

~~Upon Recording Return to:~~

Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, Virginia 22102
Attn: Colin J. Smith, Esq.

Tax Map No. 22-001-724

Tax Map No. 22-001-725

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is made as of this 29th day of August 2012 (the "Effective Date") by **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (the "Declarant" or "County"), as Grantor, Grantee, Coventor and Covenantee.

RECITALS:

- R-1 Declarant is the owner of that certain parcel of land located in Arlington County, Virginia pursuant to that certain Deed recorded among the land records of Arlington County, Virginia (the "Land Records"), at Deed Book 2784, Page 1541 ("Arlington Mill Property"); and
- R-2 By Deed of Resubdivision, Vacation and Rededication dated March 4, 2011, Declarant did re-subdivide the Arlington Mill Property, and did vacate and rededicate the Arlington Mill Property, to be henceforth known as Parcel A and Parcel B, Arlington Mill ("Parcel A" and "Parcel B" are herein after jointly referred to as, the "Properties"), as more particularly shown on the plans attached thereto and made a part thereof as *Exhibit A*, recorded among the Land Records at Deed Book 4445, Page 409; and
- R-3 By Deed of Ground Lease dated as of October 31, 2011 (as amended, the "Ground Lease"), between Declarant and Arlington Mill Limited Partnership, a Virginia limited partnership ("AMLP"), as evidenced by that certain Memorandum of Lease recorded among the Land Records at Book 4571 at Page 1134, Declarant did lease unto AMLP a portion of the Arlington Mill Property for the development of an affordable housing project (the "Project"), subject to the terms and conditions set forth therein; and
- R-4 The portion of the Arlington Mill Property leased to AMLP under the Ground Lease is "Parcel A, Arlington Mill, as the same is duly dedicated, platted and recorded in Deed Book 4445, at page 409, among the Land Records ("Parcel A"), and the remaining portion of the Arlington Mill Property retained by Declarant for use as the Arlington Mill Community Center (the "Community Center") is known as Parcel B, Arlington Mill, as the same is duly dedicated, platted, and recorded in Deed Book 4445, at page 409, among the Land Records ("Parcel B"); and
- R-5 It is the desire and intent of Declarant and AMLP, that certain areas and improvements located within Parcel A and Parcel B shall be jointly used and maintained subject to the terms and conditions set forth herein; and
- R-6 By this Declaration, Declarant and AMLP desire to bind and subject Parcel A and Parcel B, and Declarant's successors and assigns in the ownership of the land of Parcel A and

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After Recording Return To:
Commonwealth Land Title Insurance Co.
Fidelity National Title Insurance Co.
1015 15th Street, NW, Suite 300
Washington, DC 20005 DPN 2 of 7
File No. 11-001157

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Parcel B (collectively, the "Land Owners"), AMLP's successors and assigns in the ownership of the improvements on Parcel A, and Declarant's successors and assigns in the ownership of the improvements on Parcel B (collectively, the "Improvements Owners"; the Land Owners and the Improvements Owners being hereinafter sometimes referred to collectively as, the "Owners"), to all those certain easements, covenants and restrictions hereinafter provided for the benefit of the Land Owners, the Improvements Owners and their respective successors, assigns, mortgagees, lessees, employees, agents, contractors, licensees, permittees and invitees (collectively, the "Benefited Parties"). If on the Effective Date or in the future any person or legal entity (including, without limitation, the Declarant) owns both the land and the improvements of Parcel A or Parcel B, then, for purposes of this Declaration, such person or legal entity shall be deemed to be the Improvements Owner for such Parcel. The Improvements Owner of each Parcel shall be fully responsible for the actions of the Benefited Parties of such Parcel hereunder.

EASEMENTS AND LICENSES FOR SHARED USE AND ACCESS

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) cash paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the benefits to be derived by the parties hereto, Declarant does hereby grant and convey unto the Owners for the benefit of the Benefited Parties, the following nonexclusive easements (collectively, the "Easements"):

1. Non-Exclusive Easements and Licenses for the Benefit of Parcel A. Declarant hereby grants the following non-exclusive easements and licenses, as the case may be, for the benefit of Parcel A:

a. Easement for access to and use of loading dock and trash dumpster on Parcel B in the approximate location shown on *Exhibit A*; provided, however, such easement shall not (barring a mutually acceptable written agreement between the Improvements Owners as to cost sharing for trash compaction) include access to or use of the trash compactor or the trash compaction area located on Parcel B. Parcel A Improvements Owner will have primary use of the North loading dock bay and Parcel B Improvements Owner will have primary use of the two (2) South loading dock bays, but the Improvements Owners shall periodically allow the non-exclusive use of all loading dock bays pursuant to a scheduling system that the Improvements Owners may establish from time to time. All trash from Parcel A shall be compacted in facilities at Parcel A before transport of such trash to the dumpster at the loading dock on Parcel B.

b. Easement for installation and operating of security camera at the loading docks on Parcel B. At Parcel B Improvements Owner's request, data from security camera feed shall be provided by Parcel A Improvements Owner to Parcel B Improvements Owner.

c. Easement for ingress and egress through and use of the parking garage driveway and main entrance ramp into the parking garage on Parcel B, and egress through that portion of the Parcel B parking garage (on both garage levels) in order to gain access to the Parcel A garage.

d. Easement for non-exclusive construction and use of the plenum space in a portion of the Parcel B garage at the B-1 level immediately beneath the Project (the "Plenum Area"), as the approximate location of such Plenum Area is shown on *Exhibit A*, for the installation,

operation, maintenance, repair, restoration and replacement by Parcel A Improvements Owner of the plenum enclosure to be installed by Parcel A Improvements Owner and of plumbing, electrical and other mechanical systems and facilities serving the Project and a space warming system. The plenum enclosure to be installed by Parcel A Improvements Owner, at its sole cost and expense, shall be designed to accommodate all of the Parcel B Improvements Owner's sprinklers and other requirements, and shall be limited in size such that there shall be at least eight feet six inches (8'6") of clearance from such plenum enclosure to the concrete slab below, for vehicles throughout the B-1 level of the Parcel B parking garage. Parcel A Improvements Owner's use of such Plenum Area shall not restrict the Parcel B Improvements Owner's use of the same Plenum Area for garage sprinklers, lighting and other purposes. Parcel B Improvements Owner's written approval is required for all plans and drawings applicable to the design and equipment usage by Parcel A Improvements Owner of all or any portion of the Plenum Area, as a pre-condition for any installations therein. Attached hereto as *Exhibit B* is a drawing of a cross-section of the Plenum Area to illustrate the anticipated shared use of such space. Parcel A Improvements Owner shall need and is hereby granted access to the Plenum Area from time to time for the performance of such installation, operation, maintenance, repair, restoration and replacement work which shall, by necessity, require access to and use of the parking areas in the B-1 level of the Parcel B garage immediately beneath the Plenum Area; provided, however, access to and use of such parking areas shall be conditioned upon reasonable prior written notice to Parcel B Improvements Owner (barring an emergency that presents an imminent danger to persons or property) and shall be performed at such times and in such manner as to minimize disruption to the parking operations in the Parcel B garage. Without limiting the foregoing, whenever feasible, work on or involving the Plenum Area shall be performed during the non-peak usage hours of the Parcel B garage.

e. License for the performance of maintenance and repair of the portion of the Pedestrian Walkway on Parcel B.

f. Easement for use of shared storm water vault located in the public right-of-way on South Arlington Mill Drive, which shall serve the Parcel A Improvements and the Parcel B Improvements. For avoidance of doubt, it is acknowledged that each Improvements Owner shall be solely responsible for all storm water drains, pipes, downspouts and other facilities serving its Improvements up to the demarcation point at which its storm water facilities connect into the shared storm water vault.

g. Easement for installation, operation, maintenance, repair and replacement by Parcel A Improvements Owner of directional and informational signage for parking usage of the Parcel A garage, on Parcel B at or about the main entrance ramp into the parking garage on Parcel B, but subject to the prior written consent of the Parcel B Improvements Owner as to the size, type, style, appearance and precise location of such signage, which consent shall not be unreasonably withheld, conditioned or delayed.

h. Easement for use of the access card reader to be installed and maintained by the Parcel B Improvements Owner at the main entrance to the Garage (the "Main Entrance Card Reader"). Parcel B Improvements Owner shall consult with Parcel A Improvements Owner before selecting and installing the Main Entrance Card Reader or installing any replacement thereto (recognizing that Parcel B Improvements Owner shall change or replace the Main Entrance Card Reader from time to time due to changes in technology, among other reasons);

provided, however, Parcel B Improvements Owner shall be entitled to select and replace the Main Entrance Card Reader at its discretion.

i. Easement for installation, operation, maintenance, repair and replacement by Parcel A Improvements Owner of card reader/intercom pedestals, needed for access to the Parcel A garage, to be located in the Parcel B garage at the entrances to the Parcel A garage.

2. Non-Exclusive License for the Benefit of Parcel B. Declarant hereby grants the following license rights for the benefit of Parcel B:

a. License for access to the Parcel A garage for the installation, maintenance, repair and replacement of the sump pumps to be located in the Parcel A garage that are connected to the shared foundation de-watering system, and for certain interior garage directional signage in the Public Parking Area, as the approximate location of such Public Parking Area is designated on *Exhibit A*.

b. License for ingress, egress and non-exclusive use and routine maintenance of the Public Parking Area in Parcel A garage. The Public Parking Area shall be outside of the controlled access area of the Parcel A garage.

c. License for access to certain exterior lights located on Parcel A, but controlled by and connected to the electrical system on Parcel B, for the installation, maintenance, repair and replacement of such lights.

d. License for installation, operation, maintenance, repair and replacement by Parcel B Improvements Owner of directional and informational signage for parking usage of the Parcel B garage on Parcel A on or about the exterior of the Project, but subject to the prior written consent of the Parcel A Improvements Owner as to the size, type, style, appearance and precise location of such signage, which consent shall not be unreasonably withheld, conditioned or delayed.

3. Mutual Licenses to Each Owner. The Declarant hereby grants, on behalf of each Improvements Owner, licenses to each Improvements Owner for "information only" connections to each Improvements Owner's fire alarm system and other life safety systems, and for necessary access for the maintenance, repair and testing of such connections on each Parcel.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION FURTHER WITNESSETH, that for and in consideration of the recitals set forth above, the mutual covenants and agreements of the parties set forth herein, and the sum of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, and other good and valuable consideration, Declarant does hereby covenant and agree on behalf of the Improvements Owners as follows:

1. The Properties shall be held, transferred, sold, conveyed, and occupied subject to the covenants and restrictions contained in this Declaration, which are hereby imposed upon the Properties, and which covenants shall run with the land. The Properties are, and shall be held, transferred, sold and conveyed subject to this Declaration.

2. Declarant hereby covenants for itself and on behalf of the Improvements Owners as follows:

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a. General Rules for Maintenance, Repair and Replacement. Unless otherwise specifically provided by this Declaration, each Improvements Owner is responsible, at its sole cost and expense, to maintain, repair and replace all improvements, equipment, facilities and utilities on, in, under or serving its Parcel or the Improvements thereon (wherever such Improvements, equipment, facilities and utilities are located and even if another Owner has been granted the right of use hereunder) in good and workmanlike condition and in compliance with all applicable laws, codes, ordinances and regulations, at no cost or expense to the other Improvements Owner. Subject to the terms of this Declaration (including without limitation, subject to the terms of Section 4.b of the General Provisions and the terms of Section 2 of the Special County Provisions), if an Improvements Owner fails to properly maintain, repair or replace any improvements, equipment, facilities or utilities serving its Parcel or the Improvements thereon and such failure causes loss, liability or damage to the other Improvements Owner or to the Benefited Parties of such other Improvements Owner, the Improvements Owner who so failed to properly maintain, repair or replace as aforesaid shall be responsible for such loss, liability or damage.

b. Covenants by Declarant for the Benefit of Improvements Owners.

i. Declarant hereby covenants and agrees to dedicate the areas of the Pedestrian Walkway located on both Parcels A and B as a Public Access Easement prior to the issuance of the final Certificate of Occupancy for the Project.

ii. Declarant hereby covenants and agrees, during the Term of the Ground Lease as it may be extended, to permit pedestrian use of the Pedestrian Walkway Stairway from the Pedestrian Walkway to the garage, the Garage East Egress Stair within the garage, and the elevator from the Pedestrian Walkway to the Garage (provided such elevator may not to be used for deliveries or construction purposes) by the residents of Parcel A, as the approximate locations of such stairs and elevator are indicated on *Exhibit A*; provided, however, that County reserves the right to suspend or limit pedestrian use of and access to such stairs, and use of, access to, and operation of such elevator, in the evenings, or at such other times as County deems appropriate or advisable, in its sole discretion.

c. Covenants by Parcel A Improvements Owner for the Benefit of Parcel B. Declarant hereby covenants, on behalf of Parcel A Improvements Owner, to Parcel B Improvements Owner:

i. Parcel A Improvements Owner, at its sole cost and expense, shall perform the routine maintenance and cleaning of the loading docks on Parcel B, excluding the trash compactors and compaction area. For avoidance of doubt, it is understood that Parcel B Improvements Owner shall be responsible, at its sole cost and expense, to perform all non-routine repair and replacement of the loading docks on Parcel B and the overhead rolling doors providing vehicular access thereto (except to the extent of damage to the loading docks or overhead rolling doors caused by Parcel A Improvements Owner or its Benefited Parties, the repair of which damage shall be the responsibility of Parcel A Improvements Owner).

ii. Parcel A Improvements Owner, at its sole cost and expense, shall maintain, repair and replace the entire Pedestrian Walkway (including the portion of the Pedestrian Walkway on Parcel B).

d. Covenants by Parcel B Improvements Owner for the Benefit of Parcel A. Declarant hereby covenants, on behalf of Parcel B Improvements Owner, to Parcel A Improvements Owner:

i. Parcel B Improvements Owner, at its sole cost and expense, shall maintain, repair and replace the sump pumps located in the Parcel A garage that connect to the shared foundation de-watering system.

ii. Parcel B Improvements Owner, at its sole cost and expense, shall perform the routine maintenance and cleaning of the Public Parking Area (excluding the lighting of such Area).

e. Shared Parking Expenses.

i. Parcel B Improvements Owner will incur operating expenses in the operation of the Parcel B garage and also in the related operation of the main entrance to the Garage (that is available for the use of the Benefited Parties of each of Parcel A and Parcel B) and the operational interface with the Parcel A garage and its Benefited Parties. It is understood and agreed that the items of such parking operating expenses incurred by Parcel B Improvements Owner relating to certain personnel costs and auditing costs are appropriately shared between Parcel A Improvements Owner and Parcel B Improvements Owner (collectively, the "Shared Parking Expenses"). Attached hereto as *Exhibit C* is a preliminary estimate of the parking garage operating expenses that are currently anticipated to be incurred by Parcel B Improvements Owner during the first year of the Parcel B garage operation, which indicates the six (6) specified expense line items comprising the Shared Parking Expenses. The parking garage operating expense estimate attached as *Exhibit C* is attached to further define the Shared Parking Expenses, but is otherwise attached for illustrative purposes only. The amounts of such operating expenses are only a preliminary estimate and are subject to adjustment.

ii. From and after the substantial completion of the Project, Parcel B Improvements Owner shall bill Parcel A Improvements Owner, on a monthly, quarterly or annual basis at Parcel B Improvements Owner's discretion, for the Sharing Percentage (as hereinafter defined) of the total amount of the Shared Parking Expenses actually incurred by Parcel B Improvements Owner during the immediately preceding monthly, quarterly or annual period, as the case may be. Within thirty (30) days after receipt of the invoice for such Shared Parking Expenses, Parcel A Improvements Owner shall pay such billed amount to Parcel B Improvements Owner. In the event that Parcel A Improvements Owner shall fail to pay such amount billed within fifteen (15) days after when due, interest shall accrue thereon at the rate of the Prime Rate plus two (2) percentage points per annum until such late amount is paid, and, Parcel A Improvements Owner shall pay Parcel B Improvements Owner such late payment interest within fifteen (15) days after demand, in addition to all of Parcel B Improvements Owner's other rights and remedies hereunder. For purposes of this Declaration, "Prime Rate" shall mean the then applicable *Wall Street Journal* Prime Rate (U.S. money center commercial banks) or its successor publication (or in the absence thereof, such similar rate as Parcel B Improvements Owner may reasonably designate). It is acknowledged that a payment by the Parcel A Improvements Owner of an amount billed for Shared Parking Expenses shall

not constitute a waiver of any dispute as to the amount of such payment raised by the Parcel A Improvements Owner.

iii. Parcel A Improvements Owner is currently planning to seek the necessary permissions to construct a separate vehicular entrance to the G-1 level of the Parcel A garage directly from the public right of way on South Arlington Mill Drive (the "Direct Entrance"). For purposes of this Declaration, the "Sharing Percentage" shall mean ten percent (10%); provided, however, if the Direct Entrance is actually approved and constructed, the Sharing Percentage shall be five percent (5%) for all periods during which the Direct Entrance is available to serve as a vehicular entrance to and exit from the Parcel A garage.

f. Owner Meetings. In order to effectuate the efficient and harmonious operation of all shared areas and facilities under this Declaration, representatives of the Improvements Owners shall meet at least annually, and more frequently, as needed, to discuss all activities of mutual interest regarding the operations of shared areas and facilities. In addition to the foregoing, each Improvements Owner shall provide the other with the names and contact information of one or more operational points of contact, for day-to-day communications with respect to operational issues on behalf of the Improvements Owners.

g. Additional Provisions:

i. No failure by any Owner to enforce any provision of this Declaration shall be deemed a waiver of such Owner's rights to enforce this Declaration thereafter.

ii. Any breach of this Declaration by any Owner or its Benefited Parties, shall not abrogate the effect this Declaration to run with the land. No breach of any covenant contained in this Declaration shall transform, or be construed to transform, the covenants contained herein into personal obligations rather than covenants that run with the land.

iii. No provision of this Declaration shall create in any person or entity other than the Owners, rights as a third party beneficiary hereunder, or authorize any person or entity, other than the Owners, to maintain any action for personal injury, property damage, or breach of contract pursuant to this Declaration or otherwise. No person or entity, other than the Owners, shall have any right to enforce this Declaration.

iv. The obligations created by this Declaration shall survive any transfer, division, or subdivision of the Parcel A, Parcel B, or aggregation of any other real property with the Parcel A, Parcel B, or the Properties including, without limitation, the imposition of a condominium regime.

v. This Declaration cannot be amended or released, except by written instrument executed by all of the Owners, unless otherwise provided for herein.

vi. If any provision of this Declaration shall be held invalid or unenforceable, such holding shall not invalidate or make unenforceable any other provision hereof.

vii. The Recitals set forth above are incorporated into this Declaration.

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GENERAL PROVISIONS

1. Compliance with Laws. The utilization of the Easement Areas and operations therein, shall be in compliance with law and requirements of governmental authorities, and each Improvements Owner shall obtain, at its sole cost and expense, all permits, licenses and authorizations, if any, required for its utilization of the Easement Areas.

2. Miscellaneous Provisions.

a. This Declaration shall be governed and constructed in accordance with the laws of the Commonwealth of Virginia. Any dispute between any of the Owners under any of the terms or conditions of this Declaration or with respect to the interpretation of any of the easements, covenants or restrictions of this Declaration, shall be brought in the Circuit Court of Arlington County, Virginia as the sole and exclusive venue and forum for any such disputes or actions.

b. The Owners shall take such further actions and execute such additional documents as may be reasonably required in order to effectuate the intent of this Declaration.

c. If any term, covenant or condition of this Declaration shall be unenforceable or invalid, then the remainder of this Declaration shall not be affected thereby, and each such term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

d. This Declaration contains the complete understanding and agreement of the Owners with respect to all matters referred to herein, and any and all prior representations, negotiations, and understandings are superseded hereby.

e. No failure by any Owner to enforce any provision of in this Declaration shall be deemed a waiver of its rights to enforce this Declaration thereafter.

f. Any breach of this Declaration by any Owner, shall not abrogate the effect this Declaration to run with the land. No breach of any covenant contained in this Declaration shall transform, or be construed to transform, the covenants contained herein into personal obligations rather than covenants that run with the land.

g. The obligations created by this Declaration shall survive any transfer, division, or subdivision of the Properties, or aggregation of any other real property with the Properties.

h. If any Owner shall determine that any default has occurred under this Declaration, then any Owner may enforce the Declaration by proceeding at law, or in equity in the Circuit Court of Arlington County, Virginia, against the persons or entities violating or attempting to violate any of part of this Declaration. Any Owner may seek judicial action to restrain any violation of this Declaration. No remedy conferred upon or reserved to an Owner by this Declaration is intended to be exclusive of any other available remedy or remedies. Each and every such remedy is cumulative and in addition to every other remedy given under this Declaration and existing at law or equity. No delay or omission to exercise any right or power conferred under this Declaration will impair any such right or power or will be construed to be a waiver thereof.

i. This Declaration cannot be amended or released, except by written instrument executed by all Owners, unless otherwise provided for herein.

3. Force Majeure. If as a result of any event of Force Majeure any of the Owners is unable to exercise any right or option hereunder, or perform any obligations required hereunder, within

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the time limit provided therefore in this Declaration, such time limit shall be extended for a period equal to the duration of such event.

4. Insurance Requirements; Waiver of Subrogation.

a. Each Improvements Owner shall maintain at its expense the insurance required in *Exhibit D* attached hereto and made a part hereof. Each such liability insurance policy shall name as insureds or additional insureds thereunder all Owners, as their interests may appear. All insurance required and all renewals of insurance shall be issued by companies that satisfy the requirements of *Exhibit D* and that are authorized to issue such policies and otherwise transact business in the Commonwealth of Virginia. All insurance policies will expressly provide that such policies will not be canceled or altered without thirty (30) days' (10 days in the event of a failure to pay premiums) prior written notice to all Owners. Such insurance will, to the extent obtainable, at no material cost to the Improvements Owners, provide that no act or omission of Improvements Owners which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Upon written request of any Owner, each Improvements Owner so requested shall deliver to the requesting Owner within thirty (30) days a copy of each such insurance policy or certificates thereof, and the Improvements Owner shall keep such originals available on the Property or elsewhere for each Owner's inspection, as provided herein. Notwithstanding the foregoing, during all periods in which the County is an Improvements Owner, the terms and conditions of this Section 4 shall not apply to County. In such event, the County shall maintain insurance coverages with respect to the Improvements consistent with the insurance coverages the County then maintains with respect to its other owned real property in the County's discretion.

b. The Improvements Owners hereby release each other and waive any claims they may have against the other for loss or damage to the Project, the Community Center and all other improvements, fixtures, equipment and/or any other personal property located on the Properties arising from a risk insured against under the property insurance policies carried or to be carried by the Improvements Owners, as required above, even though such loss or damage was caused by the negligence of the other Improvements Owner or their respective agents, contractors or employees (or any combination thereof), except for the amount of the commercially reasonable deductible under said policies. The Improvements Owners agree to obtain and maintain throughout the term of this Declaration endorsements to their respective property insurance policies waiving the right of subrogation of their insurance companies against the other Improvements Owners and their respective agents, contractors and employees.

5. Notices. All notices, demands, or requests (each a "Notice," and, collectively, the "Notices") required or permitted to be given pursuant to this Declaration shall be in writing, and shall be sent (a) by hand delivery, or (b) by certified mail, postage prepaid, return receipt requested, or (c) by nationally recognized overnight courier, and all such Notices shall be deemed delivered when received. Rejection or other refusal to accept or inability to deliver because of changed address of which no Notice has been given shall constitute receipt of the Notice. Notices shall be addressed as follows:

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If given to Declarant: The County Board of Arlington County, Virginia
2100 Clarendon Boulevard - Suite 302
Arlington, Virginia 22201
Attention: County Manager

With copies to: Arlington County Office of the County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201
Attention: County Attorney

And to: Arlington County Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201
Attention: Real Estate Bureau Chief

And to: Arlington County Housing Division
2100 Clarendon Boulevard, Suite 700
Arlington, Virginia 22201
Attention: Housing Division Director

And to: Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, Virginia 22102
Attention: Colin J. Smith

If given to the initial
Improvements Owner: Arlington Mill Limited Partnership
c/o Arlington Partnership for Affordable Housing, Inc.
2704 N. Pershing Drive
Arlington, Virginia 22201
Attention: President

With a copy to: Bocarsly, Emden, Cowan, Esmail & Arndt, LLP
7200 Wisconsin Avenue, Suite 900
Bethesda, Maryland 20814
Attention: Craig Emden

And a copy to: Bean, Kinney & Korman, P.C.
2300 Wilson Blvd, 7th floor
Arlington, Virginia 22201
Attention: Real Estate and Zoning Section

or in each case to such other address as any Owner may from time to time designate in writing by Notice given under the terms of this Section 5.

6. Incorporation of Recitals. The Recitals set forth above are incorporated into this Declaration.

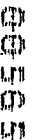
7. Termination. This Declaration shall automatically terminate, and become null and void, upon the earlier to occur of: (a) the consolidation of Parcel A and Parcel B into a single, unified parcel of land, or (b) unanimous written consent by all Owners.

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8. Protection of Mortgagees. Notwithstanding any other term or provision of this Declaration to the contrary, if and to the extent that any of the Land Owners or Improvements Owners has granted a mortgage on its interest in the land or improvements of Parcel A or Parcel B, as the case may be, to an institutional lender that is not affiliated with the granting Owner (a "Mortgagee"), neither this Declaration nor any easement, covenant or restriction granted or made hereunder shall be modified, amended or terminated while such mortgage continues to encumber the applicable property without the prior written consent of each such Mortgagee; provided, however, where any Improvements Owners holds its interest in and to the applicable improvements pursuant to a lease with a Land Owner, no mortgagee of such Improvements Owner shall be considered to be a Mortgagee for purposes of this Declaration unless such mortgagee's consent is required, by the terms of the applicable lease, before the applicable lease can be modified, amended or terminated. Declarant hereby acknowledges that, on or about the Effective Date hereof, AMLP has entered or shall enter into leasehold mortgages with each of Virginia Housing Development Authority ("VHDA") and Bank of America, N.A. ("Bank of America"), and that, so long as the lien of such leasehold mortgages remain in place upon AMLP's interest in the Project, each of VHDA and Bank of America, and their respective successors and assigns under such leasehold mortgages, shall constitute a Mortgagee under this Declaration.

SPECIAL COUNTY PROVISIONS

1. Role of Declarant/Declarant Decisions; No Waiver. Declarant has entered into this Declaration in its role as declarant under this Declaration and not as a governing authority. Accordingly, Declarant's execution of this Declaration shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the proposed re-subdivision of the Properties or for the renovation of the improvements, or for any other governmental approval or consent required to be obtained by the Improvements Owners, including without limitation, any easement or permit. Whenever in this Declaration Declarant, in its role as the Declarant or as an Owner, is required to join in, consent, give its approval, or otherwise act under this Declaration, it is understood that such obligations are meant to apply to Declarant acting in its capacity as a land owner and not in its capacity as a governing authority. Further, any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by Declarant pursuant to this Declaration, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and the Improvements Owners shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Declarant; provided such decision, determination, consent, notification, or other action by Declarant is taken in accordance with all applicable laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Declaration shall be construed to waive any of Declarant's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the land or improvements, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.



2. No Rights in Third Parties. Except as otherwise specifically provided in this Declaration, no provision of this Declaration shall create in the public, or in any person or entity other than the Owners, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Declaration or otherwise.
3. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Declaration to the contrary, Declarant shall have no obligation to explicitly or implicitly indemnify or hold harmless other Owners or any third party or parties from any loss or liability whatsoever.
4. Effectiveness of Declaration. This Declaration shall not become effective unless and until this Declaration has been executed by the County Manager or her designee, approved as to form by the County Attorney, and recorded in the land records of Arlington County, Virginia.
5. Appropriation of Funds. All of Declarant's obligations under this Declaration as the Declarant or as an Owner shall be fully subject to the appropriation of funds by The County Board of Arlington County, Virginia for the specific purpose of satisfying the obligations of Declarant hereunder.
6. No Waiver of Sovereign Immunity by Declarant. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration, nor any action taken by Declarant pursuant to this Declaration, nor any document which arises out of this Declaration, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Declarant, or of its elected and appointed officials, officers and employees in its capacity as a governing authority, to the extent that sovereign immunity applies to this Declaration and/or to the transactions contemplated hereunder.

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IN WITNESS WHEREOF, Declarant has executed this Declaration under seal as of the date first written above.

**THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA**, a body corporate and politic

By: [Signature]
Name: Uri Arkin
Title: Real Estate Bureau Chief

APPROVED AS TO FORM
[Signature]
County Attorney

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

The foregoing instrument was acknowledged before me this 22nd day of August 2012, by Uri Arkin, the Real Estate Bureau Chief of The County Board of Arlington County, Virginia, a body corporate and politic, as Declarant.

[Signature]
Notary Public

My Commission Expires: May 31, 2014
Notary Registration No.: 7043416



JOINDER

The undersigned hereby joins in the Declaration to evidence its consent to this Declaration, and to subordinate its leasehold interest under the Ground Lease to the terms, conditions, easements, licenses, covenants and restrictions of this Declaration, and to acknowledge that it is fully bound by the terms, conditions, easements, licenses, covenants and restrictions of this Declaration as an Improvements Owner hereunder.

ARLINGTON MILL LIMITED PARTNERSHIP, a
Virginia limited partnership

By: Arlington Mill Development Corporation, a
Virginia corporation, its General Partner

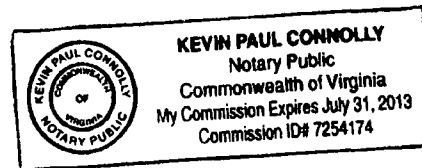
By: [Signature]
Name: Nina Janopaul
Title: President

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

The foregoing instrument was acknowledged before me this 21st day of August 2012, by Nina Janopaul, the President of Arlington Mill Development Corporation, a Virginia corporation, the General Partner of Arlington Mill Limited Partnership, a Virginia limited partnership, as an Improvements Owner.

[Signature]
Notary Public

My Commission Expires: July 31, 2013
Notary Registration No.: 7254174



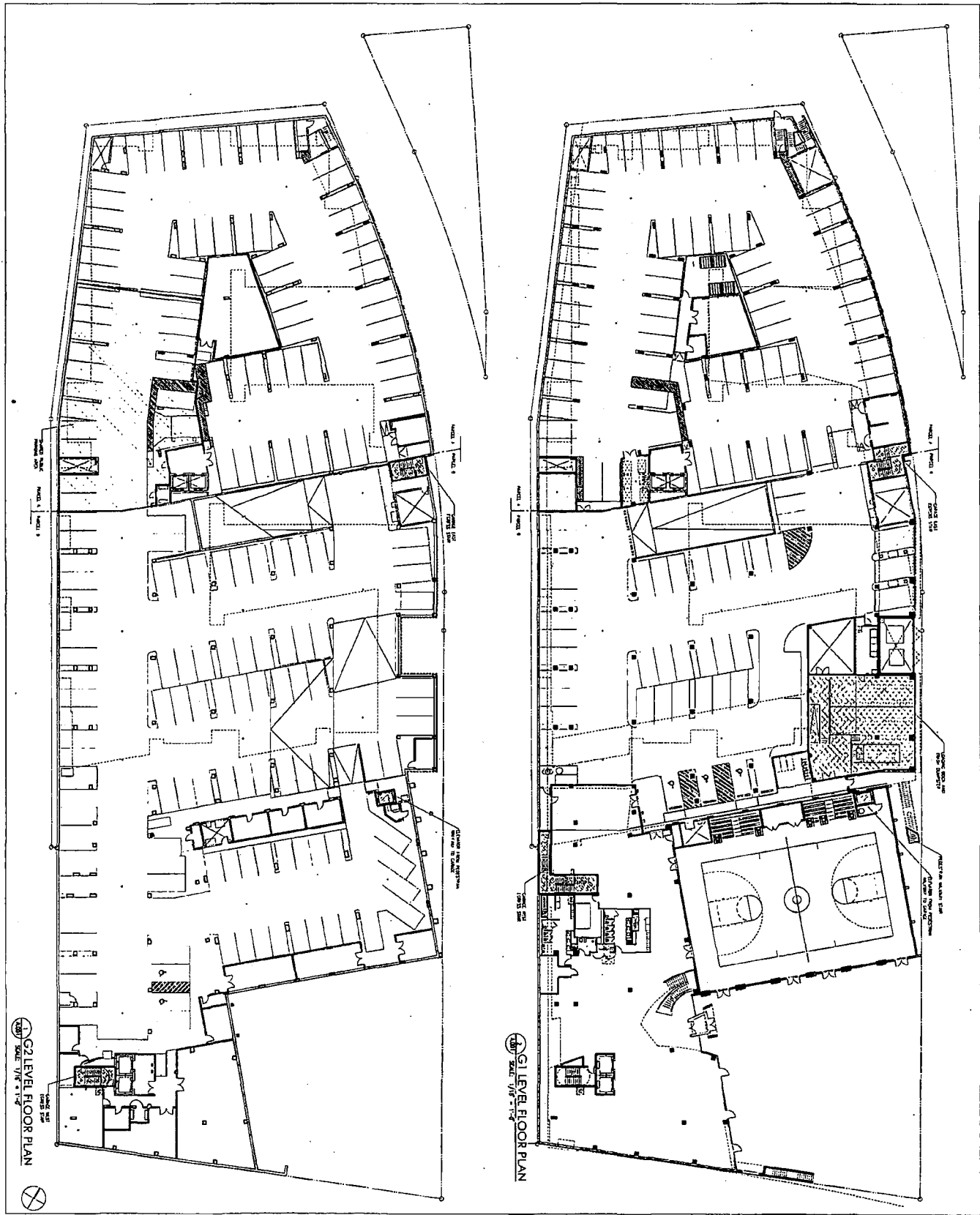
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④
④

EXHIBIT A
Plans Showing Approximate Location of Easement and License Areas
on Parcel A and Parcel B, Arlington Mill, Arlington County, Virginia

[To Be Attached]

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00570

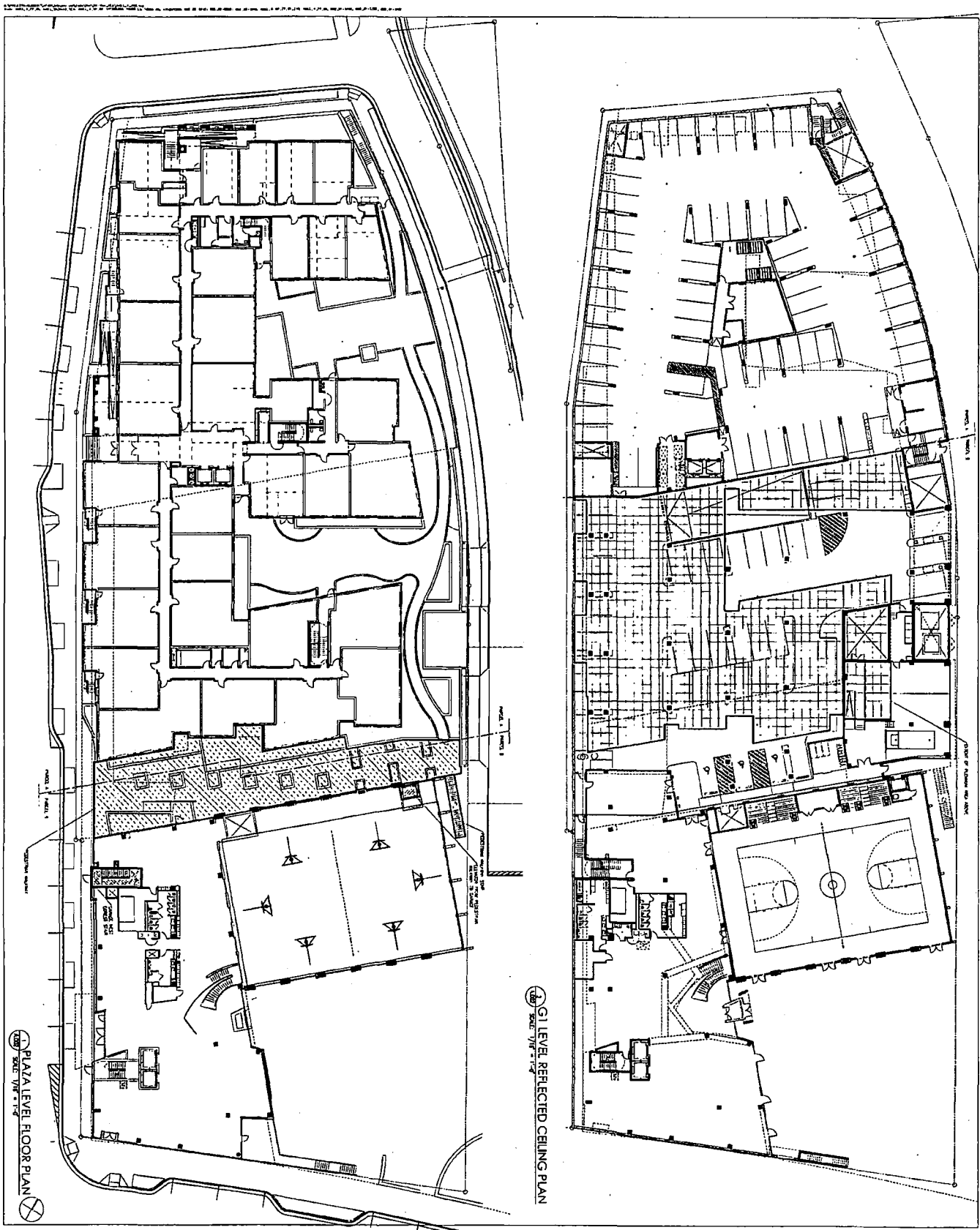


ARLINGTON MILL RESIDENCES
 901 SOUTH DINWIDDIE STREET, ARLINGTON, VA
 REA EXHIBIT
ARLINGTON MILL LIMITED PARTNERSHIP

KGd
 KENNEDY GRUBBS DESIGN
 ARCHITECTS
 1000 COMMONWEALTH COMMONS
 ARLINGTON, VA 22202
 TEL: 703.520.8800
 WWW.KGDDSIGN.COM

PROJECT NUMBER	10018.00
DATE	07.30.2012
SCALE	AS NOTED REA EXHIBIT

A.001



00571

PROJECT NAME	10018.00
DATE	07.30.2012
SCALE	1/8" = 1'-0"
REVISIONS	REA DIAGRAMS
PROJECT NUMBER	A.002

ARLINGTON MILL RESIDENCES
 901 SOUTH DINWIDDIE STREET, ARLINGTON, VA
 REA EXHIBIT
 ARLINGTON MILL LIMITED PARTNERSHIP

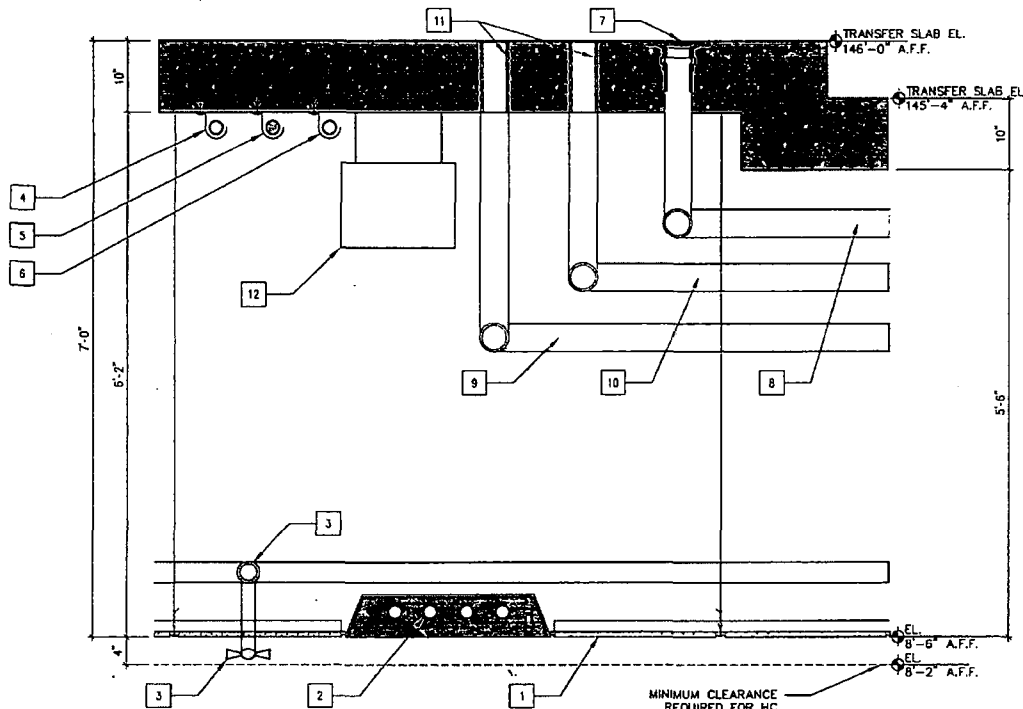
KGAD
 ARCHITECTS | INTERIORS | LANDSCAPE ARCHITECTS
 10018.00
 07.30.2012
 10018.00

EXHIBIT B
Cross-Section of Plenum Area

[To Be Attached]

00572

b1



LEGEND		
ITEM	INSTALLED BY:	MAINTAINED BY:
1	APAH	APAH
2	APAH	APAH
3	ARLINGTON COUNTY	ARLINGTON COUNTY
4	ARLINGTON COUNTY	ARLINGTON COUNTY
5	APAH	APAH
6	ARLINGTON COUNTY	ARLINGTON COUNTY
7	ARLINGTON COUNTY / APAH	APAH
8	ARLINGTON COUNTY / APAH	APAH
9	APAH	APAH
10	APAH	APAH
11	ARLINGTON COUNTY	APAH
12	APAH	APAH

M:\P\306602\DWG\DETAILS\G1_PLENUM_EXHIBIT.DWG
Date: 06/29/12

G1_PLENUM_EXHIBIT.DWG June 29, 2012, 11:04 am

dc DESIGN
 1675 International Drive, Suite 300
 McLean, Virginia 22102
 P 703.556.9275 F 703.021.6976
 www.dcsdesign.com

G1 Level - Plenum Exhibit - Area B
Arlington Mill Community Center
 June 29, 2012

NOT TO SCALE
 306602.10

57500

EXHIBIT C
Preliminary Estimate of the Parking Garage Operating Expenses

Arlington Mill Garage Operating Expenses - Annual

	Total	County (90%)	Residential (10% of selected items)	Notes	
Salaries and Wages	\$90,100	\$81,090.00	\$9,010.00	This covers an on-site attendant 12 hrs/day 7 days per wk, as well as after hours service from Ballston garage personnel to serve clients through the intercom, open residential door remotely and the dispatch of Ballston personnel if necessary etc	
Payroll Taxes and Burden	\$10,594	\$9,534.60	\$1,059.40		
Health, Welfare & Pension	\$10,618	\$9,556.20	\$1,061.80		
Workers Compensation	\$4,063	\$3,656.70	\$406.30		
Uniforms & Laundry	\$2,066	\$2,066			
Printing	\$2,758	\$2,758			
Amenities & Supplies	\$2,629	\$2,629			
Repairs & Maintenance	\$23,353	\$23,353			
License & Permits	\$796	\$796			
Liability Insurance	\$4,483	\$4,483			
Rental Expense	\$306	\$306			
Postage & Freight	\$318	\$318			
Telephone	\$3,565	\$3,565			
Accounting & Audit	\$3,183	\$2,865	\$318.30		Administration of system especially concerning fob distribution and validation
Data Processing	\$3,307	\$2,976.30	\$330.70		
Employee Processing	\$196	\$196			
Base Management Fee	\$19,096	\$19,096			
TOTAL OPERATING EXPENSES		\$169,244.50	\$12,186.50		

APAH's share of the expenses is to cover their contribution towards the overall management system of the garage. The amount will be re-evaluated if they choose to create a separate entrance on the upper level of the garage. They will also pay for any expenses related to the intercoms from the garage to their office or security provider and any costs related to the garage doors entering their area as well as the procurement of entrance cards or fobs for their residents, regular employees or service providers. It is understood that the County will not charge APAH for validating its prospective tenants and service providers. It is likely that APAH will not validate the parking fees of tenant guests. APAH and the County will periodically review the validation operation. This break down of expenses and the allocation between the County and APAH may be amended at the agreement of both parties.

EXHIBIT D
Insurance Requirements

Each Improvements Owner shall obtain and keep in force, at such Improvements Owner's expense, the following insurance; provided however, that to the extent a partnership agreement or operating agreement of any affiliate, or any mortgagee's insurance requirements require other insurance coverage, or a higher standard or amount of insurance coverage, to be maintained with respect to such Improvements Owners, affiliate or the Parcel, such other coverage requirements and such higher standards or amounts shall apply.

During all phases of the construction of the Project and until the receipt of final certificates of occupancy, Parcel A Improvements Owner shall maintain, or cause it's contractor (the "Builder") to maintain, an all-risk builder's risk insurance policy in non-reporting completed form. Limits of policy will be at least the estimated replacement value of the completed Project, plus the value of other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation; loss payment shall be to Parcel A Improvements Owner. Parcel A Improvements Owner, County, Builder, the general contractor and subcontractors and suppliers of any tier as their interest may appear shall be the named additional insureds on the policy.

Commencing from the earliest (a) of receipt of final certificates of occupancy for the Project, or (b) the lapse in builder's risk coverage, each Improvements Owner shall maintain the following insurance coverages applicable to its Improvements:

(i) Property Insurance - insurance covering risks of direct physical loss or damage. Limits of policy will be at least the estimated replacement value of the Improvements, plus the value of the other property insured. The policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation, loss payment shall be made to the Improvements Owner. All Owners shall be the named insureds on the policy.

(ii) Liability - Commercial general liability insurance against claims for bodily injury, property damage, personal injury or advertising injury occurring on, in or about the Parcel or the elevators or escalators therein, in amounts initially not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate, and in such greater amounts as County shall reasonably require from time to time upon at least ninety (90) days prior written Notice to the Improvements Owner before the annual renewal date of the insurance policy. Improvements Owner shall be the named insured on the policy and each Owner shall be the additional insured on the policy.

(iii) Umbrella/Excess Liability - Such insurance shall have the commercial general liability and automobile liability policies schedules as underlying policies. Limits on the policy shall initially be at least \$5,000,000 per occurrence and in the annual aggregate, and in such greater amounts as County shall reasonably require, consistent with other comparable multi-family residential projects in Arlington County, upon at least ninety (90) days prior written Notice to the Improvements Owner before the annual renewal date of the insurance policy. All Owners shall be named as an additional insured on the policy.

1694600

Deeds Document
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In the Office of the
Clerk of the Circuit Court
of Arlington County, Virginia

File Information

Document #: 2012242149 Book / Page: 4596 / 1184 Recorded: 8/29/2012 4:10:47 PM Clerk ID: lsmith

Document Type

Document Type: DECLARATION

Document Information

Text Pages: 21

Plat Pages: 0

Document Date:

Received Of: COMMONWEALTH

Grantor: ARLINGTON COUNTY BOARD

Tax Exempt Code: None

Taxable Consideration:

Actual Consideration:

Assumption Balance:

Original Amount:

New Amount:

County: ARLINGTON

Fees

(038) State Grantor: \$0.00

(039) State Tax: \$0.00

(145) State Library: \$1.50

(301) Clerk's Fee: \$28.50

(106) Technology Fee: \$5.00

(035) Open Air Preservation Fee: \$0.00

(036) Processing Fee: \$0.00

(213) Arlington Co. Tax: \$0.00

(212) Arlington Co. Tariff: \$0.00

(220) Arlington Grantor: \$0.00

(214) Falls Church Tax: \$0.00

(222) Falls Church Tariff: \$0.00

(223) Falls Church Grantor: \$0.00

(414) Arlington Co. Regional Congestion Relief Fee: \$0.00

(416) Falls Church Regional Congestion Relief Fee: \$0.00

Total

Document Total: \$35.00

Arlington County, Virginia
Clerk of the Court's Office

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

Paul Ferguson
Clerk

IMPORTANT:
DO NOT DETACH
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THE DOCUMENT!

Cover Sheet Required for document processing DO NOT REMOVE