THE MONTGOMERY COUNTY CODE.

THERE ARE NO RECORDED SUITS, ACTIONS AT LAW, LIENS, LEASES, MORTGAGES OR TRUSTS AFFECTING THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION.

BELLEMEAD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION
James Miller 2/4/02
 WITNESS/ATTEST DATE ADRIAN SLOOTMAKER, VICE PRESIDENT

RARE HOSPITALITY INTERNATIONAL, INC., A GEORGIA CORPORATION
Joia Johnson 5/17/02
 WITNESS/ATTEST DATE JOIA JOHNSON, EXECUTIVE VICE PRESIDENT & GENERAL LEGAL COUNCIL

NOTES:

- 1.) THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE, OF THIS PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPICT OR NOTE ALL MATTERS AFFECTING TITLE.
- 2.) THIS PROPERTY IS ZONED: TS - TOWN SECTOR, DISTRICT COUNCIL AMENDMENT TO THE ZONING MAP, RESOLUTION NO. 13-1071, APPLICATION NO. G-742, ADOPTED: OCTOBER 7, 1997.
- 3.) TAX MAP: EU562.
- 4.) THIS PLAT CONFORMS WITH THE REQUIREMENTS OF SECTION 50-35 A OF THE MONTGOMERY COUNTY SUBDIVISION REGULATIONS, BEING CHAPTER 50 OF THE CODE. THIS PLAT INVOLVES FURTHER SUBDIVISION OF A COMMERCIAL LOT AS PROVIDED FOR IN SECTION 50-35 A (a) (4).
- 5.) THIS PLAT IS COVERED BY PRELIMINARY PLAN NOS. 1-78319, 1-79121 & 1-79122.
- 6.) SITE PLAN 8-99001 WAS APPROVED ON MARCH 15, 1999.
- 7.) DEVELOPMENT IS SUBJECT TO THE TERMS OF A SITE PLAN ENFORCEMENT AGREEMENT WITH MONTGOMERY COUNTY PLANNING BOARD (FILE NO. 8-99001)

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THAT IT IS A RESUBDIVISION OF PART OF PARCELS E AND F AS SHOWN ON A PLAT OF SUBDIVISION ENTITLED "PARCELS D, E, F, G, AND H, CENTURY XXI" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN PLAT BOOK 116 AS PLAT NO. 13750, SAID PARCELS "E" AND "F" ALSO BEING SHOWN ON A SUBDIVISION PLAT FOR STREET DEDICATION ENTITLED "SUBDIVISION PLAT, FOR, STREET DEDICATION, CENTURY BOULEVARD AND AIRCRAFT DRIVE, CENTURY XXI" AND RECORDED AMONG THE AFORESAID LAND RECORDS IN PLAT BOOK 196 AS PLAT NO. 21326, SAID PROPERTY ALSO BEING PART OF THE LAND CONVEYED BY SHELL OIL COMPANY, A DELAWARE CORPORATION, TO BELLEMEAD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, BY SPECIAL WARRANTY DEED DATED OCTOBER 9, 1981 AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 5782 AT FOLIO 15; AND ALL OF THE LAND DESCRIBED IN A CONVEYANCE FROM BELLEMEAD DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, TO RARE HOSPITALITY INTERNATIONAL, INC., A GEORGIA CORPORATION, BY DEED DATED NOVEMBER 1, 2001 AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 19920 AT FOLIO 1.

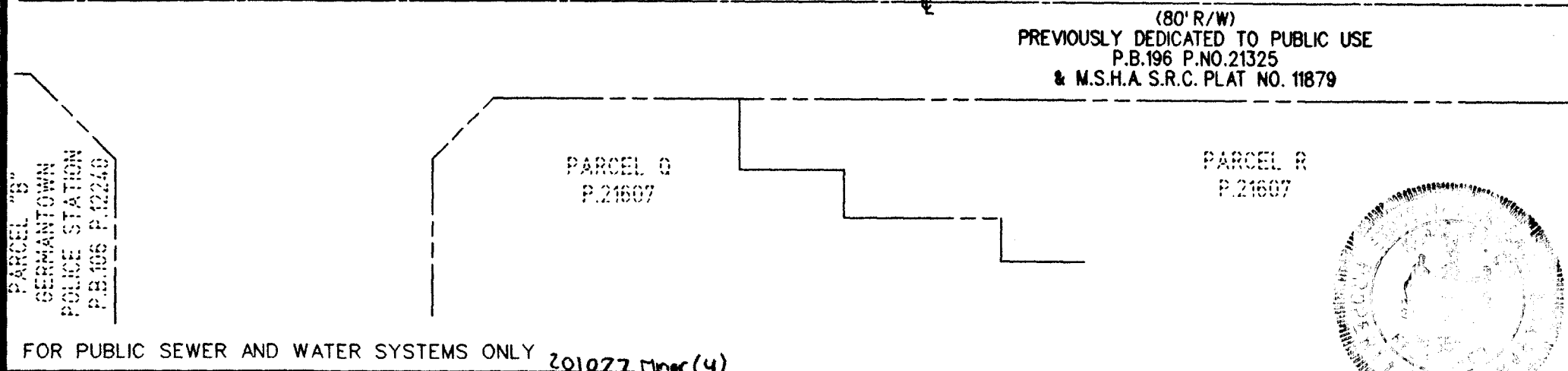
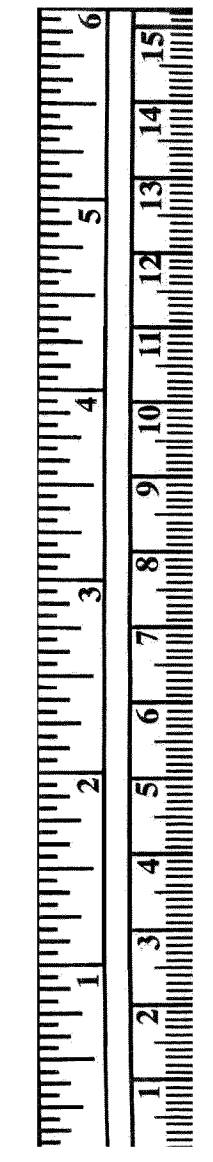
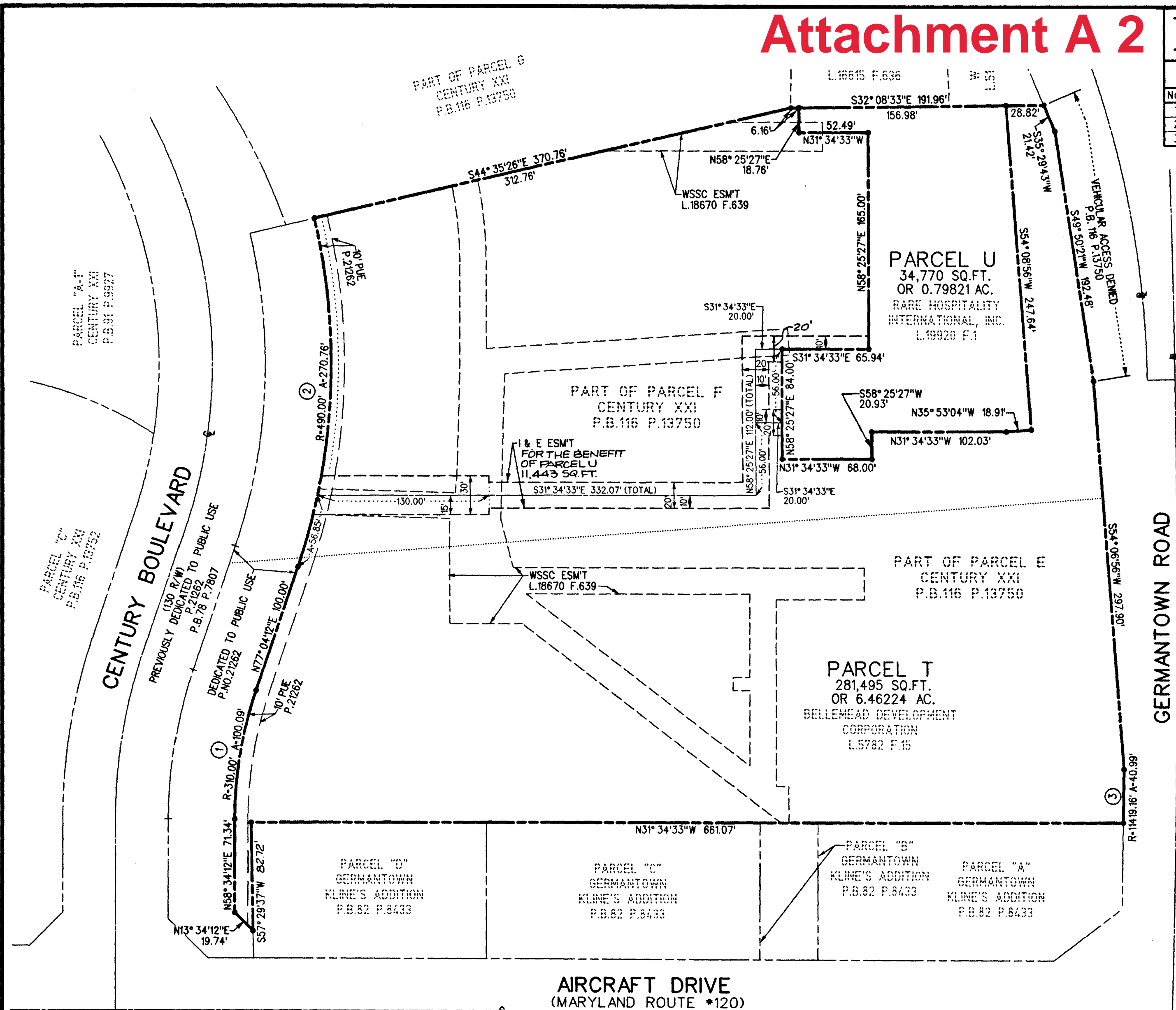
AND THAT, ONCE ENGAGED AS DESCRIBED IN THE OWNER'S CERTIFICATE HEREON, ALL PROPERTY MARKERS SHOWN THIS PLAT WILL BE SET AS DELINEATED HEREON IN ACCORDANCE WITH SECTION 50-24 (e) (2) OF THE MONTGOMERY COUNTY CODE.

THE TOTAL AREA OF THIS MINOR PLAT OF RESUBDIVISION IS 318,265 SQUARE FEET OR 7.26045 ACRES OF LAND, THERE IS NO STREET DEDICATION BY THIS PLAT.

5/22/02
 DATE
 KENNETH L. DYE
 PROPERTY LINE SURVEYOR
 MARYLAND REGISTRATION NO. 556

SUBDIVISION RECORD PLAT
 PARCELS T AND U
 CENTURY XXI
 (RESUBDIVISION OF PARCELS "E" AND "F")
 CLARKSBURG (2ND) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1" = 60' DATE: FEBRUARY, 2002

Loiederman Soltesz Associates
 CIVIL Engineering Land Planning Land Surveying Environmental Sciences
 www.loiederman.com
 1190 Piccard Drive, Rockville, Maryland 20850 301.918.2750 Fax: 301.948.9067



FOR PUBLIC SEWER AND WATER SYSTEMS ONLY 201027 (inc 4)

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD

APPROVED - September 14, 2002
Keith Helger CHAIRMAN
Mimi Wang-Femstone ASST. SECRETARY TREASURER

M.N.C.P. & P.C. RECORD FILE NO. - 618-22

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT OF PERMITTING SERVICES

APPROVED - JUNE 12, 2002
Robert A. Hulbert DIRECTOR

THE APPROVAL OF THIS PLAT IS
 PREDICATED ON THE ADEQUACY AND
 AVAILABILITY OF PUBLIC SEWER AND
 WATER.

RECORDED _____
 PLAT _____



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 18-078
Sketch Plan No. 320180130
Fairchild Apartments
Date of Hearing: July 26, 2018

JUL 31 2018

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review sketch plan applications; and

WHEREAS, on February 13, 2018, GTTCE Owner LLC (“Applicant”) filed an application for approval of a sketch plan for the construction of new buildings of up to 206,102 square feet in size with up to 206,102 square feet of residential use and up to 5,900 square feet of commercial use, including 12.5% MPDUs, while retaining 29,915 square feet of existing commercial restaurant use in three buildings, on 5.49 acres of CR 2.0, C-1.5 R-1.5 H-145T and Germantown Transit Mixed Use Overlay zoned-land, located at the south side of Century Blvd, approximately 150 feet east of the intersection with Aircraft Drive, identified as parcel V on Plat No. 22590 (“Subject Property”) in the Germantown Town Center Policy Area and Germantown Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s sketch plan application was designated Sketch Plan No. 320180130, Fairchild Apartments (“Sketch Plan”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 13, 2018, setting forth its analysis and recommendation for approval of the Application subject to certain binding elements and conditions (“Staff Report”); and

WHEREAS, on July 26, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain binding elements and conditions, by the vote certified below.

Approved as to
Legal Sufficiency:

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Sketch Plan No. 320180130, Fairchild Apartments, for construction of new buildings of up to 206,102 square feet in size with up to 206,102 square feet of residential use and up to 5,900 square feet of commercial use, including 12.5% MPDUs, while retaining 29,915 square feet of existing commercial restaurant use in three buildings on the Subject Property, subject to the following binding elements and conditions:¹

A. Binding Elements. The following site development elements are binding under Section 59-7.3.3.F of the Montgomery County Zoning Ordinance:

1. Maximum density and height;
2. Approximate location of lots and public dedications;
3. General location and extent of public open space;
4. General location of vehicular access points; and
5. Public benefit schedule.

All other elements are illustrative.

B. Conditions. This approval is subject to the following conditions:

1. Density

The Sketch Plan is limited to a maximum of 236,017 square feet of total development including:

- up to 29,915 square feet of existing commercial/restaurant use in three buildings; and
- up to 206,102 square feet of new construction in one building

The final square footage of residential and commercial uses in the new building will be determined at Site Plan.

2. Height

The development is limited to a maximum height of 80 feet, as shown on the Sketch Plan.

3. Incentive Density

The development must be constructed with the public benefits listed below, unless modifications are made under Section 59.7.3.3.I. Total points must equal at least 100 and be chosen from at least four categories as required by Section 59.4.5.4.A.2. The requirements of Division 59.4.7 and the *CR Zone Incentive Density Implementation Guidelines* must be fulfilled for each public benefit.

¹ For the purpose of these binding elements and conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Final points will be established at Site Plan approval. If the Sketch Plan is amended to increase density, the incentive density points and categories must be re-evaluated. No points received during the current phase for Major Public Facilities may be considered for the new density, and the new density will need to prove it can reach the same 100 points from at least four categories. The categories approved for refinement at site plan are the following:

- a. Major Public Facility, achieved through the previous reconstruction of Century Boulevard;
- b. Transit Proximity, achieved from the future Germantown Town Center Corridor Cities Transitway ("CCT") station;
- c. Connectivity and Mobility, achieved through wayfinding;
- d. Diversity of Uses and Activities, achieved through adaptive buildings and enhanced accessibility for the disabled;
- e. Quality Building and Site Design, achieved with structured parking; and
- f. Protection of the Natural Environment, achieved through building lot termination, and cool roof.

4. Building and Site Design

- a. At the time of Site Plan approval, the ground floor on the Century Boulevard façade must be designed to have a commercial appearance through a combination of elements such as increased transparency (large windows), awnings, special detailing, and façade finishes different from the upper floors.
- b. Floor to floor elevations on the ground floor along the Century Boulevard frontage must be a minimum of 15 feet high.
- c. The garage entrances and loading dock must be screened from view with retractable doors. The doors shall either feature a high level of transparency (glass) or be covered with artwork. The final details are to be determined at Site Plan.

5. Public Open Space

The Applicant must provide a minimum of 23,955 square feet (10 percent of the net tract area) of public open space on-site per section 59.6.3.6.C of the Zoning Ordinance. The final location, design and sizes of the open spaces will be finalized at Site Plan.

6. Streetscape

The drive aisle adjacent to the east side of the multi-family building must have a brick, paver, or decorative concrete finish sidewalk, and include a tree panel for street trees along the Subject Property frontage, and be a minimum five-foot wide free and clear walkway at all points.

7. Master Plan Transportation

Prior to certification of the future Site Plan, the Applicant must coordinate with the Montgomery County Department of Transportation and/or the Montgomery County Department of Permitting Services to secure a minimum of one additional foot of right-of-way or public improvement easement along the Century Boulevard frontage.

8. Building Lot Terminations (BLTs)

Prior to release of any building permit, the Applicant must provide proof of purchase and/or payment for the required BLTs.

9. Moderately Priced Dwelling Units (MPDUs)

The Applicant must provide on the Subject Property a minimum of 12.5% of the total units as Moderately Priced Dwelling Units. The development must provide MPDUs in accordance with Chapter 25A.

10. Future Coordination for Site Plan

In addition to any other requirements for Site Plans under Chapter 59, the following must be addressed when filing a Site Plan, as appropriate:

- a. Fire and Rescue access and facility details, including complying with all of the comments provided in the Fire Marshal Comment memo dated June 8, 2018;
- b. Public Open Space details;
- c. Pedestrian access through the site from the sidewalk on Century Boulevard to the sidewalk on MD 118 connecting the two areas of Public Open Space;
- d. Coordination with MDSHA regarding removing the existing chain link fence along the southern property boundary on MD 118;
- e. Demonstration of how each public benefit satisfies the Zoning Ordinance and Incentive Density Implementation Guideline requirements;
- f. Noise analysis from transportation noise;
- g. Transportation Impact Statement or Study;
- h. SWM concept approval (and subsequent plan);
- i. Coordination with MCDOT in accordance with that agency's letter, dated March 22, 2018;
- j. An amendment to Site Plan No. 81999001H will be needed prior to a new site plan application being approved in order to remove Parcel V's area and density from Site Plan No. 81999001H.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record and all applicable elements of the Zoning Ordinance, the Board finds that as conditioned the

necessary elements of the Sketch Plan are appropriate in concept and appropriate for further review at site plan and that:

1. *The Sketch Plan meets the objectives, general requirements, and standards of the Zoning Ordinance.*

a. Development Standards

The Subject Property includes approximately 5.49 acres zoned CR 2.0, C-1.5 R-1.5 H-145T. The data table below demonstrates the Application's conformance to the applicable development standards of the zone.

Data Table

Sketch Plan Data Table		
Development Standard	Permitted/ Required	Approved
Net Lot Area	n/a	5.49 acres (239,198 sq ft)
Density (GFA/ FAR)*		
Residential Density	1.5 FAR (358,797 sq ft)	Up to 0.86 FAR (206,102 sq ft) *
Commercial Density	1.5 FAR (358,797 sq ft)	Up to 0.150 FAR (35,815 sq ft)*
Total FAR/GFA	2 FAR (478,396 sq ft)	Up to 1.0 FAR (236,017 sq ft)*
Max. Building Height	145 ft	80 ft
Min. Public Open Space	10% (23,914 square feet)	10% (23,955 square feet)
Parking**		
Residential - cars	212 Min/276 Max	261
Residential - bicycle	100 (0.5 x 212), Max 100	100 long term
Commercial - cars	120 Min/359 Max	204

*Total density may not exceed 206,102 sq. ft. in the new building, final mix of residential and commercial will be determined at site plan

**Parking based on 212 residential units and existing restaurant use. Final parking will be determined at site plan

b. Intent of the Zone

i. *Implement the recommendations of applicable master plans.*

The Project substantially conforms to the recommendations of the 2009 Germantown Employment Area Sector Plan ("Sector Plan"). The Sector Plan's vision statement states "This Plan establishes a vision that will transform Germantown's central employment corridor into a vibrant town center and mixed-use uptown districts. The Germantown of the future will be the center of business and

community life in upper Montgomery County". The Sector Plan further envisions Germantown completing an economic core, increasing employment, and organizing development around transit. Further areawide recommendations include a zoning strategy for mixed use development and a vision for establishing an urban form which includes interconnecting transportation options, creating gathering spaces, establishing centers, and creating meaningful street character. The Subject Property is specifically located in the Town Center district of Germantown which provides district specific recommendations including to "have a mix of uses such as offices, restaurants, hotels, housing and civic facilities close to shopping, transit and jobs". The Sector Plan's Land Use map and accompanying text on page 50 identifies the Subject Property and surrounding block as appropriate for a commercial mixed-use area. The Sector Plan places emphasis on creating a continuous building line along Century Boulevard, and public open space should not be located in front of the buildings without a tie to pedestrian circulation. Century Boulevard should be a promenade street with wide sidewalks and the median running transitway.

The Sketch Plan Application substantially conforms to the goals and recommendations mentioned above. The new building location will be set back approximately 13 feet from the right-of-way, similar to the setback of the existing hotel immediately east of the residential building, establishing a building line. Public Open Space is proposed in front of the building, and while the Sector Plan generally discourages this placement, the proposed space has the potential to enhance pedestrian and bicycle circulation by helping accommodate wider sidewalks and a separated bicycle facility. The final designs for the Public Open Space will be refined at the time of site plan.

The Subject Property is part of a larger block identified as commercial mixed use, and all of the existing uses within this larger block are 100% commercial or hotel use. Therefore, adding some residential development is essential for achieving the overarching goals of creating a mixed-use district, a complete economic core, and for providing housing close to transit and jobs. The ground floor of the multi-family building will be designed with 15-foot floor-to-floor heights, and an interior configuration that would allow the dwelling units proposed along Century Boulevard to convert to retail space once the surrounding properties also redevelop. The design of the ground floor will be reviewed in detail during site plan to ensure a design that activates the street with the currently proposed residential uses. The

reconstruction of Century Boulevard to accommodate the future transitway was already completed by the Applicant during the previous site plan process and needs no further upgrade at this time.

- ii. *Target opportunities for redevelopment of single-use commercial areas and surface parking lots with a mix of uses.*

The Application will partially redevelop an area of lawn and surface parking into a new building that will contain multi-family apartments, resulting in new housing opportunities in a previously all-commercial block, while retaining the existing restaurant uses, resulting in a mix of uses.

- iii. *Encourage development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities, where parking is prohibited between the building and the street.*

The Sketch Plan allows for a new multi-family residential building that will accommodate a range of studio, one and two-bedroom apartments, a minimum of 12.5% MPDUs, and 7% of units with enhanced accessibility. The Application also enhances mobility by providing improved on-site and through-site pedestrian circulation with new sidewalks and areas of open space, and also retains three existing stand-alone restaurants. While the existing restaurants continue to be surrounded by parking, the new multi-family building provides parking in a garage, that is wrapped with the residential uses, therefore there is no parking provided between the new building and the street.

- iv. *Allows a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods.*

The Sector Plan provides the framework for this area of Germantown to undergo major changes in land use and urban form, with higher densities and taller building heights included as desirable outcomes. Most of the existing development in the area is one to three story tall retail, entertainment and office use, with the proposed multi-family building representing the first five-story tall multi-family project in this part of Germantown. The placement of the new building starts to establish the urban form desired, while still maintaining viability and compatibility with the existing restaurants. Development of the

proposed multi-family building should encourage additional redevelopment in the vicinity in a similar form. The proposed 15-foot ground floor ceiling heights also promotes flexibility in the future to convert a portion of the multi-family building to commercial uses.

- v. *Integrate an appropriate balance of employment and housing opportunities.*

The Sketch Plan will integrate an appropriate balance of employment and housing in the Germantown Town Center. The Sector Plan identified the block the Property is located on as a commercial mixed-use area that should be predominantly commercial uses while allowing for residential and entertainment opportunities. Currently, the Property and the surrounding properties are completely developed as commercial restaurant, entertainment and office uses, and this multi-family building provides an opportunity to create more of a mix of uses.

- vi. *Standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.*

The Project will provide the required public benefits from a minimum of four categories to achieve the desired incentive density above the standard method limit. A more detailed analysis of these public benefits is described in finding 6 of this Resolution. Final determination of public benefit points will be determined at the time of Site Plan.

c. General Requirements

- i. *Site Access*

Access to the Subject Property is adequate as provided for. There is existing access to Century Boulevard which will remain, and there will be one primary, and one backup garage entrance from the rear side of the building.

- ii. *Parking, Queuing, and Loading*

The Applicant demonstrated that parking will be adequate for the mix of uses on the Subject Property. Existing surface parking will remain for the retail uses, and a new parking structure will be constructed for the new building.

iii. *Open Space and Recreation*

The Sketch Plan demonstrated adequate space to meet the requirements for recreation at the time of Site Plan. The Sketch Plan also identified where the minimum 10% of Public Open Space will be located, with final design to be determined at site plan.

iv. *General Landscaping and Outdoor Lighting*

The Sketch Plan meets the general intent of the landscaping division. The new building is infill in an existing parking lot. New trees will be provided along the main access drive, while most of the building will be wrapped in sidewalk. Existing lighting on the Subject Property will remain where not directly impacted by the building location.

v. *Screening*

Screening is not required for the approved use considering the adjacent zoning and use.

2. *The Sketch Plan substantially conforms to the recommendations of the Sector Plan.*

As discussed in the intent section *i* above, the Sketch Plan substantially conforms to the recommendations of the Sector Plan.

3. *The Sketch Plan satisfies, under Section 7.7.1.B.5 of the Zoning Ordinance, the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

The Sketch Plan is not subject to any binding elements of a development plan or schematic development plan that was in effect on October 29, 2014.

4. *The Sketch Plan satisfies the green area requirement in effect on October 29, 2014.*

The Subject Property zoning on October 29, 2014 was not the result of a Local Map Amendment with a green area requirement.

5. *The Sketch Plan achieves compatible internal and external relationships between existing and pending nearby development.*

The new building design is compatible in height and scale with the existing and pending nearby development in this portion of the Germantown Town Center, and with the building height and scale that can be achieved on other nearby properties based on zoning and Sector Plan recommendations. The

adjacent hotel is a similar height, and the commercial restaurant uses both on the Subject Property and adjacent to the Property are set away from the new building, providing adequate room for parking and circulation. The new building is also set back 10-feet from the western Subject Property line, providing a buffer with the adjacent building.

6. *The Sketch Plan provides satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading.*

The Sketch Plan provides satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading. The Subject Property is accessed from an existing location on Century Boulevard and the new building will be located west of this access point. Vehicles will continue to utilize the existing drive aisle to access the surface parking for the restaurant uses, and will also have access to the new parking garage from a new drive aisle encircling part of the remaining surface parking lot. The new building provides a loading area next the garage access, co-locating these uses away from the primary pedestrian routes. The existing restaurant uses also have loading access from the same drive aisle on the southern part of the parking lot. Pedestrian and bicycle circulation will be improved with the Sketch Plan by including a new sidewalk along the entire east side of the multi-family building leading pedestrians from Century Boulevard into the Property, and ultimately connecting to existing sidewalks in front of the restaurant uses. Bicycle circulation is envisioned on the parking lot drive aisles, which are starting to function more like private streets, with fewer curb cuts increasing bicycling safety.

7. *The Sketch Plan proposes an outline of public benefits that supports the requested incentive density and is appropriate for the specific community.*

Taking into account the considerations in Section 59-4.7.1.B, including the recommendations and objectives of the Sector Plan and any applicable design guidelines, the Incentive Density Implementation Guidelines, the size and configuration of the site and its relationship to adjacent properties, similar public benefits nearby, and additional enhancements related to the individual public benefits, the Planning Board finds that the following outline of public benefits supports the Applicant's request for incentive density and is appropriate for the community surrounding the site. Final determination of public benefit point values will be determined at Site Plan(s).

Public Benefits Points		
Public Benefit	Incentive Density Points	
	Max Allowed	Requested and Approved in Concept
59.4.7.3A: Major Public Facilities		
Major Public Facility	70	51.28
59.4.7.3C: Transit Proximity		
Transit Proximity	25	25
59.4.7.3C: Connectivity and Mobility		
Wayfinding	10	5
59.4.7.3D: Diversity of Uses and Activities		
Adaptive Buildings	15	10
Enhanced Accessibility for the Disabled	20	20
59.4.7.3E: Quality of Building and Site Design		
Structured Parking	20	13.1
59.4.7.3F: Protection and Enhancement of the Natural Environment		
Cool Roof	10	5
BLTs	30	10.3
TOTAL		139.68

Major Public Facility

Major Public Facility: The Applicant requests 51.28 points for providing a major public facility. The Zoning Ordinance defines a major public facility as including but not limited to schools, libraries, recreation centers, parks, service centers, bike share stations, public transportation or utility upgrades, or other resources delineated in a Master Plan. The Applicant is requesting credit for the reconstruction of Century Boulevard across the Property frontage, including the 50-foot wide median for the Corridor Cities Transitway, that was previously required by and completed as part of Site Plan No. 819990010. Because the Sketch Plan and future Site Plan are relying on Adequate Public Facilities (“APF”) that were approved at building permit for the density approved by Site Plan No. 819990010, and is also utilizing unbuilt density from the previous Site Plan, the Board supports this request. The available points are calculated based on a formula using net lot area of the Property, land (or floor area) conveyed, and land (or floor area) constructed. Because the improvements to Century Boulevard were done as part of a larger site plan application, only a proportionate number of points resulting from the calculations may be considered for the Sketch Plan as incentive density points. The proportion of total vehicle trips the Sketch Plan is using from the original APF and site plan approval is the proportion of points that should be

awarded and will be determined at future site plan when the final mix of uses is determined. If future amendments occur to the Sketch Plan adding density, the reconstruction of Century Boulevard as a Major Public Amenity cannot be included in the incentive density points calculations for the additional density. Final points will be determined at Site Plan but the Board supports the request at this time.

Transit Proximity

Transit Proximity: The Applicant requests 25 points for the category of transit proximity. Transit proximity points are available based on the existing or planned transit level of service, the property zoning, and proximity to the transit facility. The Subject Property is in a CR zone, is within ¼ mile of a planned Corridor City Transitway stop, and the transit level of service is Level 2 (planned bus line with a dedicated path). The points available for transit proximity are 25 based on the table in the Zoning Ordinance, and the Board supports the request at this time.

Connectivity and Mobility

Wayfinding: The Applicant requests five points for providing wayfinding that helps orient pedestrians and cyclists to major open spaces, cultural facilities and transit opportunities within the Germantown Town Center. Five points are available for wayfinding signs that provide basic signage and information for the surrounding points of interest. The Applicant is proposing wayfinding within the Subject Property and along Century Boulevard. Because there is limited existing wayfinding in Germantown and a number of public amenities exist within the Town Center. The Board supports the request at this time. Final details on the wayfinding design and points of interest will be determined at Site Plan.

Diversity of Uses and Activities

Adaptive Buildings: The Applicant requests 10 points for providing adaptive building heights. Up to 15 total points are available with the first 7.5 points available for meeting the basic code requirements for adaptive buildings, and an additional 7.5 points are available if the structure is designed to accommodate additional density and height in the future, and has an internal layout that allows changes between use with only minor modifications. The ground floor facing Century Boulevard has 15-foot ceiling heights and will be designed to only require minimal plumbing changes to convert between residential and retail use. Additionally, the Applicant has designed the garage with 12-foot ceilings to be convertible to future residential use, and has explained how the side of the building could be added upon if the adjacent property becomes available. The Board supports the request for points at this time.

Enhanced Accessibility for the Disabled: The Applicant requests 20 points for providing at least 7% of the Project's units in accordance with ANSI A117.1 Residential Type A standards. The final percentage of accessible units will be determined at Site Plan. The Board supports the Applicant's request at this time.

Quality of Building and Site Design

Structured Parking: The Applicant requests 13.1 points for providing structured parking. The points available for structured parking are based on a formula accounting for the number of spaces in a garage versus the total parking. While the new building provides all its parking in a garage, there is existing surface parking remaining for the restaurant uses, which keeps the Applicant from achieving more points. The final calculation will be updated at the time of site plan based on the final parking numbers and locations. The Board supports the request for points for structured parking at this time.

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT): The Applicant requests 10.3 points for the purchase of BLT easements or equivalent payment. BLTs are required for every 31,500 square feet of gross floor area comprising the 50% incentive density floor area because this application is in the Germantown Transit Mixed Use Overlay Zone. The Board supports the Applicant's request at this time for providing BLTs.

Cool Roof: The Applicant has requested five points for providing a cool roof. A cool roof must not be vegetated and have a minimum solar reflectance index of 75 on roof slopes below a ratio of 2:12. The Zoning Ordinance suggests a maximum of five points for providing a cool roof on properties greater than one acre in size. Final roof details will be determined at Site Plan and the Board supports the current request at this time.

8. *The Sketch Plan establishes a feasible and appropriate phasing plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.*

The Sketch Plan shows one phase of development for construction of the new building.

BE IT FURTHER RESOLVED that the Board's approval of a sketch plan is in concept only and subject to further review at site plan, when, based on detailed review

the Board may modify the Sketch Plan's binding elements or conditions based on the Montgomery County Code, the Sector Plan, or other requirements; and

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that all binding site development elements shown on the latest version of 320180130, received by M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is 'JUL 31 2018 (which is the date that this Resolution is mailed to all parties of record); and

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, July 26, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850
By email rick.brush@montgomerycountymd.gov

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850
By email lisa.schwartz@montgomerycountymd.gov

MR. MARK BEALL
MCDPS-ZONING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.beall@montgomerycountymd.gov

MR. CHRISTOPHER ANDERSON
MPDU MANAGER, DHCA
100 MARYLAND AVENUE, 4TH FLOOR
ROCKVILLE, MD 20850
By email
Christopher.anderson@montgomerycountymd.gov

Matthew Walters
HIP Projects, LLC
230 Spectrum Avenue
Gaithersburg, MD 20879

Adam Hale
KTYG Group, INC
8609 Westwood Center Drive
Tysons, VA 22182

MR. GREG LECK
MCDOT
101 MONROE ST
10TH FLOOR
ROCKVILLE, MD 20850
By email greg.leck@montgomerycountymd.gov

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
atiq.panishiri@montgomerycountymd.gov
MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
christina.contreras@montgomerycountymd.gov

MR. ALAN SOUKUP
MCDDEP-WATER & WASTEWATER POLICY
255 ROCKVILLE PIKE, SUITE 120
ROCKVILLE, MD 20850
By email alan.soukup@montgomerycountymd.gov

Amy Zou
Soltesz
2 Research Place, Suite 100
Rockville, MD 20850

Peter Heng
11 Stanmore Court
Potomac, MD 20854

MR. MARK ETHERIDGE, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.etheridge@montgomerycountymd.gov

MR. EHSAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email ehsan.motazedi@montgomerycountymd.gov

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email gene.vongunten@montgomerycountymd.gov

Peter Henry
GTTCE Owner, LLC
230 Spectrum Avenue
Gaithersburg, MD 20879

Robert Brewer
Lerch, Early & Brewer, Chtd.
7600 Wisconsin Avenue, Suite 700
Bethesda, MD 20814

4. Germantown Town Center East

Adequate Public Facilities Building Permit Review

Staff Recommendation: Approval with conditions.

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:
Yea: 4-0

Nay:

Other: HUSSMANN ABSENT

Action: APPROVED STAFF RECOMMENDATION WITH SIX CONDITIONS DELINEATED IN THE APRIL 18 TRANSPORTATION PLANNING APF (ADEQUATE PUBLIC FACILITIES) REVIEW. AS A REGISTERED LOOPHOLE PROPERTY, THE BUILDING PERMIT APPLICATION REQUIRED REVIEW.

Mr. Marty Hutt, attorney, accepted the conditions recommended in the staff report.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760MCPB
Item No. 4
4/27/00

April 18, 2000

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Ronald C. Welke, Coordinator
Transportation Planning

FROM: Ki H. Kim, Planner
Transportation Planning

SUBJECT: Germantown Town Center East Building Permit.

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject building permit application as a registered loophole property. The Planning Board is required to review the proposed plans for Germantown Town Center East and the related traffic study, and to provide comments to the Director of the Department of Permitting Services (DPS) on the adequacy of the transportation system to support the additional development.

RECOMMENDATIONS

Based on our review of the submitted traffic impact study, Transportation Planning staff recommends the following conditions as part of the APF test for transportation requirements related to approval of this application.

1. Total development under this building permit application is limited to the following uses and density:
 - 127,026 square feet of retail/restaurants
 - 89-room hotel
 - 67,880-square foot theater (approximately 2,800 seats)
2. The applicant shall widen Aircraft Drive between Century Boulevard and Crystal Rock Drive as a four-lane roadway with a median at the intersection approach to Crystal Rock Drive.

3. The applicant shall extend Century Boulevard westerly from its present terminus at Aircraft Drive to Crystal Rock Drive, where the roadway will align with Main Street in the Germantown Town Center.
4. The applicant shall participate in funding the traffic signal and pavement marking modification including median relocation, pavement milling and overlay necessary to provide a second left-turn lane from southbound Crystal Rock Drive to eastbound Father Hurley Boulevard and westbound Father Hurley Boulevard to southbound Crystal Rock Drive.
5. The applicant shall participate in constructing an acceleration lane on Father Hurley Boulevard to accommodate the movement from northbound Crystal Rock Drive to eastbound Father Hurley Boulevard.
6. The applicant shall participate in constructing an acceleration lane on Crystal Rock Drive to accommodate the movement from westbound Father Hurley Boulevard to northbound Crystal Rock Drive including reconstruction/reconfiguration of the median and travel lanes on the northern leg of the intersection.

DISCUSSION

Summary of Local Area Transportation Review

A traffic study was prepared to determine the impact of Germantown Town Center East development. Staff agrees with the conclusion of that study that all impacted intersections in the area will continue to operate within the congestion standard of 1,500 Critical Lane Volume (CLV) for the Germantown Town Center Policy Area. The critical lane volume (CLV) impacts of the proposed development on critical intersections in the vicinity of the site were analyzed and are summarized in Table I.

Table I

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour						
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 118/Middlebrook Drive	940	890	1235	1089	1244	1104
MD 118/Crystal Rock Drive	777	1003	1058	1141	1145	1332
Great Seneca Hgwy./ Middlebrook Road	777	1129	851	1084	854	1094
MD 118/Aircraft Drive	667	945	1007	1028	1047	1181
Father Hurley Blvd/Crystal Rock Drive						
Without Road Improvements	1046	925	2081	2325	2063	2370
With Road Improvements					1211	1464

As shown in the above table, the five intersections analyzed are currently operating at acceptable CLVs (1,500 Critical Lane Volume (CLV)) and this acceptable level will continue for the background development (developments approved but not built) conditions except at the intersection of Father Hurley Boulevard and Crystal Rock Drive. The unacceptable condition at the intersection of Father Hurley Boulevard and Crystal Rock Drive will further deteriorate for the total development conditions without the roadway improvements. However, this intersection will operate at an acceptable congestion level for the total development conditions with the roadway improvements conditioned upon approval of this building permit application.

Staging Ceiling Capacity Review

Based on the FY 00 AGP staging ceiling capacity, there is sufficient capacity available for employment development (2,975 jobs as of December 31, 1999) in the Germantown Town Center Policy Area to accommodate the proposed development.

Conclusion

Staff concludes that with the roadway conditions as recommended in this memorandum, the subject building permit application satisfies the APF review since all nearby intersections are anticipated to operate within an acceptable CLV with additional roadway improvements to be provided by the applicant and there is staging ceiling capacity available for the proposed development.

KHK:cmd

Germantown Town Center East Building Permit.wpd

Demand, Supply & Adequacy Report



Project Location Master Plan:

M-NCPPC

Proposed Residential Project - Units by Type and their Demand Points

Code	Housing Type	Quantity	Tots	Children	Teens	Young Adults	Adults	Seniors
Mid-Rise	Multiple-Family, 4 stories or less	0	0	0	0	0	0	0
Hi-Rise	Multiple-Family, 5 stories or more	212	21.20	14.84	6.36	154.76	118.72	53
TH	Townhouses and Single-Family attached	0	0	0	0	0	0	0
SFD	Single-Family Detached	0	0	0	0	0	0	0
Total Demand Points =		212	21.20	14.84	6.36	154.76	118.72	53

Existing Offsite Park Facilities and their Supply Points

Park Facility	Quantity	Tots	Children	Teens	Young Adults	Adults	Seniors
Ampitheatre Outdoor Large	1	2	5	4	4	6	6
Public Art Seating element	1	5	5	5	5	5	5
Natural Area	1	1.06	0.74	0.64	15.48	11.87	2.65
Trail System	1	2.12	2.97	0.95	23.21	17.81	5.30
Shelter	1	0	2	7	10	7	5
Open Grass Area Large	4	24	36	60	80	60	24
Total Offsite Supply Points:		34.18	51.71	77.59	137.69	107.68	47.95
35% of Total Offsite Supply Points:		11.96	18.10	27.16	48.19	37.69	16.78
Max Allowed Pts (35% of Total Demand Pts):		7.42	5.19	2.23	54.17	41.55	18.55
Actual Assigned Offsite Supply Pts:		7.42	5.19	2.23	48.19	37.69	16.78

Proposed Onsite Recreation Facilities and their Supply Points

Recreation Facility	Quantity	% Bonus Points	Tots	Children	Teens	Young Adults	Adults	Seniors
Bicycle Parking Garage	1	0%	0	7	14	14	12	5
Dog Cleaning Station	1	0%	0	0	2	3	3	3
Indoor Community Space	1	0%	2.12	2.23	1.91	46.43	35.62	21.20
Yoga Room	1	0%	0	2	4	9	9	9
Indoor Fitness Room	1	0%	0	1.48	0.64	38.69	23.74	7.95
Resident Lounge	1	0%	0	2	5	10	8	7
Interior Courtyard, Garden or Lawn	1	0%	2	3	4	7	7	5
Swimming Pool – Outdoor	1	0%	1.06	2.97	1.27	54.17	29.68	5.30
Public Art Seating - Active Multi-use	1	0%	5	5	5	5	5	5
Interactive Outdoor Music and Art	1	10.00%	5.50	5.50	3.30	2.20	4.40	4.40
Grilling Area	1	0%	0	0	2	6	6	5
Total Onsite Supply Points=			15.68	31.18	43.12	195.49	143.44	77.85

Results: Demand, Supply & Adequacy

Age Group	Total Demand Points	Offsite Supply Points	Onsite Supply Points	Total Supply Points	Adequacy
Tots	21.20	7.42	15.68	23.10	Adequate
Children	14.84	5.19	31.18	36.37	Adequate
Teens	6.36	2.23	43.12	45.35	Adequate
Young Adults	154.76	48.19	195.49	243.68	Adequate
Adults	118.72	37.69	143.44	181.13	Adequate
Seniors	53	16.78	77.85	94.63	Adequate



Attachment F

DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Diane R. Schwartz Jones
Director

December 6, 2018

Mr. Anthony Aquino
Soltész Associates
2 Research Place, Suite 100
Rockville, MD 20853

Re: **COMBINED STORMWATER MANAGEMENT
CONCEPT/SITE DEVELOPMENT
STORMWATER MANAGEMENT PLAN** for
Germantown Town Center, Parcel V, Fairchild
Sketch Plan# 320180130
SP# 820180220
SM File #: 283559
Tract Size/Zone: 5.49 acres/CR-2.0,
C-1.5, R1.5, H145T
Total Concept Area: 1.96 acres
Legal Description: Parcel V/Century XXI
Watershed: Little Seneca Creek

Dear Mr. Aquino:

Based on a review by the Department of Permitting Services Review Staff, the combined stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals of Environmental Site Design to the Maximum Extent Practicable in 5 micro-bioretenion facilities and green roof in the courtyard of the proposed building. Due to site constraints and the construction timing for an offsite, downstream stormwater management facility (SC283577), the concept also includes a request for a stormwater management waiver for the volume not able to be treated in on-site ESD or structural measures.



255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850 | 240-777-0311
www.montgomerycountymd.gov/permittingservices

Mr. Anthony Aquino

December 6, 2018

Page 2 of 2

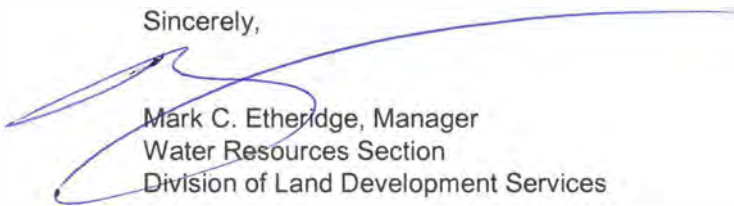
1. A detailed review of the SWM computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices must consist of MDE approved material.
4. Provide computations to demonstrate that the volume to be treated in the microbio-retention facilities fed by at-grade curb cuts can be conveyed with no bypass.
5. The submission must include field verified locations of the downspouts for the existing building draining overland to the proposed ESD facilities.
6. All measures must be designed in accordance with the latest DPS guidance documents.
7. Landscaping shown on the approved Landscape Plan as part of the approved concept plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the DPS, Water Resources Section.
8. Documentation of approval of a downstream conveyance study must be provided prior to plan approval.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is required**.

If you have any questions regarding these actions, please feel free to contact Mary Fertig at 240-777-6202 or at mary.fertig@montgomerycountymd.gov.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: mmf

cc: N. Braunstein

SM File # 283599

ESD: Required/Provided: 13,611 cf / 5,756 cf

PE: Target/Achieved: 2.2"/0.93"

STRUCTURAL n/a

WAIVED: partial QL and full QN

Attachment G



**Department of Permitting Services
Fire Department Access and Water Supply Comments**

DATE: 22-Oct-18
TO: Daniel Pino (LSA)
Loiederman Soltesz Associates, Inc
FROM: Marie LaBaw
RE: Fairchild Apartments @ Germantown
820180220

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **22-Oct-18** .Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

***** See Statement of Performance Based Design *****

October 18, 2018

S Marie LaBaw PhD, PE
Fire Department Access and Water Supply
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850
(240) 773-8917 Office

Re: Fairchild at Germantown, Parcel V, Century XXI, Site Plan (820180220)
Statement of Performance Based Design
Soltesz Project #3625-00-02

Dear Dr. LaBaw,

On behalf of GTTCE Apartments, LLC, the owners of property located on Century Boulevard, Germantown (the "Property"), Soltesz, Inc. respectfully submits this Statement of Performance Based Design.

Code section that cannot be met by the proposed Fairchild development:

Montgomery County Executive Regulation 8-16 section 18.2.3.2.3.6:

No portion of a building footprint in a building protected throughout by an approved automatic sprinkler system can be more than 450 feet of 15-foot-wide clear and unobstructed walkable grade from a fire department apparatus access point.

Reason this section cannot be met:

A 10-foot-wide clear and unobstructed walkable grade is provided along the southwest façade in order to comply with current Germantown Employment Area Sector plan goal to develop Century Boulevard as a Promenade.

From page 50 concerning Urban Form:

"Create a continuous building line along Century Boulevard. Establishing this building wall is critical. Requirements for amenity or open space should not interfere with this objective. Public use space should not be located in the front building setbacks with no tie to pedestrian circulation."

A larger setback would not only conflict with Master Plan on this property, but would also create further difficulties in redeveloping the adjacent, smaller parcel which would have similar, redundant setback requirements along this property line.

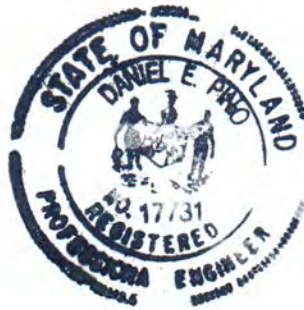
Proposed solution to meet intent of the Code:

The intent of the code is to provide adequate fire department access by foot to building façades, specifically those with openings. The openings in this façade are limited to 45% per the requirements of IBC 2015 section 705.8 based on the 10-foot separation distance, reducing the risk on this façade. The access area provided meets standards for "clear and unobstructed, walkable grade" and is also well below the total distance requirement.

Sincerely,
SOLTESZ, INC.



Dan Pino, PE
Senior Associate



cc:
Peter Henry
Matthew Walters
Amy Zou

FIRE CODE ENFORCEMENT**Fire Department Access Review**

Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from omissions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation

10/22/2018

BY: SPC FM: 43 DATE: _____

820180220 Fairchild Apartments

Contact: Sam Farhadi at 240 777-6333

We have reviewed site plan file:

“07-SITE-820180220-004.pdf V2” uploaded on/ dated “10/2/2018” and

The followings need to be addressed prior to the certification of site plan:

1. Provide all (especially right turn) truck turning movements for the site access onto Century Blvd.
2. Public sidewalk along Century Blvd:
 - a. ensure all handicap ramps have receiving ramps and are aligned with them;
 - b. All proposed brick pavement sections should be per CR 16-931 and MC-111.02 (provide a label accordingly). M&L agreement is required.

And, the followings need to be conditions of the certified site plan:

1. MCDOT-Commuter Services comments:
 - Traffic Mitigation: Commuter Services provides information to residents and employees throughout the County, and requests that the Applicant be required to work with MCDOT to adopt a Transportation Demand Management program through a Traffic Mitigation Agreement. The proposed Fairchild Apartments (212 market rate apartments) is part of the overall Germantown Town Center East project. Given the site’s proximity to the Germantown Transit Center and future transportation facilities, as well as other developments in the area where TMAGs have been executed (i.e., Black Hills, Thrive Assisted Living, Topgolf and Milestone), it is critical that Commuter Services have the ability to inform residents, employees and visitors at the Project about options and promote alternatives to single occupancy auto commuting.
 - Bikesharing: Germantown has been identified as an area into which the County plans to expand bikeshare. Therefore, at a minimum, the Applicant will be required to support MCDOT in efforts to promote use of bikesharing among residents, employees and visitors at the Project and in the general area once bikeshare becomes available in the area.
2. Downstream storm drain analysis and subsequent improvements, if any, will be reviewed and approved at the time of ROW permit.



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 1, 2018

Matthew Walters
HIP Projects, LLC
230 Spectrum Ave
Gaithersburg, MD 20879

RE: Forest Conservation Exemption Request # 42018173E
Property Name: Fairchild Apartments
Action Taken: **Confirmed**

Dear Mr. Matthews,

On April 11, 2018 the Montgomery County Planning Department's Development Applications and Regulatory Coordination staff, received a Chapter 22A-5(t) forest conservation plan exemption request for a project at Parcel V, Block UVW, southeast quadrant of intersection of Aircraft Drive and Century Boulevard, Germantown Maryland. Based on the information provided, qualification for an exemption under 22A-5(t) is confirmed.

Chapter 22A-5(t)(1) exempts a modification to an existing:

(1) non-residential developed property if:

- (A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;
- (B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan;
- (C) the modification does not require approval of a preliminary or administrative subdivision plan; and
- (D) the modification does not increase the developed area by more than 50% and the existing development is maintained;

A pre-construction meeting is required after the limits of disturbance have been staked prior to clearing and grading. The property owner, construction superintendent, forest conservation inspector, and the Montgomery County Department of Permitting Services sediment control inspector shall attend this meeting. If you have any questions regarding these actions, please feel free to contact me at 301-495-4603 or at michael.sharp@montgomeryplanning.org.

Sincerely,

Michael J. Sharp

Michael J. Sharp
Senior Planner
Forest Conservation Inspector
Development Applications and Regulatory Coordination
MNCPPC- Montgomery County Planning Department

19 December 2017



Phoenix Noise & Vibration, LLC
5216 Chairmans Court, Suite 107
Frederick, Maryland 21703
301.846.4227 (phone)
301.846.4355 (fax)
www.phoenixnv.com

Pad Site Parcel V Phase I Noise Analysis

Montgomery County, Maryland

Report No. 171219
Project No. HIP1701

For: HIP Projects, LLC

By: Josh Curley

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1. EXECUTIVE SUMMARY

Phoenix Noise & Vibration has conducted an analysis of transportation noise impact upon Pad Site Parcel V, a proposed multistory residential building in Montgomery County, Maryland. This study, limited to noise impact from surrounding roadways, primarily I-270, Germantown Road, and Century Boulevard, included:

- 24-hour noise level measurements and computer modeling.
- Determination of existing and future noise levels.
- Preliminary mitigation recommendations to meet Montgomery County's residential noise regulations.

Noise impact upon Pad Site Parcel V will vary with height; therefore impact has been presented across all building façades. Impact is presented in varying levels of noise indicating the future roadway noise level. The noise levels presented are due only to surrounding roadways and do not account for noise from other sources such as construction, mechanical noise, environmental noise, etc.

Calculated noise levels upon future building facades and within the outdoor courtyard area on the interior of the building "mitigated," accounting for the presence of existing surrounding buildings, significant structures, and topography, as well as the future building and topography. Structures along roadways act as noise barriers, providing protection from noise exposure and reducing the impact and extent of mitigation required, if any, to comply with Montgomery County's noise regulations.

Noise levels throughout the outdoor courtyard area on the interior of the building will be below 60 dBA Ldn due to the shielding of roadway noise provided by the building. Additional mitigation for this outdoor area will not be required.

With the exception of a majority of the courtyard elevations and a portion of the west elevation, residential units on all other elevations will be exposed to future transportation noise levels above 60 dBA Ldn (and up to 67 dBA Ldn along Century Boulevard). These units require further analysis to determine whether the proposed building architecture will be capable of maintaining indoor noise levels at the required limit. This analysis can only be conducted once architectural plans are further developed, typically after the Design Development drawing submission. If necessary, indoor noise levels can be maintained below 45 dBA Ldn by increasing the sound transmission class (STC) ratings of the exterior building components.

The remaining residential units, including nearly all courtyard elevation units and a portion of the west elevation, will not be exposed to future transportation noise levels above 60 dBA Ldn. Modifications to these units will not be required; i.e. typical standard building construction can be used to maintain indoor noise levels below 45 dBA Ldn.

2. NOISE TERMINOLOGY

2.1. dB vs. dBA

While the standard unit of measurement for sound is the decibel (dB), discussions of noise impacting the human ear use “dBA.” The “A” refers to a frequency weighting network used to simulate the human ear’s unequal sensitivity to different frequencies. The A-weighted noise level is therefore more representative of a human’s perception of a noise environment than the unweighted overall noise level in dB and is currently used in most all environmental noise studies.

2.2. Ldn

The day-night average noise level, or Ldn, is the equivalent sound pressure level averaged over a 24-hour period, obtained by adding 10 dB to sound pressure levels measured from 10:00 p.m. to 7:00 a.m. This 10 dB “penalty” accounts for the added sensitivity caused by noise generated during the nighttime hours.

The Ldn is NOT a measurement of the instantaneous noise level. It is very possible to have several short term events (tractor trailer, emergency vehicle siren, car horn, etc.) which generate a relatively high noise level (e.g. 85 dBA) during a given time period, yet have a more moderate overall Ldn value (e.g. 65 dBA Ldn).

2.3. Summing Noise Levels

Noise levels from multiple sources do not add arithmetically; i.e. when two noise sources generate 60 dB individually, they do not produce 120 dB when combined. Noise levels are measured using a logarithmic scale; therefore they must be summed logarithmically. In the decibel scale, two identical, non-coherent noise sources having the same noise level produce a 3 dB increase above the condition of one source alone (i.e. two 80 dB lawnmowers running at the same time generates 83 dB).

Similarly, two different noise sources with a difference of 10 dB in their individual levels results in no measureable increase in noise when they are combined. Put another way, the quieter noise source does not increase the overall noise generated by the louder source; i.e. adding an 80 dB lawnmower into a noise environment where a 90 dB lawnmower is already running does not increase the noise level above 90 dB.

3. NOISE REGULATION

Traffic noise impact for proposed residential developments in Montgomery County is governed by Table 2-1 (reprinted in Table 1) on page 8 of the *Staff Guidelines for the Consideration of Transportation Noise Impacts In Land Use Planning and Development* (June 1983).

Accompanying this table is Map 2-1 (see Figure 1), indicating outdoor noise level requirements not to be exceeded throughout the County.

Table 1: Maximum Levels for Exterior Noise & Building Line¹ For Noise Sensitive Land Uses (Table 2-1).

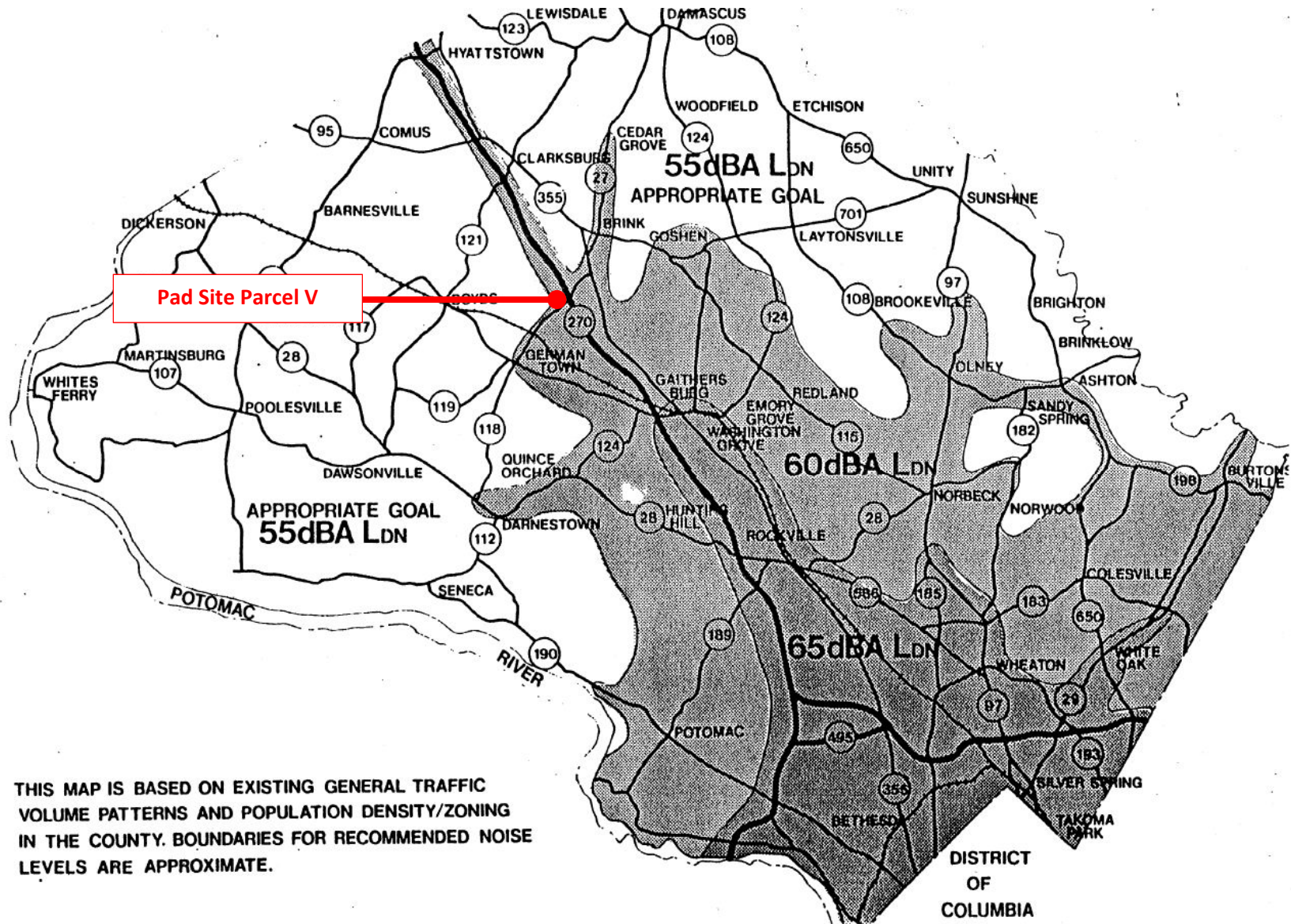
Guideline Value	Area of Application
Ldn = 55 dBA	This guideline is suggested as an appropriate goal in permanent rural areas of the County where residential zoning is for five or more acres per dwelling unit and background levels are low enough to allow maintenance of a 55 dBA Level. This guideline is consistent with Federal, State, and County goals for residential areas.
Ldn = 60 dBA	This is the basic residential noise guideline which will be applied in most areas of the County where suburban densities predominate. Maintenance of this level will protect health and substantially prevent activity interference both indoors and outdoors. Noise attenuation measures will be recommended to allow attainment of this level.
Ldn = 65 dBA	This guideline will generally be applied in the urban ring, freeway, and major highway corridor areas, where ambient levels are such that application of a stricter guideline would be infeasible or inequitable. Significant activity interference will occur outdoors and indoors if windows are partially opened, but available evidence indicates hearing is adequately protected. Noise attenuation measures will be strongly recommended to attain this level.

¹ Building line as used here refers to habitable structures only. It does not include garages, sheds, or recreational accessory buildings.

According to Map 2-1, Pad Site Parcel V is located within the 60 dBA Ldn noise zone, indicating that noise levels in outdoor activity areas throughout the site should be maintained below 60 dBA Ldn. Any outdoor area exposed to future transportation noise levels above 60 dBA Ldn typically requires further analysis to determine the mitigation designs necessary to comply with this requirement.

When outdoor noise levels exceed the recommended guideline value, Montgomery County also requires an analysis of indoor noise levels in residential buildings. According to Sections 2.2.2 and 2.2.3 of the *Staff Guidelines*, if Pad Site Parcel V will be impacted by noise levels above 60 dBA Ldn the building must be evaluated to certify that the building structure will be capable of maintaining indoor noise levels below 45 dBA Ldn.

Figure 1: Map 2-1 from *Staff Guidelines for the Consideration of Transportation Noise Impacts In Land Use Planning and Development* (June 1983).



4. SITE DESCRIPTION

Pad Site Parcel V (shown in Figure 2, property shown in red) is located along Century Boulevard just east of the intersection with Aircraft Drive. The property is northwest of the intersection of I-270 and Germantown Road.

In the vicinity of the site, Century Boulevard is divided by a grass median and composed of two eastbound and two westbound travel lanes. Aircraft Drive is composed of two northbound and two southbound travel lanes. Germantown Road is composed of three eastbound and three westbound travel lanes, and I-270 is composed of three northbound and three southbound lanes with exit and entrance ramps to and from Germantown Road.

Figure 2: Existing site (Pad Site Parcel V property shown in red) and surroundings. Aerial image dated August 8, 2016, courtesy of Google Earth.



5. NOISE MEASUREMENTS

On August 23 - 24, 2017, Phoenix Noise & Vibration conducted an on-site noise measurement survey to determine existing transportation noise levels throughout the site. This involved continuous noise level measurements and monitoring for one 24-hour period. Measurements were made using two Norsonic Type 118 and two Norsonic Type 140 Precision Integrating Sound Level Meters. All meters were calibrated prior to the survey traceable to National Institute of Standards and Technology (NIST). Each meter meets the ANSI S1.4 standard for Type 1 sound level meters.

During the 24-hour measurement, noise levels were recorded and averaged over five minute time intervals. Noise measurements were then used to calculate the site’s 24-hour average day-night noise level (Ldn), which includes the 10 dBA penalty for noise levels measured during nighttime hours.

Measurement results are presented in Table 2. Noise level measurements were made at the locations shown on Drawing 1 of the Appendix. Measurements were made at varying heights to represent noise impact as it changes with height upon the future multifamily building.

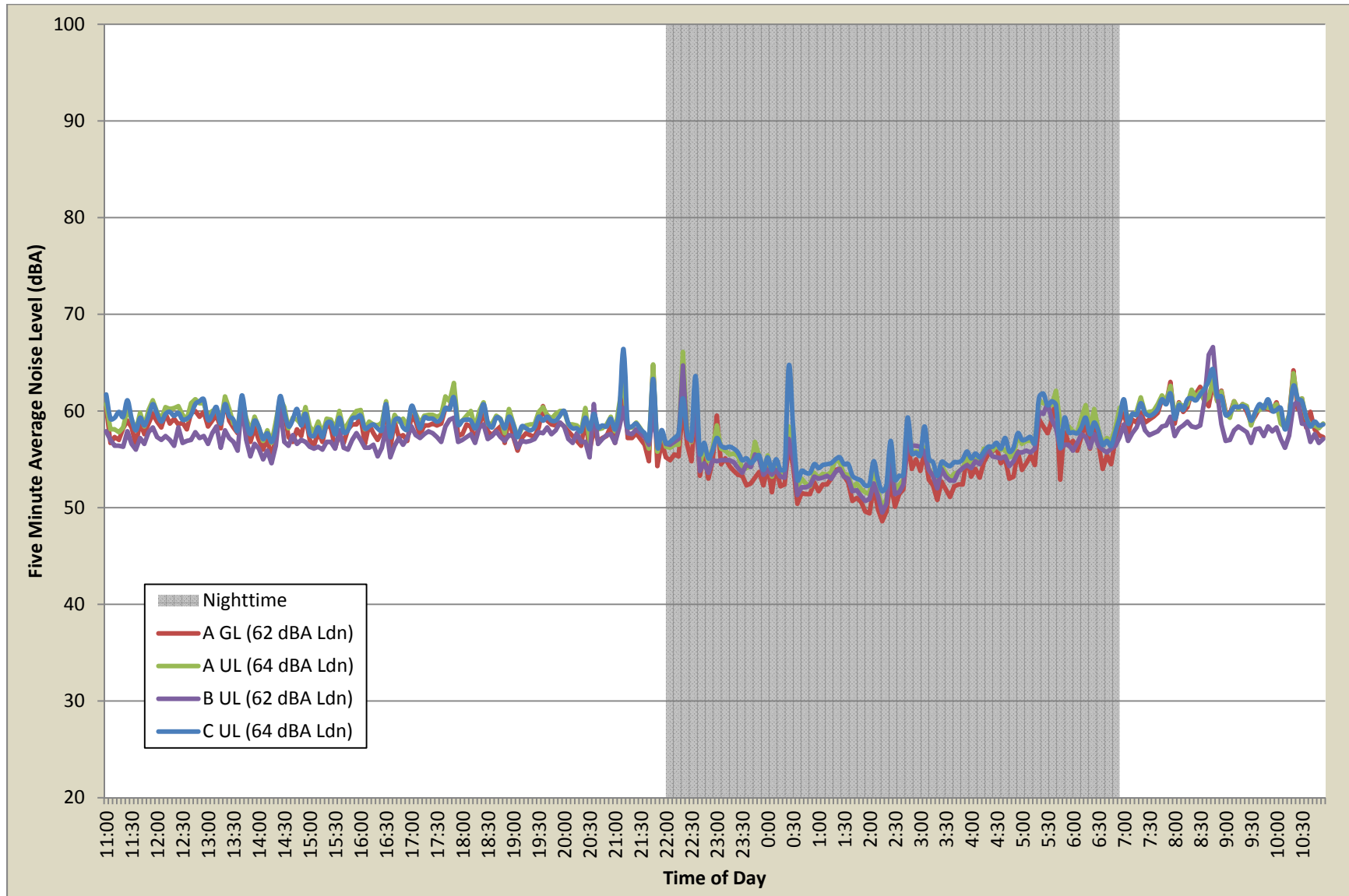
Table 2: 24-hour noise measurement results.

Measurement Location	Height Above Existing Grade (feet)	Measured Noise Level (dBA Ldn)
A	5 (GL)	62
	25 (UL)	64
B	25 (UL)	62
C	25 (UL)	64

Figure 3 presents the survey results graphically, showing the noise level as measured in five minute increments throughout the survey. Figure 3 indicates the actual measured values over the 24-hour period. While the 10 dBA nighttime penalty is not shown graphically, it was included in the Ldn calculations.

Note that the measurement locations contain isolated instances during the 24-hour measurement period at which the noise level appears inconsistent with the rest of the noise profile (i.e. peaks, spikes, or dips in the graph). These inconsistencies are typically due to extraneous occurrences such as emergency sirens or temporary traffic congestion. Such short term events, while producing a relatively high or low noise level and which may have a significant impact on the five minute average, generally have little effect on the overall, 24-hour Ldn value.

Figure 3: Five minute average noise levels recorded during 24-hour noise survey.



6. COMPUTER MODELING

The existing and future sites were computer modeled using the CadnaA software program, a three-dimensional noise propagation model capable of determining the noise level impact from multiple noise sources across vertical and horizontal surfaces while accounting for factors such as topography, buildings, barriers, surface reflections, and roadway data (traffic volumes, speeds, and vehicle classifications, etc.). Noise levels can be presented either in spot locations or as noise contours of equal value throughout a defined surface area.

6.1. Current Model

A current model was developed to simulate the existing site and its surroundings using information provided on the site's existing site plan,¹ the Montgomery County GIS, and data collected during the 24-hour measurement survey, inputting existing topography, roadway alignments, and buildings. Roadway noise levels were calibrated using the on-site noise measurements by adjusting the modeled input until the modeled noise level output matched the measured values.

6.2. Future Model

A future model was developed by altering the calibrated current model to include the projected roadway data, proposed topography, and future multifamily building. Currently, there are no plans to alter surrounding roadways in the vicinity of the site; therefore the existing roadway alignments were used in the future model. All existing surrounding buildings and topography were also left unchanged.

6.3. Roadway Data

Existing average annual weekday traffic (AAWDT) volumes, vehicle percentages, and nighttime percentages for all surrounding roadways were based upon the most recent data published by the Maryland State Highway Administration (MDSHA). MDSHA does not typically provide future traffic data; therefore a conservative, 2% increase in traffic compounded annually until 2038 was assumed² (with the exception of Century Boulevard). The future roadway data for Century Boulevard was based upon a traffic study³ completed for the proposed Century mixed-use development north of Pad Site Parcel V along Century Boulevard. All necessary traffic data for both roadways is provided in Table 3.

¹ Provided by HIP Projects, LLC on August 1, 2017.

²Montgomery County typically requires that roadway noise impact studies be conducted using the projected traffic volumes 20 years from the date of the study.

³ Report by Integrated Transportation Solutions, Inc. dated July 2015 prepared for Century Technology Campus, LLC. The study calculated future morning and evening peak hour traffic volumes for various sections of Century Boulevard. The traffic study did not calculate an AAWDT for Century Boulevard; therefore it was assumed that the peak hour volume represented 8% of the total AAWDT based upon a recommendation from C. Craig Hedberg, President of Integrated Transportation Solutions. According to Mr. Hedberg, in his experience the peak hour typically represents 8% to 9% of the AAWDT for roadways in Montgomery County. The 8% value was used to remain slightly conservative in the analysis.

Table 3: Roadway traffic data used in the computer models.

Roadway	2016 AAWDT	2038 AAWDT	Nighttime Volume %	Truck %	Posted Speed Limit (mph)
Aircraft Drive	10,474	16,193	10.1	4.9 ^A	35
Century Boulevard	3,584	21,750	7.0	3.0	30
Germantown Road (MD 118)	48,172	74,473	10.9	9.9	40
I-270 (North of MD 118)	123,651	191,162	18.6	11.6	55
I-270 (South of MD 118)	139,811	216,145	16.0	16.5	55
I-270 SB to MD 118 EB	1,821	2,815	15.2	11.6 ^B	45
I-270 SB to MD 118 WB	3,131	4,840	16.8	11.6 ^B	45
MD 118 EB to I-270 SB	8,291	12,818	15.9	9.9 ^B	45
MD 118 WB to I-270 SB	4,941	7,639	13.7	9.9 ^B	25

Table 3 Notes:

- A. Estimated roadway data based upon on-site observations.
- B. MDSHA does not maintain truck percentages for this roadway; therefore the percentage was assumed based upon the surrounding roadway data.

6.4. Future Noise Impact

The future model calculated the projected noise levels throughout the outdoor courtyard area on the interior of the building and across all future building facades (shown on Drawing 2 of the Appendix). The varying colors on the building elevations on Drawing 2 represent the future noise impact at that location. Note how the noise level changes with respect to height and orientation to the roadways.

All noise levels presented on Drawing 2 are “mitigated” noise levels, calculated in the presence of the future site topography and building, as well as all existing surrounding buildings, topography, and significant structures. Mitigated noise levels account for the effect of buildings, barriers, and other significant structures in reducing and reflecting roadway noise propagation and are more representative of the noise level actually experienced at a specific location.

Noise impact upon the future building is summarized by elevation in Table 3.

Table 4: Noise impact upon the Pad Site Parcel V building.

Building Elevation	Future Noise Impact (dBA Ldn)
North	66 to 67
East	63 to 66
West	< 60 to 64
South	61 to 65
Courtyard – Top Floor	60 to 64
Courtyard – All Other Floors	< 60

With the exception of the majority of the courtyard elevations and a small portion of the west elevation, the remainder of the building will be exposed to noise levels above 60 dBA Ldn with a

maximum noise level of 67 dBA Ldn for the north elevation (along Century Boulevard). Residential units exposed to noise levels above 60 dBA Ldn (in this portion of Montgomery County, see Section 3 and Figure 1) require further analysis (see Section 7 below) to determine the mitigation measures necessary to maintain indoor noise levels below 45 dBA Ldn.

7. MITIGATION

According to Montgomery County’s noise regulations for residential development, in this portion of the County residential sites and buildings impacted by noise levels above 60 dBA Ldn (at any height) require further analysis to determine the mitigation measures necessary to maintain noise levels in outdoor activity areas and indoor living spaces below 60 and 45 dBA Ldn, respectively.

7.1. Outdoor Noise Levels

Noise levels in the outdoor courtyard area on the interior of the building will be below 60 dBA Ldn due to the noise reduction provided by the building. Under the current building and site design, further mitigation for the site’s public outdoor activity areas will not be necessary to comply with the Montgomery County outdoor limit.

7.2. Indoor Noise Levels

7.2.1. Building Shell Analysis

According to the future noise levels shown on Drawing 2, with the exception of the majority of the courtyard elevation units, all other residential units will be exposed to noise levels above 60 dBA Ldn. Residential buildings exposed to noise levels above 60 dBA Ldn require further analysis to determine whether the proposed building construction will be capable of maintaining indoor noise levels below 45 dBA Ldn. This evaluation, or “building shell analysis,” calculates a room’s indoor noise level based upon its exterior noise level, the Sound Transmission Class (STC) ratings⁴ of its various building components, the amount of exposed exterior wall area, and the room’s size and finish.

Modifications to standard building construction may not be necessary for all units impacted by future noise levels above 60 dBA Ldn. It is possible that the proposed standard building construction will provide sufficient noise reduction to maintain the required 45 dBA Ldn indoor noise level for outdoor noise levels above 60 dBA Ldn.

A detailed evaluation of the proposed architecture for Pad Site Parcel V cannot be conducted at this time, as well-developed architectural drawings (floor plans, unit plans, building elevations, window/door schedule) are not yet available; therefore the specific mitigation designs (i.e. wall, window, and door STC ratings) required for residential units to comply with Montgomery County’s indoor noise level limit cannot yet be accurately determined.

⁴ The STC rating is a single number value which describes a building element’s (wall, window, door, roof, etc.) ability to reduce noise transmission from one side of the partition to the other.

When architectural drawings are further developed (typically during the Design Development phase), noise impact will be analyzed on a floor-by-floor basis for each individual residential unit impacted by transportation noise levels above 60 dBA Ldn. Likewise, mitigation requirements will also be provided for each individual residential unit. Calculating minimum STC ratings specific to each unit reduces “overbuilding” (i.e. installing windows/doors with unnecessarily high STC ratings).

To aid in the early phases of the design process and provide information on the factors that influence noise reduction in residential buildings, general mitigation design guidelines and explanations are provided in the section that follows.

7.2.2. STC Rating Requirements

The noise reduction provided by a building structure, and the resulting indoor noise level, are primarily dependent upon the percentage of the exterior wall surface area occupied by “non-wall” items and the STC ratings of these items. These items, typically windows and doors, act as “holes” in what would otherwise be a relatively effective exterior wall, significantly reducing its ability to prevent noise transmission. Consequently the exterior surface area occupied by windows and doors is a significant issue. This information is recorded and tracked so that the STC ratings of exterior elements can be adjusted accordingly until the required indoor noise level is achieved.

While the wall construction is also an important factor, the “holes” in the wall (i.e. the windows and doors) must be addressed first if the noise reduction of the overall building shell is to be significantly increased and the indoor noise level decreased. This can be accomplished by reducing the size of existing windows/doors and/or increasing the STC ratings of windows/doors.

Table 5 and Table 6 illustrate this concept, indicating window/door STC rating requirements based upon the window/door (or glass) area when using either cementitious/Hardi panel or brick/masonry exterior walls.⁵ The STC ratings shown are those necessary to maintain indoor noise levels at 45 dBA Ldn when using that specific exterior wall construction.

When looking at Tables 5 and 6, recall that the maximum noise impact upon Pad Site Parcel V will be 67 dBA Ldn, while a majority of the building is exposed to noise levels between 60 and 66 dBA Ldn. Note that the noise impact in Tables 5 and 6 stops at 65 dBA Ldn, as a typical standard window/door (usually rated at 25 to 28 STC depending upon the supplier) should be capable of maintaining an indoor noise level below 45 dBA Ldn for noise impact up to 60 dBA Ldn regardless of the glass percentage or exterior wall construction.

The values included in Table 5 and Table 6 were calculated using one generic room (15 feet x 15 feet, carpeted room with two walls exposed to noise) to demonstrate the concept of varying window/door percentages and the resulting effect on required STC ratings. Values in Table 5 and Table 6 **should not** be universally applied to outdoor noise impact upon Pad Site Parcel V;

⁵ STC ratings were calculated assuming exterior walls constructed of one layer of 5/8” interior gypsum board, 2” x 4” wood studs with 3.5” fiberglass batt insulation, one layer of 1/2” exterior plywood, and the specified exterior wall finish.

however they can be used to gain a general idea of the window/door STC ratings to be expected based upon the level of noise impact upon a building elevation. Actual STC ratings will depend upon interior room finishes and characteristics, room/building orientation with respect to the noise source, building geometry, etc.

Table 5: Hypothetical window/door STC ratings with cementitious or Hardi panel exterior walls.

	Percentage of Exterior Wall Area Occupied by Windows/Doors			
	20%	40%	60%	80%
Outdoor Noise Impact (dBA Ldn)	Required Window/Door STC Rating Necessary to Maintain Indoor Noise Levels Below 45 dBA Ldn (When Using Cementitious or Hardi Panel Exterior Walls)			
65	25	25	27	28
70	28	30	32	33

Table 6: Hypothetical window/door STC ratings with brick/masonry exterior walls.

	Percentage of Exterior Wall Area Occupied by Windows/Doors			
	20%	40%	60%	80%
Outdoor Noise Impact (dBA Ldn)	Required Window/Door STC Rating Necessary to Maintain Indoor Noise Levels Below 45 dBA Ldn (When Using Brick/Masonry Exterior Walls)			
65	25	25	27	28
70	27	30	32	33

STC ratings apply to one individual element. The composite STC rating is the overall STC rating of a partition with multiple elements (e.g. a wall with a window) and is always controlled by the building element with the lowest individual STC rating. In residential construction, this is almost always the glass (windows and doors); therefore the percentage of the exterior wall occupied by glass becomes critical. This also means the amount of outdoor noise heard inside a unit is primarily dependent on the glass percentage and STC rating, not the wall STC rating.

In other words, when the glass occupies such a significant portion of the exterior wall, increasing the wall STC rating even drastically will not decrease the indoor noise level. Increasing the composite STC rating of the partition must be accomplished by first addressing the “weakest link” in the partition (the glass).

Note that when windows and/or doors occupy a high percentage of the impacted façade, higher window/door STC ratings than those typically used in standard construction (usually around 25 to 28 STC depending upon the supplier) may be required depending upon the noise level impact. For reference, STC ratings greater than approximately 33 STC require either laminated glass, increased airspace between glass panes, or varying glass pane thicknesses.

8. CONCLUSION

The proposed Pad Site Parcel V building will be exposed to future transportation noise levels above 60 dBA Ldn and up to 67 dBA Ldn. While this represents a moderate level of noise impact, compliance with Montgomery County's residential noise regulations can be achieved through reasonable modifications to proposed building architecture.

Future transportation noise levels throughout the outdoor courtyard area on the interior of the building will be below 60 dBA Ldn. Additional mitigation for these public outdoor spaces will not be required.

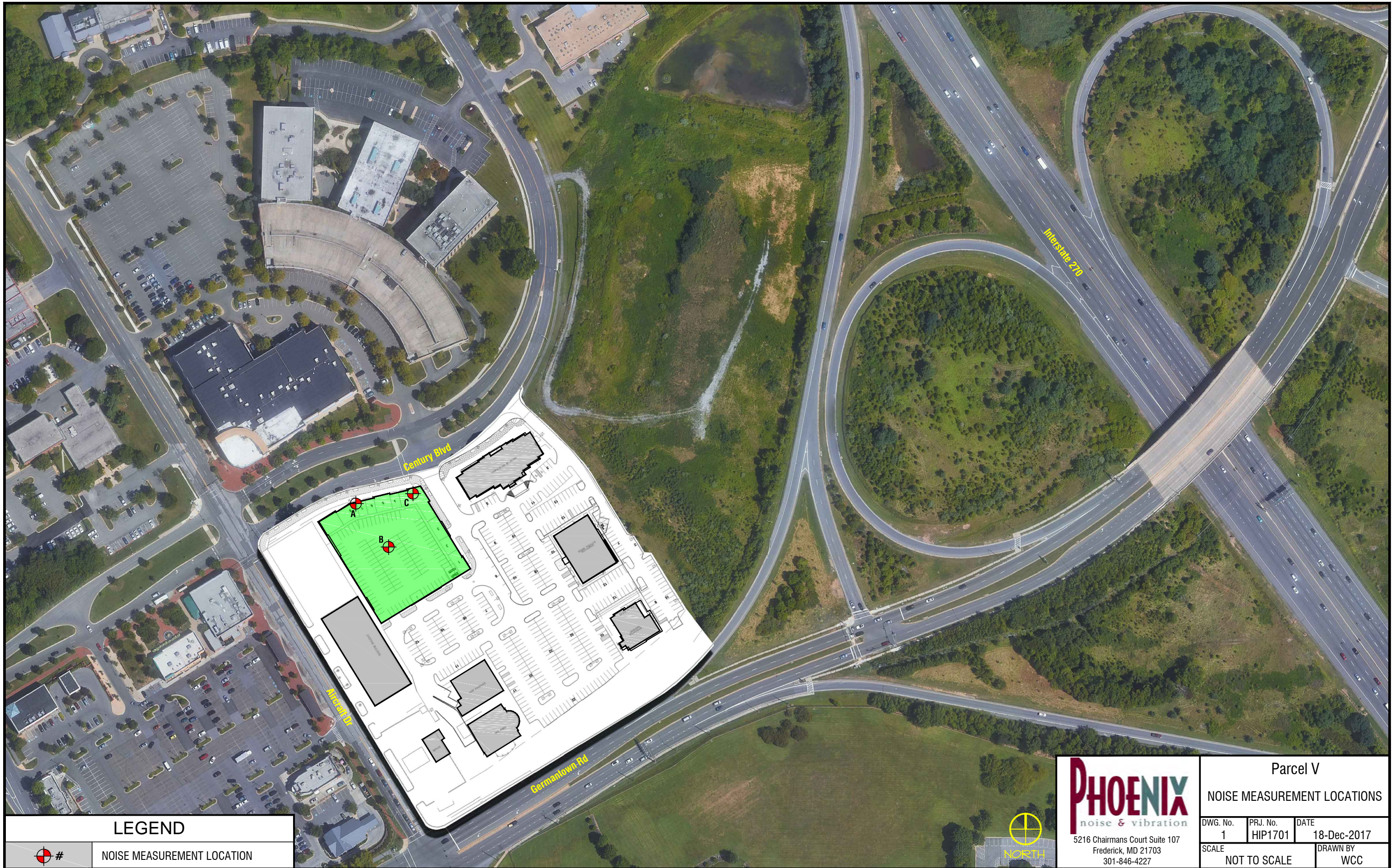
With the exception of a majority of the courtyard elevations and a small portion of the west elevation, residential units on all other building elevations will be exposed to future transportation noise levels above 60 dBA Ldn. While this is above the recommended outdoor noise level of 60 dBA Ldn, compliance with Montgomery County's residential 45 dBA Ldn indoor noise level requirement can be achieved through modifications to proposed building construction.

Units with impact above 60 dBA Ldn require further analysis and may require modifications to proposed standard building construction. Depending upon the noise level specific to each impacted unit, modifications may include increased window/door STC ratings. Further analysis is required to determine the exact mitigation designs necessary, which will be established once architectural plans (building elevations, window/door schedule, unit plans) are further developed.

All other residential units, including nearly all courtyard elevation units and those on a portion of the west elevation, will not be exposed to future transportation noise levels above 60 dBA Ldn. These residences require no further analysis or modifications to comply with Montgomery County's residential indoor noise regulation.

Please Note: The results of this Phase I Noise Analysis have been based upon the site and architectural information made available at the time of this study, including existing and proposed topography, existing roadway alignments, projected roadway traffic volumes, and the proposed building layout. Should any of this information be altered, additional analysis will be required to determine if the results and recommendations presented herein are capable of reducing outdoor and indoor noise levels to comply with Montgomery County's noise level requirements for residential development.

APPENDIX



LEGEND



NOISE MEASUREMENT LOCATION

PHOENIX
noise & vibration
5216 Chairmans Court Suite 107
Frederick, MD 21703
301-846-4227

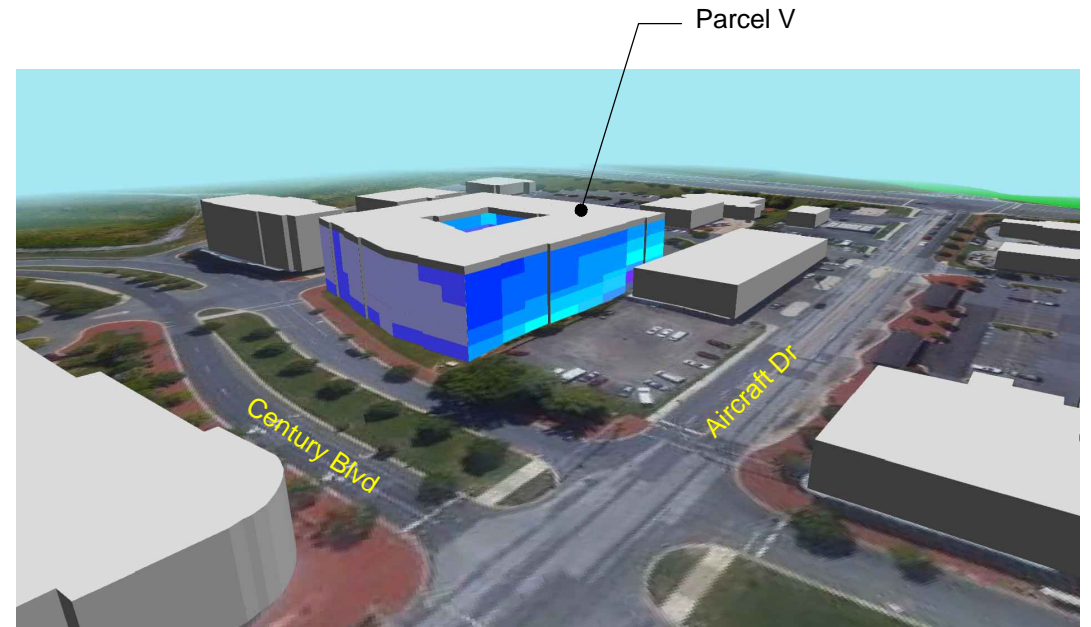


Parcel V
NOISE MEASUREMENT LOCATIONS

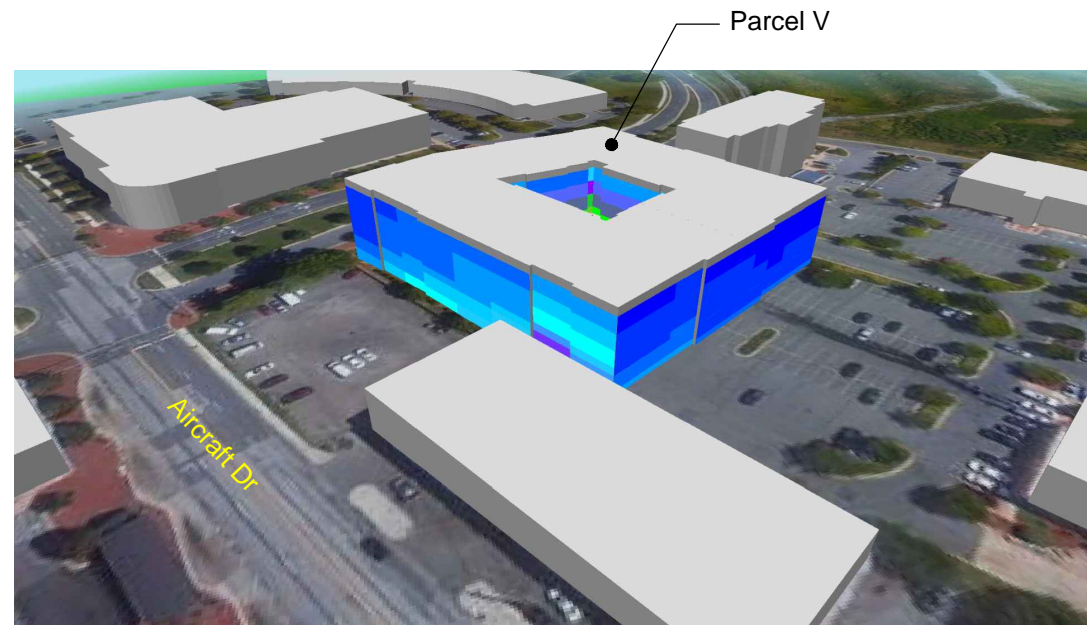
DWG. No. 1	PRJ. No. HIP1701	DATE 18-Dec-2017
SCALE NOT TO SCALE		DRAWN BY WCC



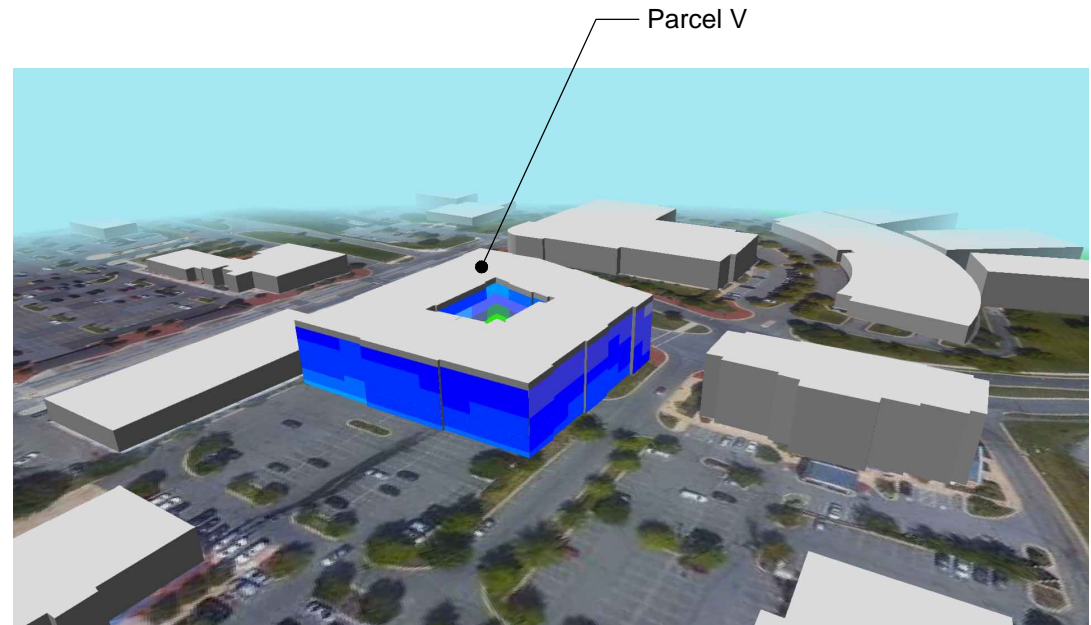
① Looking Southwest



② Looking Southeast



③ Looking Northeast

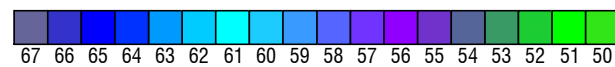


④ Looking Northwest



KEYPLAN

Future Transportation Noise Levels (dBA Ldn)



			Parcel V FUTURE TRANSPORTATION NOISE IMPACT	
			DWG. No. 2	PRJ. No. HIP1701
5216 Chairmans Court Suite 107 Frederick, MD 21703 301-846-4227			SCALE NOT TO SCALE	DRAWN BY WCC



Attachment K

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Clarence J. Snuggs
Director

October 22, 2018

Mr. Benjamin Berbert
Area 3 Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Fairchild Apartments
Site Plan No. 820180220

Dear Mr. Berbert:

The Montgomery County Department of Housing and Community Affairs (DHCA) has reviewed the above referenced plans and recommends Approval. DHCA will need to review and approve any changes to the currently proposed bedroom mix, MPDU locations, and/or MPDU unit layouts.

Sincerely,

Lisa S. Schwartz
Senior Planning Specialist

cc: Matthew Walters, HIP Projects, LLC

S:\Files\recurring\Housing\MPDUDevelopments\Fairchild Apartments\Fairchild Apts DHCA Letter_10-22-2018.docx

Division of Housing

Affordable Housing Common Ownership Communities Landlord-Tenant Affairs Multifamily Housing

1401 Rockville Pike, 4th Floor • Rockville, Maryland 20852 • 240-777-0311 • 240-777-3691 FAX • www.montgomerycountymd.gov/dhca

montgomerycountymd.gov/311



240-773-3556 TTY

18060 302

①

Attachment L

DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS

# 01:00	0002 #10 REC
5857 # 116	WOR
40954 # 40954	REC # 40954
77.00	TOTAL
75.00	RECORDING FEE
2.00	IMP FD SURE #

THIS DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS (the "Declaration"), is made effective as of the 4th day of May, 2000, by **BELLEMEAD DEVELOPMENT CORPORATION**, a Delaware corporation (the "Declarant").

POLITY ELECTRIC COMPANY, INC. 05/27/2000 03:07 PM

00 MAY -4 P 3:07 9

RECITALS

1. The Declarant owns in fee simple those certain parcels of property, containing approximately 25 acres of land, more or less, situated in Germantown, Montgomery County, Maryland (the "Property" or the "Entire Parcel"), as legally described on Exhibit "A" attached hereto, and more particularly shown on that certain signature set final site plan file number 99001 (the "Site Plan") prepared by CHK Architects & Planners with a Planning Board signature approval date of October 22, 1999, a copy of which is attached hereto as Exhibit "B". Such description and Site Plan are subject to adjustment in connection with the governmental approvals for the development of the Town Center (hereinafter defined);

2. Declarant desires to create, establish, preserve and maintain on the Property a unified commercial development to be known as the Germantown Town Center East (the "Town Center"), and further desires to (a) create certain reciprocal easements, (b) provide for the maintenance and upkeep of common facilities, (c) provide for the allocation of certain costs, and (d) establish certain benefits, restrictions and obligations pertaining thereto; and

3. Declarant deems it desirable and in the best interests of all the present and future owners of all or a portion of the Property to subject the Property to this Declaration to protect the value and desirability of the Property by providing for the development of the Property in accordance with a common plan of development, operation and maintenance of certain shared facilities which will serve and benefit owners of the Property as a whole.

NOW, THEREFORE, for good and valuable consideration Declarant hereby declares, grants, conveys, and restricts the Property as follows, and declares that the Property shall be held, sold, leased or otherwise conveyed subject to the following easements, covenants, and restrictions, which shall run with the land and be binding on and inure to the benefit of all persons or entities who may now or hereafter own or acquire any right, title, estate or interest in or to any of such Property, or who may now or hereafter occupy or enter upon any portion thereof:

IMP FD SURE #	2.00
RECORDING FEE	75.00
TOTAL	77.00
Rec # 40954	REC # 40954
WOR BID BID # 1580	
May 04, 2000	03:07 PM

ARTICLE I DEFINED TERMS

Section 1.1. Defined Terms.

As used in this Declaration, the following terms shall have the following respective meanings:

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"Affiliate" means a Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Person in question. "Control" means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlled," "controlling" and "controls" have meanings correlative to the foregoing.

"Annual Assessments" has the meaning ascribed to it in Section 4.1.

"Assessments" has the meaning ascribed to it in Section 4.1.

"Claims" has the meaning ascribed to it in paragraph (b) of Section 6.1 hereof.

"Common Areas" means those areas and facilities which may be furnished by the Declarant and the Owners from time to time within the Entire Parcel for the general use, convenience and benefit of the Declarant, the Owners and other persons entitled to occupy space in the improvements located on the Property. **The Common Areas shall include all areas on the Site Plan other than the building areas shown thereon**, and shall include, without limitation, parking areas, sidewalks, access roads, driveways, entrances and entrance features, lighting, traffic controls, exits, (including all "Common Roadways" as hereinafter defined), retaining walls, landscaped areas, truck serviceways, and first aid stations, utilities and related utility lines (including all "Common Utilities" as hereinafter defined) management offices or portions thereof used exclusively for the management of the Town Center, public washrooms, on-site signs identifying or advertising the Town Center and any maintenance buildings and/or equipment rooms constructed in the Town Center.

"Common Roadways" means those roads and travel lanes, as initially shown on Exhibit "B", as modified and/or relocated by Declarant from time to time in accordance with the terms hereof.

"Common Utilities" means sanitary sewer lines, domestic water lines, storm water lines, electric lines, natural gas lines, cable television and other telecommunication lines, conduits, hydrants, couplers, telephonic wires, on-site storm water management facilities (including underground and above ground ponds), offsite storm water management facilities, and lines leading to them, and other utility systems and facilities situated on any of the Parcels, including trunks and connections to public facilities, that are designed, intended and made available for the non-exclusive use and benefit, in common, with the Owners of the Parcels.

"Condemnation" has the meaning ascribed to it in Section 5.1.

"Construction Easement" has the meaning ascribed to it in Section 2.5(b).

"Default Rate" means a rate of interest equal to two and one-half percent (2 1/2%) above the prime rate or substitute reference rate announced from time to time by Chase Manhattan Bank N.A. (or such other bank selected by the Declarant, or as applicable the Operator, from time to time), but in no event more than the highest permitted legal rate.

"Defaulting Party" has the meaning ascribed to it in paragraph (a) of Section 8.1.

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"Declarant" means Bellemead Development Corporation ("BDC") or an Affiliate thereof designated in writing by the BDC, as the case may be, which shall, for all purposes of this Declaration, be deemed to be the "Declarant" hereunder for so long as BDC or such Affiliate is the owner of twenty percent (20%) or more of the Property (excluding publicly-dedicated roadways or other portions of the Property owned by any governmental authority or agency), or any successor Declarant appointed pursuant to Section 11.5.

"Design Guidelines" means the standards developed by Declarant pursuant to the Declaration.

"Dominant Tenement" means the Parcel which, by creation of an easement pursuant to this Declaration, is benefited by such easement.

"Entire Parcel" has the meaning ascribed to it in Recital 1 hereof.

"Grantee" means the Owner of the Dominant Tenement.

"Grantor" means the Owner of the Servient Tenement.

"In" "to", "over", "through", "upon", "across" and "under" as to a Parcel shall mean one or more of such words as the context requires.

"Land Records" means the Land Records of Montgomery County, Maryland.

"Lease" means any lease of all or any part of a Parcel or Parcels by an Owner.

"Lessee" means any lessee under a Lease.

"Mortgage" means any mortgage or deed of trust at any time encumbering a Parcel or Parcels (including any such other form of security arrangement arising under any deed of trust, sale/leaseback or lease/leaseback document, security deed or conditional deed, or any financing statement, security agreement or other document pursuant to the provisions of the Uniform Commercial Code or similar statute), provided that such mortgage, deed of trust or other form of security instrument has been recorded among the Land Records or in such other place as is required for such instrument to give constructive notice of the matters set forth therein.

"Mortgagee" means any Person who is the holder of, or the beneficiary under, or otherwise secured by a Mortgage.

"Offsite Agreements" shall have the meaning as described in Section 11.2.

"Offsite Real Estate Taxes" means Real Estate Taxes with respect to the offsite facilities (i.e., those not within the Property) utilized by the Town Center, including offsite storm water management facilities and offsite parking facilities (if any).

"Operating Costs" means any and all costs and expenses incurred by the Declarant or the

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Operator in connection with managing, operating, maintaining, repairing, replacing and securing the Common Areas in accordance with Section 3.2 hereof, and shall include, without limitation, the costs and expenses of: providing the services described in Section 3.2.; gardening and landscaping; management, maintenance and service contracts; repairs and replacements; traffic control; line painting and repaving; lighting and other utilities; costs incurred in connection with the Offsite Agreements; sanitary controls; removal of rubbish, trash and other refuse; removal and stockpiling of snow, and sanding and ice removal; reserves, except as provided below; public liability insurance, fire and extended coverage insurance on any Common Area improvements, workmen's compensation insurance or other insurance obtained by Declarant; legal, management and accounting fees; supplies; depreciation on equipment and machinery used in connection with the foregoing; cost, including salaries, disability and other benefits and insurance, of personnel in performing the foregoing, including a Town Center manager;

Notwithstanding the foregoing, all of the following are specifically excluded from Operating Costs:

(i) all capital expenses in connection with the original construction of site improvement work (as distinguished from operation and maintenance) of the Property or any expansion thereof;

(ii) the cost of repairs or replacements performed to the extent of actual reimbursement therefor under warranties or guaranties which apply to the item being repaired or replaced;

(iii) any such costs as are attributable solely to a specific occupant of the Town Center, including, without limitation, the cost of work not needed for normal and customary maintenance of the Common Areas which is requested by any existing or prospective occupant of the Town Center or which is for the benefit of such occupant (e.g., costs associated with shopping cart corrals);

(iv) reserves for anticipated future capital or repair expenses exceeding five percent (5%) of the current year's Annual Assessment;

(v) all interest or penalties incurred as a result of the failure of Declarant or Operator to pay bills as the same shall become due, provided that the Declarant or Operator has been reimbursed for such items under the terms set forth herein; and

(vi) administrative fees exceeding fifteen percent (15%) of Operating Costs.

(vii) salary of a Town Center manager allocated to the Town Center as an Operating Cost in excess of Ten Thousand and 00/100 Dollars (\$10,000), as escalated by three percent (3%) on January 1, 2000, and on each January 1 thereafter.

(viii) payments to affiliates of Declarant or Operator for services otherwise constituting an Operating Cost in excess of market rates.

(ix) legal and accounting fees related to existence or operation of Declarant or the Operator as an entity, it being understood that legal and accounting fees incurred in the

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enforcement or administration of this Declaration or the Town Center shall not be deemed excluded.

"Operator" means the Person, if any, appointed by Declarant to perform the maintenance of the Town Center.

"Owner" means the owner or owners of the fee simple title to, or the entire beneficial interest (subject only to the record legal right of a trustee or nominee) in, from time to time, a Parcel or Parcels, and its successors and assigns, excluding a Mortgagee (other than a Mortgagee in actual possession of such Parcel by foreclosure or otherwise).

"Parcel" or "Parcels" means such area of the Property as may be separately identified from time to time by legal subdivision or otherwise, as the context may require.

"Parking Areas" mean all areas and related facilities and improvements which are designed, intended and/or made available for the parking of passenger vehicles, ingress to and egress from Common Roadways and purposes related or incidental thereto, excluding any offsite parking areas.

"Permittees" means the tenants, subtenants and other occupants of an Owner, and the respective customers, employees, agents, contractors, invitees, licensees, subtenants, concessionaires and guests of such Owner and such tenants, subtenants and other occupants, and including the rights easement .

"Person" means an individual, general or limited partnership, corporation, joint venture, trust, business trust, cooperative or association, unincorporated organization, limited liability company, limited liability partnership, other entity, or government or any agency or political subdivision thereof, and the heirs, executors, administrators, successors and assigns of such individual or entity where the context so permits.

"Plans and Specifications" has the meaning ascribed to it in Section 9.1.

"Proportionate Share" means with regard to any Owner of a Parcel or Parcels within the Entire Parcel the percentage determined by a fraction, the numerator of which is the number of parking spaces required to be utilized for Montgomery County parking code purposes to support the as-built use of such Parcel or Parcels, and the denominator of which is the number of parking spaces required to be utilized for Montgomery County parking code purposes to support all of the as-built uses of all Parcels subject to Assessments under Section 4.2(b), but shall specifically exclude building improvements used as Common Areas or for the operation of the Town Center, including without limitation, management offices, storage facilities, community centers and community center offices, day care centers, and non-selling mezzanine areas, elevator shafts and floor space dedicated to mechanical equipment.

"Real Estate Taxes" means any real estate taxes, betterments, assessments, front foot benefit charges, charges, fees or the like levied or imposed against a property by Montgomery County or other governmental, quasi-governmental, utility district or other authority, whether or not special, extraordinary, or unforeseen. Real Estate Taxes shall include reasonable attorneys' fees and expenses, including court costs and expert fees, incurred by Declarant in trying to reduce the

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amount of Real Estate Taxes. Real Estate Taxes shall not include income, excess profits, gift, estate, inheritance or recording taxes, except to the extent levied or imposed in substitution of the foregoing described Real Estate Taxes.

"Rules and Regulations" means those rules and regulations governing the use and operation of the Town Center and/or the Entire Parcel as may be prescribed from time to time by Declarant in accordance with the terms and provisions of this Declaration.

"Section 8.1 Lien" has the meaning ascribed to it in paragraph (c) of Section 8.1.

"Servient Tenement" means the Parcel, which by creation of an easement pursuant to this Declaration, is burdened by such easement.

"Site Plan" has the meaning ascribed to it in Recital 1 hereof.

"Structure" means any building or enclosed improvements.

"Town Center" has the meaning ascribed to it in Recital 2 hereof.

"Unavoidable Delay" has the meaning ascribed to it in Section 8.2.

ARTICLE II

EASEMENTS FOR COMMON AREAS

Section 2.1. Utility Easements.

(a) The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel(s) (the Dominant Tenement), a perpetual non-exclusive easement over across, through, and under all other Parcels (the Servient Tenement), outside of any building area on such Servient Tenement, for the use, installation, maintenance and replacement of underground Common Utilities to serve buildings located on the Dominant Tenement.

(b) The Grantor, at its sole expense, shall have the continuing right to relocate any such utility easement so granted and conveyed across, through, under and over such Owner's Parcel, provided it does not interrupt the continuing use of any Common Utilities within such utility easement during the business hours of those utilizing such Common Utilities.

(c) In connection with any relocation contemplated pursuant to subparagraph (b) above, the Owner desiring to perform such work shall (i) provide the Owner of the affected Parcel with advance notice of the performance of such work together with a work schedule, (ii) use good faith efforts to minimize interference with the use and enjoyment of the affected Parcel, (iii) repair any damage and restore the affected area to its prior condition, (iv) indemnify and hold harmless the Owner of the affected Parcel in connection with the performance of such work, and (v) bond off or release any liens within thirty (30) days of notice thereof resulting from such work.

(d) No water, storm water, sewer, gas, telephone, electrical, television or

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communication lines, systems or facilities may be installed or relocated on the Property unless approved in writing by the Declarant (such approval not to be unreasonably withheld or delayed). Should any person or entity, including any governmental authority or utility provider, providing utilities or services covered by the foregoing general easement request a specific easement by separate recordable document, Declarant shall have and is hereby given, the right and authority to grant such easement by separate recordable document without conflicting with the terms hereof, and if so requested, the Owner of each Parcel to be burdened thereby shall join in such document without charge, consideration or delay (provided that the failure of any such Owner to join in shall not affect the validity of such easement or prevent the effectiveness of such easement). Subject to the foregoing limitation, by acceptance of a deed to a Parcel, or by the acceptance of any other legal or equitable interest in a Parcel, each Mortgagee, Owner or other party having a legal or equitable interest in any Parcel do automatically and irrevocably name Declarant as their attorney-in-fact for the purpose of executing any such specific easement. Such power of attorney shall be coupled with an interest in the subject matter hereof and shall run with and bind the Parcels, and shall not be affected by death or disability of a principal.

(e) As to the storm water management facilities forming part of the Common Utilities, storm water shall be conveyed across Parcels only by means storm sewers (except as a means of conveying storm water prior to a Parcel's development), and appurtenant facilities (including without limitation bioretention facilities) and piping which shall be designed, installed and maintained in accordance with the requirements of state and local governmental authorities. Each Owner shall bear the cost of installation of pipes necessary to provide underground conveyance of storm water across its Parcel and connection to the storm water conveyance features on adjoining Parcels.

Section 2.2. Easements in Common Roadways and Parking Areas.

(a) The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel (the Dominant Tenement) a perpetual non-exclusive easement over, across, through and under all other Parcels (the Servient Tenement) for access, ingress and egress for and by vehicular traffic over the Common Roadways. Said easement shall be for the use of the Owner of the Dominant Tenement and its Permittees.

(b) The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel (the Dominant Tenement) a perpetual non-exclusive easement for ingress and egress over, across and through all other Parcels (the Servient Tenement) for use by pedestrian traffic, on, over and upon all Common Areas (but excluding building areas), including, without limitation, parking areas, landscaped areas (subject to any Rules and Regulations), sidewalks, walkways and Common Roadways. Said easement shall be for the use of the Owner of the Dominant Tenement and its Permittees.

(c) The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel (the Dominant Tenement) a perpetual non-exclusive easement over, across, through and under all other Parcels (the Servient Tenement) for the purpose of utilizing the parking areas within the Common Areas located thereon. Said easement shall be for the use of the Owner of the Dominant Tenement and its Permittees.

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(d) The Declarant reserves the right at any time and from time to time, without the consent of any other Owner, to change the location, width, point or angle of all or any portion of the Common Roadways, including parking areas affected thereby and the entrances and exits thereto, as development of the Parcels proceeds.

Section 2.3. Limited Common Areas.

The Declarant reserves the right to designate some portions on the Common Areas, such as drive-through lanes, outdoor seating areas and dumpster areas, if any, as "Limited Common Areas" subject to restrictions on users and such additional restrictions as may be set forth in any Supplemental Declaration hereto. If Declarant is not the Owner of the Parcel to be affected, the joinder to such Supplementary Declaration by such Owner shall be required. Such Supplemental Declaration may provide that maintenance of such Limited Common Area may be performed by the Owner or by Declarant; however, all Operating Costs associated with the Limited Common Areas shall be borne solely by the Owner of the Parcel, and shall be specially assessed against such Owner.

Section 2.4. Easement for Town Center Signage.

The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to all other Parcels (the Dominant Tenement) a permanent, partially non-exclusive easement over the 15 foot perimeter of each Parcel (the Servient Tenement), excluding building areas, for the purpose of locating Town Center identification and signs, together with a permanent easement to power, light, landscape and enter upon that portion of the Parcel upon which the Town Center identification and signs are located (including the surrounding area as reasonably necessary to access in order to repair, maintain and replace the sign) to repair, maintain, and replace (as necessary) such identification and signage so as to keep it in a good condition. Once installed by Declarant, the easement area upon which the Town Center identification and sign are located shall be exclusive for the use of the Town Center identification and sign (the foregoing shall not be deemed to prevent the Declarant from identifying more than the "Town Center"). The Declarant shall have the right, from time to time, to relocate the Town Center identification and sign, power, lighting, and landscaping within such fifteen foot area, so long as the relocated identification and sign do not disturb the utilization or operation of existing Common Roadways, or other existing improvements, or block the sightline for existing Parcel identification and signs. The Declarant, on behalf of all Owners, is granted the exclusive right to utilize this easement for Town Center identification and signs. The Declarant shall have the right, in its sole discretion, to waive or modify the terms of this identification and signage easement with respect to any Parcel, by execution of a Supplement to this Declaration joined by the Owner of the Parcel affected, if other than Declarant.

Section 2.5. Construction Easements.

(a) The Declarant hereby reserves to itself during the period of the initial development of the Town Center and construction of the Common Areas and any offsite improvements (including without limitation, parking and storm water management facilities) serving the Town Center, and any expansion, reconstruction, replacement, restoration, alteration or maintenance thereof, a temporary, non-exclusive easement and license over all Common Areas on all Parcels as the Servient Tenements as are reasonably required for Declarant to complete the

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development of the Town Center and construction of the Common Areas and any offsite improvements (including without limitation, parking and storm water management facilities) serving the Town Center, and any expansion, reconstruction, replacement, restoration, alteration or maintenance thereof. Each such easement and license is referred to herein as "Declarant's Construction Easement". While "Declarant's Construction Easement" shall be temporary in each instance, for the purposes of Section 13.14, Declarant's Construction Easement shall be deemed perpetual.

(b) The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel as the Dominant Tenement, during any period of construction, expansion, reconstruction, replacement, restoration, alteration or maintenance of Common Areas serving such Parcel, a temporary, non-exclusive easement and license over the Common Areas of all other Parcels as the Servient Tenements as are reasonably required to enable the Owner of the Dominant Tenement to prosecute such construction. Each such easement and license is referred to herein as a "Construction Easement". While the "Construction Easement" shall be temporary in each instance, for the purposes of Section 13.14, the Construction Easement shall be deemed perpetual.

(c) Any Grantee desiring to use the Construction Easement shall give notice to the Grantor not less than sixty (60) days prior to the Grantee's use of the Construction Easement (except in the event of emergency circumstances in the event of imminent danger to person or property in which case notice shall be delivered as soon as is possible), which notice shall designate the nature, location and a schedule setting forth the estimated duration of the Construction Easement. The Grantor, by notice to the Grantee given within thirty (30) days thereafter (except in the event of emergency circumstances in the event of imminent danger to person or property in which case notice shall be delivered as soon as is possible), shall be entitled to establish reasonable requirements as to the nature, location (including without limitation, staging areas) and duration of the construction on the Construction Easement so as to minimize interference with the Grantor's business operations. The right to use any Construction Easement shall end when the construction which gave rise to such Construction Easement is completed, and shall not extend beyond the time when such Construction Easement would be needed under good construction practices.

(d) Each Grantee availing itself of a Construction Easement shall perform its construction:

(i) with due diligence and expeditiously in a good and workmanlike manner so as to cause the least possible disturbance to the Common Areas and to the ordinary and usual business operations of the Owners of the Servient Tenement;

(ii) using first-class materials, architecturally compatible with the remainder of the Town Center and in conformance with plans and specifications submitted to and approved by Declarant and by the applicable governmental agencies and authorities having jurisdiction over such Construction and in compliance with all applicable laws, ordinances, rules and regulations of all governmental agencies and authorities having jurisdiction over such Construction;

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- (iii) in accordance with the terms and provisions of this Declaration;
 - (iv) taking any and all safety measures reasonably required to protect all other Owners and all Permittees from injury or damage caused by or resulting from the performance of such Owner's construction, including, without limitation, the erection of adequate and proper construction barricades;
 - (v) at the completion of any construction, clearing all affected areas of construction materials and restoring such areas to at least the condition existing immediately before such construction;
 - (vi) provide evidence to the Grantor of the insurance required under Section 6.2; and
 - (vii) complete such Construction lien free.
- (e) Each Owner in the performance of such Owner's Construction shall not:
- (i) materially interfere with any construction being performed by any other Owner;
 - (ii) materially impair the use, occupancy or enjoyment of the Servient Tenement or any part thereof; or
 - (iii) interrupt the supply of utility services to any other Owner except with prior notice to such Owner and (x) during non-retail business hours maintained by such other Owner, or (y) with such Owner's consent, which consent shall not be unreasonably withheld provided there shall be the minimum adverse impact on the business operations of such other Owner as is possible using commercially reasonable means, and, in either case, (z) with due regard for fire protection and security during any interruption.

Section 2.5. Easement for Self-Help.

The Declarant hereby reserves, grants and conveys for the benefit of and as appurtenant to each Parcel as the Dominant Tenement, a temporary, non-exclusive easement and license over the Common Areas of all other Parcels as the Servient Tenements as are reasonably required to enable the Owner of the Dominant Tenement to exercise any right of self-help granted by this Declaration with respect to the Dominant Tenement or such Common Areas. Said easement shall last only during the pendency of the right to self help as set forth herein. Each such easement is referred to herein as a "Self-Help Easement". While the Self-Help Easement shall be temporary in each instance, for the purposes of Section 13.14, the Self-Help Easement shall be deemed perpetual.

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Section 2.6. Easement for Emergency Access/Governmental Use.

A perpetual easement is hereby granted to all police, fire, ambulance, and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies or as otherwise required by law or in connection with the development approvals for Town Center. The Declarant may execute such further assurances of this easement as required in connection with the development of the Town Center.

Section 2.7. Easement for Administration of Declaration.

A perpetual easement is hereby reserved to the Declarant for the performance of the duties and functions of Declarant hereunder over and through all or any portion of the Property. This easement may be utilized by Declarant's contractors, managers or Town Center Operator in the performance of the duties and functions of Declarant hereunder.

Section 2.8. Miscellaneous.

(a) Declarant shall have the right, from time to time, after thirty (30) days prior written notice to each other Owner, to close temporarily all or any portion of the Common Areas, to such extent necessary to prevent a dedication of or a prescriptive right on such Common Areas in or to the public or any governmental agency or subdivision; provided, however, that the closing of such Common Areas by Declarant shall not materially interfere with the use of such Common Areas by any Owner or such Owner's Permittees or the business operations of such Owner, and, to the extent possible, any such temporary closing shall be scheduled for non-retail business days or during non-retail hours.

(b) No Owner may destroy, alter or change the locations or arrangements of the Common Areas on such Owner's Parcel without Declarant's prior written consent which consent shall not be unreasonably withheld (provided the operation and integration of the Town Center and the Parcels therein are not adversely affected as determined by Declarant), and without the necessary consent, if any is required, by the applicable governmental authority having jurisdiction.

(c) No Owner may place, keep, permit or maintain on the Common Areas any fence, barricade or other obstruction which may interfere with the intended use of such Common Areas by Declarant, any other Owner or Permittees or prevent the free flow of pedestrian or vehicular traffic.

(d) Except as otherwise expressly provided herein, the Declarant shall be solely responsible for managing and maintaining Common Areas in accordance with the provisions of this Declaration.

(e) Each Owner agrees to maintain a parking ratio equal to that required by county code (including those required under any shared parking arrangements for the benefit of other Parcels), without waivers for parking reductions for adjoining uses.

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Section 2.9. Binding Effect; Covenants Running With Land.

(a) Unless provided otherwise, all easements created and granted in this Declaration shall exist by virtue of this Declaration without the necessity of confirmation by any other document, and shall be perpetual, non-exclusive and irrevocable.

(b) Unless specifically provided herein to the contrary it is intended that all covenants, easements, agreements, restrictions, promises and duties imposed on each Parcel and each Owner in this Declaration, whether affirmative or negative in nature, shall be construed as covenants and not as conditions and, to the fullest extent legally possible, all covenants shall be deemed to run with and be enforceable against each Parcel and the Owner thereof and shall constitute equitable servitudes as between the Servient Tenement and the Dominant Tenement.

Section 2.10. Easement Priority

These easements (including the specific easements referenced in Section 2.1(d) and those referenced in Section 11.2) shall be prior and superior to any Mortgages encumbering any portion of the Property regardless of whether such easements are recorded before or after such Mortgages. By accepting and recording its Mortgage, each Mortgagee shall be deemed to have consented to such subordination of its lien without the need of a separate instrument of subordination provided this Declaration (or a memorandum thereof) shall have been recorded among the land records of Montgomery County.

**ARTICLE III
OPERATION OF TOWN CENTER****Section 3.1. Powers; Duties and Authority of Declarant.**

Declarant shall have all powers, duties and authority as may be necessary or appropriate for the repair, administration and management of the Town Center. In furtherance and not in limitation of the foregoing, Declarant shall have full power, right and authority:

(a) to adopt an annual budget, as soon as is practicable following the date hereof, which shall be the basis for determining the required obligation of each Parcel for Operating Costs it being understood and agreed that any element of Operating Costs (other than management and general accounting services) over Thirty Thousand Dollars (\$30,000.00) (except in an emergency basis with imminent danger to person or property) or contracted for on an annual or longer basis shall be competitively bid (upon request, Declarant shall notify an Owner of the particulars of the bidding process and such Owner shall be entitled to notify prospective bidders of the bidding process);

(b) to levy assessments for Operating Costs and Offsite Real Estate Taxes and establish the means and methods of collecting and paying such assessments;

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(c) to adopt, promulgate, amend and repeal Rules and Regulations consistent with the provisions of this Declaration governing the management, use and enjoyment of the Town Center (including those relating to location of employee parking and merchandise delivery procedures) and establishing penalties for infractions of the Rules and Regulations (provided, however, that all new or revised Rules and Regulations shall be furnished to each Owner for its approval, which approval shall not be unreasonably withheld, prior to the time when the same shall become effective);

(d) to provide for the lighting, maintenance, management, insuring, cleaning and operation of the Town Center and the repair and replacement of improvements erected on the Common Areas of the Town Center;

(e) to designate, hire and dismiss, and prescribe and supervise the duties of all personnel necessary for the performance of Declarant's obligations hereunder, and to provide for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(f) to make or contract for the making of additions, improvements or alterations to the Town Center (excluding the building areas on Parcels not owned by the Declarant) in accordance with the provisions of this Declaration;

(g) to employ and retain such agents and services as are necessary or appropriate to exercise the powers, duties and authority vested in or granted to Declarant by this Declaration;

(h) to enter into parking and cost sharing agreements with adjoining property owners of the adjoining parcels listed on Exhibit "C", for the use and maintenance of additional parking areas;

(i) to enter into easements and other agreements with Montgomery County and other governmental entities and quasi-governmental entities to allow for access, transit facilities and bus and park and ride facilities;

(j) to exercise the powers, duties and authority granted to Declarant hereunder, including without limitation, to enforce or cause to be enforced the provisions of this Declaration;

(k) to enter into financing arrangements to fund the cost of any repairs, renovations, or replacements to the Common Areas, and to collaterally assign as security for such financing, Declarant's enforcement rights against the Owners;

(l) to specially assess an Owner for any such costs as are attributable solely to a specific occupant of the Town Center, including, without limitation, the cost of work not needed for normal and customary maintenance of the Common Areas which is requested by any existing or prospective occupant of the Town Center or which is for the benefit of such occupant (e.g., costs associated with shopping cart corrals), or for the enforcement against such Owner of the Declaration or as otherwise provided herein;

(m) to maintain, repair and replace certain median strips, signage, entry strips,

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entrance features, landscaping, sidewalks, benches, and other property located within the public right-of-way of certain streets within the vicinity of the Town Center as required by applicable governmental authorities; and

(n) do such other acts not inconsistent with this Declaration which Declarant shall be authorized to do under law.

Section 3.2. Maintenance of Common Areas.

(a) Declarant will, or will cause a third party to, sweep, clean, operate, maintain, repair, replace and, if needed, provide security for the Common Areas of the Town Center, including the Common Areas on Parcels owned by Owners other than Declarant and keep the same in a first-class condition including without limitation maintenance and operation according to the following standards:

(i) all hard-surfaced portions of the Common Area and improvements shall be swept at intervals sufficient to maintain the same in a clean condition before the retail stores within the Town Center shall open for daily business with the public;

(ii) all sidewalks shall be swept and/or washed at reasonable intervals calculated to maintain the same in a clean condition;

(iii) all public trash and rubbish containers located in the Common Areas for the use of the public shall be emptied and shall be washed at intervals sufficient to maintain the same in a clean condition;

(iv) all landscaping within the Common Areas shall be properly maintained, including irrigation, removal of weeds and foreign matter, and trimming, removal and replacement of dead plant materials;

(v) striping, markers, directional signs, etc., shall be maintained and repainted and the same shall be repaired and replaced as necessary to maintain in first-class condition;

(vi) all sewer catch basins shall be cleaned on a schedule sufficient to maintain all sewer lines in a free flowing condition; and all mechanical equipment a part of storm and sanitary sewer facilities shall be regularly inspected and kept in proper working order;

(vii) the surface of the automobile parking area and sidewalks shall be maintained in a level and smooth condition and shall be covered with the type of surfacing material originally installed thereon, or such substitute therefor as shall be in all respects equal thereto in quality, appearance and durability;

(viii) all utility systems that are part of or located within the Common Area shall be cleaned, repaired and maintained to the extent that the same are not cleaned, repaired and maintained by public utilities;

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(ix) all common area facility amenities, benches and institutional, directional, traffic and other signs, shall be inspected at regular intervals and maintained in a clean and attractive condition;

(x) all lamps on lighting standards or otherwise shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning;

(xi) courteous and professional security personnel for Common Area patrol and traffic control may be employed from time to time in adequate numbers and during store hours and such other hours as is deemed prudent for the safe and orderly operation of the Common Areas;

(xii) automobile parking area entrances, exits and directional signs, markers and lights in the Town Center shall be maintained, repaired and replaced as such are appropriate and reasonably required; and

(xiii) signs of the Town Center (but not those of Occupants of the Town Center) shall be cleaned and shall be relamped and repaired as needed.

(b) Declarant shall have the right, with the consent of the Owner affected, to cause any Owner to perform any particular Declarant obligation (including without limitation, maintenance) with respect to the Common Areas on the Owner's Parcel, in which case (i) as to all other Owners, the line item of such Operating Costs representing such obligation shall be grossed up to an amount which, in Declarant's reasonable estimation, would have been incurred had Declarant been performing such line item for all Parcels, and (ii) as to such Owner performing such obligation, there shall be an equitable reduction in such Owner's share of such line item, to the effect that such Owner shall bear only its allocable costs, if any, of the line item for such obligation as to the remainder of the Town Center (excluding such Owner's Parcel); provided, however, that if Declarant has not received adequate Assessments to fund the Operating Costs hereunder, then Declarant shall have the unilateral right without the consent of the Owner affected to cause any Owner to perform any particular Declarant obligation (including without limitation, maintenance) with respect to the Common Areas on the Owner's Parcel, in which case the Operating Costs shall be adjusted as aforesaid. In no event shall any Owner receive any credit against other Operating Expenses on account of performing a Declarant obligation (including without limitation, an Item of Failure) with respect to the Common Areas on its own Parcel.

(c) If Declarant fails to perform a Declarant obligation with respect to the Common Areas located on a Parcel in accordance with this Declaration, then the Owner of such Parcel may give Declarant written notice of such failure detailing the specific item of failure ("Item of Failure"). If the Declarant fails to undertake to perform such obligation after the expiration of thirty (30) days after receipt by Declarant of such notice, the Owner of such Parcel may elect to perform the Item of Failure. If Owner so elects, it shall perform the Item of Failure in accordance with the standards set forth herein for the Declarant, and the obligation for Operating Costs on account of the Item of Failure shall be adjusted in the same manner as provided in Section 3.3(b) above. If said Owner elects, but then fails to properly perform the Item of Failure, the Declarant shall have the right once again to perform the Item of Failure. In addition, after undertaking to maintain such Common Areas, Owner may subsequently elect to return such Item of Failure to the control of Declarant by providing Declarant with thirty (30) days prior written notice of such intent, in which case and at

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such time as Declarant recommences the same located on the Owner Parcel, the Owner shall recommence paying its full share of Operating Costs, including the cost of the Item of Failure with respect to the Common Areas located on the Owner Parcel.

Section 3.3. Lighting

(a) During Normal Lighting Hours, Declarant shall light all Common Areas within the Town Center, except to the extent that Declarant has elected, from time to time, to cause any Owner to light the Common Areas on such Owner's Parcel. "Normal Lighting Hours" shall mean the period during the hours of darkness within normal operating hours for the use on any Parcel (or within the normal lighting hours of any other Parcel utilizing, as determined by Declarant, the parking areas thereon after the normal lighting hours) and for one (1) hour thereafter, but no later than 11:00 p.m. (except as required by applicable law or agreements with applicable governmental authorities). At Declarant's option, Declarant may light some or all of the Common Areas within the Town Center after Normal Lighting Hours, and each Owner agrees, upon the request of the Declarant, to light the Common Areas on such Owner's Parcel beyond the Normal Lighting Hours as the Declarant shall request ("Declarant's Requested Lighting"). The lighting for each Parcel shall be controlled and metered through a building electrical panel, and each Owner shall pay directly to the utility company the cost of lighting its Parcel including its Common Areas. In the construction by Declarant of the site improvements for any Parcel, Declarant may provide an override switch whereby Declarant may turn on the lights for the Common Areas on any Owner's Parcel in the event Declarant is lighting the Common Areas on such Parcel, whether Declarant has not elected to cause such Owner to light the same, or whether such Owner has failed to light the same after Declarant's election. The parties agree to cooperate in connection with the installation of the lighting systems contemplated by this Section 3.3. In addition to the foregoing, Declarant shall provide security lighting during periods of darkness for the Common Areas on all Parcels when said Common Areas are not otherwise required to be lighted or are lighted as provided above, except to the extent that Declarant has elected, from time to time, to cause any Owner to provide the security lighting for the Common Areas on such Owner's Parcel. For purposes of this paragraph, security lighting shall be the lighting of not less than one (1) out of every four (4) lighting fixtures.

(b) The costs incurred by Declarant in lighting the Common Areas shall be deemed Operating Costs. To the extent that Declarant has elected to cause any particular Owner to light the Common Areas on such Owner's Parcel, and such Owner has performed the same, there shall be an equitable adjustment in the Operating Costs on account of lighting costs in the same manner as provided above in Section 3.2(b). In no event shall any Owner receive any credit against other Operating Expenses on account of lighting the Common Areas on its own Parcel.

Section 3.4 Operator. The Declarant reserves the right to appoint and replace, from time to time, an Operator to perform some or all of the functions of the Declarant set forth herein, and upon such appointment, such Operator shall have all of the rights as Declarant hereunder relating to the performance of such functions, including without limitation, the right to maintain the Common Areas, to prepare the Annual Budget, to take all actions in connection with the collection of Assessments.

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ARTICLE IV
ASSESSMENTS

Section 4.1. Covenant and Agreement to Pay Assessments.

(a) Each Owner irrevocably covenants and agrees to pay to the Declarant in the manner and method set forth herein assessments for (i) Operating Costs incurred by the Declarant pursuant to its powers, duties and authority granted in this Declaration, and (ii) Offsite Real Estate Taxes (such assessments are hereinafter referred to as "Annual Assessment" or "Assessment"). Such obligation for Assessments shall be an independent covenant, payable without offset, setoff or counterclaim or diminution or abatement for inconvenience of making repairs or any other reason. No Owner shall be exempt from the obligation to pay any Assessments by the waiver of the use or enjoyment of any of the Common Areas of the Town Center or by abandonment of the Parcel against which such Assessments are made, or for any other reason (except as provided in Section 3.2).

(b) Any Assessment (including any monthly installment or annual adjustment thereof) not paid within ten (10) days of when due shall be subject to late charge in the amount of five percent (5%) of the Assessment payable upon demand by Declarant. In addition, any Assessment not paid when due shall bear interest at the Default Rate until paid payable upon demand by Declarant. All collection costs, reasonable attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of Assessments, whether or not suit (or appeal therefrom) is filed shall be payable by the defaulting Owner upon demand by Declarant. All late charges, default interest, collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of Assessments shall be deemed to be a "Special Assessment" as to the defaulting Owner and shall be subject to the lien of Assessment set forth in Section 4.3.

(c) All payments received on account of Assessments shall first be applied to collection costs and attorneys' fees, then to late charges, then interest, then to any unpaid installments of Assessments not subject to any suit brought for collection, and then to unpaid installments of Assessments subject to suit brought for collection.

(d) Special Assessments shall be deemed to include any payment required hereunder which is to be borne solely by a single Owner, including without limitation, (i) all costs and expenses which would otherwise be Operating Costs, but relating specifically only to a Limited Common Area, (ii) any costs and expenses which would otherwise be Operating Costs, but which are attributable solely to a specific occupant of the Town Center, including, without limitation, the cost of work not needed for normal and customary maintenance of the Common Areas which is requested by any existing or prospective occupant of the Town Center or which is for the benefit of such occupant (e.g., costs associated with shopping cart corrals), (iii) all late charges, default interest, collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of Assessments or enforcement of this Declaration. For all purposes of this Article IV (other than that a particular Owner is responsible for the Special Assessment), including without limitation, the lien of the Assessment, the obligations of the Owner, and Declarant's collection rights, Special Assessments shall be deemed Assessments.

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Section 4.2. Proportionate Obligations of Owners to Pay Assessments for Operating Costs.

(a) On or about the beginning of each calendar year, the Declarant shall prepare an annual budget of Operating Costs for such calendar year which shall include all estimated Operating Costs (the "Annual Budget") and distribute a copy thereof to each Owner. In the event that the Declarant's estimated Annual Budget changes during any calendar year, the Declarant shall have the right to furnish a revised Annual Budget. Unless otherwise provided herein, Annual Assessments on account of Operating Costs for each Owner shall be determined by multiplying such Annual Budget by each Owner's Proportionate Share.

(b) On or about the beginning of each calendar year, the Declarant shall notify each Owner of the Annual Assessments on account of Operating Costs for such Owner, and the amount of the Owner's monthly obligation in the amount of one twelfth (1/12th) of Owner's share of estimated Annual Assessments on account of Operating Costs. Declarant may, but shall not be required to, send to each Owner a monthly bill thereafter. Owner's monthly payment shall be due on the first (1st) day of each month during each calendar year. If a new year's Annual Budget is not yet in effect, Annual Assessments on account of Operating Costs shall be paid pursuant to the previous Annual Budget, with an appropriate adjustment made in the first quarter of the new Annual Budget year when put in effect. If the Declarant has revised the Annual Budget during the year, the Declarant, by notice to the Owners, may adjust the monthly payment of estimated Annual Assessment on account of Operating Costs in a manner to fully recoup or refund the difference during such calendar year. An Owner's obligation to pay Annual Assessments on account of Operating Costs shall commence as to that portion of the land area of a Parcel on the date such Owner improves and opens business to the public on that Parcel.

(c) Within ninety (90) days after the expiration of each calendar year; or as soon thereafter as possible, the Declarant shall furnish to each Owner a statement showing the Operating Costs for the immediately preceding calendar year broken down in reasonable detail, showing the items included therein, plus the calculation of each Owner's Proportionate Share, and the payments made by each such Owner with respect to such year. If the aggregate payments made by an Owner for such Operating Costs with respect to such year are greater than the amount such Owner should have paid during such year with respect to such Operating Costs, such Owner shall receive a credit for the excess against any payment next becoming due hereunder from such Owner to the Declarant. If, on the other hand, the aggregate payments made by an Owner for such Operating Costs with respect to such year are less than the amount such Owner should have paid during such year with respect to such Operating Costs, such Owner shall pay to the Declarant the difference within thirty (30) days after the date of the receipt by such Owner of such statement.

(d) Declarant shall retain at Declarant's principal office or at such other location as Declarant shall designate, each year's records relating to Operating Costs for at least twenty-four (24) months after such year, and, upon reasonable prior notice to Declarant, an Owner, and tenants of such Owner (if so requested by such Owner), shall have the right to audit or inspect all of such records. Appropriate adjustments shall be made for errors in the computation of Operating Costs revealed by such Owner's audit or inspection thereof. The office or location at which the Operating Costs records shall be retained shall be located within the District of Columbia, Maryland, Virginia

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or New Jersey.

Section 4.3. Proportionate Obligations of Owners to Pay Assessments for Offsite Real Estate Taxes.

(a) Subject to Section 4.3(b), on or about the beginning of each calendar year, the Declarant shall provide to each Owner the estimated amount of Offsite Real Estate Taxes, such Owner's Proportionate Share of Offsite Real Estate Taxes and the amount of the Owner's monthly obligation for Offsite Real Estate Taxes, which, unless otherwise provided, shall be one-twelfth (1/12th) of the Owner's Proportionate Share of Offsite Real Estate Taxes. Declarant shall calculate the monthly obligation (and make any adjustments necessary), so that two months prior to the last date when the Offsite Real Estate Taxes are due without penalty, Declarant shall have received all payments on account of Offsite Real Estate Taxes. In the event that the amount of the Offsite Real Estate Taxes changes from Declarant's estimate, the Declarant may notify each Owner of the change in monthly amount. The Proportionate Share of Offsite Real Estate Taxes shall reasonably be determined by Declarant for the respective users of the offsite facilities (whether as determined by a traffic consultant, as to parking, by the Proportionate Share allocations or otherwise).

(b) The Declarant shall have the option not to collect monthly in advance for each Owner's Proportionate Share of Offsite Real Estate Taxes, but instead to bill each Owner for its Proportionate Share of Offsite Real Estate Taxes at such time as Declarant receives the tax bills for the Offsite Real Estate Taxes from the applicable taxing authority. In such event, each Owner's Proportionate Share of Offsite Real Estate Taxes shall be due within thirty (30) days of receipt of Declarant's bill by such Owner.

Section 4.4. Lien for Assessments.

Assessments (including late charges, default interest, collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of Assessments, if any) shall constitute a continuing lien on the Parcel (including the improvements thereon) against which the Assessments are made from the date such Assessments are due provided Declarant (i) provides a written notice to the non-paying Owner and the non-paying Owner fails to pay the Assessments due within thirty (30) days after receipt of such notice, and (ii), to the extent required by applicable law, files a statement of lien among the Land Records pursuant to applicable law on the Parcel (including the improvements thereon) against which the Assessments are due. Such lien may be enforced and foreclosed in the same manner provided under the laws of the State of Maryland relating to the foreclosure of mortgages and deeds of trust on real property containing power of sale and/or assent to decree provisions. Any Owner may bid for and/or purchase any Parcel (including the improvements thereon) at any foreclosure sale or by process in lieu thereof. During the pendency of any such action, the Owner of any such Parcel shall be required to pay a reasonable rental therefor, and the Declarant shall have the right to appoint a receiver, if available under the then applicable laws of the State of Maryland. Suit for a deficiency judgment following any such action shall be maintainable. The terms and provisions of the Maryland Contract Lien Act are hereby incorporated, and the enforcement of any liens created hereunder shall be conducted in accordance with the terms thereof; provided, however, that the priority provisions hereof shall govern in lieu of any contrary provision in the Maryland Contract Lien Act, to the fullest extent permitted by law.

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Section 4.5. Subordination and Mortgage Protection.

(a) Notwithstanding any other provision of this Declaration to the contrary, any lien for Assessments (including the costs of collection, interest, and late charges, if any), shall be subordinate to the lien of any first-lien Mortgage. All Persons other than a first-lien Mortgagee acquiring a lien, judgment lien or encumbrance after the date this Declaration is recorded shall be deemed to consent that such liens or encumbrance shall be inferior to the future lien for Assessments, as provided herein, whether or not such consent is set forth in the instruments creating such liens or encumbrance. The sale or transfer of any Parcel shall not affect the Assessment lien; provided, however, that the sale or transfer of any Parcel pursuant to a foreclosure sale of a first-lien Mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer pursuant to a decree of foreclosure or the taking of actual possession (whichever first occurs) of such Parcel pursuant to a first-lien Mortgage (it is understood that in accordance with applicable law, excess foreclosure proceeds, if any, shall be applied against such Assessment lien subordinate to the first-lien Mortgage). The first-lien Mortgagee or the purchaser at a foreclosure sale of the first-lien Mortgage, their successors and assigns, shall not be liable for the payment of Assessments which have become due and payable prior to the acquisition of title or the taking of actual possession (except in the manner described in the next sentence), but such first-lien Mortgagee or purchaser, their successors and assigns, shall be liable for, and such Parcel shall be subject to a lien for, Assessments thereafter becoming due and payable. The unpaid Assessments due and payable prior to the acquisition of title or the taking of actual possession shall be deemed Operating Costs applicable to all Owners, including the first-lien Mortgagee or purchaser, as the case may be.

Section 4.6. Personal Obligation for Assessments.

Assessments (including late charges, default interest, collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of Assessments, if any), until paid, shall constitute the personal obligation of the Owner of Parcel during an Owner's period of ownership of such Parcel against which such Assessments are made.

Section 4.7. Transferees of Owners.

Except as otherwise provided in Section 4.5., the purchaser of a Parcel or other successor Owner shall be liable jointly and severally with the transferor Owner for all unpaid Assessments which have become due and payable against such Parcel prior and up to the time of transfer, without prejudice, however, to any rights of such successor Owner to recover from the transferring Owner. Declarant shall, within ten (10) days after the request of an Owner or Mortgagee, provide such Owner or Mortgagee, as the case may be, with a certification in writing, setting forth: (a) that this Declaration is unmodified, in full force and effect, free of known existing defaults of the requesting Owner and free of known defenses against enforceability (or if there have been modifications or defaults, or if such Owner claims defenses against the enforceability hereof, then stating the modifications, defaults and/or defenses); (b) the date to which Assessments due from such Owner

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have been paid to Declarant; and (c) the amount of any outstanding Assessments against such Owner's Parcel. Any such certification provided by Declarant may be relied upon by the requesting Owner and any purchaser, Lessee or Mortgagee of the requesting Owner's interest, or any prospective purchaser, Lessee or Mortgagee or any purchaser at a foreclosure sale of a Mortgagee's interest.

Section 4.8. No Waiver.

Suit to recover a money judgment for any unpaid Assessments shall be maintainable without waiving the lien securing such Assessments, and enforcement and foreclosure of such lien shall be maintainable notwithstanding the pendency of a suit to recover a money judgment for such Assessments.

Section 4.9. Real Estate Taxes For Parcels.

(a) Each Owner of a Parcel shall be responsible for paying directly to the taxing authority, the Real Estate Taxes levied or assessed against the Owner's Parcel (including the improvements thereon). If any Owner fails to pay such assessment when due without penalty, the Declarant may (but shall not be required to) pay such Real Estate Taxes. Such Real Estate Taxes so advanced, until reimbursed by the defaulting Owner, together with late charges, default interest, collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of such Real Estate Taxes shall constitute a continuing lien on that Owner's Parcel (including the improvements thereon) from the date Declarant make such advances provided Declarant (x) provides a written notice to the Owner and Owner fails to pay the Real Estate Taxes due within ten (10) days after receipt of such notice, and (y) to the extent required by law, files a statement of lien pursuant to applicable law. Such lien may be enforced and foreclosed by action brought in the manner provided under the laws of the State of Maryland relating to the foreclosure of mortgages and deeds of trust on real property containing power of sale and/or assent to decree provisions. The lien for reimbursement of Real Estate Taxes for an Owner's Parcel (including the improvements thereon) shall be subject to the same subordination provisions as the lien for Assessments, as provided in Section 4.5.

(b) Any Real Estate Taxes for an Owner's Parcel (including the improvements thereon) advanced by Declarant and not reimbursed to Declarant by the Owner within ten (10) days of notice from Declarant shall be subject to late charge in the amount of five percent (5%) of the amount advanced by Declarant payable upon demand by Declarant. The Real Estate Taxes for an Owner's Parcel advanced by Declarant shall bear interest at the Default Rate until paid, payable upon demand by Declarant. All collection costs, attorneys' fees, expert fees and court costs incurred by the Declarant in connection with the collection of reimbursement of Real Estate Taxes for an Owner's Parcel advanced by Declarant, whether or not suit (or appeal therefrom) is filed shall be payable by the defaulting Owner upon demand by Declarant.

(c) All payments received on account of reimbursement for Real Estate Taxes on an Owner's Parcel (including the improvements thereon) shall first be applied to collection costs and attorneys' fees, then to late charges, then interest, then to any unpaid reimbursements not subject to

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any suit brought for collection, and then to unpaid reimbursements subject to suit brought for collection.

ARTICLE V **CONDEMNATION**

Section 5.1. Condemnation; Allocation of Proceeds.

In case of (a) a taking of all or part of a Parcel or any interest therein or right thereto as a result of the exercise of the right of condemnation or eminent domain, or (b) a conveyance in lieu or in anticipation of the exercise of any such right of condemnation or eminent domain (all of the foregoing being herein referred to as a "Condemnation"), any award or payment or portion thereof made by reason of such Condemnation which is allocable to the land of such Parcel and the improvements thereon shall be paid only to the Owner of such Parcel and, except as hereinafter provided, no claim on such award or portion thereof shall be made by any other Owner or any Person claiming through any such other Owner as a result of the easements granted herein, or otherwise. However, nothing contained herein shall preclude the holder of any interest in another Parcel from claiming and collecting from the condemning authority the severance and consequential damages to such holder's Parcel resulting from such Condemnation, so long as such claim will not diminish the award of the Owner whose Parcel is taken.

Section 5.2. Common Areas.

In the event of a Condemnation of any Common Areas on an Owner's Parcel, the Owner of such Parcel shall be obligated to apply any proceeds received as the result of such Condemnation attributable to the Common Areas to the restoration of the Common Areas so condemned, to the extent commercially reasonable (and the restoration shall not be deemed commercially reasonable if circumstances would require construction of substitute Common Areas which are (x) materially different from the Common Areas condemned and (y) substantially more expensive than the construction of the original Common Areas would be). Notwithstanding the foregoing, if any parking spaces are taken as part of Condemnation of the Common Areas, provided the parking ratio on such Owner's Parcel is not reduced below that which is required to be maintained pursuant to applicable code (including any spaces required to be maintained for the benefit of other Parcels under any shared parking arrangements utilized in connection with the development approvals for all or any portion of the Town Center), then no restoration of such parking spaces shall be required.

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ARTICLE VI
INDEMNIFICATION AND INSURANCE

Section 6.1. Indemnification.

(a) Each Owner ("Indemnitor Owner") agrees, to the extent permitted under Maryland law, to indemnify, hold harmless and defend each other Owner ("Indemnified Owner"), except to the extent covered by any policy or policies of insurance maintained or required to be maintained by such Indemnified Owner, from and against, and to reimburse each other Owner with respect to, any and all Claims (as such term is hereinafter defined), damages or causes of action for damages brought on account of injury to, any person or persons or property, or loss of life, to the extent that such Claims, damages or causes of action for damages are caused by any negligent or tortious act or omission of such Indemnitor Owner arising out of the use, operation or maintenance by such Indemnitor Owner of any easement granted hereunder; provided, however, that there shall be excluded from the foregoing indemnity claims arising from the negligence or tortious acts or omissions of the Owner otherwise indemnified; and provided further, however, that the foregoing indemnity shall in no event pertain to consequential damages.

(b) As used in this Article VI, "Claims" means claims, liabilities, penalties, fines, judgments, forfeitures, losses, expenses (including, but not limited to, reasonable attorneys' fees, consultant fees, expert fees and court costs), and costs.

Section 6.2. Duty to Carry Liability Insurance.

(a) Each Owner shall maintain (or cause to be maintained) commercial general liability (including contractual indemnity and automobile liability) and fire and extended coverage property insurance covering such Owner's Parcel and all operations and improvements located thereon. In addition, Declarant shall maintain commercial general liability insurance with respect to its activities within the Common Areas of the Town Center and each Owner shall reimburse Declarant for such Owner's proportionate share thereof as part of Operating Costs.

(b) Such commercial general liability insurance shall afford protection to a specified limit of not less than Five Million Dollars (\$5,000,000.00) combined single limit (which may be covered under a primary policy combined with umbrella type coverage) for personal injury or property damage per occurrence and in the aggregate with a deductible not to exceed Fifty Thousand Dollars (\$50,000.00). Such fire and extended coverage property insurance shall be maintained at full replacement cost, with a municipal code endorsement rider.

(c) All policies required to be carried under this Section 6.2 shall be carried with financially responsible insurance companies that are licensed and admitted to do business in the State of Maryland and that carry a designation in "Best's Insurance Reports" (or equivalent rating service), as issued from time to time, of a policy holders' rating of A and a financial rating of not less than X.

(d) Any Owner may carry any insurance required to be maintained hereunder

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under a "blanket policy" covering other property of such Owner.

(e) On the request of an Owner each other Owner shall promptly furnish to the requesting Owner a certificate evidencing such Owner's compliance with the insurance coverage requirements of this Article VI, and a copy of the underlying policy and riders.

(f) Declarant may evaluate and update the insurance coverage required in this Article VI no more frequently than every three (3) years and shall make such adjustments with respect to the terms of coverage required hereunder as are found to be commercially reasonable.

Section 6.3. Waiver of Subrogation

Notwithstanding anything to the contrary contained in this Declaration, each Owner for itself and to the extent legally possible for it to do on behalf of its insurer, waives all rights to recovery against each other Owner (including Declarant in connection with the functions and duties contemplated in this Declaration), and each other Owner's (including Declarant's) officers, directors, managers, employees, agents and principals, for any loss, damage or expense arising from any cause (even if such loss, damage or expense is the result of the negligence of such parties) covered by any property insurance required to be carried by them hereunder, or any property insurance actually carried by each of them. Each Owner shall cause its respective insurer to issue an appropriate waiver of subrogation rights endorsement to all such policies of insurance, and each Owner shall deliver to the other (within a reasonable time after a written request for the same) adequate written proof (for example, a policy or certificate of insurance with attached endorsement) of the issuance of the foregoing. If an Owner uses reasonable efforts to obtain a waiver of subrogation endorsement on a policy of insurance, but is nevertheless unable to obtain such endorsement, then the failure to obtain such endorsement shall not constitute a default under this Declaration.

ARTICLE VII OBLIGATIONS OF PARCEL OWNERS

Section 7.1. Liens.

(a) Each Owner shall keep such Owner's Parcel free of mechanics' and materialmen's liens. An Owner performing work on the Parcel of another Owner shall not permit any lien to be filed or perfected in connection with such work on another Owner's Parcel.

(b) It is expressly intended that any tax sale, sale for enforcement of mechanics' lien, enforcement of liens hereunder, or other judicial sale shall be subject to the easements and use restrictions created by this Declaration and that all such easements and use restrictions shall survive any such sale.

Section 7.2. Maintenance.

Each Owner shall keep the exterior of the buildings on its Parcel in a good and safe state of repair and in a good, clean and orderly first-class condition and reasonably free of dirt, debris or

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obstructions. In the event of damage or destruction to any building on an Owner's Parcel, such Owner shall either restore such building to an architectural whole or, to the extent not restored (or a new building or buildings not constructed), shall raze such building and pave or landscape such Owner's Parcel to at least the same standards as the nearest Common Areas. Each Owner shall use reasonable efforts in connection with the negotiation of any financing secured by such Owner's Parcel to provide for the right of the Owner to use insurance proceeds for such restoration, as opposed to being applied by the lender against the loan balance. If an Owner razes such building or buildings and does not restore or rebuild same, it shall nevertheless remain responsible for the payment of its share of Assessments provided herein, assuming, for purposes of determining the Proportionate Share, that the building had not been damaged or destroyed. This provisions shall not be deemed to limit or affect any rights or remedies provided to Declarant set forth in other agreements with the Owner upon the failure of an Owner to operate its business, or upon other circumstances.

Section 7.3. Damage, Destruction and Repair of Common Areas.

In the event of any damage or destruction of Common Areas on a Parcel, the Owner of such Parcel shall be obligated to restore such Common Areas to at least the condition as existed prior to such damage or destruction. In addition, should any portion of the Common Areas on a Parcel require any capital replacement, reconstruction or repair (excluding the ongoing maintenance to be provided by the Declarant), the Owner of such Parcel, at its expense, shall be required to promptly commence such capital replacement, reconstruction or repair and thereafter diligently complete the same in a prompt manner, but in no event shall the Owner fail to commence the same within thirty (30) days of notice by the Declarant that the same is required; the foregoing obligation of an Owner shall not apply to the extent that the Declarant has elected to perform the item of capital replacement, reconstruction or repair as to all Parcels, in which case the costs of the same shall constitute Operating Costs.

ARTICLE VIII REMEDIES; SELF HELP

Section 8.1. Self Help.

(a) If, subject to any Unavoidable Delays, any Owner (the "Defaulting Party") shall fail to perform any of the provisions, covenants or conditions of this Declaration on its part to be performed at the time and in the manner herein provided, then any other Owner (including Declarant or any Operator appointed by the Declarant) (the "Non-Defaulting Party"), after thirty (30) days notice to the Defaulting Party and to the Declarant or Operator if the Non-Defaulting Party is not the Declarant or Operator, shall have the right, but shall in no event be obligated (unless within such thirty (30) day period the Defaulting Party shall cure such default, or in the case of a default which by its nature cannot be cured within such thirty (30) day period, the Defaulting Party shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion), to proceed to take such action or make such payment as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Party; provided, however, if the Non-Defaulting Party is not the Declarant (or Operator),

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the Non-Defaulting Party shall not have the right to cure such default if the Declarant (or Operator) has elected to cure such default. In any such case, the Defaulting Party shall on demand reimburse the Non-Defaulting Party, the Declarant (or Operator), as the case may be, for the monies reasonably expended by the Non-Defaulting Party, the Declarant or Operator, as the case may be, and for the Non-Defaulting Party or the Declarant's (or Operator's), as the case may be, reasonable out-of-pocket expenses, in so doing together with all penalties, if any, paid by the Non-Defaulting Party or the Declarant (or Operator), as the case may be, arising from such default, with interest at the Default Rate from the date of demand to the date of payment.

(b) Notwithstanding the provisions of paragraph (a) of this Section 8.1, in the event that an emergency exists or that it is necessary to take immediate action in order to prevent injury to persons or damage to property, the Non-Defaulting Party may cure a default before the expiration of the cure periods set forth in Section 8.1(a), but only after giving written or oral notice to the Defaulting Party (unless the Defaulting Party immediately takes such action as will prevent such injury or damage); provided, however, that any oral notice so given must be confirmed in writing within twenty-four (24) hours; and provided further if the Non-Defaulting Party is not the Declarant (or Operator), the Non-Defaulting Party shall also notify the Declarant (or Operator), and only proceed with such cure if the Declarant (or Operator) has failed or refused to do so.

(c) Subject to and in accordance with the Maryland Contract Lien Law, any amount due under this Section 8.1 from the Defaulting Party to the Non-Defaulting Party shall, ipso facto, without further act, be deemed to constitute a lien (the "Section 8.1 Lien") against the Parcel of the Owner obligated to pay the same; provided, however, that the Section 8.1 Lien shall be subordinate to any first-lien Mortgagee's right and interest in the Parcel so encumbered if such first-lien Mortgagee was not in possession or control of the Parcel encumbered by the Section 8.1 Lien at the time the obligation to perform, non-performance of which resulted in the Section 8.1 Lien, arose. The Defaulting Party shall, at the request of the Non-Defaulting Party, execute such instruments as are necessary properly to record the existence of the Section 8.1 Lien. Upon the satisfaction of such obligation, the Non-Defaulting Party shall, at the sole cost and expense of the Defaulting Party, cause such lien to be removed from the record.

Section 8.2. Unavoidable Delays.

Regardless of whether or not any specific reference in this Declaration is made to this Section 8.2, except as expressly provided to the contrary in this Declaration, each Owner and Declarant shall be excused from performing any obligation under this Declaration, from the date notice of such Unavoidable Delay shall have been given to Declarant within a reasonable time after the occurrence thereof, and any delay in the performance of any obligation under this Declaration shall be excused, if and for so long as the performance of the obligation is prevented or delayed by any of the following "Unavoidable Delays". "Unavoidable Delays" shall mean acts of God, fire, earthquake, flood, adverse weather conditions not reasonably anticipated, explosion, declared or undeclared war, riots, invasion, insurrection, sabotage, inability to procure (despite good faith diligent efforts) governmental approvals except for those required in connection with the initial construction of the Town Center, or a general shortage of labor, equipment, facilities, energy or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, orders of governmental or military authorities or any other similar

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cause that is not within the reasonable control of such Owner (other than lack of or inability to procure monies to fulfill such Owner's commitments and obligations under this Declaration which shall in no event be deemed an Unavoidable Delay).

Section 8.3. Limitation of Liability.

All of Declarant's obligations hereunder shall be subject to and conditioned upon Declarant receiving full payment or reimbursement of Operating Costs relating to the performance of such obligations. If Declarant shall fail to perform any obligation on its part to be performed under this Declaration after having received full payment or reimbursement for the Operating Costs associated with carrying out such obligation, the Owner's exclusive remedies shall be to obtain specific performance or avail itself of self-help remedies as set forth herein. Following the self-help remedies and as a consequence thereof, an Owner shall recover a money judgment against Declarant for the expenses incurred in connection therewith, such judgment shall be satisfied only out of (i) the proceeds of sale produced upon execution of such judgment and levy thereon against Declarant's interest in its respective Parcels and the improvements thereon, (ii) the rents and other income from such property receivable by Declarant, and (iii) the net consideration (which consideration shall be deemed to include any assets thereafter held by Declarant having a value not exceeding that of the proceeds of such sale or other disposition, net of any debt repayment) received by Declarant from the disposition of all or part of Declarant's respective interest in the Town Center for breaches of this Declaration prior to such disposition, provided a claim for such breach is made within three (3) months of said disposition. The provisions of this paragraph are not intended to relieve Declarant of the performance of any of its respective obligations hereunder, but rather to limit Declarant's liability in the case of a recovery of a judgment against it. Nothing herein shall limit an Owner's right to seek specific performance of the other Owner's obligations under this Declaration or to avail itself of any other right or remedy (not involving personal liability of Declarant in excess of the limits set forth in this paragraph) which may be accorded to an Owner by law or under the terms of this Declaration by reason of Declarant's failure to perform its respective obligations hereunder, provided, however, that in no event shall Declarant be liable to any Owner for any consequential damages. Declarant shall not be liable to any Owner for any damage caused to the person or property of Owner, its agents, employees or invitees, due to any Common Facilities or any part or appurtenances thereof being improperly constructed or being or becoming out of repair, or arising from the leaking of gas, water, sewer or steam pipes, or from electricity, or from any other cause whatsoever. Each Owner agrees to report immediately in writing to Declarant any defective condition in or about such Owner's Parcel and known to the Owner which Declarant is required to repair.

ARTICLE IX ARCHITECTURAL REVIEW

Section 9.1. General.

(a) The Declarant shall retain the right to approve (or withhold approval of) the external design and appearance of each and every improvement erected on a or a part of a Parcel in

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such a manner so as to preserve a harmonious relationship among the improvements, natural vegetation and topography, and to be harmonious and consistent with the remainder of the Town Center and, as applicable, with the Design Guidelines, such approval to be granted in writing to each Owner. The Declarant may from time to time promulgate "Design Guidelines" to set forth the guidelines for design of Exterior Elements (hereinafter defined) within the Town Center. Except as otherwise provided in this Declaration, no improvement shall be erected or replaced on any Parcel, including any of the Common Areas located thereon, and no exterior addition to or change (including any change in color) or alteration shall be made to any improvements until complete plans and specifications therefor ("Plans and Specifications"), together with such other information as shall be required by the Declarant from time to time, shall have been submitted to and approved in writing by the Declarant, which approval shall not be unreasonably withheld, conditioned, or delayed. The intent of the foregoing being that an Owner cannot construct or alter any of the "Exterior Elements" (as hereinafter defined) of the buildings on any Parcel (including as part of a reconstruction after a fire or other casualty) without the prior consent and approval of the Declarant, which approval shall not be unreasonably withheld, conditioned, or delayed, provided the proposed Exterior Elements preserve a harmonious relationship among the existing improvements, natural vegetation and topography, and are harmonious and consistent with the remainder of the Town Center and, as applicable, with the Design Guidelines. As used herein, "Exterior Elements" shall include, without limitation, setback and building line requirements, architectural design, color, texture, design, height, orientation, and materials, as well as paving, parking areas, walkways, landscaping, signage, fencing, walls, screening, and outside lighting. The Declarant's consent and approval rights shall specifically not apply to any interior design components.

(b) The Declarant reserves the right to appoint and replace, from time to time, a Design Review Board ("DRB") to perform the functions of the Declarant set forth in Section 9.1(a), and upon such appointment, such DRB shall have the declarant rights hereunder relating to the performance of such functions, including without limitation, the right to promulgate the Design Guidelines and to approve the Exterior Elements.

Section 9.2. Action By Declarant.

The Declarant shall use commercially reasonable efforts to approve or disapprove any adequate submission, or to reject a submission as inadequate, within fifteen (15) business days of receipt of submission. If any submission is deemed inadequate by Declarant, Declarant may reject such submission or may approve a portion thereof, conditionally or unconditionally, and disapprove the balance thereof.

Section 9.3. Removal.

(a) If any improvement is altered, erected, installed, placed or maintained, or any new structure erected, or any other action described in Section 9.1 is taken, on any Parcel other than in accordance with Plans and Specifications approved by Declarant pursuant to the foregoing provisions of this Article IX, such action shall be deemed to be a violation of the provisions of this Article IX and, in addition to any other remedies available to Declarant in equity or at law, Declarant may give written notice thereof to the applicable Owner, whereupon such improvement

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shall be promptly removed or restored by the applicable Owner to its condition prior to such action, and such use shall cease, so as to terminate such violation. It is understood and agreed however, that the foregoing is intended to apply to exterior alterations to any existing or newly placed or erected improvement.

(b) Declarant shall have the immediate right to enforce the provisions of Section 9.3(a) by injunctive relief or otherwise. In no event shall the Declarant be required to post any bond or other security in connection with any injunctive action or any other relief pursued by Declarant under this Section 9.3(b) or elsewhere in the Declaration.

ARTICLE X USE RESTRICTIONS

Section 10.1. Permitted Uses.

Subject to the obligations and restrictions set forth in any separate agreement (or memorandum thereof) between Declarant and any Owner, or in supplemental declarations recorded by Declarant, the Entire Parcel may be used for any lawful retail and ancillary office purposes and such other uses as are in keeping with a first class shopping center or town center development as determined by Declarant (including, to the extent permitted by Declarant in writing and applicable law, non-retail first class uses). Notwithstanding the foregoing, no Parcel, other than a Parcel whose Owner is a party to such separate agreement or supplemental declaration, or who is a successor in title to a party to such separate agreement or supplemental with actual or record notice of such separate agreement or supplemental declaration (including an Owner who has purchased a Parcel from Declarant), shall be burdened by such separate agreement or supplemental declaration. Declarant shall have no obligation to enforce the provision of any such separate agreement or supplemental declaration for the benefit of any Owner, and, except as otherwise provided in such separate agreement or supplemental declaration, Declarant shall have the sole right to enforce (and to waive) the provisions of such separate agreement or supplemental declaration. Declarant's rights referenced in this paragraph shall be deemed a Declarant right which shall not run to any successor in title to any Parcel, except as provided in Section 11.5. For the purposes of Article IV hereof, the enforcement of such separate agreement and supplemental declaration shall be deemed an enforcement by Declarant of the provision of this Declaration, except as otherwise expressly set forth therein.

Section 10.2. Prohibited Uses.

(a) No portion of the Entire Parcel shall be used for any of the "Prohibited Uses" set out on Exhibit "D" (the "Prohibited Uses") attached hereto and made a part hereof.

(b) Declarant shall have the immediate right to enforce the provisions of Section 10.2(a) by injunctive relief or otherwise. In no event shall the Declarant be required to post any bond or other security in connection with injunctive remedy or any other relief pursued under this Section 10.2(b).

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ARTICLE XII**DECLARANT RESERVED RIGHTS**

Section 11.1 Annexation. The Declarant shall have the right, from time to time, without the consent of the other Owners, to incrementally annex all or any portion of adjacent or neighboring properties to the scheme of the Declaration, by executing and recording (among the land records of Montgomery County, Maryland) one or more Supplementary Declarations, regardless of the ownership of such additional property at the time of such annexation and without the necessity of the joinder to such Supplementary Declaration by any other party (except if Declarant is not the owner of such property, with the joinder by such owner and any lienholders on such property to the Supplementary Declaration). Upon any such annexation, each reference to "Property", "Entire Parcel" or "Town Center" shall be deemed to include such annexed property (as well as the property originally identified by such references). Without limiting the generality of the foregoing, the Proportionate Share of each Owner shall be adjusted as applicable to reflect such annexed property, and Owners of such annexed property shall be subject to assessments based on their own Proportionate Share calculated in accordance with the terms hereof.

Section 11.2 Offsite Agreements. In connection with the development of the Town Center, the Declarant shall have the right, from time to time, without the consent of the other Owners, to enter into easement, lease or license agreements with owners (including the Declarant or affiliates) of adjacent or neighboring properties to benefit the Town Center for purposes of providing parking, governmentally required improvements or infrastructure, including stormwater management ponds, or other amenities, for the Town Center (collectively, the "Offsite Agreements"). The costs and expenses incurred in connection with the maintenance, repair, reconstruction, operation and use of the such Offsite Agreements shall be deemed Operating Costs (except to the extent that such costs are otherwise excluded in Section 1.1); provided, however, at Declarant's option, each Owner's proportionate obligation for such Operating Costs may be allocated in the same manner as for Offsite Real Estate Taxes, or as for all other Operating Costs.

Section 11.3 Park & Ride Easement. The Declarant reserves the right to grant to Montgomery County, Maryland or other governmental agencies for public use, transit lines, transit and Park and Ride easements and dedications on the Common Areas of the Property, pursuant to agreements reached with Montgomery County, Maryland or other governmental agencies in connection with obtaining the approvals for the development of the Town Center, as generally contemplated in furtherance of portions of the Germantown Master Plan.

Section 11.4 Rules and Regulations. The Declarant reserves the right to establish and promulgate reasonable rules and regulations in furtherance of, but not inconsistent with, this Declaration.

Section 11.5 Successor Declarant. The Declarant reserves the right to appoint a successor Declarant by assignment of declarant rights in connection with any sale by Declarant of twenty percent (20%) or more of the Property (excluding publicly-dedicated roadways or other portions of the Property owned by any governmental authority or agency). In the event that Declarant is no longer the Owner of twenty percent (20%) or more of the Property (excluding publicly-dedicated roadways or other portions of the Property owned by any governmental authority

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or agency), and Declarant has not previously assigned its declarant rights, the Owners holding a majority of the land area of the Parcels shall appoint a successor Declarant.

NOTICES

Section 12.1. General.

Any notice or communication required to be given by or on behalf of an Owner to any other Owner shall be in writing and delivered by hand, or mailed by registered or certified mail, return receipt requested, or sent by air courier or expedited mail service, addressed to the address(es) established in Section 12.2 and Section 12.3. All such notices or communications hereunder shall be deemed to have been given on the date of delivery, or, if delivery is refused or cannot be made, the date of postmark.

Section 12.2. Addresses.

Each Owner, within ten (10) days after having been granted its interest in a Parcel shall deliver to the other Owners a notice setting forth the address to which notices or communications may be sent pursuant to this Declaration, and at any time upon request shall deliver a list of such addresses to any Owner requesting the same. The addresses of Declarant are as follows:

If to Declarant: Bellemcad Development Corporation
 280 Corporate Center
 7 Becker Farm Road
 Roseland, NJ 07068
 Attention: Donn Norton
 Fax: (973) 740-0126

with a copy to: Capstone Realty, Ltd.
 11 Stanmore Court
 Potomac, Maryland 20854
 Attn: Peter Henry
 Fax: (301) 654-1768

and

Lerch, Early & Brewer, Chtd.
 3 Bethesda Metro Center, Suite 380
 Bethesda, Maryland 20814
 Attention: Charles T. Hathway, Esquire
 Fax: (301) 986-0332

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Section 12.3. Additional Addresses

An Owner from time to time may designate up to two (2) additional Persons entitled to receive copies of all notices or communications sent hereunder provided the addresses are furnished as required by Section 12.1, but the failure of a party to send a copy of the notice to such additional persons shall not invalidate said notice or communication.

**ARTICLE XII
MISCELLANEOUS**

Section 13.1. Enforcement. The Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any provision of this Declaration including the Rules and Regulations cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Declarant or any Owner successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration including the Rules and Regulations, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien (subordinate to any first-lien Mortgage) upon the Lot of such Owner, as provided by the Maryland Contract Lien Act, and if Declarant is the successful party, the obligation of the non-prevailing Owner shall be collectible as a Special Assessment.

Section 13.2. Severability.

Every term and provision of this Declaration is hereby declared to be independent of, and severable from, every other provision of this Declaration. If any term or provision of this Declaration shall be held by a court of competent jurisdiction to be invalid or unenforceable in any one instance, or not run with the land in any one instance, that holding shall be without effect upon the validity, enforceability or running with the land of any other term or provision of this Declaration, or the validity, enforceability or running with the land of such term or provision in any other instance.

Section 13.3. Covenants Separate and Independent.

Except as otherwise expressly provided in this Declaration, each and every covenant and agreement contained in this Declaration is, and shall be construed as, a separate and independent

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covenant and agreement, and, except as otherwise expressly provided herein, the breach of any such covenant or agreement by any Owner shall not discharge or relieve the other Owners from their respective obligations to perform the same.

Section 13.4. Captions.

All captions in this Declaration are for convenience only and do not in any way define, limit, amplify or describe the scope of the provisions hereof and shall not be utilized to interpret the provisions of this Declaration.

Section 13.5. Successors and Assigns; No Third Party Beneficiaries.

(a) This Declaration shall inure to the benefit of and be binding upon the Owners and their respective successors and assigns.

(b) Except as specifically set forth in paragraph (a) of this Section 13.5., nothing in this Declaration is intended or shall be construed to confer upon or give to any other Person any right, remedy or claim under this Declaration or by reason hereof.

Section 13.6. Waiver of Default.

A waiver of any default must be in writing, and no such waiver shall be implied from any omission by an Owner to take any action in respect of such default. No express written waiver of any default shall affect any other default or cover any period of time other than the default and period of time specified in such express waiver. An Owner's approval of any act or request by another Owner requiring approval shall not be deemed to waive or render unnecessary the approval of any subsequent similar act or request.

Section 13.7. Default Shall Not Permit Termination of Declaration.

No default under this Declaration shall entitle any Owner to terminate, cancel or otherwise rescind this Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Owners may have by reason of any default under this Declaration.

Section 13.8. Governing Laws.

This Declaration shall be construed and governed in accordance with the laws of the State of Maryland.

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Section 13.9. Remedies Cumulative.

All rights, privileges, and remedies afforded the Owners by this Declaration are cumulative and shall be deemed additional to any and all other remedies to which each of the Owners may be entitled at law or in equity, by statute or otherwise, and shall include the right to restrain by injunction any violation or threatened violation by any Owner of any of the terms, covenants or conditions of this Declaration and by decree against any Owner to compel such Owner's specific performance of any such terms, covenants or conditions, it being agreed that the remedy at law for any breach by an Owner of any such term, covenant or condition (except those, if any, requiring payment of a liquidated sum) is not adequate. The exercise of any one of such remedies and/or exercise of any right afforded in this Declaration in such circumstances shall not be deemed to constitute a release, excuse or a waiver of any right, remedy or privilege herein or at law or in equity.

Section 13.10. Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any part of any Parcel to or for the general public, or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

Section 13.11. Estoppel Certificates.

From time to time upon no less than ten (10) days notice from an Owner, each Owner so requested shall execute and deliver to the requesting Owner a certificate in recordable form stating that, to the best of the knowledge, information and belief of the Owner executing the same, either the requesting Owner is in compliance with the requirements of this Declaration or, if the Owner executing the same has reason to believe the Owner requesting the same is not so in compliance or is in default, the basis for such belief.

Section 13.12. Counterparts.

This Declaration may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

Section 13.13. Amendment.

(a) Except as otherwise provided, this Declaration may be amended or supplemented only by an instrument in writing duly executed by or on behalf of the Declarant provided all Owners have given their written consent thereto; provided, however, that at such time as neither BDC nor an Affiliate thereof is the Owner of any Parcel, this Declaration may be amended or supplemented only by an instrument in writing duly executed by or on behalf of all Owners.

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(b) The Declarant retains the unilateral right, on behalf of all Owners, Mortgagees and others having a legal or equitable interest in a Parcel, to amend this Declaration to the extent required by the Montgomery County Planning Board of the Maryland-National Capital Park & Planning Commission in connection with the approvals for the initial development of the Town Center, provided that no such amendment which adversely affects any Owner or the value of the Owner's Parcel or substantially increases the financial burden of the Owner or reserves any special privileges to the Declarant not previously reserved shall be made without the prior written consent of the Owner affected, and provided further that no such amendment which affects the priority or validity of any Mortgage shall be made without the consent of the Mortgagee affected. Subject to the foregoing limitations, by acceptance of a deed to a Parcel, or by the acceptance of any other legal or equitable interest in a Parcel, each Mortgagee, Owner or other party having a legal or equitable interest in any Parcel do automatically and irrevocably name Declarant as their attorney-in-fact for the purpose of executing any such amendment. Such power of attorney shall be coupled with an interest in the subject matter hereof and shall run with and bind the Parcels, and shall not be affected by death or disability of a principal.

(c) The Declarant may unilaterally execute and record a corrective amendment or supplement to this Declaration to correct errors or omissions herein.

(d) The Declarant may, for a period of ten (10) years following the date of recordation of this Declaration, without the consent of the Owners or any other party, modify, amend or change any of the provisions as may be requested by an Owner or contract purchaser of a Parcel; provided that no such modification, amendment or change which shall adversely affect any Owner or the value of a Parcel, or substantially increase the financial burden of the Owner or reserve any special privileges to the Declarant not previously reserved, shall be made without the prior written consent of the Owner or Mortgagee affected.

(e) Nothing herein shall be deemed to prohibit the Declarant from entering into a modified agreement with an Owner with respect to Assessments, provided the obligation for Assessments of other Owners is not materially affected.

Section 13.14. Term; Termination.

Except as provided in this Section 13.14, the provisions of this Declaration shall be binding upon all portions of the Parcels and all Owners thereof for a term of seventy (70) years, and thereafter for successive periods of ten (10) years each until, before the expiration of any such ten (10) year period, there is recorded among the land records an instrument which expressly and by specific reference to this Declaration terminates the operation and effect of this Declaration, and is executed by or on behalf of (a) the Declarant, or (b) if neither BDC or an Affiliate thereof is the Owner of any Parcel, the Owners of all the Parcels consenting to such termination; provided, however, that such Owner's consent shall not be required for such termination if a notice of intention to terminate is sent pursuant hereto to such Owner and no written response to such notice, disputing such termination is received by the sender within sixty (60) days thereafter. Notwithstanding the foregoing, the parties agree that all easements herein referenced as perpetual shall survive termination or earlier expiration of this Declaration.

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Section 13.15. No Partnership or Joint Venture.

It is mutually understood and agreed that nothing contained in this Declaration is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture, between the Owners, or as constituting any Owner as the agent or representative of another Owner, for any purpose or in any manner whatsoever.

Section 13.16. Exhibits.

Each writing or Site Plan referred to herein as being annexed hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

Section 13.17. Interpretation.

Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

Section 13.18. No Merger.

None of the provisions of this Declaration is intended to or shall be merged by reason of the fact that one Person may at any time be the sole Owner of the Entire Parcel, or the Owner of more than one Parcel.

Section 13.19 Further Assurance.

The Owners agree to enter into such supplemental or further agreements as may be reasonably necessary or appropriate to carry out the intention of this Declaration.

Section 13.20. Cooperation.

(a) The Owners agree to cooperate reasonably with each other with respect to the development of their respective Parcels without the payment of compensation, except as otherwise expressly agreed herein. Such cooperation shall include conferring on matters of mutual interest, promptly consenting to and granting easements reasonably requested by the other, and providing waivers and consents required by governmental authorities in connection with another Owner's development of its Parcel. However, any such easement shall be reasonable in purpose and location and shall have no material adverse impact on the Parcel burdened by the easement, and any such consent shall have no material adverse effect on the Owner giving the consent or on its property and shall not require such party to pay any money or incur any liability. All such consents shall not be unreasonably withheld, conditioned or delayed. Other than the Declarant, no Owner shall seek to amend the Site Plan or any other required governmental approval affecting more than

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the Parcel(s) it owns in fee if such amendment would have a material adverse effect on any other Parcel, including, without limitation, a material adverse effect on the use, operation, repair or reconstruction of improvements on any other Parcel. An amendment will be deemed conclusively to have a material adverse effect if the amendment reduces permitted density, increases required green area, tree or forestation requirements or affects the parking requirements of any other Parcel.

(b) Other than the Declarant, no Owner shall convey or otherwise transfer its Parcel if such action would result in a subdivision of the Parcels unless both Parcels would be in compliance with, or would be exempt from compliance with, the applicable subdivision ordinance in connection therewith.

Section 13.21. Waiver or Trial by Jury.

By acceptance of a deed to any Parcel, such Owner waives trial by jury in any action, proceeding or counterclaim to which such Owner is a party relating to this Declaration or the enforcement thereof or the Town Center.

Section 13.22. Time of the Essence.

Time shall be of the essence as to all dates and time periods set forth herein.

Section 13.23. Perpetuities.

If any provision of this Declaration is void or voidable for violation of the rule against perpetuities, then such provision shall last only so long as twenty (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS/ATTEST

DECLARANT:

BELLEMEAD DEVELOPMENT CORPORATION,
a Delaware Corporation

By: *ADRIAN P. SUDTMALER*

Name: ADRIAN P. SUDTMALER

Title: VICE PRESIDENT

Jenni F. Mesler



[corporate seal]

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LIST OF EXHIBITS

- Exhibit A - Legal Description of Entire Parcel
- Exhibit B - Site Plan of Entire Parcel
- Exhibit C - Adjoining Parcels for Parking
- Exhibit D - Prohibited Uses

Law Gray)
) SS.
Essey)

I, Carol L. Uzzardi, a Notary Public for the jurisdiction aforesaid, do certify that ADRIAN P. SHOOTMAKER, whose name, as Y.P. of BELLEMEAD DEVELOPMENT CORPORATION, is signed to the writing above bearing date of MAY 3, 2000, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and official seal on 5-2, 2000.

Carol L. Uzzardi
 Notary Public



Commission expiration date:

[NOTARIAL SEAL]

CAROL L. UZZARDI
 A NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires May 3, 2005

This Agreement has been prepared by or under the supervision of an attorney duly admitted to practice before the Court of Appeals of Maryland.

Charles T. Hathway
 Charles T. Hathway, Attorney

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EXHIBIT "A"**Legal description of Entire Parcel****Parcels B and C:**

PARCELS B and C in a subdivision entitled "**PARCELS B and C, CENTURY XXI**" as shown on plat of resubdivision recorded in Plat Book 116 at Page 13752, among the Land Records of Montgomery County, Maryland;

SAVING and EXCEPTING therefrom that portion of land for Street Dedication pursuant to the "Subdivision Plat for Street Dedication Century Boulevard and Aircraft Drive" recorded on December 9, 1999, in Plat Book 196 at Plat 21262 among the Land Records of Montgomery County, Maryland.

Parcels D, E & F

PARCELS D, E & F, in a subdivision entitled "**PARCELS D, E, F, G and H, CENTURY XXI**", as shown on plat of subdivision recorded in Plat Book 116 at Page 13750, among the Land Records of Montgomery County, Maryland.

AS TO PARCEL D ONLY: SAVING and EXCEPTING therefrom that portion of land for Street Dedication pursuant to the "Subdivision Plat for Street Dedication Century Boulevard and Aircraft Drive" recorded on February 17, 2000, in Plat Book 196 at Plat 21325 among the Land Records of Montgomery County, Maryland.

AS TO PARCEL E AND F ONLY: SAVING and EXCEPTING therefrom that portion of land for Street Dedication pursuant to the "Subdivision Plat for Street Dedication Century Boulevard and Aircraft Drive" recorded on December 9, 1999, in Plat Book 196 at Plat 21262 among the Land Records of Montgomery County, Maryland.

Parcel Identification Numbers:

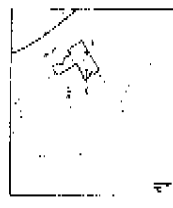
Parcel B: 02-001-02168292
Parcel C: 02-001-02168204
Parcel D: 02-001-02168188
Parcel E: 02-001-02168190
Parcel F: 02-001-02168202

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EXHIBIT "B"

Site Plan of Entire Parcel

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VICINITY MAP Scale: 1" = 2,000'

General Notes

- 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MARYLAND STATE DESIGN SPECIFICATIONS FOR HIGHWAY BRIDGES AND STRUCTURES AND THE MARYLAND STATE DESIGN SPECIFICATIONS FOR HIGHWAY SIGNALS AND TRAFFIC CONTROL DEVICES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT CONSTRUCTION.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
8. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT CONSTRUCTION.

Land to be Dedicated

Approximate Non-Residential Land Use Summary:
APPROXIMATE NON-RESIDENTIAL LAND USE SUMMARY
TOTAL AREA: 1.00 ACRES
LAND TO BE DEDICATED: 0.00 ACRES

Approximate Non-Residential Land Use Summary

APPROXIMATE NON-RESIDENTIAL LAND USE SUMMARY
TOTAL AREA: 1.00 ACRES
LAND TO BE DEDICATED: 0.00 ACRES

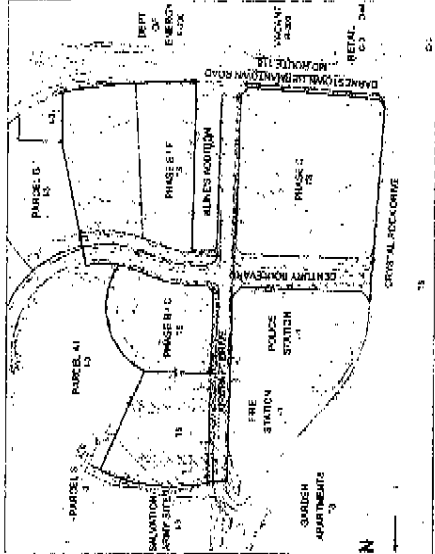
DATE: 04/27/05
SCALE: AS SHOWN

Open Space

APPROXIMATE OPEN SPACE SUMMARY
TOTAL AREA: 0.00 ACRES

APPROXIMATE OPEN SPACE SUMMARY
TOTAL AREA: 0.00 ACRES

GERMANTOWN TOWN CENTER EAST Germantown, Maryland Site and Adjacent Area S-1
Scale: 1" = 100'
Date: 04/27/05
Author: [Signature]



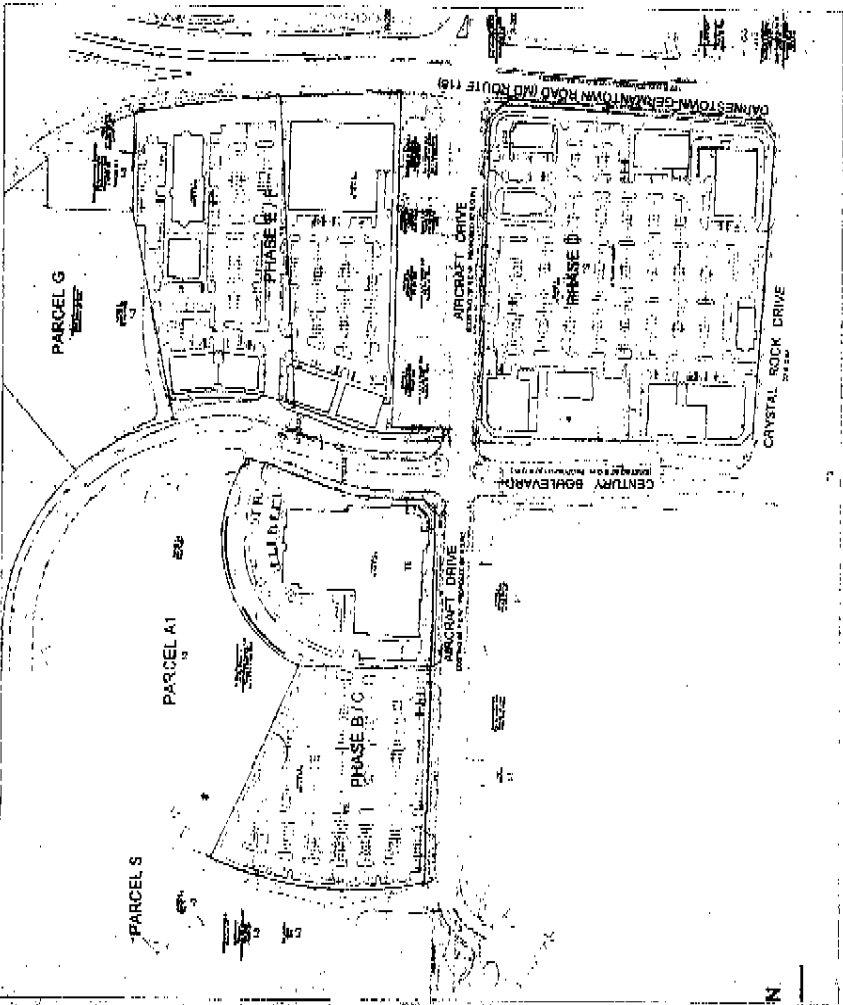
LOCAL VICINITY / PHASING Scale: 1" = 200'

SHEET NO. SHEET TITLE

- S-0 TITLE SHEET
S-1 SITE AND ADJACENT AREA
S-2 SITE PLAN - Phase B1C
S-3 SITE PLAN - Phase B1F
S-4 SITE PLAN - Phase D
S-5 LANDSCAPE AND LIGHTING PLAN - Phase B1C
S-6 LANDSCAPE AND LIGHTING PLAN - Phase B1F
S-7 LANDSCAPE AND LIGHTING PLAN - Phase D
S-8 LANDSCAPE DESIGN S
S-9 SCHEMATIC ARCHITECTURE

DRAWING INDEX

Table with 2 columns: SHEET NO. and SHEET TITLE. Lists sheets S-0 through S-9 and their corresponding titles.



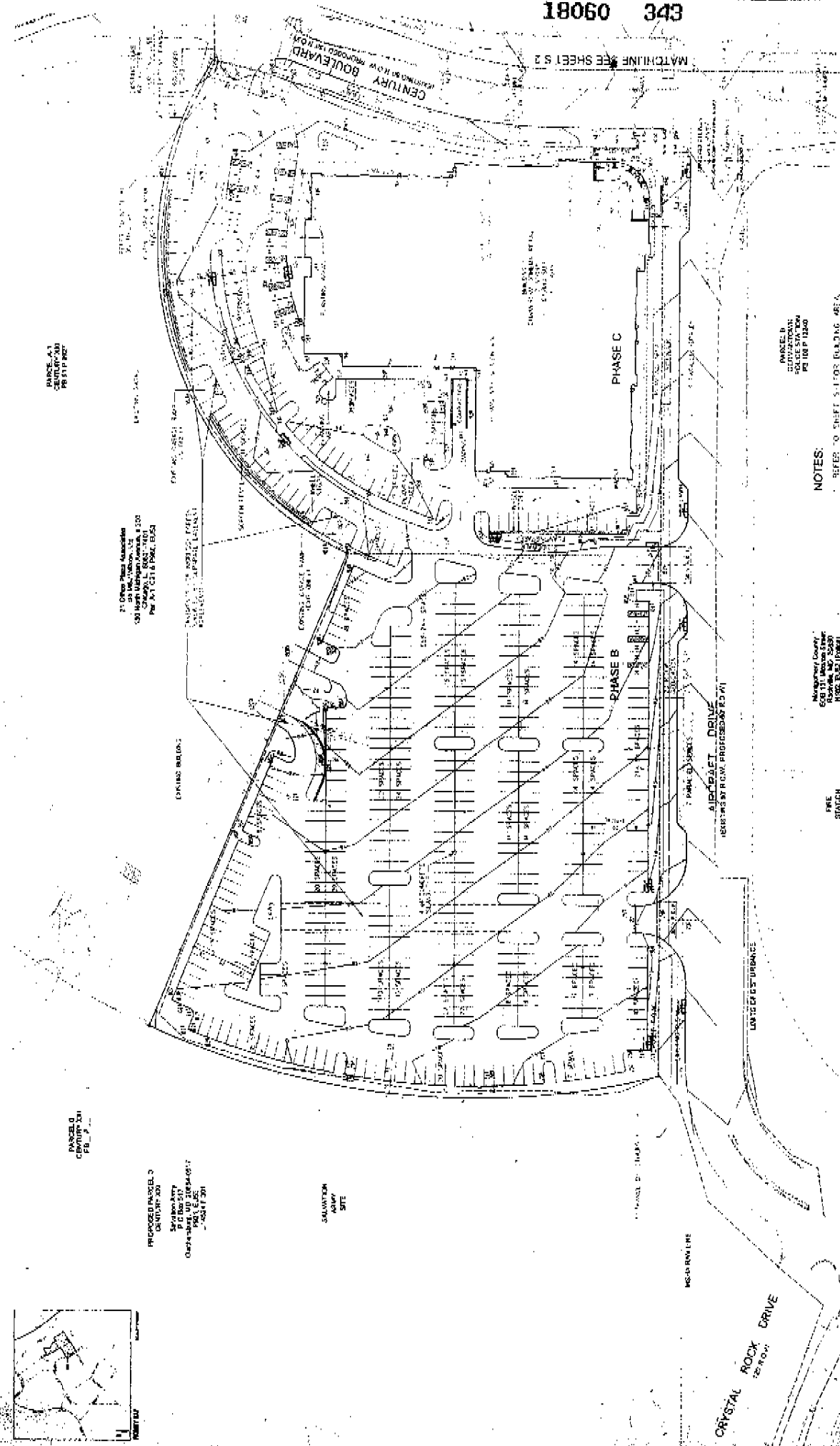
Site and Adjacent Area Scale: 1" = 100'

Development Summary - Phase B1C, Phase B1F, Phase D. Includes tables for Development Summary, General Summary, and Tabulations. Also includes a section for TABULATIONS with a table of values.

TABULATIONS

Table with 2 columns: Description and Value. Lists various tabulation items and their corresponding values.

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GERMANTOWN TOWN CENTER EAST
 Germantown, Maryland
Site Plan - Phase B / C

DATE: 04/27/05
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: [Number]
 SHEET NO: S-2
 SCALE: 1/8" = 1'-0"

- NOTES:**
1. REFER TO SHEET S-1 FOR BUILDING AREA, GREEN AREA & CALCULATION.
 2. REFER TO LANTIERE, INC. LITING SPECIFICATIONS FOR LIGHTING.
 3. ROW STAIRS, ROAD SECTIONS AND CURB CUTS ARE SUBJECT TO APPROVAL.
 4. ALL UTILITIES SHALL BE AS SHOWN UNLESS OTHERWISE NOTED.
 5. THE ENTRANCE WILL BE ADJUSTED WHEN CONSENT IS RECEIVED FROM THE PROPERTY OWNER.
 6. THIS AREA IS CONCEPTUAL. APPROVED AND IS SUBJECT TO THE SUBMISSION OF ALL SCALE PLAN AND DETAILS FOR FINAL APPROVAL.

PROPOSED PHASE B
 20' OFFSET FROM EXISTING
 10' OFFSET FROM EXISTING
 10' OFFSET FROM EXISTING

PHASE B
 10' OFFSET FROM EXISTING
 10' OFFSET FROM EXISTING

PHASE C
 10' OFFSET FROM EXISTING
 10' OFFSET FROM EXISTING

NOT FOR CONSTRUCTION

THIS DRAWING IS THE PROPERTY OF [FIRM NAME] AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF [FIRM NAME].



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EXHIBIT "C"

Adjoining Parcels for Parking

Parcels G and H, Plat Book 116 at Plat No. 13753
Parcel 228, consisting of .48 acres (See attached legal description)
Parcel A-1, Century XXI, Plat Book 91 at Plat No. 9927

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EXHIBIT C (continued)

PARCEL 228

LEGAL DESCRIPTION

Being all of that piece or parcel of land situate, lying and being in the Second Election District of Montgomery County, Maryland, and being all of that land conveyed by D.A. Dayhoff to Lawrence I. Kasdon by deed dated April 12, 1972, and recorded among the Land Records of Montgomery County, Maryland, in Liber 4205 at Folio 200 and being more particularly described according to available adjacent land records mathematically adjusted for closure as follows:

Beginning for the same at the common rear corner of Parcel G and Parcel F as shown on a plat of subdivision entitled "**Parcels D, E, F, G, and H, CENTURY XXI**" as recorded among the aforesaid Land Records in Plat Book 116 at Plat No. 13750; thence running with the following two courses with and along the rear lines of said Parcel G in the datum of said plat

1. North 58°55'56" East, 177.00 feet to a point; thence
2. South 32°08'54" East 98.14 feet to a point on the right of way line of Maryland Route 118 as shown on the Maryland State Highway Administration State Roads Commission plat number 46243; thence running with and along a part of said right of way line
3. South 19°18'46" West, 23.90 feet to the end of the second or North 58°36'15" East, 155.18 foot deed line of property of the Washington Suburban Sanitary Commission as described in deed recorded among the aforesaid Land Records in Liber 5113 at Folio 447; thence running with and along said second deed line reversed
4. South 57°51'06" West, 158.27 feet to a point on the South 32°08'54" East 191.96 foot plat line of the aforesaid Parcel F; thence running with and along a part of said line reversed
5. North 32°08'54" West, 116.37 feet to the place of beginning, containing 0.46 acres of land more or less as based upon available information only.

\\REJAH\23902\NAOMI.OTP
020999\1

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EXHIBIT "D"**Prohibited Uses**

All of the following items shall be referred to as the "Prohibited Uses".

(i) committing or suffering to be committed (as to the Owner's Parcel) any nuisance or other act or thing to be done in or about the Owner's Parcel or Town Center to damage or annoy the Owner's Parcel or the Town Center; allowing the Owner's Parcel to be used for any improper, immoral, unlawful or other objectionable purpose;

(ii) obstructing, encumbering or using for any purpose, other than ingress or egress to and from the Owner's Parcel, the Common Areas, or the entrances, vestibules, stairways or hallways thereof (if any), or engaging in or permitting any selling, merchandising, display, advertising or soliciting anywhere within the Town Center outside of the building(s) on the Owner's Parcel, unless the same shall be expressly permitted by the Declaration or by the Declarant in writing;

(iii) permitting the use of any portion of an Owner's Parcel for solicitations, demonstrations or itinerant vending, or any activities inconsistent with reasonable standards of good regional shopping center practice;

(iv) use of a Parcel for any of the following uses: Bowling alley, skating rink, amusement park, night club, massage parlor or any facility which sells or displays obscene or pornographic materials or services, the display of pornographic films (including those rated X, XX, or XXX or substitute designation or unrated films which are also shown at so called 'adult' movie theaters, it being understood that NC-17 shall not be deemed the equivalent of the "X" rating), a facility which sells or repairs cars, boats, trailers, or mobile homes, flea market, carnival, meeting hall, banquet facility, discount thrift or second-hand shop (the foregoing would not exclude a first class antique shop or upscale resale store), disco or dance hall, sporting event or sports facility, video parlor of more than 3,000 square feet of video games or other game parlor, any non-restaurant facility that sells alcoholic beverages except as authorized by the Declarant in writing, pool hall, billiard parlor, off-track betting facility, or auditorium (other than meeting rooms in the morning hours and before 2 P.M., Monday through Friday), more than 3,000 square feet dedicated to a food court;

(v) causing or permitting (as to the Owner's Parcel) any unusual or objectionable odor to emanate from an Owner's Parcel or the Town Center, or burning anything in the Owner's Parcel or the Town Center;

(vi) using any loudspeakers outside the building improvements, except as specifically authorized by the Declarant in writing, or playing music except at a volume and of a type as approved by the Declarant in writing;

(vii) conducting any auction, fire, "going out of business" or bankruptcy sale, except under conditions approved by Declarant in writing which conditions will be consistently applied to all retail tenants and occupants of the Town Center;

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(viii) committing or allowing to be committed any waste in or about the Town Center;

(ix) handling, using, generating, processing, producing, packaging, treating, storing, emitting, discharging, disposing of, or releasing any hazardous or toxic substances, materials, wastes or other objects so designated, identified or determined in any governmental requirements except in quantities and to the extent permitted by law; and

(x) any other use not in keeping with a first class shopping center or "town center" development as determined by Declarant.

Return To:

Judith A. Hill, Paralegal
Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 380
Bethesda, MD 20814

ELROI FAX SYSTEM

Date: 04/27/05
Time: 16:19:36

To: JUDITH HILL

Account Number: DC4398

FAX Number: 1-301-347-1768

From: Montgomery County Land Record Imaging System

Instrument: Images for Book 18060, Pages 302 to 349

Number of Pages (including cover page): 49

Parcel Identification Numbers:

Parcel B 02-0001-02168292
 Parcel C 02-0001-02168304
 Parcel Q 02-0001-03312144
 Parcel R 02-0001-03312155
 Parcel S 02-0001-03312166
 Parcel U 02-0001-03379718
 Parcel V 02-0001-03411490
 Parcel W 02-0001-03411502

Title Insurer: None

MONTGOMERY COUNTY, MD
APPROVED BY me

JUN 20 2011

\$ n/a RECORDATION TAX PAID
 \$ n/a TRANSFER TAX PAID

FILED
 LORETTA E. KNIGHT
 CLERK'S OFFICE
 MONTGOMERY CO. MD.

2011 JUN 20 P 2:40

AMENDMENT TO DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS

THIS AMENDMENT TO DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS (the "Amendment") is made this 13th day of June, 2011, by **BELLEMEAD DEVELOPMENT CORPORATION**, a Delaware corporation (the "Declarant") having an address of P.O. Box 1615, Warren, New Jersey 07059.

RECITALS

R-1. Declarant executed that certain Declaration of Restrictions, Covenants and Easements dated May 4, 2000, and recorded May 4, 2000, among the Land Records of Montgomery County, Maryland, in Liber 18060 at Folio 302 (the "Declaration") pursuant to which Declarant established the Germantown Town Center East (the "Town Center") on certain property more particularly described in the Declaration.

R-2. Section 13.13(c) of the Declaration provides that the Declarant may unilaterally execute and record a corrective amendment or supplement to the Declaration to correct errors or omissions.

R-3. The Declaration failed to include a provision for an Owner to modify its address for notices.

R-4. Declarant desires to amend Section 12.2 of the Declaration for the sole purpose of including a provision to allow an Owner to modify its address for notices from time to time, and to include a new address for Declarant.

IMP FD SURE 20.00
 RECORDING FEE 20.00
 TOTAL 40.00
 REST NO. 100167
 LEK MAD BIK # 5305
 JUN 20, 2011 02:30 PM

NOW, THEREFORE, The Declarant declares as follows:

1. **Recitals; Definitions.** The recitals set forth above are incorporated herein by. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

PLEASE RETURN TO:
Lerch, Early & Brewer Chartered
3 Bethesda Metro, Suite 460
Bethesda, MD 20814-5367
Attn: Judith A. Hill, Paralegal

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2. **Notices.** Section 12.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 12.1. Addresses.

Each Owner, within ten (10) days after having been granted its interest in a Parcel shall deliver to the other Owners a notice setting forth the address to which notices or communications may be sent pursuant to this Declaration, and at any time upon request shall deliver a list of such addresses to any Owner requesting the same. Each Owner may change its address for notices by providing notice of the new address to the other Owners in accordance with Section 12.1 above. Declarant's current address is as follows:

If to Declarant: Bellemead Development Corporation
15 Mountain View Road
P1-020
P.O. Box 1615
Warren, New Jersey 07059
Attn: Adrian P. Sloomaker, SVP
Fax: 908-903-3820

with a copy to: Bellemead Development Corporation
15 Mountain View Road
P1-020
P.O. Box 1615
Warren, New Jersey 07059
Attn: Legal Department
Fax: 908-903-3820

And

Capstone Realty, Ltd.
11 Stanmore Court
Potomac, Maryland 20854
Attn: Peter Henry
Fax: (301) 654-1768

And

Lerch, Early & Brewer, Chartered
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814
Attn: Robert G. Brewer, Jr., Esquire
Fax: (301) 347-1772

3. **No Further Modification.** Except as amended hereby, the Declaration shall be and remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has executed this Amendment as of the day and year first above written.

DECLARANT:

BELLEMEAD DEVELOPMENT CORPORATION,
a Delaware corporation

Witness:

By: ADRIAN P SLOOTMAKER
Name: ADRIAN P SLOOTMAKER
Title: SR VP

STATE OF NEW JERSEY :
: ss.
COUNTY OF SOMERSET :

On the 13th day of June, 2011, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Adrian P. Sloomaker, who acknowledged himself/herself to be the Senior vice President of **Bellemead Development Corporation**, a Delaware corporation, and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.

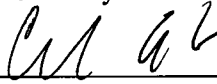
[NOTARIAL SEAL]

My Commission Expires:

Cathleen J. Trangone
Notary Public

[**Cathleen J. Trangone**]
Notary Public of New Jersey
Commission Expires
5/15/2015]

I HEREBY CERTIFY that this instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.



Cindi E. Cohen, Attorney

AFTER RECORDATION PLEASE RETURN TO:

Judith A. Hill, Paralegal
Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814
301-986-1300

Parcel Identification Numbers:

Parcel B 02-0001-02168292
Parcel C 02-0001-02168304
Parcel Q 02-0001-03312144
Parcel R 02-0001-03312155
Parcel S 02-0001-03312166
Parcel U 02-0001-03379718
Parcel V 02-0001-03411490
Parcel W 02-0001-03411502

State of Maryland Land Instrument Intake Sheet

[] City [X] County: Montgomery

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation, and the County Finance Office only. (Type or Print in Black Ink Only All Copies Must Be Legible)

1 Type(s) of Instruments () Check Box if Addendum Intake Form is Attached. Deed Mortgage Amend/Declaration Other
2 Conveyance Type Improved Sale Unimproved Sale Multiple Accounts Not an Arms-Length Sale
3 Tax Exemptions (if Applicable) Recordation Document not subject to recordation/transfer taxes. State Transfer

4 Consideration and Tax Calculations Table with columns for Purchase Price/Consideration, Any New Mortgage, Balance of Existing Mortgage, Other, Full Cash Value, Finance Office Use Only, Transfer and Recordation Tax Consideration, Transfer Tax Consideration, Less Exemption Amount, Total Transfer Tax, Recordation Tax Consideration, TOTAL DUE.

5 Fees Table with columns for Amount of Fees, Recording Charge, Surchage, State Recordation Tax, State Transfer Tax, County Transfer Tax, Other, Doc. 1, Doc. 2, Agent, Tax Bill, C.B. Credit, Ag. Tax/Other.

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i). District Property Tax ID No.(1) Grantor Liber/Folio Map Parcel No. Var. LOG

7 Transferred From Doc. 1 - Grantor(s) Name(s) Bellemead Development Corporation Doc. 2 - Grantor(s) Name(s)

8 Transferred To Doc. 1 - Grantee(s) Name(s) Doc. 2 - Grantee(s) Name(s) New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed Doc. 1 - Additional Names to be Indexed (Optional) Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information Instrument Submitted By or Contact Person Name: Judith A. Hill, Paralegal Firm: Lerch, Early & Brewer, Chartered Address: 3 Bethesda Metro Center Suite 380 Bethesda, Maryland 20814 Phone: 301-986-1300

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER Assessment Information Will the property being conveyed be the grantee's principal residence? Does transfer include personal property? Was property surveyed? If yes, attach copy of survey (if recorded, no copy required)

Assessment Use Only - Do Not Write Below This Line Terminal Verification Agricultural Verification Whole Part Tran. Process Verification Transfer Number: Date Received: Deed Reference: Assigned Property No.: Year Land Buildings Total Geo. Zoning Use Town Cd. Man. Grid Parcel Ex. St. Sub. Plat Section Ex. Cd. Block Lot Occ. Cd.

REMARKS:

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