

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “Memorandum”) is made as of this ____ day of _____, 2009, by and between the COUNTY OF FAIRFAX, VIRGINIA (the “County”); [MERRIFIELD MIXED USE], LLC, a Virginia limited liability company, or its successor or assigns, as landowner and developer (the “Developer”); and MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY (the “CDA”).

WITNESSETH

WHEREAS, the Developer is the owner or contract purchaser of certain real property located in the County (collectively, the “Property”); and

WHEREAS, on February 11, 2009, the Developer filed with the Board of Supervisors of the County (the “Board of Supervisors”) a petition (the “Petition”) pursuant to Sections 15.2-5152 *et seq.* of the Code of Virginia of 1950, as amended (the “Virginia Code”), requesting the Board of Supervisors to create a community development authority to assist in the development of certain infrastructure improvements as described in the Petition (the “Improvements”) in conjunction with the development of the Property as a mixed-use project consisting of commercial, retail and residential components defined herein as the Project; and

WHEREAS, by Ordinance adopted _____, 2009 (the “Ordinance”), the Board of Supervisors created the CDA and the CDA District (as described in the Ordinance), which CDA District is composed of the Property; and

WHEREAS, the transactions contemplated by this Memorandum will benefit the citizens of the County by promoting increased employment opportunities, a strengthened economic base and increased tax revenues and additional retail and residential opportunities not currently available in the local area; and

WHEREAS, the parties wish to set forth several understandings with respect to the CDA and its plan of finance in this Memorandum:

NOW, THEREFORE, in consideration of the foregoing, the parties set forth the following agreements and understandings:

1. **Definitions.** The following terms as used in this Memorandum each shall have the meaning as stated in this paragraph as follows:

(a) “Aggregate Credit” means for purposes of the Reimbursement Amount the sum of the annual Credits accruing from the first year in which any of the Bonds are issued to the

Reimbursement Date or to any year prior to the Reimbursement Date, plus any portion of an Annual Installment for a given year that is collected by the County from the Developer and applied to pay debt service on Tax Revenue Bonds less any such amounts collected from the Developer that have been repaid to the Developer or its successors or assigns from the Surplus as provided herein in paragraph 5(j)(3). For example, if the parties seek to determine the Aggregate Credit at the end of 2020 and the first issuance of Bonds occurred in 2009, the Aggregate Credit would be the sum of annual Credits from 2009 through and including 2020.

(b) “Aggregate Debit” means for purposes of the Reimbursement Amount the sum of the annual Debits accruing from the first year in which any of the Bonds are issued to the Reimbursement Date or to any year prior to the Reimbursement Date. For example, if the parties seek to determine the Aggregate Debit at the end of 2020 and the first issuance of Bonds occurred in 2009, the Aggregate Debit would be sum of the annual Debits from 2009 through and including 2020.

(c) “Annual Increment” means for a particular calendar year beginning as of January 1 of the year in which the first series of Tax Revenue Bonds is issued the numerical result of subtracting from the sum of the Gross Incremental Tax Revenues for that calendar year both the debt service paid on Tax Revenue Bonds in that year and the County Return Hurdle. It may be a positive or a negative number.

(d) “Annual Installment” means the amount of the Special Assessment to be levied and collected in a particular year pursuant to Virginia Code Section 15.2-5158(A)(5) and paragraph 5 of this Memorandum.

(e) “Assessment Amount” means the amount of an Annual Installment sufficient (1) to pay all Costs other than debt service on Tax Revenue Bonds anticipated by the County to be due or incurred in the next calendar year; plus (2) to pay debt service on Tax Revenue Bonds anticipated by the County to be due or incurred in the next calendar year, if and to the extent that the County reasonably anticipates that available County Advanced Revenues will be insufficient for that purpose; plus (3) to Fully Fund the Special Assessment Bond DSRF; plus (4) to Fully Fund the Tax Revenue Bond DSRF.

(f) “Board” or “Board of Supervisors” means the Board of Supervisors of Fairfax County, Virginia.

(g) “Bonds” means bonds to be issued by the CDA pursuant to Virginia Code Sections 15.2-5158(A)(2) and 15.2-5125 or, at the option of the County and with the concurrence of the EDA, to be issued in whole or part by the EDA pursuant to Chapter 643 of the 1964 Acts of the General Assembly of Virginia, as amended, and other applicable law, in aggregate principal amounts sufficient to produce amounts available for the capital costs of Improvements equaling \$72,000,000, as set forth in this Memorandum, and anticipated to be issued in two series (including any sub-series) called the Tax Revenue Bonds and the Special Assessment Bonds, respectively.

(h) “CDA” means the Mosaic District Community Development Authority created

by the Board by adoption of the Ordinance.

(i) “CDA District” means the portion of the County that is within the jurisdiction of the CDA, as created by the Board by adoption of the Ordinance.

(j) “Costs” means that portion to be paid with proceeds of the Bonds of the costs associated with the acquisition, design, construction, project management and development of the Improvements, capitalized interest through _____, 20____, required reserves, the costs of issuing the Bonds (including, but not limited to, attorneys’ fees, underwriter fees, engineering fees and appraisal fees), additional administrative costs to be incurred by the County in connection with the administration and operation of the CDA and the performance of the County’s other obligations pursuant to this Memorandum, certain administrative costs to be incurred by the CDA as set forth below in paragraph 5(o) of this Memorandum, and debt service on the Bonds.

(k) “County” means the County of Fairfax, Virginia.

(l) “County Advanced Revenues” means for each calendar year an amount equal to that portion of the real estate taxes on property within the CDA District collected by the County pursuant to Chapter 32 of Title 58.1 of the Virginia Code that is attributable to the increased value between the current assessed value of each Parcel and the base assessed value of such Parcel as set forth in Virginia Code Section 58.1-3245.2, less any amounts collected as a result of the Special Tax, which the Board of Supervisors agrees will be paid to the CDA, subject to annual appropriation, for that purpose, as provided in this Memorandum; provided, however, that the “base assessed value,” as that term is defined in Virginia Code Section 58.1-3245, shall be determined as of January 1, 2007. County Advanced Revenues shall be dependent on appropriations being made for that purpose from time to time by and in the discretion of the Board, and shall not be deemed to be a general obligation of the County.

(m) “County Return Hurdle” means for each calendar year an amount equal to the County Return Hurdle for the previous year multiplied by the sum of one (1) plus the previous year’s CPI-U. For purposes of this definition, the County Return Hurdle shall be zero (0) until Stabilization, at which point the amount will be [\$_____ being the amount approved by the Board based on Municap computation] in the first year following Stabilization and such amount shall serve as the initial County Return Hurdle.

(n) “CPI-U” means for each calendar year the consumer price index-urban published by Bureau of Labor Statistics, United States Department of Labor.

(o) “Credit” means for a particular calendar year the Net Present Value of the Annual Increment for such calendar year.

(p) “Debit” means for a particular calendar year the Net Present Value of debt service paid on Tax Revenue Bonds, if any, in such calendar year.

(q) “Developer” means the Merrifield Mixed Use LLC, a Virginia limited liability company, or its successors or assigns.

(r) “Discount Rate” means the average CPI-U percentage for the period beginning in the year the Bonds are issued and ending in the year immediately preceding the year in which the Discount Rate is to be applied. For example, in determining the Discount Rate applicable in 2014, and assuming the Bonds are issued in 2009 and assuming the CPI-U for 2010, 2011, 2012 and 2013 are 2.5%, 2.0%, 2.0% and 2.0%, respectively, the CPI-U percentage for 2014 would be 2.13%.

(s) “EDA” means the Fairfax County Economic Development Authority.

(t) “Fiscal Agent” means the bank or trust company designated as such pursuant to paragraph 5(a) of this Memorandum to perform the duties set forth therein.

(u) “Fully Fund” means to fund the Special Assessment Bond DSRF, the Tax Revenue Bond DSRF, or the Surplus Fund, as appropriate in context, up to the levels specified in paragraphs 5(j) (1), (2) and (3), respectively, of this Memorandum

(v) “Gross Incremental Tax Revenues” means for each calendar year the sum of (1) an amount equal to the County Advanced Revenues collected that year, whether or not appropriated for payment to the CDA by the Board; plus (2) the County’s portion of sales and use taxes collected that year by the County pursuant to Chapter 6 of Title 58.1 of the Virginia Code from retail establishments located within the CDA District, less the amount of such taxes collected by the County during either 2007 or 2008, whichever is larger, from businesses located on property thereafter included in the CDA District; plus (3) the County’s BPOL tax revenues collected that year by the County pursuant to Chapter 37 of Title 58.1 of the Virginia Code for business conducted within the CDA District, less the amount of such taxes collected by the County during either 2007 or 2008, whichever is greater, from businesses located on property in that portion of the County that is included in the CDA District; plus (4) the County’s transient occupancy tax revenues collected that year by the County pursuant to Article 6 of Chapter 38 of Title 58.1 of the Virginia Code from businesses located within the CDA District; plus (5) personal property taxes collected that year by the County pursuant to Article 1 or 1.01 of Chapter 35 of Title 58.1 of the Virginia Code for personal property located within the CDA District, if and to the extent that the County is able to determine the location of such property from its regular tax records, less the amount of such taxes collected by the County during either 2007 or 2008, whichever is greater, for such property located in that portion of the County that is included in the CDA District; plus (6) any other taxes that are not being imposed as of the date of this Memorandum but that subsequently are collected from or attributable to the CDA District for the benefit of the County. All the amounts described in this paragraph 1(v) shall be based on actual figures to the extent that such actual figures are made available to the County in a timely manner each year or, if and to the extent any such actual figures are not so made available, then on estimates made by the County on any reasonable basis. The mathematical determination of Gross Incremental Tax Revenues each year using figures provided by the County (either actual or estimated as described above) may be verified by the professional administrator engaged by the CDA pursuant to paragraph 6(c) of this Memorandum, whose duties and activities shall

be governed by an administrative services agreement among the administrator, the CDA, the Developer and the County. To the extent permitted by applicable law, Developer has the right at any time to review the calculations, and detailed support thereof, prepared by the County to derive the Gross Incremental Tax revenue.

(w) “Improvements” means the public infrastructure improvements described in the Petition, all of which are deemed necessary to meet increased demands to be placed upon the County as a result of the Project.

(x) “Indenture” means either the indenture of trust between the CDA and the Trustee under which the Special Assessment Bonds will be issued, or the indenture of trust between the CDA and the Trustee under which the Tax Revenue Bonds will be issued, or both, as appropriate in context.

(y) “Memorandum” means this Memorandum of Understanding.

(z) “Net Present Value” means a value equal to a given numerical figure divided by the sum of one (1) plus the Discount Rate, that sum raised to the power equal to the number of years between that calendar year and the first year in which any Tax Revenue Bonds are issued. For example, if the Discount Rate determined to be applicable in 2016 is 2.5%, and Tax Revenue Bonds are first issued in 2009, then the Net Present Value of 100 in 2016 would be calculated as $100/(1+0.025)^7 = 84.13$.

(aa) “Ordinance” means the ordinance adopted by the Board on _____, 2009, creating the CDA and the CDA District.

(bb) “Parcel” means an individual parcel of real property located within the CDA District.

(cc) “Parking Facilities” means the portions of any parking garages and decks funded with the proceeds of Tax Revenue Bonds. Such portions will be determined so as to (1) make it possible for the Parking Facilities to be operated in a manner that can generate revenue to pay the Reimbursement Amount, (2) enable the County to have an enforceable security interest in the Parking Facilities, and (3) enable the County to convert such security interest into an equity interest, all as set forth herein in paragraph 5.

(dd) “Project” means a mixed-use town center project located on the Property with up to 1,893,112 square feet of retail, multi-family housing, hotel and/or office space to be undertaken in accordance with rezoning case RZ2005-PR-041 that was approved by the Board on October 15, 2007.

(ee) “Property” means that real property in the County included in the CDA District as described in the Ordinance.

(ff) “Rate and Method” means the rate and method for apportioning Special

Assessments among Parcels as generally set forth in the exhibits to this Memorandum.

(gg) “Reimbursement Amount” means the reimbursement amount due to the County determined as set forth in paragraph 5(m) of this Memorandum.

(hh) “Reimbursement Date” means the date that is thirty (30) years following Stabilization of the Project.

(ii) “Special Assessment” means an assessment levied and collected pursuant to Virginia Code Section 15.2-5158(A)(5).

(jj) “Special Assessment Bonds” means that series of Bonds anticipated to be paid principally from proceeds of Special Assessments and issued in an aggregate principal amount sufficient to produce amounts available for public improvement capital costs equaling \$30,000,000.

(kk) “Special Assessment Bond DSRF” means the Special Assessment Bond debt service reserve fund established pursuant to and for the purposes set forth in paragraph 5(j) of this Memorandum.

(ll) “Special Tax” means a special tax on taxable real property within the CDA District levied pursuant to Virginia Code Section 15.2-5158(A)(3), such special tax being levied only in the event the Special Assessment is determined to be legally unenforceable in a final decree by a court of competent jurisdiction. The millage rate of such special tax shall be the rate per \$100 of assessed fair market value of any taxable real estate or assessable value of taxable leasehold property within the CDA District that is reasonably determined to be necessary for receipts from the special tax to replace (but in no event exceed) the revenue to be derived from the levy of the Special Assessment as contemplated by this Memorandum. If the Special Assessment is determined to be unenforceable as provided herein, then any and all references in this Memorandum to the Special Assessment as a revenue source shall mean Special Tax.

(mm) “Stabilization” means the date one (1) year after the final residential use permit or non-residential use permit is issued for the Project, but in no event later than six (6) years following the issuance of the first series of any of the Bonds.

(nn) “Surplus” means that portion, if any, of annual County Advanced Revenues described in paragraph 5(j)(3) of this Memorandum.

(oo) “Surplus Fund” means the fund established and maintained pursuant to paragraph 5(j)(3) of this Memorandum.

(pp) “Tax Revenue Bonds” means that series of Bonds anticipated to be paid principally from County Advanced Revenues and issued in an aggregate principal amount sufficient to produce amounts available for public improvement capital costs totaling \$42,000,000 for Improvements in the nature of public roads, curbs and gutters (inclusive of right of way and easements related thereto),

public sidewalks and walkway paths, public park and plaza facilities, and certain parking facilities.

(qq) “Tax Revenue Bond DSRF” means the Tax Revenue Bond debt service reserve fund established pursuant to and for the purposes set forth in paragraph 5(j) of this Memorandum.

(rr) “Trustee” means the trustee pursuant to the Indenture for the Special Assessment Bonds, the trustee pursuant to the Indenture for the Tax Revenue Bonds, or both, as appropriate in context. The Trustee will be selected by agreement of the CDA and the County.

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

2. Issuance of Bonds. (a) The CDA proposes that the Bonds be issued under an Indenture between the issuer and a Trustee, provided, however, that at the option of the County there may be separate Indentures for each of the Special Assessment Bonds and the Tax Revenue Bonds. The proceeds of the Bonds will be used to pay a portion of the costs associated with the acquisition, design, construction, project management and development of the Improvements, capitalized interest through _____, 20__, required reserves, the costs of issuing the Bonds (including, but not limited to, attorneys’ fees, underwriter fees, engineering fees and appraisal fees) and additional administrative costs to be incurred by the County in connection with the administration and operation of the CDA. The CDA will have sole and complete responsibility to pay all of the Costs, which are defined above in paragraph 1 of this Memorandum and include but are not limited to those costs set forth in the second sentence of this paragraph 2.

(b) The Bonds are anticipated to be issued in two series (including any sub-series), the Tax Revenue Bonds and the Special Assessment Bonds. The maximum length of the terms of the Bonds, exclusive of the capitalized interest period, shall be twenty-two (22) years for Tax Revenue Bonds and twenty-seven (27) years for Special Assessment Bonds. The CDA shall not issue any series (including any sub-series) of Bonds without first seeking and receiving the express prior consent of the County for such issuance. No professional or consultant service provider, including but not limited to bond counsel, financial advisors, underwriters, and auditors, shall be engaged by the CDA unless and until the County has approved the selection of each such professional or consultant service provider and also approved the compensation or basis for determining the compensation to be paid to each such service provider for their services.

3. Development of Improvements. The Improvements to be financed with the proceeds of the Bonds, along with other funds which shall be provided by the Developer, consist of various public infrastructure improvements more particularly described in the Petition. Bond proceeds may not be used to pay for any infrastructure improvements other than the Improvements without the express written consent of both the County and the CDA, which consent may be withheld for any reason. The CDA, or the Developer or its designee on behalf of the CDA, will enter into contracts for the acquisition, design, construction, project management and development of the Improvements.

4. Submission of Information. Before the issuance of each series (and any sub-series) of the Bonds, the Developer or the CDA, as appropriate, will submit to the County a Limited Offering Memorandum or other disclosure document to be used in connection with the sale of those Bonds and such other information with respect to the CDA's finances and the issuance of those Bonds as the County may reasonably request. Such documents will be furnished to the County solely for informational purposes and receipt of any such document does not constitute approval of any such document by the County or any person not submitting such documents. Neither the CDA nor the County is required to participate in offering or issuing any Bonds if the County concludes that it has insufficient information to meet all applicable disclosure requirements for such offering or issuance.

5. Payment of the Costs of the Bonds.

(a) Sources of Revenues Generally; Fiscal Agent.

(1) The sources of revenues for the payment of Costs associated with the Bonds and the obligation for the Reimbursement Amount are as set forth below in paragraphs 5(b) and 5(c).

(2) The County shall designate a Fiscal Agent, which may be a Trustee. The CDA will assign its right to receive any Special Assessment revenues, County Advanced Revenues, and, if applicable, Special Tax revenues to the Fiscal Agent and will request that the County pay any such revenues collected by the County directly to the Fiscal Agent on behalf of the CDA, except as provided below. Each year the County, subject to appropriation, and the CDA will assign and transfer to the Fiscal Agent all County Advanced Revenues, except a portion that may be retained by the County pursuant to paragraph 5(j)(3) of this Memorandum, all revenues from Special Assessments, except a portion that may be retained by the County pursuant to paragraph 5(e)(1), and, if applicable, all Special Tax revenues. The Fiscal Agent shall deposit or cause to be deposited in separate accounts all County Advanced Revenues, Special Assessment revenues and, if applicable, Special Tax revenues that it receives. Any interest earnings on each such account shall be credited as additional funds of the type deposited in that account, and shall be available to meet the purposes for which such revenues may be expended as set forth below in paragraphs 5(b) and 5(c).

(3) Based on the applicable debt service schedule, the Fiscal Agent shall pay over to the Trustee for the Special Assessment Bonds and the Trustee for the Tax Revenue Bonds, respectively, all such revenues in its custody that are required to pay debt service on such Bonds and to Fully Fund the Special Assessment Bond DSRF and the Tax Revenue Bond DSRF, in the order of priority set forth below in paragraphs 5(b) and 5(c); provided, however, that the Fiscal Agent's responsibilities shall terminate when there no longer is any obligation to pay debt service on any of the Bonds, and after that time, any revenues of any kind collected for the purpose of paying the Reimbursement Amount shall be retained by the County if collected by the County, or paid over to the County if collected by or otherwise on behalf of the CDA.

(4) The Fiscal Agent shall maintain adequate records of the outstanding balances of the various accounts in its custody and payments made to the respective Trustee, and shall forward to the CDA and the County a financial report and statement setting forth such information by [first date] and [second date] of each year in a form acceptable to the CDA and the County. The CDA and the County shall furnish such information to the Fiscal Agent as is necessary for the Fiscal Agent to fulfill its responsibilities.

(b) Sources of Revenues to Pay Debt Service on Costs Other Than Tax Revenue Bond Debt Service. The Costs payable in any calendar year, including debt service on Special Assessment Bonds but excluding debt service on Tax Revenue Bonds and excluding costs paid with Special Assessment Bond proceeds as described above in paragraph 2(a), shall be paid first from available revenues derived from Special Assessments; if those revenues are insufficient to pay all such Costs, then second, from available funds in the Special Assessment Bond DSRF; and if the revenues previously described collectively are insufficient to pay all such costs, then from any available funds derived from the enforcement of the County's rights and remedies in collecting delinquent Special Assessments. The Developer hereby acknowledges the County's rights and remedies to enforce any such Special Assessment liens that are in arrears.

(c) Sources of Revenues to Pay Tax Revenue Bond Debt Service. Debt service on Tax Revenue Bonds payable in any calendar year, other than those costs paid with Tax Revenue Bond proceeds as described above in paragraph 2(a), shall be paid first from County Advanced Revenues available for such purpose; if such revenues are insufficient to pay such debt service, then second, from available revenues in the Surplus Fund; if the revenues previously described collectively are insufficient to pay such debt service, then third, from revenues derived from Special Assessments, provided, however, that available revenues from Special Assessments first shall be applied as needed to pay debt service on Special Assessment Bonds; if the revenues previously described collectively are insufficient to pay such debt service, then fourth, from available funds in the Tax Revenue Bond DSRF; and if the revenues previously described collectively are insufficient to pay all such costs, then from any available funds derived from the enforcement of the County's rights and remedies in collecting delinquent Special Assessments. The Developer hereby acknowledges the County's rights and remedies to enforce any such Special Assessment liens that are in arrears. For purposes of this paragraph 5(c) and paragraph 5(e) below, the phrase "available for such purpose" shall be without regard to whether the Board of Supervisors appropriates any such County Advanced Revenues to the CDA.

(d) Special Assessment: Definition, Request for Collection, and Determination of Amount. Not later than _____ of each year, commencing _____, the CDA will furnish the annual report described in paragraph 6(c) to the County and will request the County to collect an Annual Installment of the Special Assessment. For each tax year, the CDA shall request that the County levy and collect the Annual Installment in an amount sufficient to pay the entire Assessment Amount. The portion of any Assessment Amount to be levied upon each Parcel shall be determined in accordance with the Rate and Method, which amount may vary among the different Parcels and may be zero with respect to one or more Parcels (as defined in the Rate and Method) if otherwise consistent with applicable Virginia law, provided, however, that if any method of apportionment set forth in the Rate

and Method shall be deemed not to comply with applicable law by a court of competent jurisdiction, then the County shall have the right to reapportion the obligation among the various Parcels in any manner that it reasonably believes is lawful. In making the above request, the CDA also will provide such information as the County may request to enable it to collect the Annual Installment. The parties to this Memorandum recognize that the Developer intends to enter into various private contractual agreements that may result in it or other parties being reimbursed or credited by one or more private parties to those contractual agreements for all or a portion of any Annual Installment paid or payable as provided herein; however, neither the CDA nor the County shall have any obligations or responsibilities pursuant to or because of any such private agreements, and the presence or absence or terms of any such agreement shall be of no consequence regarding the obligation any person otherwise will have to pay any Annual Installment or, if applicable, Special Tax to the County.

(e) Special Assessment: County's Agreement and Assignment. (1) The County Executive or other officer responsible for proposing the County's budget to the Board of Supervisors shall propose payments to the CDA to be derived from such Annual Installment in the County's budget for each fiscal year any Bonds are outstanding; provided, however, that with respect to the Tax Revenue Bonds, any collection and payment of the Annual Installment attributable to the Tax Revenue Bonds from revenues derived from Special Assessments shall be made only to the extent that County Advanced Revenues are not available for such purpose as set forth in paragraph 5(c) herein. The County agrees that so long as the Bonds are outstanding the County will collect the Annual Installment and pay the amounts received there under to the Fiscal Agent, subject to appropriation each year by the Board. To the extent permitted by law, the County pledges and assigns all of its right, title and interest in the Annual Installment to the CDA, except amounts that may be retained by the County to pay administrative costs, as described in paragraph 5(m) below. The CDA, in turn, will pledge and assign all of its right, title and interest in the Annual Installment to the Fiscal Agent or its successor, who will pay over the moneys received, except for amounts segregated for other Costs, to the appropriate Trustee to make debt service payments on the Bonds and, if necessary, to Fully Fund the Special Assessment Bond DSRF or Tax Revenue Bond DSRF. The County agrees to pay the amounts received from each Annual Installment directly to the Fiscal Agent, provided, however, that the County need not pay over to the Fiscal Agent any portion of an Annual Installment to be retained by the County to pay its administrative costs as described in paragraph 5(m) below. The Annual Installment assigned to the Fiscal Agent by the County includes any payments from foreclosures, less costs of collection, but excludes County administrative costs described in paragraph 5(m) below.

(2) The County's obligation to make payments to the Fiscal Agent of the Annual Installment shall not be deemed to be a general obligation of the County, shall be payable solely from payments of the Annual Installment received by the County and shall be subject to and dependent on appropriations being made from time to time of the Annual Installment by the Board of Supervisors for such purpose.

(f) Special Assessment: Landowner's Agreement. In accordance with Virginia Code Sections 15.2-5158(A)(5) and 15.2-2405, the parties hereto agree to the Special Assessment to be levied and apportioned in accordance with this Memorandum and in substantial accordance with the Rate and

Method set forth in the exhibits to this Memorandum. The Developer for itself and its successors and assigns represents and agrees that the Special Assessment, as apportioned pursuant to the Rate and Method, does not exceed the peculiar benefit to the assessed property resulting from the Improvements and is apportioned to property within the CDA District on a rational basis.

(g) Special Tax. In the event the Special Assessment is determined to be legally unenforceable in a final decree by a court of competent jurisdiction, the County may levy a Special Tax in accordance with this paragraph 5(g) and this Memorandum. In such event, not later than _____ of each year, commencing _____, the CDA will request that the County levy and collect the Special Tax at such rate, subject to the limitations of this Memorandum, as the County determines is needed for any of the purposes set forth herein in paragraphs 5(b) and 5(c) above, provided, however, that any assessment, levy, and collection of a Special Tax as a result of such request, and any payment of Special Tax revenues, is solely at the discretion of the Board and subject to annual appropriation. Pursuant to Virginia Code Section 15.2-5158(A)(3), the Developer affirms that it is the sole owner of all real property within the CDA District at the time of execution of this Memorandum, and as such hereby irrevocably requests that for any tax year the maximum rate of the Special Tax be set in excess of \$.25 per \$100 of assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property, to the extent that a Special Tax in excess of that rate is reasonably determined to be necessary to provide revenue in replacement of revenue expected to be derived from the levy of the Special Assessment as contemplated by this Memorandum.

(h) Billing and Collection of Special Assessment and Special Tax Generally. The County shall bill the Annual Installment in the same manner and at the same time as it bills its real estate taxes. The amount of the Annual Installment and, if applicable, the Special Tax levied upon each Parcel will be recorded in the normal manner in the official tax records of the County. Penalties and interest on delinquent payments of the Annual Installment shall be charged as provided by law. The Annual Installment and, if applicable, the Special Tax shall be billed and collected on the same dates as the County's real estate taxes. Payments of the Annual Installment and, if applicable, the Special Tax collected by the County shall be segregated from all other funds of the County and may not be used for any other purpose by the County.

(i) Collection of Delinquent Special Assessments and Special Taxes. The County's customary tax payment enforcement proceedings will apply to the collection of any delinquent payment of Special Assessments or, if applicable, Special Taxes. The County shall pursue the collection of such delinquent payments with the same diligence and in the same manner as it employs in the collection of the County's general ad valorem real estate taxes. The County agrees that it will provide notice to the CDA of any legal proceedings to be instituted for the collection of delinquent payments of Special Assessments and, if applicable, Special Taxes. The parties understand and agree that the County's ordinary discretion in this regard allows it to decide not to expend resources to collect de minimus outstanding amounts. The CDA agrees to cooperate with the County in any such enforcement action.

(j) Debt Service Reserve Funds; Surplus Fund. (1) There shall be established with the Trustee under the Indenture on or before the sale of the Bonds the Special Assessment Bond DSRF

and the Tax Revenue Bond DSRF. The Special Assessment Bond DSRF and the Tax Revenue Bond DSRF shall be established and maintained at such levels as the County reasonably determines are needed to appropriately enhance the marketability of the respective Bonds and that are allowable under applicable federal tax laws and regulations. The Special Assessment Bond DSRF and the Tax Revenue Bond DSRF each shall be deemed to be Fully Funded when it is funded at the respective level described above. The Special Assessment Bond DSRF and the Tax Revenue Bond DSRF shall be used by the Trustee as set forth in paragraphs 5(b) and 5(c) above.

(2) The Special Assessment Bond DSRF shall be Fully Funded initially from proceeds of the Special Assessment Bonds available for that purpose. If at any time thereafter the Special Assessment Bond DSRF becomes less than Fully Funded, those sources of revenue set forth above in paragraph 5(b) shall be used, in the priority order set forth therein, to provide sufficient revenue to Fully Fund the Special Assessment Bond DSRF as soon as reasonably practical, as determined by the County. The Tax Revenue Bond DSRF shall be Fully Funded initially from proceeds of the Tax Revenue Bonds available for that purpose. If at any time thereafter the Tax Revenue Bond DSRF becomes less than Fully Funded, then County Advanced Revenues, revenues in the Surplus Fund, and Special Assessment revenues as available in that order of priority, shall be used to provide sufficient revenue to Fully Fund the Tax Revenue Bond DSRF as soon as reasonably practical, as determined by the County.

(3) If, in any calendar year in which Tax Revenue Bonds are outstanding, the County Advanced Revenues available to the CDA pursuant to the provisions of paragraph 5(k) below exceed the debt service and a proportional share of administrative costs for such calendar year attributable to the Tax Revenue Bonds, such excess shall be deemed a Surplus. Any Surplus shall be deposited by the County in an account called the Surplus Fund, to be established with the Fiscal Agent and to be used in the event that County Advanced Revenues in any year are less than amounts needed to pay debt service on Tax Revenue Bonds; provided, however, that if in any year the financial report on the County Advanced Revenues account that is submitted in accordance with paragraph 5(a) above indicates that the sum of the funds on deposit in the Surplus Fund, plus the County Advanced Revenues projected to be available for debt service on the Tax Revenue Bonds in the current year, is at least equal to 1.5 times debt service on the Tax Revenue Bonds, the County shall not be required to deposit any Surplus in the Surplus Fund in the current year. Any amounts remaining on deposit in the Surplus Fund after the Tax Revenue Bonds have been re-paid in full, or other provision for their repayment in full has been made, shall be transferred to the general fund of the County and shall be credited towards the Reimbursement Amount. Provided, however, that if, prior to two (2) years following Stabilization, any portion of the Annual Installment for a given calendar year was collected by the County from the Developer, the Surplus shall be used to reimburse the Developer for that portion of the Annual Installment applicable to the Tax Revenue Bonds for such calendar year that was actually collected from the Developer by the County in accordance with the Rate and Method. The County and the CDA agree that any surplus payable to the Developer pursuant to this subparagraph shall, subject to appropriation by the Board of Supervisors, be paid to the County's Economic Development Authority or other entity legally authorized to make payments to the Developer.

(k) County Advanced Revenues. (1) The County hereby agrees to pay to the Fiscal Agent on behalf of the CDA amounts equal to certain incremental tax revenues, called County Advanced Revenues and determined as set forth below. The payments to the Fiscal Agent on behalf of the CDA of County Advanced Revenues up to the amount needed to pay the debt service for the next calendar year on the Tax Revenue Bonds and to Fully Fund the Tax Revenue Bond DSRF as provided in paragraph 5(j)(2) above shall be transferred by the Fiscal Agent to the Trustee on the Tax Revenue Bond Indenture and used by that Trustee on a semi-annual basis to pay, in whole or in part as the case may be, the debt service for that particular calendar year on the Tax Revenue Bonds and to Fully Fund the Tax Revenue Bond DSRF. If any additional County Advanced Revenues are collected and are needed to Fully Fund the Surplus Fund as provided in paragraph 5(j)(3) above, then the Fiscal Agent shall apply them to that purpose. The County shall make such payments to the Fiscal Agent in semi-annual installments on or before each January 5th and August 28th beginning [_____, 20__][the first such date occurring following _____]. The County Advanced Revenues for any year shall be determined in accordance with the formula in Virginia Code Section 58.1-3245.2 for the calculation of amounts to be paid into a “Tax Increment Financing Fund.”

(2) Notwithstanding anything to the contrary in this Memorandum, the County shall make each such payment of County Advanced Revenues only to the extent that it has collected amounts that would be payable into a “Tax Increment Financing Fund” as calculated in accordance with the formula set out in Virginia Code Section 58.1-3245.2. However, the County’s obligation to make payments to the CDA of County Advanced Revenues shall not be deemed to be a general obligation of the County and shall be subject to and dependent on appropriations being made from time to time by and at the discretion of the Board of Supervisors for such purpose.

(l) Notice to Subsequent Landowners. The Developer will include in each sales contract and each deed for the conveyance of a fee simple interest in any portion of land within the CDA District that is subject to an outstanding Special Assessment or Special Tax, if applicable, a disclosure statement that includes a statement that such CDA charges may be imposed annually, a statement of the amount of the applicable portion of the Special Assessment and the last rate of the Special Tax, if applicable, set by the Board of Supervisors, and setting forth the name and address of the CDA’s administrator or other location where information regarding the CDA, the Special Assessment, and the Special Tax, if applicable, may be obtained. All such sales contracts and deeds shall also include a covenant that all subsequent deeds conveying any fee simple interest in land within the CDA District that is subject to an outstanding Special Assessment or Special Tax, if applicable, include such disclosure statement. The Developer agrees that it will notify the CDA and the CDA’s administrator in writing, within ten (10) days after recordation of a deed of conveyance, of the sale of any land owned by the Developer indicating the tax map parcel number of the property sold and the purchaser of the property. However, any failure to provide any disclosure or notice specified by this paragraph 5(m) shall have no effect on the obligation of anyone to pay any Special

Assessment or Special Tax, if applicable, and all such purchasers shall be fully liable for such payments whether or not any such disclosure is made or notice given.

(m) Reimbursement to County. (1) The Reimbursement Amount to be paid to the County shall be an amount equal to the Aggregate Debit less the Aggregate Credit (if that calculation yields a positive number) determined as of the Reimbursement Date; provided, however, that if at any time prior to the Reimbursement Date (a “Prior Date”) the Aggregate Credit shall exceed the sum of the Aggregate Debit as of that Prior Date plus the sum of the annual Debts that would accrue each year from the Prior Date until final redemption of all outstanding Tax Revenue Bonds, then the Developer’s obligation to pay the Reimbursement Amount shall be satisfied and discharged, and the Developer thereafter shall have no continuing obligation in respect of the Reimbursement Amount. Solely for purposes of calculating the annual Debts that would accrue after a Prior Date as set forth in this paragraph 5(m)(1), the Discount Rate for any such period after a Prior Date shall be deemed to be the average of the CPI-U for each year from the first year that any Tax Revenue Bonds are issued up the Prior Date.

(2) Each calendar year, beginning at such time as the Tax Revenue Bonds are issued and ending on the Reimbursement Date, the debt service paid on Tax Revenue Bonds in that year plus the County Return Hurdle will subtracted from the Gross Incremental Tax Revenues paid to the County that year and the result of that calculation will be the Annual Increment for that year.

(3) Beginning on the Reimbursement Date, the Reimbursement Amount, as determined by performing the calculation set forth above in paragraph 5(m)(1), shall be paid to the County.

(4) A hypothetical illustration of the mechanics of how the Reimbursement Amount will be calculated is as follows:

Average Discount Rate	2.5%								
	<u>Bond Year Ending</u>								
(\$000s)	2010	2011	2012	2013	2014 (1)	2015	2016	2017	2018
Real Property Tax Increment	\$ 500	\$ 750	\$ 1,000	\$ 1,500	\$ 4,459	\$ 2,807	\$ 4,962	\$ 5,121	\$ 5,285
Sales Tax Increment	-	-	-	-	3,044	3,353	3,453	3,557	3,663
BPOL Tax Increment	-	-	-	-	716	774	798	822	846
Personal Property Tax Increment	-	-	-	-	328	338	348	358	369
Transient Occupancy Tax Increment	-	-	-	-	234	328	355	366	377
Gross Incremental Tax Revenues	\$ 500	\$ 750	\$ 1,000	\$ 1,500	\$ 8,781	\$ 7,600	\$ 9,916	\$10,224	\$10,541
<i>Less</i>									
(a) Tax Revenue Bond Debt Service	-	-	-	-	(3,920)	(4,001)	(4,085)	(4,170)	(4,256)
(b) County Return Hurdle	-	-	-	-	(2,435)	(2,496)	(2,559)	(2,623)	(2,688)
Annual Increment	\$ 500	\$ 750	\$ 1,000	\$ 1,500	\$ 2,426	\$ 1,103	\$ 3,272	\$ 3,431	\$ 3,597
<u>Reimbursement Balance Calculation</u>									
NPV of Annual Debit	-	-	-	-	3,465	3,450	3,437	3,423	3,408
NPV of Annual Credit	488	714	929	1,359	2,144	951	2,753	2,816	2,880
Aggregate Debit	-	-	-	-	3,465	6,915	10,351	13,774	17,182

Aggregate Credit	488	1,202	2,130	3,489	5,634	6,584	9,337	12,153	15,033
Rolling Reimbursement Balance	\$ (488)	\$(1,202)	\$(2,130)	\$(3,489)	\$(2,169)	\$ 331	\$ 1,104	\$ 1,621	\$ 2,149

(1) First Stabilized Year

(5) The obligations of the Developer to pay the Reimbursement Amount will be secured by a security interest in the Parking Facilities in favor of the County. Such security interest will be required to be discharged in accordance with the following provisions in the event the Developer exercises its right to purchase such Parking Facilities from the CDA, such purchase to be completed in accordance with applicable IRS regulations as are necessary to preserve the tax-exempt status of the Bonds if such Bonds are at the time of such purchase satisfying the requirements to be tax-exempt obligations.

a. *Purchase of the Parking Facilities Prior to the Reimbursement Date.* If the Developer exercises its option to purchase Parking Facilities prior to the Reimbursement Date, then the purchase price shall be the fair market value of the Parking Facilities as determined by an appraisal performed by an appraiser acceptable to the County. If the purchase price paid to the CDA is greater than the sum of the Aggregate Debit less the Aggregate Credit at the time of the purchase, then the Developer shall receive the Parking Facilities free and clear of the obligation to pay the Reimbursement Amount and such payment obligation under paragraph 5(m) herein shall terminate. However, if the fair market value of the Parking Facilities is less than the Reimbursement Amount, then the purchase price paid to the CDA shall be added to that particular year's Credit and the purchase will be subject to a security interest in favor of the County in such Parking Facilities securing Developer's obligation to pay the remaining outstanding Reimbursement Amount. After the Reimbursement Date, if Developer fails to satisfy its obligations to pay the Reimbursement Amount to the County, then the County will have the right to convert its security interest into an equity interest in the Parking Facilities equal to the value of the outstanding Reimbursement Amount. The County will have the right to require that the Parking Facilities be operated in a manner so as to generate revenue, and all revenues generated by the Parking Facilities will be applied against the Reimbursement Amount then outstanding until the Reimbursement Amount is paid in full.

b. *Purchase of Parking Facilities following the Reimbursement Date.* If the Developer does not purchase the Parking Facilities prior to the Reimbursement Date and there remains a obligation to pay the Reimbursement Amount, then any subsequent purchase of the Parking Facilities prior to the date on which the real property on which the Parking Facilities are located reverts to the Developer (or its assignee) shall have a purchase price equal to the greater of the fair market value determined by appraisal by an appraiser acceptable to the County at the time of purchase or the Reimbursement Amount then due. After the Reimbursement Date, if Developer fails to satisfy its obligation to pay the Reimbursement Amount, then the County's security interest shall be converted into an equity interest in the Parking Facilities equal to the value of the Reimbursement Amount then due. The County will have the right to require that the Parking Facilities be operated in a manner so as to generate revenue, and all revenues generated by the Parking Facilities will be applied to the Reimbursement Amount then owed by

the Developer until the Reimbursement Amount is paid in full. The County's equity interest will be calculated as a percentage equal to the Reimbursement Amount then due divided by the market value of the Parking Facilities determined as of the Reimbursement Date by an appraisal performed by an appraiser acceptable to the County. In the event that there remains an amount due on the Reimbursement Amount at such date as the ground lease interest related to such Parking Facility reverts to the Developer (or its assignee), the reversion shall be stayed until such time as the Reimbursement Amount is paid in full.

(n) Administrative Costs of the County. The County shall be reimbursed for its costs and expenses associated with the CDA, including but not limited to the administration and collection of the County Advanced Revenues, Special Assessment revenues, and, if applicable, Special Tax revenues. Such costs and expenses may be deducted by the County in its remittance to the Fiscal Agent for the Bonds as set forth above in paragraph 5(e)(1), provided that an initial payment of \$_____ may be paid from proceeds of the Special Assessment Bonds, if any are available for that purpose, in lieu of deducting it from the first payment to the Fiscal Agent of Annual Installment revenues. In addition to administrative expenses, the County shall be entitled to recover any additional costs incurred by the County in conjunction with any and all proceedings to collect the amounts payable to the CDA hereunder, including but not limited to tax foreclosure, administrative and other proceedings.

(o) Administrative Costs of the CDA. On or before [DATE] of each year, the CDA shall submit a proposed budget to the County, showing the CDA's anticipated administrative costs for the next fiscal year. No such proposed budget shall exceed the expenses reasonably anticipated to be incurred by the CDA for that year. If the County approves the budget, then the CDA may seek reimbursement for any administrative cost incurred that is shown on the approved budget, by submitting an invoice for such cost to the County, which will then direct the Fiscal Agent to reimburse the CDA out of any Special Assessment revenues available for that purpose.

6. Additional Covenants.

(a) The Bonds will be sold only in minimum denominations of \$100,000.

(b) The CDA agrees to comply with the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 even if the Bonds are exempt from such Rule and to furnish copies of all filings under such Rule to the County Executive within fifteen (15) days after filing. The Developer and the County shall cooperate with CDA and shall endeavor to provide information with respect to the Developer, the Improvements and the Special Assessment and County Advanced Revenues, as appropriate, reasonably requested by the CDA in connection with the CDA's disclosure obligations.

(c) The CDA will engage a professional administrator, who may be a County employee, to oversee its financial affairs and shall obtain an annual report of the CDA's finances

from such administrator. Copies of such financial report and all other reports required by the Trustee for the Bonds and the owners of the Bonds shall be furnished to the County Executive as soon as they are available to the CDA. The CDA will provide draft annual financial statements to the County prepared in accordance with generally accepted accounting principles. Unless otherwise approved by the County, the CDA's audited financial statements will be audited by the auditor engaged by the County to audit the County's financial statements. The fiscal year of the CDA shall be from July 1 through June 30.

(d) The Developer and the CDA agree that the Improvements will be built in accordance with all applicable federal, state and local laws, rules and regulations and that the Improvements to be acquired by the County will be built in compliance with all applicable specifications of the County.

(e) The Board of Supervisors of the County shall have complete discretion in selecting and appointing members of the board of the CDA. Neither the Developer nor the CDA nor any other person shall have any right to circumscribe that discretion in any way.

7. Notice of Failure to Appropriate. In the event that the Board of Supervisors fails to appropriate any amounts payable hereunder by the County, the County agrees to notify the Trustee for the Bonds and any Nationally Recognized Municipal Securities Information Repository as required to comply with continuing disclosure rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board in effect at that time.

8. Prerequisites to Issuance of Bonds. The CDA agrees that no Bonds will be issued until the Developer has satisfied the prerequisites set forth in this paragraph. The Developer agrees that it will provide the following to the County in form and substance reasonably satisfactory to the County before the issuance of any Bonds:

(a) Such information and assurances as are necessary to complete the disclosure documents prepared in connection with the sale of the Bonds;

(b) Confirmation that the Project complies with all applicable zoning requirements;

(c) Such engineering and other reports regarding the Improvements and the Project as the County shall reasonably require;

(d) Financial statements or other satisfactory evidence of the financial stability and capacity of the Developer to construct and operate the Project, which information shall be updated immediately before the sale of any Bonds to ensure that there has been no material adverse change in the developer's financial position; and

- (e) (1) A development agreement in a form mutually agreeable to the parties;
- (2) An administrative services agreement in a form mutually agreeable to the parties; and
- (3) evidence of financing for the Project.

9. Approval by County. Any approval or consent required of the County under this Memorandum may be given by the County Executive or such officer's designee unless action by the Board of Supervisors is required by the express terms of this Memorandum or required by applicable law.

10. Successors and Assigns. This Memorandum shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

11. Amendments. This Memorandum may be amended only in writing signed by each of the parties hereto or their successors and assigns.

12. Term. This Memorandum shall be in full force and effect until all Bonds have been paid or deemed no longer outstanding under the Indenture and any Reimbursement owed is paid in full.

13. Severability. If any clause, provision or section of this Memorandum is held to be illegal or invalid by any court, the invalidity of the clause, provision or section shall not affect any of the remaining clauses, provisions or sections, and this Memorandum shall be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

14. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

15. Recitals. The recitals set forth at the beginning of this Memorandum are incorporated into and made a part of this Memorandum as though they were fully set forth in this Section 14 and constitute representations and understandings of the parties hereto.

16. Governing Law and Venue. This Memorandum shall be governed by the laws of the Commonwealth of Virginia without regard to its conflict of law rules.

17. Notices. Any notice, request or other deliveries required to be given hereunder shall be deemed given if sent by registered or certified mail, or overnight delivery service, postage prepaid, addressed to the following addresses:

County: _____

CDA: _____

CDA Administrator: _____

Developer: Edens & Avant
7200 Wisconsin Avenue, Suite 400
Bethesda, Maryland 20814
Attention: Steven C. Boyle
Facsimile: (301) 347-3734

Any party may designate any other addresses for notices or requests or other deliveries by giving notice under this Section 17.

18. Exhibits. All exhibits to the Memorandum are incorporated in and are a part of the Memorandum as if set out fully in the main text of the Memorandum.

WITNESS the following signatures.

COUNTY OF FAIRFAX, VIRGINIA

By: _____

Title: County Executive

MOSAIC DISTRICT COMMUNITY
DEVELOPMENT AUTHORITY

By: _____

Title: Chairman

MERRIFIELD MIXED USE LLC, a Virginia limited liability
company

By: Edens Merrifield Manager, LLC, a
South Carolina limited liability company,
its sole manager

By: Edens & Avant Investments Limited
Partnership, a Delaware limited partnership, its
member

By: Edens & Avant Administrative LLC,
a Delaware limited liability company,
its sole general partner

By: _____
Jodie W. McLean, President

Attachment 2

**PROPOSED ORDINANCE TO ADOPT A NEW APPENDIX P (MOSAIC DISTRICT
COMMUNITY DEVELOPMENT AUTHORITY) TO THE FAIRFAX COUNTY CODE**

_____, 2009

AN ORDINANCE to create the Mosaic District Community Development Authority in accordance with Article 6 of Chapter 51 of Title 15.2 of the Code of Virginia.

§ 1 The Board of Supervisors of Fairfax County, Virginia, hereby creates the Mosaic District Community Development Authority pursuant to Article 6 of Chapter 51 of Title 15.2 of the Code of Virginia, as amended, in accordance with the Petition Pursuant to Virginia Code Section 15.2-5153 for the Creation of the Mosaic District Community Development Authority to the Board of Supervisors of the County of Fairfax, Virginia, submitted to the Board of Supervisors on February 11, 2009 (the "Petition").

§ 2 The Mosaic District encompasses the portion of the County as set forth in Exhibits A, B, and C to the Petition, which are attached hereto and made a part hereof, provided that in case of any conflict among those exhibits in the description of the extent of the Mosaic District, the extent of the Mosaic District as set forth in Exhibit B shall be controlling.

§ 3 The Mosaic District Community Development Authority is not permitted to provide services which are provided by, or are obligated to be provided by, any authority already in existence whose charter requires or permits service within the Mosaic District.

§ 4 A copy of this ordinance shall be recorded in the land records of the Fairfax County Circuit Court as provided by Section 15.2-5157 of the Code of Virginia.

§ 5 This ordinance shall become effective upon adoption.

GIVEN under my hand this ____ day of _____ 2009.

Nancy Vehrs
Clerk to the Board of Supervisors