



**Revised Staff Report: Limited Site Plan Amendment 81999001F, Germantown
 Town Center – Panera Bread**

ITEM #: _____

MCPB HEARING DATE: June 2, 2011

DATE:

REPORT DATE: May 23, 2011

TO: Montgomery County Planning Board

VIA: John Carter, Chief *JAC*
 Richard Weaver, Supervisor
 Area 3 – Site Plan Review

FROM: Molline Smith, Senior Planner
 301.495.4573
 Molline.Smith@mncppc-mc.org



APPLICATION DESCRIPTION: The site is located within the Germantown Town Center on Parcel D; approximately 0.11 acres of land originally zoned TS (Town Sector). The Applicant is requesting to construct a 5,097 square foot restaurant; which is a reduction to the building square footage approved on the certified site plan by 3 square feet.

APPLICANT: L2M, Inc.

FILING DATE: January 21, 2011

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY: This application was originally accepted as an administrative amendment on January 21, 2011. A vacant pad site was created with the 1999 plan approvals with a building footprint for a restaurant/retail use. A new tenant (Panera Bread) is now proposing to occupy the pad site with a more defined building footprint. Due to opposition by the adjacent business owners with regards to the existing parking conditions; a public hearing was scheduled (Appendix D). MNCPPC Staff has confirmed with MCDPS that the total number of existing parking spaces is approximately 590 total spaces (including 172 Park & Ride spaces); which creates a shortage of 9 spaces. The Applicant must meet the minimum requirement of 599 parking spaces (per the conditions of approval) prior to the issuance of any building permits.

Approval signatures

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STAFF RECOMMENDATION

Staff recommends approval of site plan No. 81999001F amendment, Germantown Town Center – Panera Bread, for a 5,097 square feet building and associated parking facilities. All site development elements shown on the site plan stamped “Received” by the M-NCPPC on March 28, 2011 are required except as modified by the following conditions.

1. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 819990010 as listed in the Planning Board Resolution dated March 15, 1999, unless otherwise amended.

2. Site Plan

- a. Add site details/ site elevations regarding the loading/ dumpster areas. The details shall clearly label the proposed setbacks from pedestrian pathways, adjacent uses and parking facilities. Provide further details regarding the dumpster enclosures.
- b. Add site details regarding the seating areas (i.e. chairs, tables, trash cans, etc.). Seating areas shall be closer aligned with the building façade as to not fully block pedestrians from using the adjacent sidewalk.

3. Certified Site Plan

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

- a. Provide a signed traffic statement and/or certified verification to MCDPS and MNCPPC for the total number of existing parking spaces meet the minimum requirement of 599 total parking spaces (including 175 Park & Ride spaces and 22 handicap spaces) for Parcel D prior to the issuance of any building permits.
- b. Modify data tables and parking calculations to reflect the development and mixed use standards enumerated in the staff report.
- c. Ensure consistency of the proposed building location and parking layout between all sheets of the site plan set. The revised plans must be consistent with the requirements of the previous approvals regarding the building footprints and maximum densities permitted on the original certified site plan.
- d. Reserved parking spaces are prohibited from being included in the shared parking calculations (Section 59 E-3.1b2).

BACKGROUND INFORMATION

The subject property is located approximately 0.40 miles west of I-270 and bordered by Century Boulevard to the north, Germantown Road (MD 118) to the south, Aircraft Drive to the east, and Crystal Rock Drive to the west. Other neighboring properties in close proximity to the site include the Regal Cinemas Stadium 14 (819990010), the Germantown Police Station, the Department of Energy, and the Chevron gas station (819870490).

The Planning Board recommended approved the original site plan on November 12, 1998 for 181,900 gsf of commercial/ retail and 98,559 gsf of hotel on 24.74 acres of land zoned TS (Town

Sector). The Parcel D area consisted of 65,620 square feet of retail. The original certified site plan consisted of eight commercial/retail pad sites, seven of which are currently occupied, a village green space area (open space within a 50 foot transit easement), a public plaza, shared surface parking facilities and a Metro Transit station along Aircraft Drive (to the northeast).



Aerial Photo

The existing Metro Transit station is a destination point and major layover that typically generates increased levels of vehicular and pedestrian commuters during the weekday peak hours. The existing Park & Ride facilities are located in the center of Parcel D and were specifically dedicated to the transit use during the weekdays at certain hours of the day.

Previous Approvals

The Preliminary Plans of Subdivision approved for this development includes: 119783190, 119791210 and 119781220. On May 31, 1979; 538,000 square feet of office space was approved on 40.7 acres of land zoned I-1 as part of Plan No. 119781220.

The Development Plan G-742 (adopted October 7, 1997) established Interim and Ultimate Development Phasing schedules. The land use summary for the Interim development of Parcel D consisted of 9.47 acres of land zoned TS (Town Sector) with 65,600 square feet of retail and 599 proposed parking spaces (specifically identified in the Land Use Summary); which includes the dedication of 200 parking spaces for the Park and Ride facilities (specifically identified under the Development Plan Phasing and Dedication Commitments).

Site Plan 819990010 was approved by the Planning Board on November 12, 1998 for 181,900 gross square feet of commercial/ retail use and 98,559 gross square feet of hotel use on 24.74 acres of land zoned TS. The development program consisted of three phases (B/C, D and E/F). After the dedication of roadways and open spaces, Parcel D was permitted 63,620 square feet of commercial, retail and restaurant uses with 599 surface parking spaces. The Park & Ride facility was approved for 175 spaces per the comments of the Montgomery County Department of Transportation (MCDOT).

Site Plan 81999001A was approved administratively on April 10, 2003, for the Fairfield Inn on an existing pad site within Phases E/F. The hotel is 10,763 square foot and has 87-rooms.

Site Plan 81999001B was approved administratively on December 12, 2004, for the Bailey's Pub and Grill (currently the same operated by Green Turtle) on an existing pad site within Phase D, Parcel D.

Site Plan 81999001C was approved administratively on December 1, 2005, for the IHOP restaurant on an existing pad site within Phase E/F.

Site Plan 81999001D and 81999001E was approved by the Planning Board on September 21, 2006, for Commerce Bank (1-story, 5,100 sf.) on an existing pad site within Phase D, Parcel D. The proposed building footprint on the original site plan was reduced by 4,600 square feet, which was added to the overall green space provided.

There is no record of approvals for the other pad sites (i.e. the Chick-Fil-A, Carrabbas, Taco Bell, Rite Aid, and BB&T Bank); however, MNCPPC Staff has confirmed the approved building square footages with MCDPS Staff per the release of their respective building permits. All of which currently meet the maximum building square footages as shown on the original certified site plan (sheet S-4).

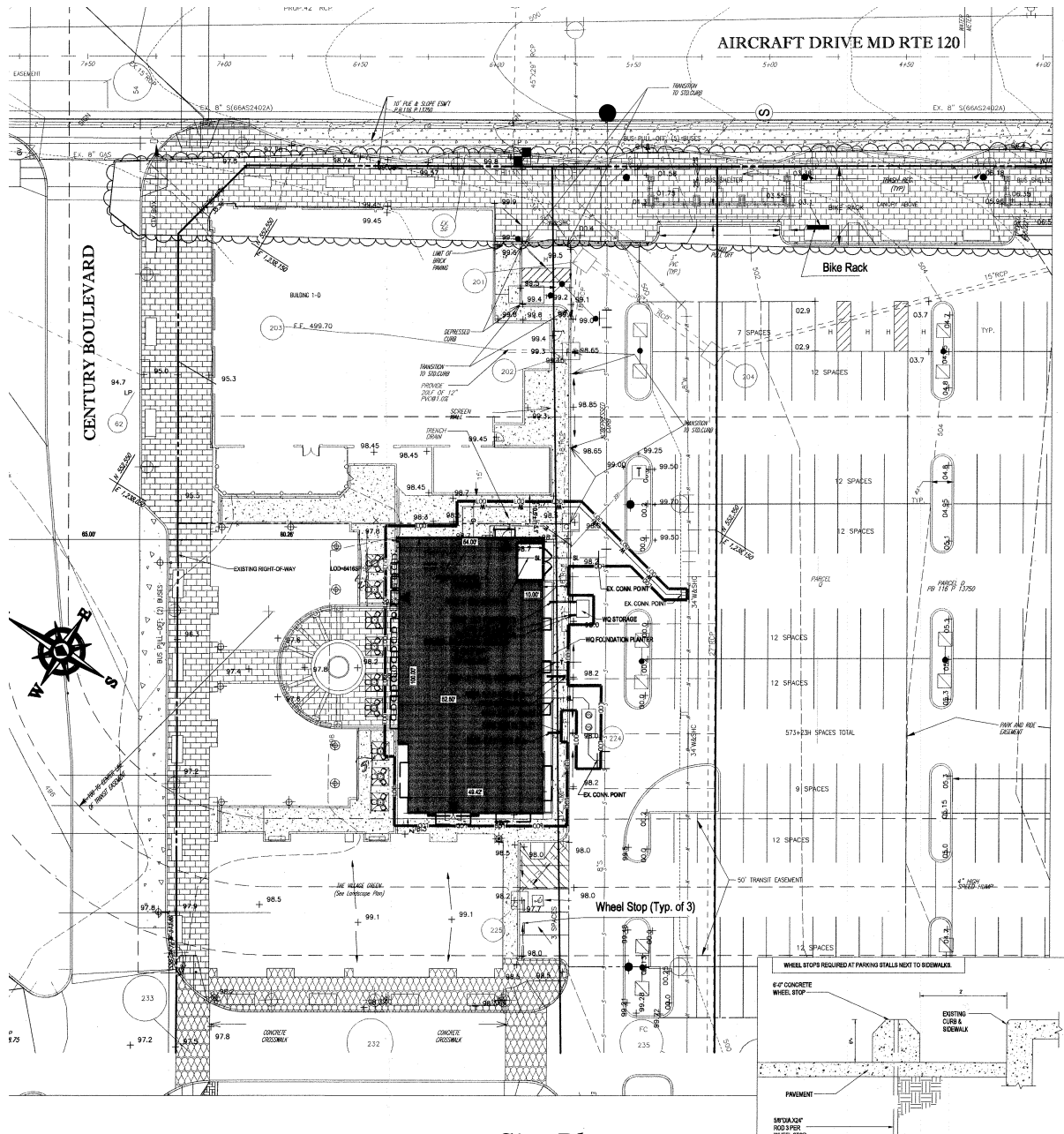
PROJECT DESCRIPTION

Proposal

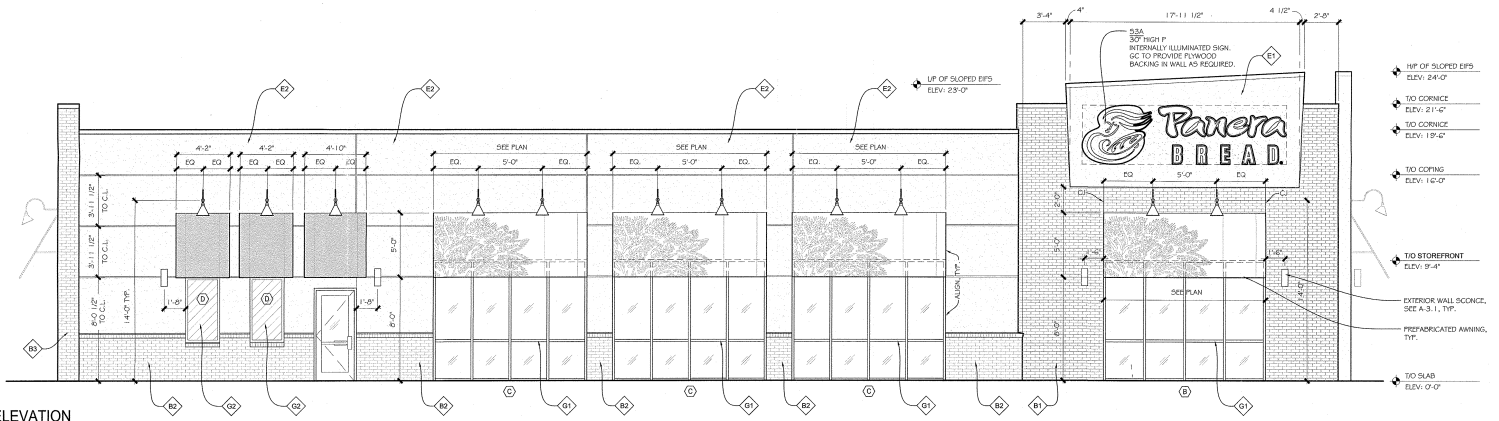
This amendment proposes to construct a building that will reduce the original building square footage specified for Building 2D of Phase D Parcel D by 3 square feet. The original site plan specified a 1-story building with a 2-story appearance at a maximum of 5,100 square feet. The proposed building has been slightly shifted 2 feet east of the 50 foot Transit Easement for a maximum of 5,097 square feet. The patron areas for the proposed building will consist of indoor

space (approximately 2,450 square feet) and outdoor seating (approximately 800 square feet) in close proximity to the existing public plaza and Village Green space area. The revised building footprint will not change the existing pedestrian and vehicular circulation systems.

The Applicant proposes no modifications to the existing lighting and landscape plans; however, according to the conditions of approval, minor enhancements will be incorporated within the existing parking facilities. The Applicant will provide signed verification that the total number of parking spaces has been fully constructed. Wheel-stops will be added to the 3 parking spaces directly abutting the 5-foot pedestrian sidewalk and the proposed building. A handicap space will be relocated in close proximity to the entrance of the building.

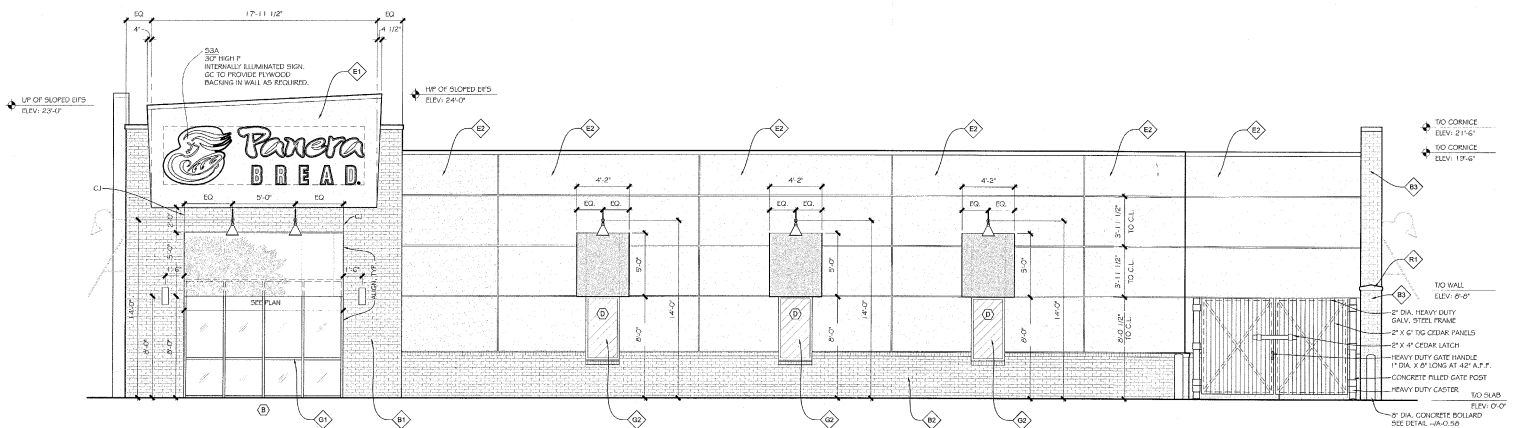


Site Plan



A4 ELEVATION
SCALE: 1/4"=1'-0"

Front Building Elevation



A1 ELEVATION
SCALE: 1/4"=1'-0"

Rear Building Elevation

The main entrance to the proposed building will front onto Century Boulevard with outdoor seating area; while loading areas will front onto the internal parking facilities.

FINDINGS

1. The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.

This site plan amendment is in general conformance with the Development Plan's Interim Development Phasing and Illustrative Land Use Plan for Parcel D with respect to the following matters discussed within the Development Plan. The sequencing and

dedications were approved with the certification of the original site plan. The Development Plan established the Interim Development Phasing in anticipation of the dedication of land for public use, the development of the arterial road systems, the development of pedestrian and bicycle circulation systems, the development of community facilities and open spaces, and the development of regional stormwater management facilities. The Ultimate Development Phasing was conceptual and mainly focused on the future redevelopment of Parcel D specifically related to the future transit development.

- a) Dedication of land to public use: A 50 foot transit easement has been dedicated and as conditioned, the 175 commuter parking spaces will be constructed. Century Boulevard has been built to accommodate the future transit. Adequate access to Metro facilities has been provided along Aircraft Drive.
- b) Development of the arterial road system: The sections of Century Boulevard and Crystal Rock Drive and Aircraft Drive are fully constructed.
- c) Development of pedestrian and bicycle circulation systems: The pedestrian and bicycle circulation systems, adjoining the property, are fully constructed.
- d) Development of community facilities and open space: There are no community facilities proposed nor required for this project; however, the Village Green space has been dedicated and is currently maintained by the developer. The open space is located in close proximity to the proposed building within the 50 foot transit easement.
- e) Development of regional stormwater management facilities: There are no regional stormwater management facilities proposed nor required for this project.

Comparison of Development Plan Standards for Parcel D

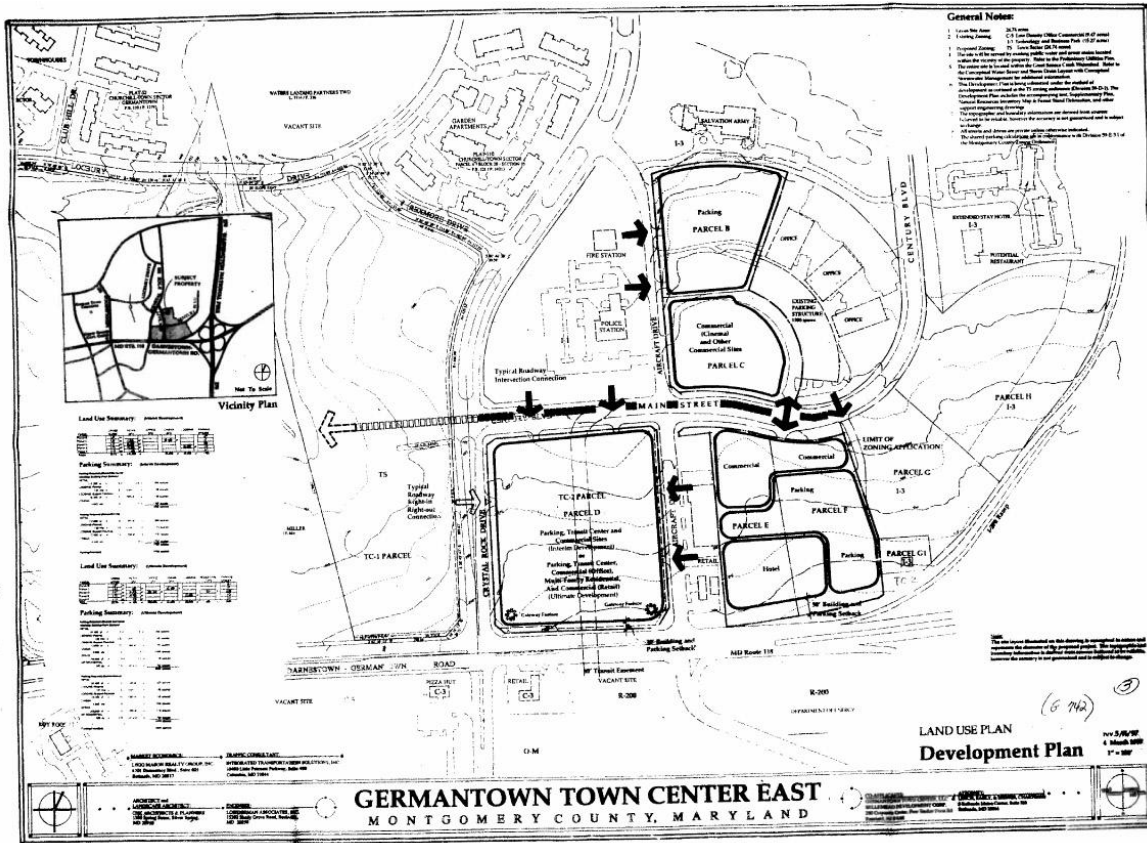
Phase D, Parcel D	Development Plan	Site Plan 819990010	Site Plan 81999001F
Max. Retail Density Permitted (sf.)	65,600 sf.	63,620 sf.	63,620 sf.
Min. Green Space (% of lot)	10%	22.2%	22.2%
Size of Parcel (ac.)	9.47 ac.	9.5 ac.	9.5 ac.
Max. FAR	N/A	0.5	0.5
Total Required Parking			
Standard Spaces	599	599	599
Handicap Spaces	N/A	22 spaces	22 spaces
Park & Ride	200	175	175

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 proposed use is allowed in the TS Zone and the site plan fulfills the purposes of the zone by providing adequate access to transit and mixed use commercial retail uses.

As the project data table on page 9 indicates, the site plan meets all of the development standards of the zone. With respect to building height, setbacks, and density the proposed development is under all the maximum standards allowed. With respect to the green space area, because Building 3D (per the original site plan) was never constructed Parcel D Phase D substantially exceed the 10% requirement.

The subject site is zoned TS (Town Section). It is the purpose of this zone to encourage and facilitate desirable development of this kind, it is further the purpose to eliminate some of the specific restrictions, as in other zoning categories, the height, bulk and arrangement of the buildings and the location of the various land uses; to provide for more flexibility in development; and to require that all development be in accordance with a plan meeting the requirements of this zone, and the development plan provisions of Division 59 D-1. It is the intent of this zone to achieve flexibility of design, integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the standards permitted by right and required in conventional zoning categories.



Development Plan (G-742)

The following data tables indicate the proposed development's compliance with the Zoning Ordinance and the Development Plan. Only the standards that are affected by the proposed amendment are listed; a comprehensive modified project data table is included on the certified site plan.

Project Data Table for the TS Zone

Development Standard	Permitted/Required	Proposed for Approval
Building Height (feet)	N/A	28 feet
Building Setbacks (feet)		
Front (Century Boulevard)	N/A	80.26 feet
Side (Crystal Rock Drive)	N/A	328.09 feet
Site (Aircraft Drive)	N/A	135.88 feet
Rear (Germantown Road)	N/A	511.53 feet
Min. Green Area (% of lot)	10% (37,026 sf.)	22% (82,272 sf.)
Max. Floor Area Ratio (FAR)	¹ 0.5	0.14
Max. Building Area (square feet)	² 5,100	5,097
Parcel D Min. Parking Spaces	³ 526 spaces	599 spaces

Parking Standards

The internal surface parking facilities are shared per the requirements of the Declaration of Restrictions Covenants and Easements (section 2.2, Appendix C). Metro access has been provided along Aircraft Drive (MD 120) and the dedicated Park & Ride spaces are located towards the center of the site. The on-street parking facilities have been removed from the site plan, due to comments from Fire and Rescue Services. However, the on-street parking spaces are not included in the overall shared parking agreement. The existing parking facilities will meet the requirements of the zone, specifically noted in section 59 E-3.1 related to mixed use off-street parking.

Staff has verified with MCDPS a minor parking shortage of approximately 9 spaces including 3 Park & Ride spaces. Upon meeting the conditions of approval, the subject site will provide adequate parking per the requirements of the Development Plan and the shared parking agreement.

¹ The total floor area of the center 51,850 sf.

² Original building footprint approved with the certified site plan 819990010.

³ The maximum number of spaces needed per the shared parking requirements.

⁴ The maximum number of parking spaces needed based the building square footage of the office and retail uses and

² Original building footprint approved with the certified site plan 819990010.

³ The maximum number of spaces needed per the shared parking requirements.

Parcel D Required Parking

Land Use	Approved BLDG sq. ft.	Constructed BLDG sq. ft. (per Notes from DPS)	Patron Area	Required Parking Calculations	Shared Parking Calculations
Mixed Use Bank/ Office					
BB&T Bank	3,905 sf.	3,500 sf.	N/A	11 spaces	1 spaces
TD Bank	9,700 sf.	5,100 sf.	N/A	15 spaces	2 space
Totals	13,605 sf.	8,600 sf.	N/A	26 spaces	3 spaces
Mixed Use Retail					
Rite Aid	11,000 sf.	10,901 sf.	N/A	55 spaces	55 spaces
Restaurants					
Green Turtle	10,400 sf.	9,450 sf.	5,000 sf.	125 spaces	125 spaces
Outdoor			1,200 sf.	18 spaces	18 spaces
Panera Bread	5,100 sf.	5,097 sf.	2,450 sf.	61 spaces	61 spaces
Outdoor			800 sf.	12 spaces	12 spaces
Carrabbas	6,742 sf.	6,655 sf.	3,000 sf.	75 spaces	75 spaces
			400 sf.	6 spaces	6 spaces
Chick-Fil-A	3,873 sf.	3,822 sf.	1,600 sf.	40 spaces	40 spaces
Taco Bell	2,800 sf.	2,637 sf.	1,250 sf.	31 spaces	31 spaces
Totals	28,915 sf.	27,661 sf.	15,700 sf.	368 spaces	368 spaces
Park & Ride	N/A	N/A	N/A	175 spaces	N/A
Site Totals	53,520 sf.	47,162 sf.	15,700 sf.	624 spaces	⁴601 spaces

The shared parking total (601 spaces) is assuming that every parking space for each of the uses (including the Park & Ride facility) is completely occupied. However; the Shared Parking Requirements chart below demonstrates how the parking facilities are currently intended to be used. The Development Plan established a minimum number of parking spaces (599 spaces); which includes the parking need for the Park & Ride facilities.

In accordance with the current Mixed Uses standards for the shared parking agreement; the Park and Ride facilities would be categorized under the “All Other Uses” and specifically defined as bus depot and other passenger terminal facilities. A maximum number of 100 spaces are required to be provided at all times. During the peak hours of the day there should be approximately 73 spaces remaining for non-commuter usage.

⁴ The maximum number of parking spaces needed based the building square footage of the office and retail uses and the patron area of the restaurants.

Parcel D Shared Parking Requirements (section 59E-3.1 Mixed Uses)

Land Use	Total No. of Spaces	Day 6am-6pm	Evening 6pm-12am	WKD Days 6am-6pm	WKD Nights 6pm-12am	Nights 12am-6am
Restaurant	368	50% (184)	100% (368)	100% (368)	100% (368)	10% (37)
Mixed Use Retail	55	60% (33)	90% (50)	100% (55)	70% (40)	5% (3)
Office (Banks)	26	100% (26)	10% (3)	10% (3)	65% (1)	5% (1)
Park & Ride	175	⁵ 100 % (175)	⁶ 100	100	100	100
Totals	624 spaces	418 spaces	521 spaces	526 spaces	509 spaces	141 spaces
No. Parking Spaces	599 spaces	599 spaces	599 spaces	599 spaces	599 spaces	599 spaces
Extra Parking	-25 spaces	181 spaces	78 spaces	73 spaces	90 spaces	458 spaces

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

The location of the proposed building is directly adjacent to a public plaza and the Village Green space, which is appropriate for the character envisioned by the Master Plan and Development Plan. Easy access is provided to the Metro facilities (bus stops) along Century Boulevard, the commercial/ retail uses, the adjoining sidewalks and the surface parking facilities. The main access point and the outdoor seating area front onto Century Boulevard. The loading/ dumpster location is compatible with the existing conditions of the neighboring property (currently occupied by Green Turtle). The location of the building is adequate, and it does not pose any safety concerns on the site.

This amendment does not propose to modify the existing vehicular and pedestrian circulation systems. The existing pedestrian circulation systems adequately and efficiently integrate this site into the surrounding area. Wheel stops will be added to the parking spaces that are directly adjacent to the pedestrian sidewalks to ensure the

⁵ Per the conditions of the Park and Ride Lot Memorandum of Understanding and Declaration of Easement, the Park & Ride facilities are only available from 6am to 11am during the weekday. However; the applicant has over estimated the timeframe to account for the patrons that commute to work.

⁶ The current Montgomery County Zoning Ordinance specifies 100 spaces for railroad stations, bus depots or other passenger terminal facilities (page 59 E-29). The Park & Ride spaces would qualify as All Other Uses in the Mixed Uses shared parking agreement (page 59 E-11); therefore

maximum width is maintained. A handicap space will be located in close proximity to the building access point.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed building is compatible with the adjacent and similar uses in the vicinity, and fulfills the vision of the Development Plan and approved certified site plans. The structure itself is in scale with the nearby buildings and is located such that it will not adversely impact existing or proposed adjacent uses.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The amendment does not propose any amendment to the approved forest conservation plans and/or the related stormwater management facilities.

COMMUNITY CORRESPONDENCE

The following issues were presented to Staff within the response letters (see Appendix D). Although, Staff met with the Applicant and Green Turtle (business owner) in an effort to resolve these issues prior to establishing a public hearing date; no resolution has been communicated to MNCPPC Staff as of yet.

- 1- There is a current shortage of parking for the existing businesses.

The TS Zones are intended to meet requirements directly associated with self-sufficiency, diversity, density, transportation facilities, and public utilities. The transportation facilities adequately serve the anticipated total population planned for future construction. The existing parking facilities are shared with other commercial/retail uses. Parcel D shall have a total of 599 spaces (per the conditions of approval); which will include 22 handicap spaces and 175 Park & Ride spaces. Reserved spaces for the specific use of the businesses are prohibited from being calculated in the total number of shared parking spaces as they are not specified in the original agreement and/or are not in accordance to the Montgomery County Zoning Ordinance (section 59E-3.1b2). The shared parking calculations specify that the peak hours of the day occur on the weekends from 6am to 6pm. During this timeframe 526 parking spaces are required for the restaurant, retail and office uses. The Park & Ride facilities are only available during the weekdays from 6am to 6pm (per the Park and Ride Lot Memorandum of Understanding and Declaration of Easement); which will allow the other uses to share the excess of 73 parking spaces.

- 2- Discrepancies/ errors in the building square footages and in the parking calculations.

Staff has confirmed the existing building square footages on the subject property with the MCDPS. The approved building square footages and building footprints labeled on the

proposed site plan will be consistent with the maximum densities previously approved on the certified site plans; however, the parking calculations are based on the existing and proposed building square footages and the indoor/ outdoor square footage of patron areas; with the exception of the Park & Ride facilities. In adherence to the parking agreement, the parking calculations have been rounded up to ensure that maximum capacity does not exceed the minimum requirements for each of the uses. None of the existing and proposed building square footages exceed the allowable densities permitted by the certified site plan. The development of the proposed building, Parcel D has ⁷16,458 square feet remaining.

Staff has confirmed that there is a discrepancy in the total number of required parking spaces (599 spaces including 175 Park & Ride spaces) with the total number of spaces provided in the field (590 space including 172 Park & Ride spaces). Prior to the issuance of any building permit the Applicant will need to provide certified verification to MNCPPC and DPS; which demonstrates that this requirement has been fulfilled.

3- Regulation of the existing parking usage and future phasing for the existing facilities.

The regulation of the Park & Ride facilities are currently enforced through the use of restrictive signage and pavement markings. Patrons that violate these restrictions may be towed or ticketed. The parking schedule is subject to change depending on the time of day. During the weekend and evening hours (after 6pm), every spaces has the potential to be utilized by the restaurants and retail uses.

The Interim Phasing for the Development Plan and the certified site plans for Parcel D established the need to provide convenient access to Metro facilities, adequate pedestrian circulation systems, and the dedication of a 50-foot Transit Easement through the center of the property. The Ultimate Phasing of the Development Plan was also specifically mentioned; however, it is conceptual and linked to the market conditions. Any proposed development shall reevaluate the programming and funding of the Corridor Cities Transit Easement Program. The future development of the Corridor Cities Transitway shall also consider; transit facilities, structured parking, and accommodations for shared rider programs.

Staff has received other correspondence related to the proposed location of the loading/ dumpster areas and the importance of the Metro Transit facilities (via phone calls and emails). Staff has contacted each of the senders and through further explanation of the compatibility findings and the justifications (listed above); Staff was able to reach an understanding with each of the senders.

⁷ The original site plan (819990010) approved 63,620 sq. ft. of commercial/ retail spaces. Based on the notes from DPS, 47,162 sq. ft. will be constructed per the approval of this amendment (63,620 sq. ft. – 47,162 sq. ft. = 16,458 sq. ft.).

CONCLUSION

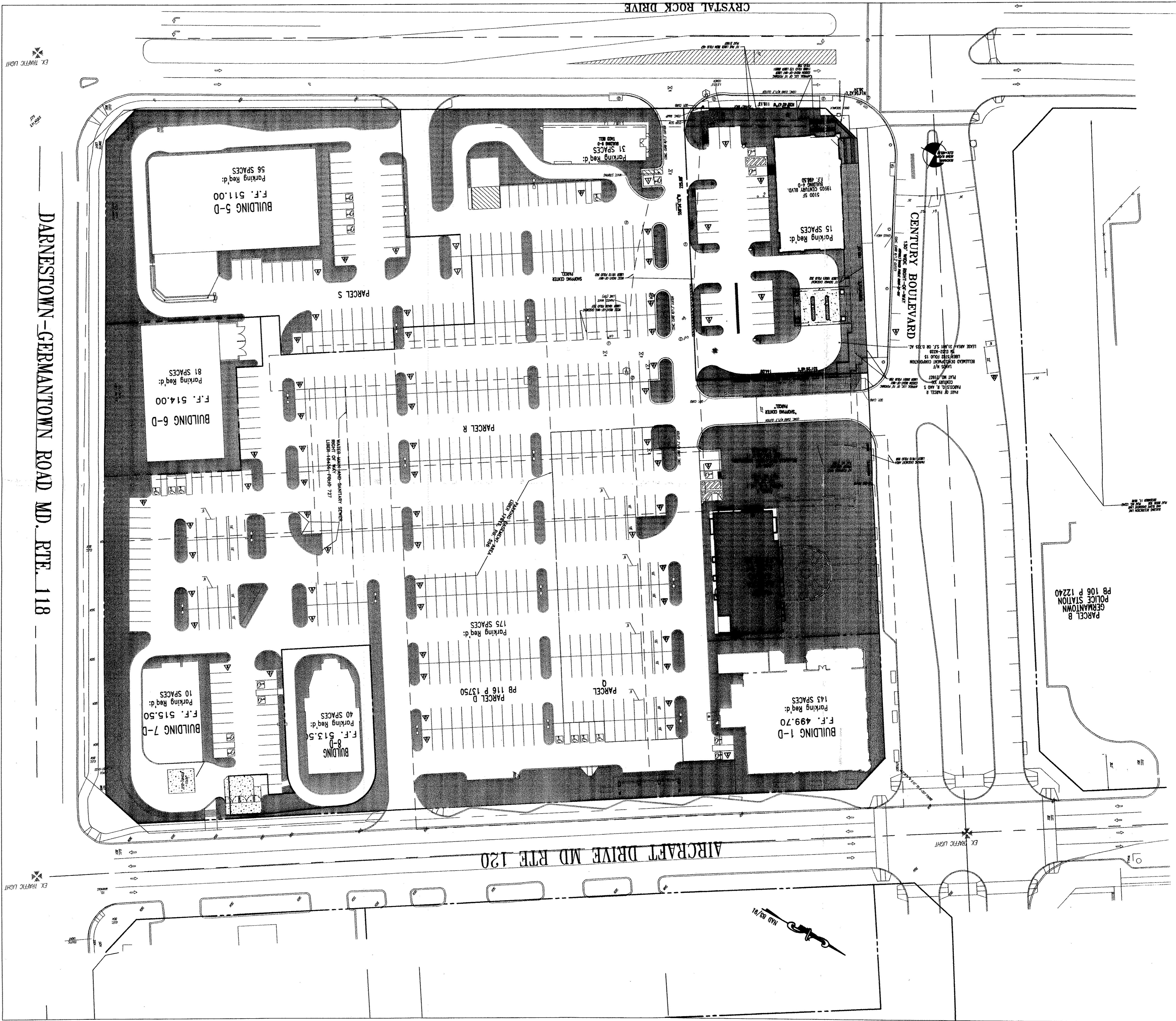
The requirements of the shared parking agreement are in accordance with the certified site plan and the mixed-use requirements of the zone; and adequate parking will be provided. The proposed modifications to the site plan do not alter the overall design character of the Development Plan in relation to the original approval. The site remains compatible with existing and proposed development directly adjacent to the site. Furthermore, these modifications do not impact the efficiency, adequacy, or safety of the site with respect to vehicular and pedestrian circulation, open space, landscaping, or lighting.

APPENDICES

- A. Submitted Site Plans & Building Elevations
- B. Letter of Justification (dated March 24, 2011)
- C. Parking Agreement (signed May 2, 2000, effective May 4, 2000)
- D. Community Correspondence

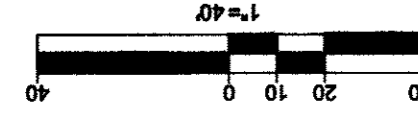
APPENDIX A (Submitted Site Plan & Building Elevations)

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REVIEW ALL THE DIMENSIONS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE ADJACENT PROPERTY OWNERS AND THE LOCAL COMMUNITY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE ADJACENT PROPERTY OWNERS AND THE LOCAL COMMUNITY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE ADJACENT PROPERTY OWNERS AND THE LOCAL COMMUNITY.



DARNESTOWN-GERMANTOWN ROAD MD, RTE. 118

Approximate Site Area: 8.5 Acres
Green Space: 82,272 S.F. (22.2%)



PROFESSIONAL CERTIFICATION
I, EMMETT B. BOHLER, HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME AND UNDER THE CLOSE PERSONAL SUPERVISION OF ME.

LICENSE NO. 29889, EXPIRATION DATE 2022/12

BOHLER ENGINEERING
18900 SCIENCE DRIVE, SUITE 104
GERMANTOWN, MD 20874
PHONE: (301) 808-4500
WWW.BohlerEngineering.com

PROJECT: GERMANTOWN TOWN CENTER EAST
FOR: PANERA BREAD
LOCATION OF SITE: 19866 CENTURY BLVD, MONTGOMERY COUNTY, GERMANTOWN, MD 20874

PROJECT NO.: BH2020K
DRAWN BY: AMW
CHECKED BY: ESK
DATE: 02/24/11
SCALE: 1"=40'
CAD ID.: GSEKX

NOT APPROVED FOR CONSTRUCTION

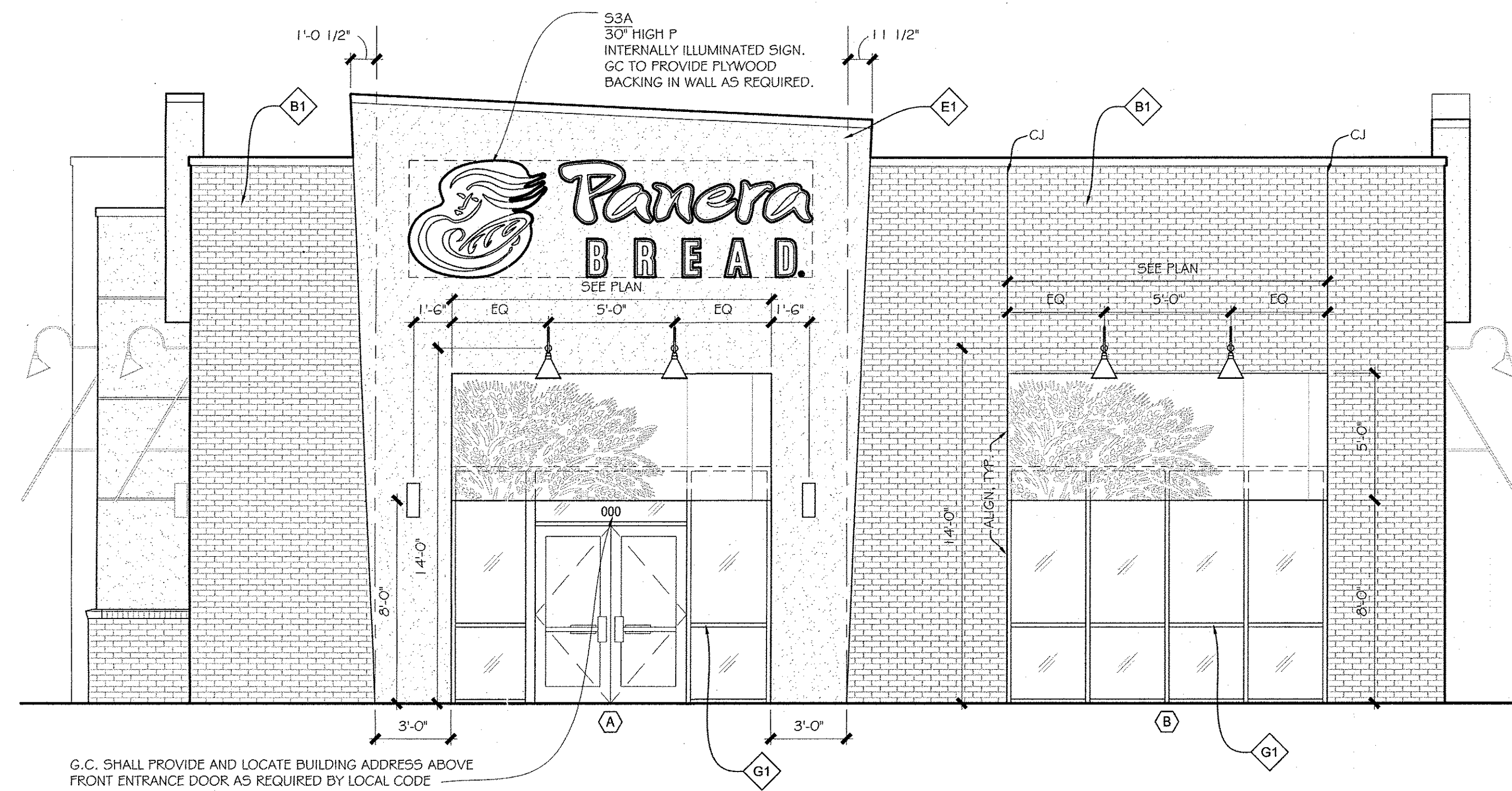
THE FOLLOWING STATES REQUIRE NOTIFICATION BY THE CONTRACTOR OF ANY PERSON PERFORMING WORK IN THIS STATE AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE ADJACENT PROPERTY OWNERS AND THE LOCAL COMMUNITY.

REVISIONS

REV	DATE	COMMENT	BY

BOHLER ENGINEERING
CORPORATE OFFICE:
WARREN, NJ
OPERATIONS:
SPRING LAKE, NJ
TOWSON, MD
FARMINGTON, CT
PORTLAND, ME
PHILADELPHIA, PA

CIVIL & CONSULTING ENGINEERS
PROJECT MANAGERS
ENVIRONMENTAL CONSULTANTS
LANDSCAPE ARCHITECTS



G.C. SHALL PROVIDE AND LOCATE BUILDING ADDRESS ABOVE FRONT ENTRANCE DOOR AS REQUIRED BY LOCAL CODE

- H/P OF SLOPED EIFS
ELEV: 24'-0"
- T/O CORNICE
ELEV: 21'-6"
- T/O STOREFRONT
ELEV: 9'-4"
- T/O SLAB
ELEV: 0'-0"
- L/P OF SLOPED EIFS
ELEV: 23'-0"

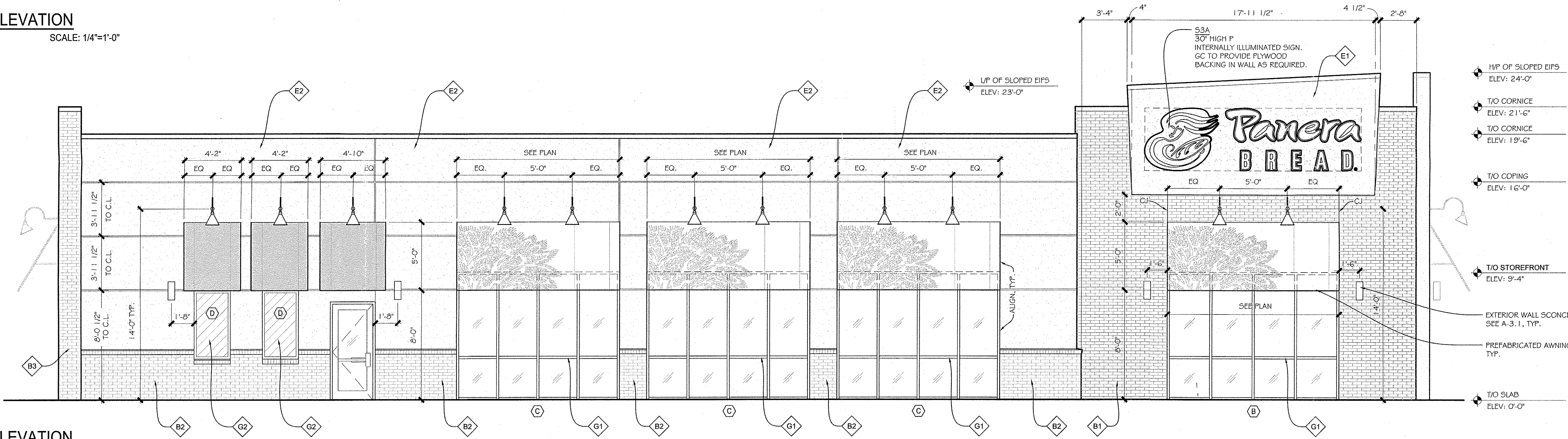
GENERAL NOTES:

- A. GC SHALL PROVIDE PLYWOOD BLOCKING FOR ALL SIGNAGE & AWNINGS.
- B. GC TO PROVIDE CONCAVE MORTAR JOINT
- C. MORTAR COLOR FOR ALL BRICK SHALL BE LATICRETE #40
- D. PAINT UTILITY PANELS/METRO BOXES ON/AROUND BUILDING, COLOR TO MATCH ADJACENT WALL FINISH. CONFIRM REQUIREMENTS W/ UTILITY.
- E. ALL EXTERIOR SIGNAGE TO BE UNDER SEPARATE PERMIT.

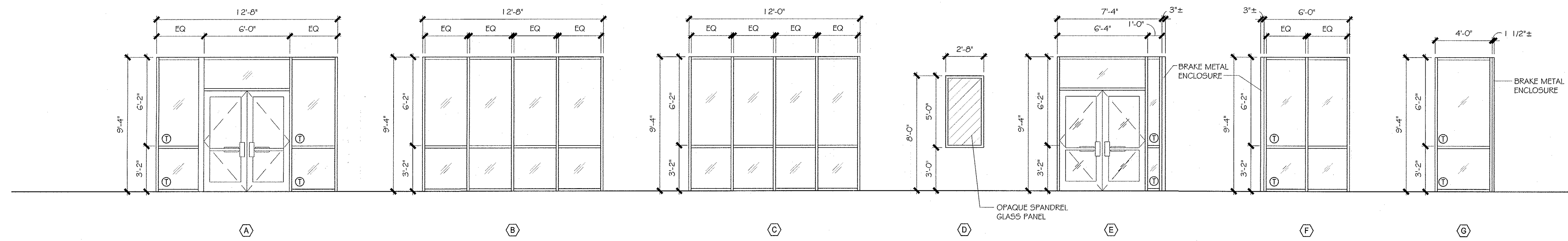
EXTERIOR MATERIALS:

- INDICATED BY SYMBOL
- MASONRY ENDICOTT MODULAR BRICK ROSE BLEND - VELOUR FINISH
 - MASONRY ENDICOTT MODULAR BRICK DESERT IRONSPOT LIGHT - VELOUR FINISH
 - MASONRY ENDICOTT MODULAR BRICK DARK IRONSPOT - SMOOTH FINISH
 - EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE COLOR: BENJAMIN MOORE HC-122 GR T BARRINGTON GREEN.
 - EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE COLOR: BENJAMIN MOORE 2154-30 BUTTERCUP
 - EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE COLOR: BENJAMIN MOORE HC-21 HUNTINGTON BRIDGE
 - EIFS SHALL MATCH ADJACENT BRICK COLOR
 - CLEAR ANODIZED ALUMINUM STOREFRONT W/ 1" INSULATED GLAZING.
 - CLEAR ANODIZED ALUMINUM STOREFRONT W/ 1" INSULATED SPANDREL GLASS

A8 ELEVATION
SCALE: 1/4"=1'-0"



A4 ELEVATION
SCALE: 1/4"=1'-0"



A1 STOREFRONT DETAILS
SCALE: 1/4"=1'-0"



REV. #	ISSUE / DESCRIPTION	DATE
PHASE 1 SUBMISSION		12/09/10
95% REVIEW		02/09/11
PERMIT		02/09/11
BID		02/09/11

SHEET TITLE:
EXTERIOR ELEVATIONS

DRAWN BY: ACP	REVIEWED BY: SR
PROJECT # 10.219	
SHEET #	

GENERAL NOTES:

- A. GC SHALL PROVIDE PLYWOOD BLOCKING FOR ALL SIGNAGE & AWNINGS.
- B. GC TO PROVIDE CONCAVE MORTAR JOINT
- C. MORTAR COLOR FOR ALL BRICK SHALL BE LATICECRETE #40
- D. PAINT UTILITY PANELS/METRO BOXES ON/AROUND BUILDING, COLOR TO MATCH ADJACENT WALL FINISH. CONFIRM REQUIREMENTS W/ UTILITY.
- E. ALL EXTERIOR SIGNAGE TO BE UNDER SEPARATE PERMIT.

EXTERIOR MATERIALS:

INDICATED BY SYMBOL

- MASONRY ENDICOTT MODULAR BRICK ROSE BLEND - VELOUR FINISH
- MASONRY ENDICOTT MODULAR BRICK DESERT IRONSPOT LIGHT - VELOUR FINISH
- MASONRY ENDICOTT MODULAR BRICK DARK IRONSPOT - SMOOTH FINISH
- EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE. COLOR: BENJAMIN MOORE HC-122 GRIT BARRINGTON GREEN.
- EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE. COLOR: BENJAMIN MOORE 2154-30 BUTTERCUP
- EIFS - MANUFACTURER: PAREX FINISH: SAND COARSE TEXTURE. COLOR: BENJAMIN MOORE HC-21 HUNTINGTON BRIDGE
- EIFS SHALL MATCH ADJACENT BRICK COLORS
- CLEAR ANODIZED ALUMINUM STOREFRONT W/ 1" INSULATED GLAZING.
- CLEAR ANODIZED ALUMINUM STOREFRONT W/ 1" INSULATED SPANDREL GLASS
- PRECAST CONCRETE CAP



L2M
811 Cromwell Park Drive, Suite 113
Cromwell Business Park at DWT
Glen Burnie, Maryland 21061
L2M@l2m.com
Phone: 410.863.1302
Fax: 410.863.1308

L2M
ARCHITECTS

I certify that these documents were prepared or approved by me, and that I am a duly licensed architect under the laws of the State of Maryland Lic. 9839 Exp. 07 December 2011.



LEMEK, L.L.C.
8184 LARK BROWN ROAD
ELK RIDGE, MD 21075
(443) 552-0700

LEMEK, L.L.C.
ARCHITECT
CAFE #3772
GERMANTOWN, MARYLAND

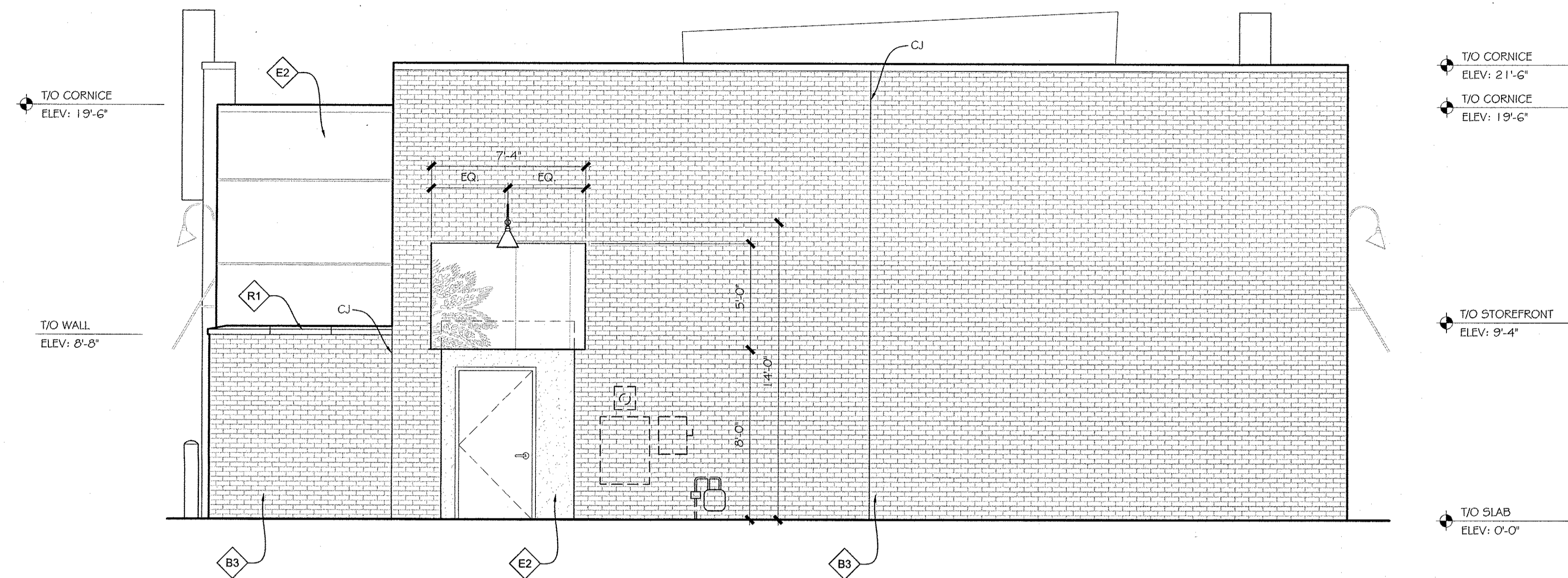
REV. #	ISSUE / DESCRIPTION	DATE
PHASE 1 SUBMISSION		12/09/10
95% REVIEW		02/09/11
PERMIT		02/09/11
BD		02/09/11

SHEET TITLE:
EXTERIOR ELEVATIONS

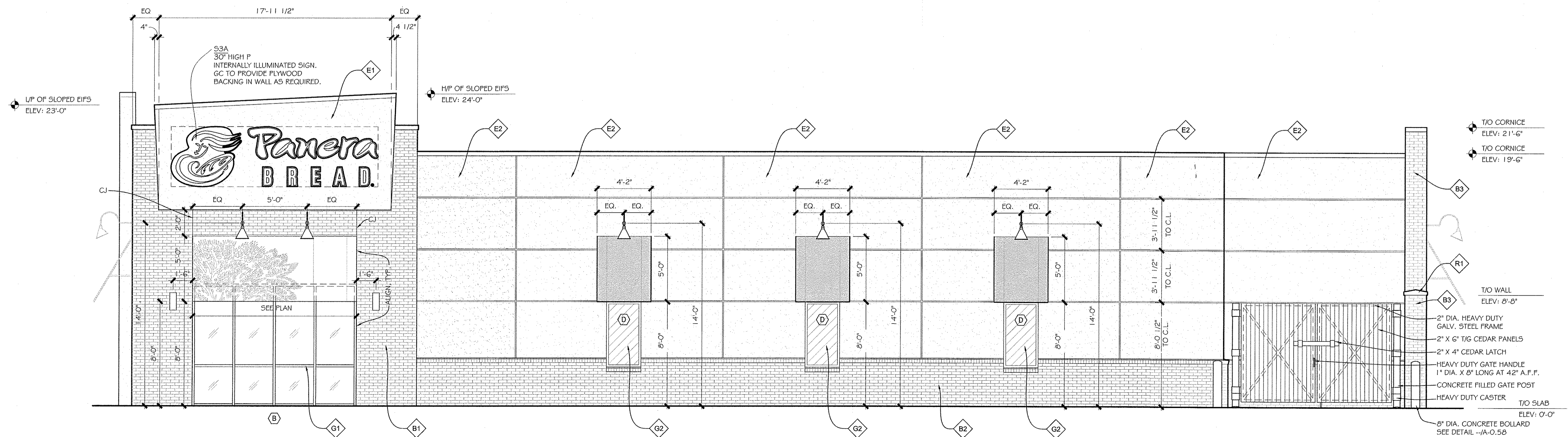
DRAWING DATE:
DRAWN BY: ACP
REVIEWED BY: SR
PROJECT #
10.219
SHEET #

A-5.2

FILE NAME:
10.219 - A-5.2 .dwg



A7 ELEVATION
SCALE: 1/4"=1'-0"



A1 ELEVATION
SCALE: 1/4"=1'-0"

APPENDIX B (Letter of Justification)

March 24, 2011

Ms. Molline Smith
Senior Planner
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland

Re: Germantown Town Center East (Panera Bread)
Site Plan 81999001F

Dear Ms. Smith:

As you know, our law firm represents Bellemead Development Corp., the land owner, and Panera Bread, the tenant and applicant, in the referenced matter. This letter is a follow-up to our meeting with Technical Staff on March 8, 2011. Specifically, this letter responds to points # 1 and 2 of your Memorandum of February 22, 2011.

As to the first point of your Memorandum, this is to confirm that the pending application merely continues the implementation of the original site plan for the density approved for this property prior to the recent Germantown Employment Area Sector Plan and ensuing rezoning via sectional map amendment (SMA). This property and adjoining parcels owned by Bellemead were rezoned to the Town Sector (TS) zone in the late 1990s for a project known as Germantown Town Center East. Thereafter, it was thereafter site planned for all of the rezoned parcels in one master site plan. More particularly, the 9+ acre land area surrounded by Rt. 118, Century Boulevard, Crystal Rock Drive, and Aircraft Drive originally was one development parcel, Parcel D. Along with original Parcels, B, C, E and F, Parcel D was planned for a myriad of retail users, as well as a Park & Ride Lot.

In the recently adopted Germantown Employment Area Sector Plan, the long contemplated future mixed use, primarily commercial use, nature of Parcel D was reaffirmed. The Sector Plan recommended, and the SMA granted, significantly increased density and building height through a new zone, TMX-2. However, the continued implementation of the overall site plan for Germantown Town Center East was expressly permitted. Once the approved site plan is fully implemented (and it nearly has been), then any material future density will require a substantive amendment to the current site plan and consideration of any incrementally new recommendations of the Germantown Employment Area Sector Plan.

As to the second point of your Memorandum, this is also to confirm that the applicant chooses to rely on Section 59-C-14.26 (c) and further on the development standards of the TS zone for the referenced site plan amendment. This Zoning Ordinance section expressly permits an applicant in these circumstances to choose whether it wishes to use the standards of the TMX-2 zone or the standards of the TS zone. The applicant here chooses the latter.

Please feel free to call me with any questions. Thank you very much.

Very truly yours,

Robert G. Brewer, Jr.

cc: Peter Henry
Ray Thomas
Greg Bardini



Ten Thousand Falls Road, Suite 100
Potomac, Maryland 20854

phone. 301.299.2099

fax. 301.299.2033

www.watkinsmilltc.com

To: Molline Smith
From: Peter Henry
Date: May 21, 2011
RE: Parking Count Summary
Germantown Town Center

Dear Molline:

It was a pleasure to speak with you again briefly yesterday and discuss the pending Panera application at the Germantown Town Center.

As we discussed there are three ways to look at the shared parking calculation: (1) as it was negotiated and approved by the District Council in 1999, (2) utilizing the current shared parking calculation, or (3) eliminating sharing of the Park & Ride facility from sharing. While we continue to believe the correct method is the first (i.e., the negotiated and approved calculation), for clarity we have looked at all three.

By way of background, in 1999 a Park & Ride facility was incorporated into the Germantown Town Center development under a negotiated and approved plan between Bellemead (the Developer and owner of the town center) and the County. That negotiated agreement provided the County's an easement for shared parking on the following basis:

- a. 6 AM to 11 AM weekdays 175 spaces for its Park & Ride customers from for their use exclusively, and
- b. All other times, the spaces are to be available for use by those coming to the town center.

These 175 spaces are striped yellow and extensively signed.

1. 1999 Approved Shared Parking Calculation

The Germantown Town Center East project was processed and approved by the District Council and Planning Commission in 1999 utilizing the shared parking calculation negotiated and approved at that time for the project. Over the ensuing 11 years, additional restaurants, banks and hotels have been processed under that approved site plan utilizing the same negotiated and approved shared parking calculation. That 1999 site plan approval remains valid today.

The approved calculation provides (a) from 6 AM to 6 PM weekdays that 175 spaces be set-aside for the Park & Ride, and (b) for evenings, weekends and midnight to 6 AM, the 175 spaces are fully available for use by those visiting the town center complex, with none reserved for the Park & Ride specifically.

Realistically, there are a small group of Park & Ride customers using the facility outside the 6 AM to 6 PM weekday period, which often are also customers of the center, utilizing its restaurants. This is how the facility was envisioned to operate, and how it in fact operates at present.

2. 2011 Shared Parking Code Calculation:

A second way to look at the shared parking would be to assume that the existing 1999 District Council approval as negotiated was not in place, and that the center was required meet the 2011 shared parking requirements. Under these provisions, the 175 Park & Ride Spaces would require (i) 175 spaces in the 6 AM to 6 PM Weekday period, and (b) 100 spaces for evenings, weekends and midnight to 6 AM as a transit or bus station under the County Parking Code. Under this scenario, assuming the 100 spaces were always fully utilized by 100 Park & Ride users, there would still be a surplus of 73 – 459 spaces at all times.

3. No Shared Parking – the ‘fence’ scenario:

The third scenario would be provide that the 175 Park & Ride spaces not be shared at all – as though a fence were put up around them preventing anyone from utilizing the spaces. The gate would be closed to all except the Park & Ride users. This calculation would requires that the full 175 spaces be set aside at all times 100% for the Park & Ride’s exclusive use, and never be available to the Town Center at all.

While contrary to the specific language of the Park & Ride Agreement, the District Council approval, and the actual observable use of the Park & Ride spaces, the Town Center provides so much parking that it still comes within 2 spaces of meeting all requirements during all time periods! Of course, this scenario is not supported by either the existing 1999 approval or the express terms of the Park & Ride agreement.

Actual Parking Usage: That significant surplus of parking is consistent with the recent parking study performed by the traffic engineering firm, The Traffic Group (“TTG”). The TTG study counted actual parking users over 4 week days and a Saturday for April 26-30, 2011 for the Town Center. Counts were made at 10 AM, 1 PM, 5 PM and 7 PM for each of those days for Parcel D, and at no time were there less than 200 empty spaces in Parcel D of the shopping center. The balance of the center also had significant amounts of excess parking available.

Molline, this is a tempest in a teapot. The project has an existing binding approval for the method of calculating the parking. The actual parking counts performed by TTG support that approved calculation. Even if the current shared parking formula were applied, there would still be numerous excess parking spaces. There is no “fence” around the Park & Ride to prevent its sharing.

Too much credence has been given to the stated objections of Green Turtle. It is time for and we move forward to the approval of the Panera building under the existing 1999 District Council plan approval. I hope this is of some assistance in clarifying the questions raised.

Sincerely,

Peter

Peter Henry

APPENDIX C (Parcel D Shared Parking Requirements)

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01:00
 5851 \$ 1585
 4895 \$ 4895
 77.80
 75.80
 2.80

**DECLARATION OF RESTRICTIONS,
 COVENANTS AND EASEMENTS**

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").

POLICY # 1000000000
 CLAIMS SERVICE
 1-800-368-7000

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 \$ 2.80
 RECORDING FEE 75.80
 TOTAL 77.80
 Rec'd MOBB Rec'd \$ 48955
 MOR 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, telephone 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 hercof, 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 hercof.

(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 1, 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:

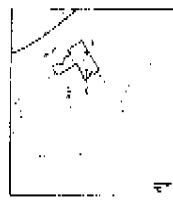
Parcel B: 02-001-02168292
Parcel C: 02-001-02168204
Parcel D: 02-001-02168188
Parcel E: 02-001-02168190
Parcel F: 02-001-02168202

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EXHIBIT "B"

Site Plan of Entire Parcel

18060 342



VICINITY MAP Scale: 1" = 2,000'

General Notes

- 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MARYLAND STATE DEPARTMENT OF TRANSPORTATION (SDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION AND THE MARYLAND STATE DEPARTMENT OF GENERAL SERVICES (DGS) STANDARD SPECIFICATIONS FOR CONSTRUCTION.
- 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 PUBLIC 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 BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 7. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC UTILITIES AT ALL TIMES.
- 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
- 9. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT CONSTRUCTION.

Land to be Dedicated

Approximate Non-Residential Land Use Summary:

Approximate Total Area: 1.00 Acres

Approximate Residential Area: 0.00 Acres

Approximate Commercial Area: 0.00 Acres

Approximate Industrial Area: 0.00 Acres

Approximate Open Space: 0.00 Acres

Approximate Non-Residential Land Use Summary

Approximate Total Area: 1.00 Acres

Approximate Residential Area: 0.00 Acres

Approximate Commercial Area: 0.00 Acres

Approximate Industrial Area: 0.00 Acres

Approximate Open Space: 0.00 Acres

Open Space

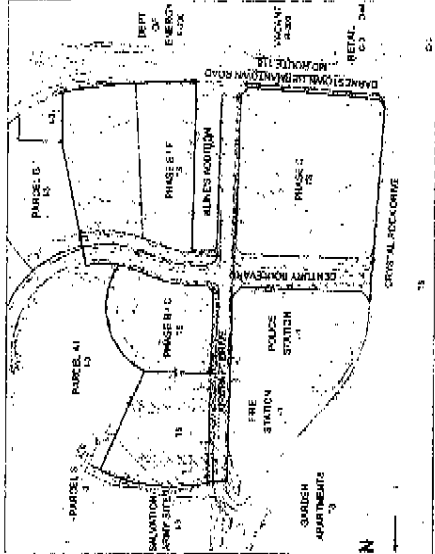
Approximate Total Area: 0.00 Acres

Approximate Residential Area: 0.00 Acres

Approximate Commercial Area: 0.00 Acres

Approximate Industrial Area: 0.00 Acres

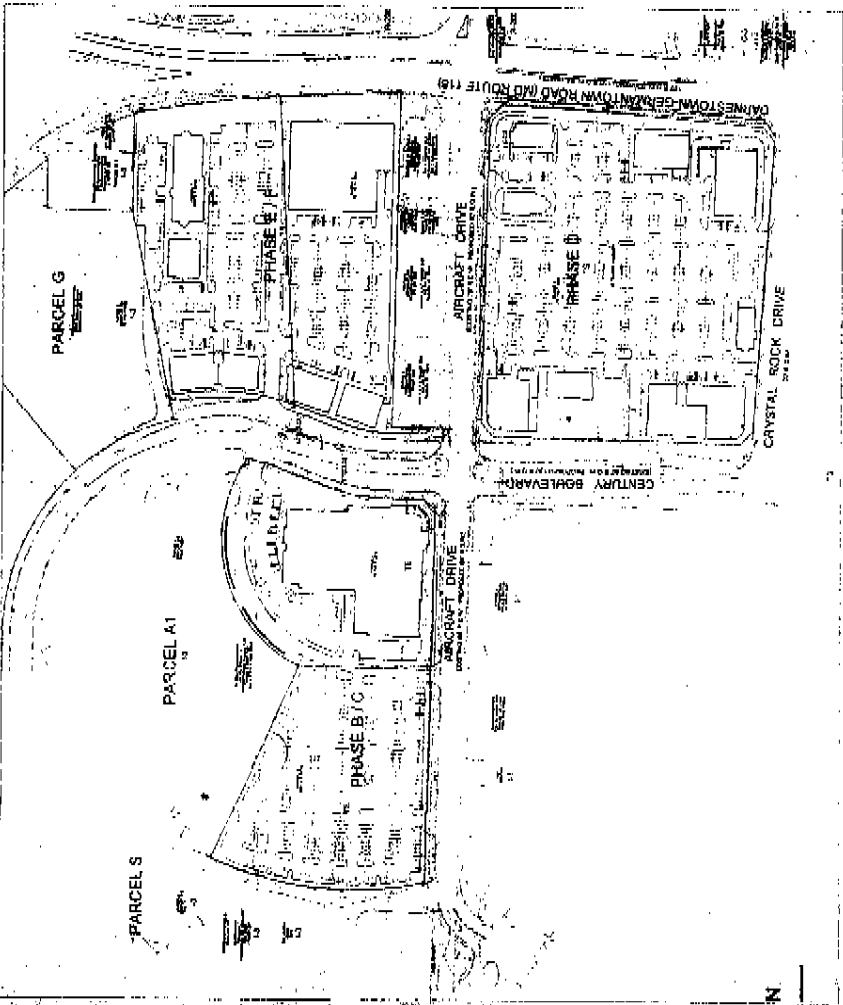
Approximate Open Space: 0.00 Acres



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 B1-C
- S-3 SITE PLAN - PHASE E1-F
- S-4 SITE PLAN - PHASE D
- S-5 LANDSCAPE AND LIGHTING PLAN - PHASE B1-C
- S-6 LANDSCAPE AND LIGHTING PLAN - PHASE E1-F
- S-7 LANDSCAPE AND LIGHTING PLAN - PHASE D
- S-8 LANDSCAPE DETAILS
- S-9 SCHEMATIC ARCHITECTURE



SITE AND ADJACENT AREA Scale: 1" = 100'

DRAWING INDEX

1. General Notes

2. Vicinity Map

3. Local Vicinity / Phasing

4. Site and Adjacent Area

5. Site Plan - Phase B1-C

6. Site Plan - Phase E1-F

7. Site Plan - Phase D

8. Landscape and Lighting Plan - Phase B1-C

9. Landscape and Lighting Plan - Phase E1-F

10. Landscape and Lighting Plan - Phase D

11. Landscape Details

12. Schematic Architecture

13. Development Summary - Phase B1-C

14. Development Summary - Phase D

15. Development Summary - Phase E1-F

Development Summary - Phase B1-C	Development Summary - Phase D	Development Summary - Phase E1-F
Area (Acres)	Area (Acres)	Area (Acres)
Residential Units	Residential Units	Residential Units
Commercial Units	Commercial Units	Commercial Units
Industrial Units	Industrial Units	Industrial Units
Open Space	Open Space	Open Space

Parking (Spaces)	Development (Units)	Greenhouse (Percentage of the Requirement)	Required (Parking Spaces Required)
100	100	100	100
200	200	200	200
300	300	300	300
400	400	400	400
500	500	500	500

GERMANTOWN TOWN CENTER EAST
Germantown, Maryland

Site and Adjacent Area

S-1

DATE: 11/18/04
BY: [Signature]
SCALE: AS SHOWN

NOT TO SCALE

FOR INFORMATION ONLY

THIS DRAWING IS THE PROPERTY OF [Firm Name]

IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON.

NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF [Firm Name].

18060 343

MATCHLINE SEE SHEET S.2

CENTURY BOULEVARD
RESERVING RIGHT TO IMPROVE TOWN

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

S-2

DATE: 04/27/05
SCALE: AS SHOWN
DRAWN BY: [Name]
CHECKED BY: [Name]
PROJECT NO.: [Number]
SHEET NO.: S-2 OF [Total]
DATE: 04/27/05

PARCEL A1
SUBDIVISION
PB 10 P 1202

Other Plans Associated
with this Subdivision
are as follows:
1. SUBDIVISION MAP
2. SITE PLAN
3. CONCEPTUAL SITE PLAN
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PARCEL C
SUBDIVISION
PB 10 P 1202

PROPOSED PARCEL D
CONTRIBUTION
TO THE
GERMANTOWN TOWN CENTER EAST
SUBDIVISION
AS SHOWN ON SHEET S-2
OF THIS SET

SALVATION
ARMY
SITE

PARCEL B
SUBDIVISION
PB 10 P 1202

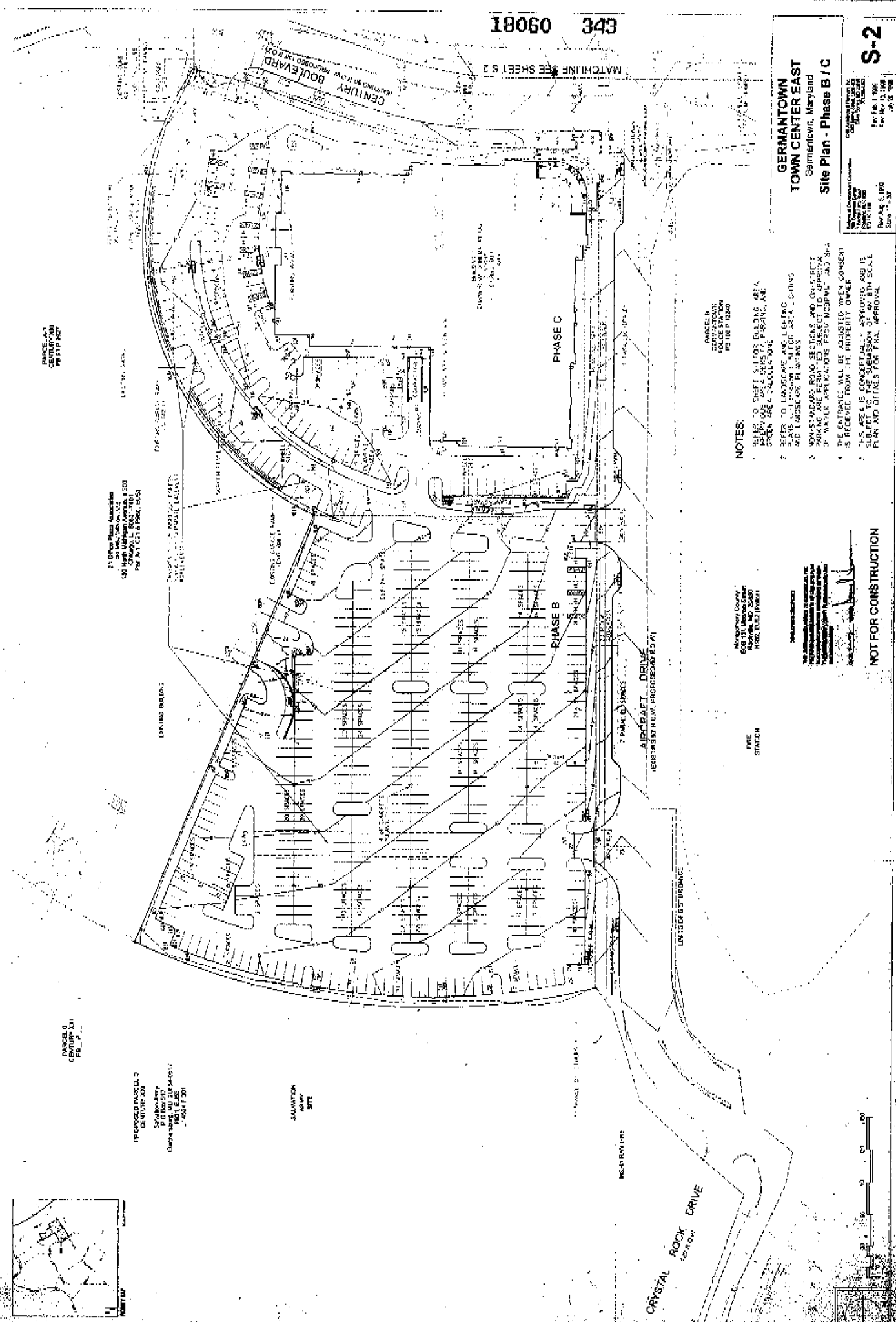
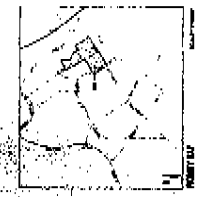
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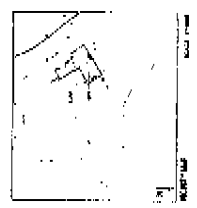
1. REFER TO SHEET S-1 FOR BUILDING AREA, GREEN AREA & CALCULATION.
2. REFER TO LANTIERE INC. LITING SPECIFICATIONS FOR LIGHTING.
3. ROW STAIRCASE ROAD, SECTIONS AND CURBSIDE PARKING ARE PERMITTED SUBJECT TO APPROVAL.
4. MAJOR APPLICABLE PERMITS: MDPW, ASD, SPA.
5. THE ENTRANCE WILL BE ADJUSTED WHEN CONSENT IS RECEIVED FROM THE PROPERTY OWNER.
6. THIS AREA IS CONCEPTUALLY APPROVED AND IS SUBJECT TO THE SUBMISSION OF A 6TH SCALE PLAN AND DETAILS FOR FINAL APPROVAL.

Maryland County
Geometric Engineer
Germantown, MD 20874
PH: 301.271.1000



NOT FOR CONSTRUCTION





NOTES

1. REFER TO SHEET 18060 344 FOR BUILDING AREA, SPECIFIC AREA DESIGNATION, HATCHING, AND GREEN AREA CALCULATIONS.
2. REFER TO LUMBER, AND LIGHTING AND LANDSCAPE PLANS.
3. SHALL MAINTAIN 5' CLEARANCE FROM CURB TO STREET FOR ALL VEHICLES FROM HEREIN AND FROM 3' WALKER AND BICYCLISTS FROM HEREIN AND FROM.
4. SUBJECT TO APPROVAL OF MARYLAND DEPARTMENT OF TRANSPORTATION, APPROVAL IS GRANTED FOR THE CONSTRUCTION OF ADJACENT DRIVEWAY AND DRIVEWAY, PROVIDED THAT THE DRIVEWAY IS PERMITTED FOR UNREASONABLE PUBLIC STORAGE VEHICLES.

18060 344

NOT FOR CONSTRUCTION

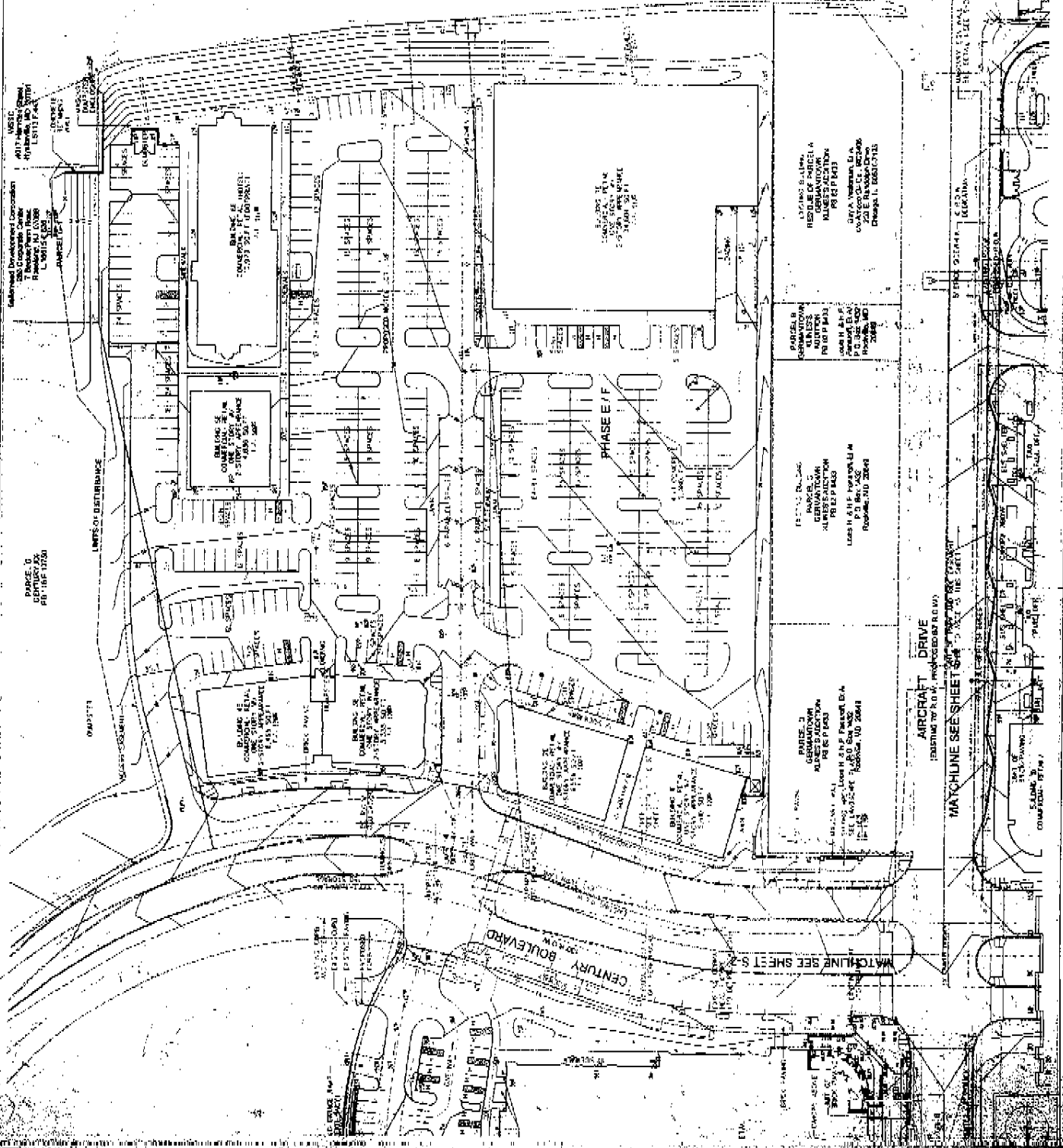
GERMANTOWN
TOWN CENTER EAST
Germantown, Maryland
Site Plan - Phase E / F

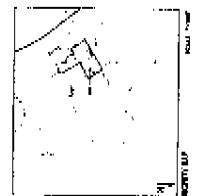
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BY: [Signature]
CHECKED BY: [Signature]

S-3

DATE: 11/11/04
BY: [Signature]
CHECKED BY: [Signature]

DARNESTOWN - GERMANTOWN ROAD (MD. ROUTE 118)
120' R.O.W. (RHS) (ING) 150' R.O.W. (ULTIMATE)





Division of Planning
 Dept. of Energy, Air & Environment
 1000 North 17th Street, N.W.
 Washington, D.C. 20036
 Date: 4/27/05

NOTES:

1. REFER TO SHEET 18060 345 FOR THE BUILDING AREA AND OTHER AREA CALCULATIONS.
2. REFER TO PLAN FOR THE ONE AND ONE HALF (1.5) MILLION GALLON STORAGE TANK AND THE 100,000 GALLON STORAGE TANK. THE 100,000 GALLON STORAGE TANK IS TO BE LOCATED IN THE EXISTING POND AREA.
3. THE EXISTING POND AREA IS TO BE REGRADED TO A FINISH GRADE OF 100.00 FEET. THE REGRADED AREA IS TO BE COVERED WITH A 4 INCH THICK CONCRETE SLAB. THE FINISH GRADE IS TO BE 100.00 FEET. THE EXISTING POND AREA IS TO BE REGRADED TO A FINISH GRADE OF 100.00 FEET. THE REGRADED AREA IS TO BE COVERED WITH A 4 INCH THICK CONCRETE SLAB. THE FINISH GRADE IS TO BE 100.00 FEET.
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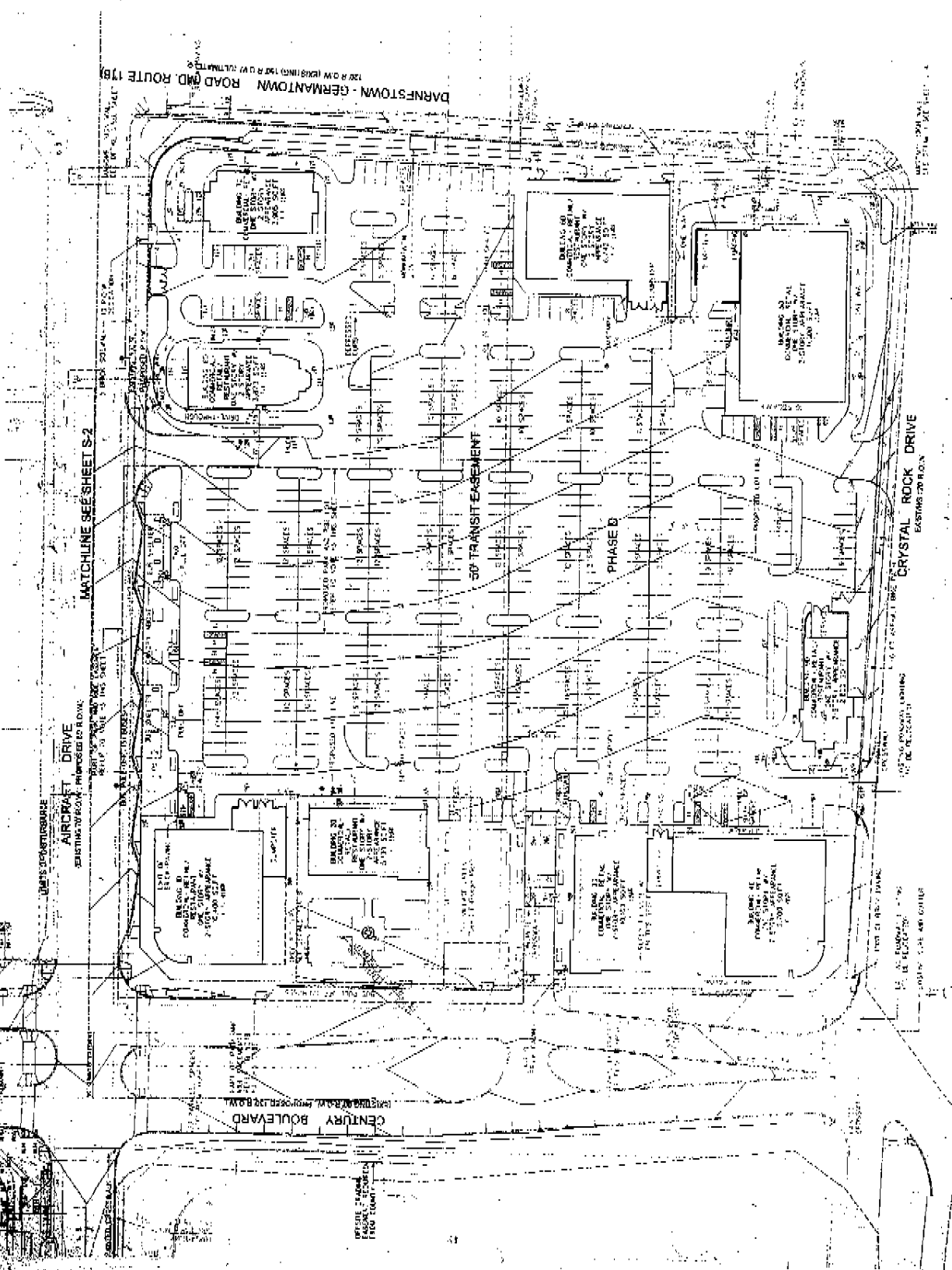
TABLE A
 NEW CONSTRUCTION
 18060 345
 18060 345
 18060 345

APPROVED FOR CONSTRUCTION
 DATE: 4/27/05
 BY: [Signature]

**GERMANTOWN
 TOWN CENTER EAST**
 Germantown, Maryland
Site Plan - Phase D

S-4
 Date: 4/27/05
 By: [Signature]
 Scale: 1" = 40'

NOT FOR CONSTRUCTION



CONSTRUCTION NOTES:
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IMC).
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IMC).
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IMC).

18060 346

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

18060 347

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.

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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;

18060 349

(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

APPENDIX D (Community Correspondence)

MNCPPC-MC

Molline C. Smith, ASLA

8787 Georgia Avenue

Silver Spring, MD 20910

April 7, 2011

In Re: Request for Hearing

Dear Ms. Smith:

Thanks for speaking with Jesse Windsor and me this morning. As you are aware, Jesse has been trying to get your attention on the issues involving the proposed Panera for several weeks now. I am the Managing Member of Noble Victory LLC, the owner and operator of the Greene Turtle Sports Bar & Grille located on 19961 Century Drive, Germantown, Maryland 20874.

This letter involves our discussion that Montgomery County is contemplating an approval of a new Panera Bread Restaurant, immediately adjacent to our property.

Be advised that we strenuously object to the opening of a Panera Bread location adjacent to our building for numerous reasons. Further, we request a hearing on the matter.

Our concerns begin as follows:

- (1) There is no available parking for any other businesses. The addition of Panera will adversely affect our sales by encroaching on the 104 spaces located immediately in front of our restaurant. It should be known that Noble Victory LLC invested almost \$900,000 to secure a total of 143 spaces and continues to expend \$25,000 - 35,000.00 per year to maintain these spaces.
- (2) We have concerns over the integrity of the existing and future submittals of the Developer.
 - a. The Developer may indicate street parking when fully aware that such parking is illegal.
 - b. The Developer may present inconceivable scenarios where supposedly restaurant patrons would park their car at considerable distance, behind the Movie Theatre.
 - c. The Developer and proposed tenant plan to position their garbage, grease refuse, truck loading area along the entrance path to our restaurant.
- (3) Our experience with the Developer over the last 4 years has raised serious concerns over whether the Developer is equipped, able or interested in managing the troubled parking situation, perhaps the center itself.
 - a. The loss of available parking due to the Developer's negligence has been a significant factor in the loss of approximately \$1,200,000 in annual revenue. Morning, lunch, and Happy Hour business day-parts have dwindled year over year since 2008, as the Park &

Ride grew beyond the boundaries of its lease with the Developer at the expense of our restaurant.

- b. Park & Ride customers regularly park illegally in spaces strictly reserved for other tenants of the shopping center. The Developer despite repeated communications on our part has failed to redress Park & Ride, and therefore we see them as complicit.
- c. The declarations of the shopping center include the basis for enforcement against the Developer, and other tenants, if a change is made that materially impacts existing tenants.
- d. On several occasions the Developer asked us to police the Park & Ride customers and asked us to directly contact Park & Ride to resolve the parking situation, essentially asking us to do their job at our expense.
- e. We have seen a pattern of slow or no response to maintenance issues including: repairing large potholes in the parking lot, replacing parking lot lamps, failure to maintain landscaping, failure to keep up with litter, failure to manage property issues with vagrants, profanity, gangs, drugs, violence, and vandalism.

I trust that our concerns about the Developer's real objectives do not fall on deaf ears. We will have an attorney contact you to discuss the expected scheduling of the hearing and expect to be given ample time to assemble the materials needed to assemble our argument. Regrettably, we have reached a point with Bellemead, given their formal rejection to discuss or resolve these issues, that a substantial legal battle is at hand with respect to Panera.

Sincerely



Noble Victory LLC

Frank Illiano

Managing Member



Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349-2998
www.chick-fil-a.com

Stephanie A. Thompson
Direct: (404) 765-2601
Fax: (404) 684-8620
stephanie.thompson@chick-fil-a.com

April 25, 2011

VIA EMAIL

molline.smith@mncppc-mc.org

Ms. Molline Smith
Planning Department
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

**Re: M-NCPPC Site Plan Application Number 819990010 (the "Application")
Germantown Town Center East (the "Center")**

Dear Molline:

In response to the above-referenced submission of Application, Chick-fil-A, Inc. ("CFA") is expressing its concern for the proposed development described in the Application and respectfully requests that the foregoing comments be included in your research and recommendation to the Montgomery County Planning Board.

CFA is a corporate citizen of Montgomery County and is a tenant in the above-referenced Center. In addition to the Center supporting other tenants of a commercial retail type, the Center is burdened with a parking easement for the benefit of the Montgomery County Department of Transportation ("MCDOT") managing an on-site Park-n-Ride transit stop. Since the initial development of the Center, Montgomery County and the surrounding community have experienced tremendous growth. This growth, coupled with rising fuel costs, has increased the demand for Park-n-Ride transit services. CFA and other tenants of the Center are very concerned that the parking spaces we rely upon to serve our guests and invitees are becoming monopolized by Park-n-Ride patrons. The Planning Board's approval of the referenced Application would only exasperate the situation to the detriment of the existing businesses in the Center serving the community and would further limit the use and convenience of this particular transit stop by current Park-n-Ride patrons.

According to MCDOT the subject parking easement is a blanket easement over the entirety of the Center's parking field and Park-n-Ride patrons, to the best of CFA's knowledge, have no use constraints that would help to mitigate their use of the Center's parking field. When reviewing the submitted Application, CFA respectfully requests that you and the Planning Board consider transportation demand management measures to help meet the needs of the existing tenants of the Center while providing a reasonable public transportation option for the community.



Ms. Molline Smith
April 25, 2011
Page Two

Molline, thank you for your continued assistance in this matter and if you should have any questions or concerns, please do not hesitate to contact me at (404) 765-2601.

Sincerely,

CHICK-FIL-A, INC.

A handwritten signature in cursive script that reads "Stephanie A. Thompson".
Stephanie A. Thompson, Manager
Property Management - Real Estate Legal

Smith, Molline

From: Stephanie Thompson [STEPHANIE.THOMPSON@chick-fil-a.com]
Sent: Wednesday, April 27, 2011 9:16 AM
To: Smith, Molline
Subject: M-NCPPC Site Plan Application Number 819990010: Germantown Town Center East
Attachments: DOC008.PDF

Molline,

You and I spoke last week regarding the subject application and I requested the opportunity to submit a response to you for you to include in your report to the Planning Board. I hope that the attached letter can still be included and/or forwarded as a supplement to your report, if you have already submitted it. Thank you for your continued assistance!

Stephanie A. Thompson
Property Management - Real Estate Legal
Manager
Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, GA 30349
Phone: 404-765-2601
Fax: 404-684-8620
Email: stephanie.thompson@chick-fil-a.com

Carter, John

From: Matthews, Catherine [Catherine.Matthews@montgomerycountymd.gov]
Sent: Monday, May 02, 2011 1:16 PM
To: Carter, John
Subject: FW: Panera application for Germantown Town Center

Importance: High

Good afternoon John,

Please call me today when you have a minute. I have some concerns about the packet for Panera's public hearing on this Thursday, May 5th.

1. A wall is proposed to shield Panera's disposal area from view however, it won't prevent garbage odors from wafting on to the Greene Turtle's outdoor porch or even to Panera's sidewalk tables.
2. If there's a sizeable wall as proposed, it must be covered with greenery or something to discourage graffiti artists. *cover the area.*
3. Some customers for the Greene Turtle and Panera will access both restaurants via a sidewalk that runs between both. I suspect that the Greene Turtle will have to add some signage on the parking lot side. I see from the drawings that Panera will already have signage on that side. *back surface.*
4. I hope that Panera is well-aware that the transit station is not just a bus stop, but a major layover and transfer station so while two or three buses can be lined up on Aircraft Drive, another two buses can be idling on Century Blvd. in front of the fountain plaza and Panera's future sidewalk café. Prior to the Greene Turtle, another restaurant (Jaspers) occupied the corner parcel at the intersection of Century and Aircraft. I fielded many complaints from the restaurant management, owners, and customers about the busses' fumes, unruly youths with profanity in the plaza, and panhandlers soliciting the diners on Jaspers' porch. I believe that much of the undesirable behavior has been addressed through my efforts with the Police. The 5th District Commander told me last week that he will continue the bike patrols throughout the town center with special attention given to the transit station as in the past couple of years. The issue that is still with us is that of bus fumes. We all know that eating at an outdoor café in D.C. or Silver Spring or Bethesda carries the acknowledgement and acceptance that bus fumes may be a part of our dining experience. This is still a new concept in Germantown and although it won't be an issue as Germantown morphs into more of an urban setting, I just hope that Panera and our planners realize the setting that's there today. *Signage Not A Problem.*
5. We have a long history of parking problems at this lot. I have worked with Transit Services in trying to find additional parking spaces in that area for commuters but we've been unsuccessful for the past five years. We even approached property owners along Century Blvd. behind the movie theater about long-term leases, but they are positioning themselves for their own development projects and aren't interested. Commuters aren't going away. Innocent restaurant customers will indeed exacerbate the situation, but I just want everyone to know this now and not after the building is in place and complaints are received.
6. Transit is still planning to add a small restroom structure for bus operators.
7. Last year, the Greene Turtle's local manager told us that they were planning to add a pizza carry-out between their restaurant and the transit station. I'll see if that's still in their plans.

Perhaps the hearing should be rescheduled to allow for more examination of these concerns.

Catherine Matthews
Director, Upcounty Regional Services Center
12900 Middlebrook Road, Suite 1000

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

May 5, 2011

Todd D. Brown
301.961-5218
tbrown@linowes-law.com

By Hand Delivery

Françoise M. Carrier, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



Re: Site Plan Amendment No. 81999001F (Panera Bread – Germantown Town Center Phase D)

Dear Ms. Carrier and Members of the Planning Board:

This office represents Noble Victory Court LLC (“NVC”). NVC is the owner of Parcel Q of the Century XXI Subdivision (“Parcel Q” or “NVC Property”) (Exhibit 1). The NVC Property is located within Phase D of the Germantown Town Center (“Phase D”) which is the subject of the pending site plan amendment (Exhibit 2). Because of discrepancies in the pending site plan, prior approved site plans, parking calculations and MCDPS building permit information, the site plan should not be permitted to move forward at this time. Please include this letter and its attachments in the Record.

We note we expressed these concerns to Staff at a meeting on May 4, 2011. We understand from Staff that revised materials may be submitted by the applicant and/or Staff at the hearing later today that may clarify some of the discrepancies. However, as of the delivery of this letter, NVC has not seen this information or had an opportunity to review it or to determine its accuracy or impact on NVC’s property.

The following is a summary of the issues we discussed with Staff:

The NVC Property is the site of the Green Turtle Restaurant. NVC is unique in that it is the fee simple owner of Parcel Q (Exhibit 3). We understand the other restaurants and uses within Phase D are operated by tenants who do not own the property on which they are located. NVC’s interest and willingness to act to protect the value of its investment might therefore be different from these tenants whose operations are presumably subject to lease agreements with the applicant or other Belmead entit(ies). We also understand a portion of the parking that is being used ostensibly to satisfy the parking requirements for Phase D is located on the NVC Property. The parking is operated pursuant to a Declaration of Restrictions, Covenants and

**L&B 1542457v1/04063.0026

Françoise M. Carrier, Chair
and Members of the Montgomery County Planning Board
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May 5, 2011
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Easements (Exhibit 4). Other parking located within Phase D is subject to the terms of a Park and Ride Agreement between Montgomery County and Bellemead Development Corporation (Exhibit 5).

NVC is not opposed to Panera Bread *per se*. Because the restaurants serve different market segments, NVC does not view Panera Bread as its competitor. However, NVC is very concerned about the inadequate supply of parking within Phase D to serve the *existing* uses, let alone a new generator of parking demand such as Panera Bread.

NVC requested a meeting with the applicant to discuss this and other matters, but was told by the applicant's attorney that "many of the [raised] issues had been resolved and that "it would not be productive to have a meeting" (Exhibit 6). Our office also requested a meeting through the applicant's representatives, but no meeting has been held to date.

We recognize that the overall dispute between the parties also involves several private matters not properly before the Board. However, when our office was asked to review the pending site plan amendment, we discovered a number of discrepancies/errors in the materials that the Board is being asked to approve. It is these discrepancies/errors that we wish to bring to the Board's attention and which, in our view, require the Board to defer action on the pending site plan amendment until they can be explained or corrected.

As noted above, NVC is very concerned about the supply of parking relative to the demand for parking within Phase D. A primary cause of this concern is the use of the Park and Ride Lot. According to the Park and Ride Agreement, a total of approximately 175 spaces are to be provided, and the pending site plan indicates the lot contains 175 spaces (*see* Note 3 of site plan). Our client advises that the Park and Ride spaces fill up early each morning, and later-arriving transit riders are instead parking in spaces intended for customers of the restaurants and other uses in Phase D. **While this is encouraging as far as transit usage is concerned, the result creates a very real problem for the center because there are an insufficient number of parking spaces available to serve the existing uses in Phase D and to meet the parking requirements of the Zoning Ordinance.** The enclosed Fox news article from April 27, 2011 highlights the problem (Exhibit 7). We have also enclosed a number of photographs which demonstrate the degree to which the customer parking is being used by transit riders and the ineffective efforts to enforce the limits of the Park and Ride Lot (Exhibit 8). The photographs of parked vehicles were taken during the weekday. The result is a significant

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and Members of the Montgomery County Planning Board
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reduction in the number of parking spaces available to serve the businesses and meet the requirements of the Zoning Ordinance.

Other potential sources of the parking problems appear to have their origin in the parking calculations for Phase D as discussed below.

Lastly, when we reviewed the original site plan for Phase D, the pending site plan amendment, previously approved amendments to the site plan, and building permit information from the Department of Permitting Services, we discovered a number of additional discrepancies which must be resolved before the pending plan should be considered.

Off-Street Parking Calculations

1. NVC advises they have physically counted the marked parking spaces within Phase D. There are 591 total marked parking spaces, not 624 spaces as indicated in the Staff Report.

2. Parking calculations must be rounded “up” to meet the minimum required amount of parking.

3. The parking summary in Appendix C to the Staff Report identifies building square footages that are inconsistent with the building square footages for the same buildings shown on the proposed site plan. We have attached a table that compares the building square footages reflected on proposed site plan and Appendix C (Exhibit 9). In some instances, the building size shown on the proposed site plan is *smaller* than the building size identified on Appendix C. The consequence of this discrepancy is that the existing buildings were constructed at a size that is *larger* than permitted by the proposed site plan. In other instances, the building square footage shown on the proposed site plan is *larger* than the building size identified on Appendix C. The consequence of this type of discrepancy is that the parking calculation in Appendix C *understates* the amount of parking required to be provided for the uses that are actually shown on the site plan the Board is being asked to approve. Thus, either the existing buildings will be in violation of the site plan if it is approved in its current form or the parking calculation is inaccurate and not based on the buildings shown on the site plan. To approve the pending site plan as shown, the Board must first have parking calculations that are accurate and consistent with the plan itself.

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4. Under Section 59-E-3.7 of the Zoning Ordinance, the parking requirement for restaurants is based on the amount of indoor (25/spaces/1000sf) and outdoor (15 spaces/1000sf) of patron area. The staff report does not indicate that any waivers have been granted modifying this requirement and we are not aware of any. Accordingly, one would expect Appendix C to include a calculation for each restaurant based on the amount of indoor and any outdoor patron area. However, Appendix C does not contain this information. Moreover, the parking requirement shown in Appendix C does not appear to be based on either the indoor patron area or the outdoor patron area standard. The math simply does not work. In addition, NVC advises the Carrabba's Restaurant floor plans they have reviewed contain as *indoor* patron area the approximately 3,400sf indicated in Appendix C. However, the client also advises that based on an actual measurement taken in the field, Carrabba's regularly utilizes 1,085 square feet of outdoor area for customer seating and waiting. This outdoor patron area requires 17 additional parking spaces to meet the Zoning Ordinance requirement of 15 spaces/1000sf of outdoor patron area.

5. We understand from staff that the proposed site plan application did not contain any floor plans for Panera Bread. Without a floor plan it is impossible to determine the amount of indoor patron area proposed for Panera. It is therefore impossible for staff to calculate accurately or confirm the parking requirement for Panera.

6. We have also reviewed the MCDPS records for the uses within Phase D and find that according to information available from MCDPS, several of the buildings within Phase D are *larger* than indicated on the site plan and also *larger* than indicated on Appendix C with respect to the amount of parking that is required for such uses. While some of the discrepancies are properly described as nominal, in two instances, the differences are significant. If the information available from MCDPS is correct, the Carrabba's Restaurant is 8,345sf, not 6,200sf as indicated on the proposed site plan or 6,720sf as indicated in Appendix C (Exhibit 10). If the fifty percent ratio of patron area to total building size contained in Appendix C for Carrabba's is applied to the MCDPS figure, the Carrabba's Restaurant should have 4,172sf of indoor patron area, not 3,400sf as indicated in Appendix C. This indoor patron area generates a need for 105 parking spaces, not 81 spaces as indicated in Appendix C. When the 1,085sf of Carrabba's outdoor patron area is also taken into account (*see 3 above*), an additional 17 spaces are required, bringing the total number of spaces required for Carrabba's to 122 total spaces, rather than the 81 spaces indicated in Appendix C.

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the transit stop generates more Park and Ride users than there are available spaces, the additional users are parking in spaces intended for customers of the commercial establishments in the center. NVC further advises that this problem is most acute during the weekday.

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and Members of the Montgomery County Planning Board
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9. The proposed site plan drawing (Note 5.E) indicates the parking requirement is 5 spaces/1,000sf. This is (i) not the correct standard and (ii) not consistent with Appendix C to the Staff Report.

10. Lastly, as the Board is aware, the Corridor Cities Transitway is master planned to traverse Phase D. The site plan shows a 50' easement for the Transitway bisecting Phase D. NVC acknowledges the reasonableness of allowing the transit right-of-way to be used for parking until the Transitway is established, and this parking is critical to the success of the existing businesses with Phase D. However, NVC does question whether it is appropriate or legal to allow parking spaces that are located within the transit right-of-way to be counted towards meeting the off-street parking requirements.

In this case, approximately 93 parking spaces will be impacted and likely eliminated when the Transitway is established. The record plat for the affected properties indicates the easement is a "horizontal easement only" indicating the Transitway will run at grade. Accordingly, the approximately 93 parking spaces located within the easement right-of-way may simply disappear. However, once the Panera Bread is constructed, it and all the other uses within Phase D will remain even after the parking within the Transitway easement is eliminated and notwithstanding any severe parking problems thereby created or a lack of conformity with the parking requirements of the Zoning Ordinance.

By counting the approximately 93 parking spaces towards the Zoning Ordinance parking requirements, the proposed site plan, if approved, will create future nonconforming uses such that these uses, if destroyed by casualty, could have limits on their reconstruction imposed because of a lack of sufficient parking. Approval of the site plan amendment could also create refinancing implications for NVC.

Importantly, the establishment of the Transitway and the ultimate elimination of the existing parking will not occur by happenstance. Unlike the situation where a portion of a parking lot might be taken for public improvements that were neither planned nor foreseen when a development plan is approved or permit issued, in this case, the Transitway is master planned and actually shown on the site plan. It is contrary to all logic to plan for this facility by showing it on the master plan and site plan, yet completely ignore the practical effect the facility will have on the use of the properties it traverses. As emphasized above, NVC is the fee simple owner of its parcel. Unlike Bellemead, which can perhaps rationalize the relative

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and Members of the Montgomery County Planning Board
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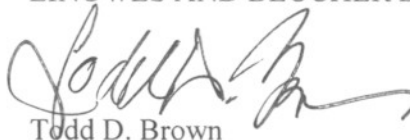
impacts of the eventual loss of this parking as to its various leases, NVC will be impacted in a way that affects it very directly and profoundly.

In closing, the parking standards in the Zoning Ordinance establish the minimum requirements. The Planning Board under its site plan authority has the ability, and obligation, to modify the minimum standards to assure the parking facility meets the objectives for parking facility plans (Section 59-E-4.2) and results in a maximum of compatibility, safety, efficiency and attractiveness under the site plan review standards. The presence of both a substantial (93 spaces) transit right-of-way and a large (175 spaces) Park and Ride lot merit particular attention and consideration to assure that **ALL** the owners in this center are provided with sufficient conveniently located parking in accordance with the Zoning Ordinance.

Thank you for your consideration.

Sincerely,

LINOWES AND BLOCHER LLP



Todd D. Brown

Attachments

cc: Frank Illiano
Kevin Burns
Molline Smith
John Carter
Robert Kronenberg
Robert Brewer, Esq.