TITLE: Westview South MXD – Residential Section Revision
Continued from October 14, 2015

FILE NUMBER: S-905/SP-98-36 (AP 15579, APFO 15580, FRO 15581)

REQUEST: Combined Preliminary Subdivision Plan/Site Plan
The Applicant is requesting Combined Preliminary Subdivision/Site Development Plan approval for 421 dwellings on 170 lots (84 additional units and 35 fewer lots relative to previous approval) composed of 48 alley loaded single family detached, 13 front-loaded single family detached, 98 alley loaded townhouses, 224 multi-family units, and 38 'two-over-two' units on +/- 24.57 acres of land.

PROJECT INFORMATION:
ADDRESS or LOCATION: Northeast quadrant of New Design Road and Executive Way
TAX MAP/PARCEL: Tax Map 86, Parcels 269 & 3
COMP. PLAN: Mixed Use Development
ZONING: Mixed Use Development (MXD)
PLANNING REGION: Frederick
WATER/SEWER: W-3, S-3

APPLICANT/REPRESENTATIVES:
APPLICANT: MB Westview South, LLC
OWNER: WVS Parcel 400, LLC/Matan Properties, LLC
ENGINEER: Harris Smariga Associates, Inc.

STAFF: John Dimitriou, R.A., Principal Planner

RECOMMENDATION: Conditional Approval

ATTACHMENTS:
EXHIBIT 1 - Plan Rendering
EXHIBIT 2 - Parking and Street Tree Modification Justification
ISSUE

Development Request

The Applicant is requesting Combined Preliminary Subdivision Plan / Site Development Plan approval for development of 421 residential dwellings in the following mix:

- Single-family detached, front loaded: 13 units
- Single-family detached, alley loaded: 48 units
- Single-family attached (townhouses): 98 units
- Two over two dwellings: 38 units
- Multifamily: 224 units

This application revises a portion of the previously approved application (AP#14262 FCPC approved on 5/21/2014). The portion of the project currently under review is labeled “Part 2” in the accompanying graphic. The remaining portion of the project, which is labeled “Part 1” on the accompanying graphic, is not a part of this review and is currently under construction. The proposed change in the number of dwellings in Part 2 is described in the following table:

<table>
<thead>
<tr>
<th>Number of Dwellings</th>
<th>Currently Approved Plan (AP#14262)</th>
<th>Proposed Plan</th>
<th>Difference Between Approved and Proposed</th>
<th>New Overall</th>
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<tr>
<td></td>
<td>Total</td>
<td>Part 1</td>
<td>Part 2</td>
<td>Part 2</td>
</tr>
<tr>
<td>SFD Alley</td>
<td>90</td>
<td>37</td>
<td>53</td>
<td>48</td>
</tr>
<tr>
<td>SFD Front</td>
<td>31*</td>
<td>18</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>TH Alley 16'</td>
<td>73*</td>
<td>51</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>TH Alley 20'</td>
<td>104</td>
<td>11</td>
<td>93</td>
<td>76</td>
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<tr>
<td>MF 12 unit</td>
<td>156</td>
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<td>156</td>
<td>0</td>
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<tr>
<td>MF 32 unit</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>224</td>
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<tr>
<td>2o2</td>
<td>62</td>
<td>62</td>
<td>0</td>
<td>38</td>
</tr>
<tr>
<td>Total</td>
<td>516*</td>
<td>179</td>
<td>337</td>
<td>421</td>
</tr>
</tbody>
</table>

*Current Combined Preliminary/Site Plan approval is for 518 dwellings. Prior to the current application, a Type III Plan application was approved at staff level to remove one single family detached lot (lot 310) and one single family attached lot (lot 6) (AP#15592) for the purpose of improving the layout relative to lot access and the provision of utilities.

The Project is subject to the requirements of the Frederick County Code, specifically Chapter 1-16 (Subdivision Rules and Regulations) for the Preliminary Subdivision Plan review, and Sections 1-19-3.300 through 1-19-3.300.4 for the Site Development Plan review. The Site Plan portion of the Project is being reviewed as “Townhouse” and “Multifamily dwellings” under the use heading of Residential per §1-19-5.310 Use Table in the Zoning Ordinance.
**Modification Requests**
Reduction in required number of on-lot parking spaces.
Reduction in planting strip width and approval of tree spacing that is intermittently greater than 35’.
(see attachments below)

**BACKGROUND**

**Development History**
The Site of this preliminary/site plan was the subject of several previous rezonings. The Site was zoned Agricultural (A) from 1959 to 1986/87, at which time it was rezoned to Office/Research/Industrial (ORI). The Site is currently zoned MXD, which was originally applied in 1994 to 377 acres, a land area that included an additional 177 acres to the north of the current Westview South MXD Site. In 2001, the MXD was amended only for the southern portion of the Site, a land area totaling +/- 200 acres. At that time, the most significant change to the rezoning conditions was the removal of a residential land use component from the approved land use mixture.

The Westview South MXD began construction after the 2001 rezoning and several portions of the Project have been completed. The completed portions include a commercial area to the east along MD 85, portions of an employment area to the west along New Design Road, and major road connections. In addition, the Site includes areas within the Ballenger Creek Trail Master Plan, and a large portion of the trail has been constructed. The project is subject to a Development Rights and Responsibilities Agreement made June 13, 2013.

Given that the 1994 Westview MXD rezoning included a residential land use component, dedication of a school site was required as a condition of approval. While the 2001 Westview South MXD rezoning removed the residential land use component that was previously approved, the condition requiring the dedication of a school site was carried over to the 2001 conditions.

In 2013, another rezoning was approved that resulted in the reintroduction of a residential land use component, not to exceed 615 dwellings. The previously required school site was eliminated from the 2013 conditions in favor of a rezoning condition (#2) requiring an $800,000 lump sum payment toward acquisition, planning and/or construction of an elementary school in the vicinity of the proposed Project to be made 30 days after final non-appealable approval by the FCPC and signature of the Phase II (combined preliminary/site) plan (Ord. 13-10-638). This payment was received by the County in November of 2014.

An addition plat was recorded in February of 2014 that modified parcel lines to advance satisfaction of condition #3 of Ordinance 13-10-638. Condition #3 requires public dedication, if desired by the County, of a 22.49 +/- acre public use site for park purposes prior to recordation of the Project’s first residential lot. This public use site is planned to provide a portion of the Ballenger Creek Trail. This site was conveyed to the County on February 17, 2015 per the deed recorded in the Frederick County land records in book 10423 on page 0083.

A combined preliminary/site development plan was approved on 5/21/2014 (AP14262). This approval was for 518 dwellings on a +/- 42 acre site. A Type III site plan modification to remove two lots was approved at staff level. A lot for a front loaded single family detached dwelling and a lot for a 16’ wide, alley loaded townhouse were removed to improve the overall lot configuration.

Finally, a separate site development plan for a community center, pool, and park space was approved by the Planning Commission on June 10, 2015 (AP#15160).
**Existing Site Characteristics**

Surrounding the Project to the west are the residential subdivisions of Kingsbrook, Robin Meadows, and Wellington Trace. To the east are office and industrial uses, including the State Highway offices, the Omega Center and the Center at Monocacy. To the north is the Westview MXD, which includes office and retail uses. The adjoining properties to the south are in office and industrial use, and include the Wedgewood Business Park and Tamko Asphalt. The Russell Property had been planned as a six lot industrial subdivision and is currently proceeding through the review process. Near the property along MD 85 is the location of the Arcadia Mansion, a property on the National Register of Historic Places.

Ballenger Creek crosses the northern portion of the Site, flowing from northwest to southeast into the Monocacy River to the east. Areas of the Site along Ballenger Creek are within the Federal Emergency Management Agency (FEMA) 100 year floodplain. However, the floodplain is located within the area of the project that was dedicated to the County for park purposes, and therefore no residential development is proposed within the floodplain. There are no steep slopes within the residential portion of the Project. Rough grading of the Site relative to previous plan approvals is currently underway.

Portions of the Site have been conveyed to the County to provide recreational land in conjunction with the Ballenger Creek Trail Master Plan. The Site has frontage along New Design Road and Executive Way. Access to the Project is attained from New Design Road and Executive Way. The Site is served by Tuscarora Elementary School, Crestwood Middle School, and Tuscarora High School.
ANALYSIS

Summary of Development Standards Findings and Conclusions
The changes proposed in this application are limited to a revised mix of dwellings, and several partial changes to the layout. Parking, lighting, landscaping, bulk restrictions, lot size requirements, pedestrian and vehicular circulation, and the broad development strategy for the Site are equivalent to that which has been reviewed and approved in the existing plan.

As indicated below, and as has been previously approved, the Project meets the requirements of Chapter 1-16 and Chapter 1-19 of the Frederick County Code. The land use pattern of the comprehensive development plan and the district regulations of the zoning ordinance form the basic theme of the design pattern of the proposed subdivision. The subdivision design takes advantage of the uniqueness of the Site reflected by the surrounding natural, built, and planned landscape. Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized. Water and sewer service is or will be provided to the Site and the Site has the appropriate designation. Access to the Site is adequate and sight distance is sufficient at the proposed access points.

Setbacks and height restrictions exactly match those currently approved, and must be approved with this application. A modification is requested for parking and street trees for the same reasons that the previously approved modifications were requested. The Adequate Public Facilities Ordinance Letter of Understanding (APFO LOU) outlining required public facility improvements was executed in September of 2005 with an amendment in June of 2013 in conjunction with the Westview South MXD rezoning (Case # R-00-02A). A second amendment was executed in May/June of 2014, which was required due to changes in the Project’s residential use mix and the resulting increasing in pupil yield. The current application does not exceed the thresholds established by the previous LOU, and therefore does not require amending.

Detailed Analysis of Findings and Conclusions
COMBINED ANALYSIS OF SUBDIVISION AND SITE DEVELOPMENT PLAN REVIEW

Preliminary Subdivision Plan approval is granted based upon the requirements found in Chapter 1-16 of the Frederick County Code. Site Development Plan approval shall be granted based upon the criteria found in §1-19-3.300.4 Site Plan Review Approval Criteria of the Frederick County Zoning Ordinance

SITE DEVELOPMENT

- **Land Requirements §1-16-217(A) & (B)**
  The land use pattern of the comprehensive development plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.

The Site is designated Mixed Use Development in the County Comprehensive Plan. The Mixed Use Development land use designation signifies the advocacy of a mixture of employment, residential, commercial, and/or civic uses for land that is within Community Growth Areas. The Project is within the Ballenger Creek Community Growth Area, and is part of the overall Westview South MXD, which includes a combination of commercial, employment, and residential uses.

The PUD and MXD zoning districts require development that results in an integrated mixture of commercial, employment, residential, recreational, civic and/or cultural land uses. Projects in this district should employ planning and design that is broad and integrative, and should result in
efficient use of land, innovative design involving flexibility not permitted within the Euclidean zoning districts, and promote building and site design that reduces dependence on vehicular movement.

As was approved in the preceding plan, this revision proposes an interconnected system of streets with on-street parking and sidewalks, and the development includes a variety of housing types such as two-over-two’s, townhouses, multifamily buildings, and single-family houses. The proposed gross density of the portion of the Project subject to this review (part 2) is seventeen (17) dwellings per acre based on a total of 421 dwellings on a 24.57 acre land area.

The current proposal carries forward the planned interconnected street network previously approved. The interconnect street system promotes transportation efficiency by creating a flexible web of possible travel routes, and potentially distributing transportation load across the network. The design of the proposed revision includes a pedestrian network that is equivalent to the approved plan and that connects the different areas of the development as well as provides connectivity to the adjacent future Ballenger Creek Trail. As such, the proposed design supports the intended land use pattern of the comprehensive development plan and the district regulations of the zoning ordinance.

The subdivision design shall take advantage of the uniqueness of the site reflected by the topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.

The Project integrates Ballenger Creek and an associated planned County trail network into the design. The Site is relatively flat and does not contain flooding or wet soils, wooded areas, or wetlands. Surrounding retail uses provide support services.

- **Block Shape §1-16-218**
  
  The maximum block dimension shall be 1,800 feet. No block dimension is greater than 1,000 feet. Multiple housing styles and the location of open space create variety in the arrangement and size of blocks in the proposed development. Pedestrian circulation is supported by neighborhood design and placement of sidewalks and paths.

- **Lot Size and Shape §1-16-219**
  
  The size, width, depth, shape, orientation and yards of lots shall not be less than specified in the zoning ordinance for the district within which the lots are located and shall be appropriate for the type of development, the use contemplated, and future utilities. Setbacks and height within the Planned Development Districts (PUD & MXD) shall be established by the Planning Commission at Phase II as provided in §1-19-10.500.7(F)(2) of the Zoning Ordinance.

The Applicant proposed setbacks and height restrictions for the current plan revision are not modified relative to the plan as previously approved. They are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Single Family Detached</th>
<th>Single Family Attached (Townhouses)</th>
<th>Multifamily</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Yard:</td>
<td>0’</td>
<td>0’</td>
<td>0’</td>
</tr>
<tr>
<td>Rear Yard:</td>
<td>3’</td>
<td>3’</td>
<td>3’</td>
</tr>
<tr>
<td>Rear Yard Accessory:</td>
<td>3’</td>
<td>3’</td>
<td>3’</td>
</tr>
<tr>
<td>Side Yard:</td>
<td>5’</td>
<td>5’</td>
<td>0’</td>
</tr>
<tr>
<td>Side Yard Accessory:</td>
<td>0’</td>
<td>0’</td>
<td>0’</td>
</tr>
<tr>
<td>Height:</td>
<td>50’</td>
<td>50’</td>
<td>65’</td>
</tr>
</tbody>
</table>
The plans have been reviewed by DUSWM and other agencies with the above proposed setbacks with consideration given to required utility easements and have received conditional approval. The proposed setbacks correspond to typical dimensions in urban settings, and are appropriate for this Project in that it is designed with an urban density range and style of layout. The requested setbacks are also intended to provide flexibility to the Applicant for building placement on residential lots.

- **Site Development §1-19-3.300.4 (A)**
  Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.

The Project is located in close proximity to schools, commercial uses, and employment. The Ballenger Creek Trail will provide a recreational amenity for future residents, and the Ballenger Creek Park is near the Site. The layout of the buildings in the Project has been designed to provide appropriate frontage to the surrounding features. The building fronts are oriented toward the existing surrounding public streets, as well as toward a trail head of the Ballenger Creek Trail public recreational feature. This design approach addresses the visual perception of the Project from the surroundings by establishing a frontage that is intended to be viewed from outside the development.

Section 1-19-6.400 of the Zoning Ordinance requires landscaping, screening and buffering on a development site as part of the site plan review process. The Project generally meets the code requirements by providing landscaping within open spaces and internal parking areas of the Project. Street trees are provided throughout the Project.

A modification is requested for street trees to allow planting of street tees within a planting strip of reduced width and a spacing that is intermittently greater than 35’. Staff has no objection to this request due to the urban nature of the project, the planned provision of 436 trees on site (overall, which is in excess of the 273 required based on the requirement of 1 tree per 35’ of street frontage), and a general design of tree plantings that in most cases complies with the spacing criteria.

A photometric plan has been provided that indicates no lighting levels in excess of .5 footcandles at the property boundary. Proposed light fixtures meet the height requirement of 14’ for pedestrian oriented lighting as measured from the ground surface to the midpoint of the source of illumination. The proposed fixture is shielded to direct lighting downward and limit illumination of the nighttime sky. The Zoning Ordinance requires that lighting be designed and installed to be fully shielded, and directed downward. Note 6 on the Cover Sheet shall be amended to ensure compliance with these requirements.

**TRANSPORTATION AND PARKING**

- **Street, Common Driveway and Sidewalk Construction §1-16-109**
  The project shall provide for the complete construction of street improvements, including drainage facilities as provided in §1-16-234 through §1-16-241 of the Subdivision Regulations and in accordance with the Frederick County Design Manual.
There is no change to the general specifications and strategy for the provision of sidewalks in Part 2 of the plan relative to the previous approval. The Plan proposes sidewalks measuring 5 feet in width and marked street crossings at appropriate locations. The sidewalk network provides internal pedestrian mobility and facilitates movement to and from adjacent land uses. Sidewalks are provided that link the Project to the commercial uses to the east. The pedestrian network connects the project to the Ballenger Creek Trail.

- **Right of Way and Paved Surface Widths §1-16-235**
  Whenever a proposed subdivision includes or abuts streets designated on the Highway Plan section of the Comprehensive Plan, the Planning Commission shall require, by dedication to public use, adequate right-of-way for the coordination of roads within the subdivision with other existing, planned or platted roads.

  The County Comprehensive Plan classifies New Design Road and MD85 as Major Arterials. Executive Way is identified as a local road. Right of way for these roads has been provided according to County standards and improvements to these roads have been or will be completed in the near future. Roads within the subdivision provide the standard right of way and paved surface widths required by the County.

- **Other Street Requirements §1-16-236**
  The proposed project does not contain cul-de-sac or dead end streets. The Project layout meets the relevant requirements of this section.

- **Transportation and Parking §1-19-3.300.4 (B)**
  The transportation system and parking areas are adequate to serve the proposed use in addition to existing uses by providing safe and efficient circulation, and design consideration that maximizes connections with surrounding land uses and accommodates public transit facilities.

  The Site has one limited access point with New Design Road and multiple access points with Executive Way. The proposed road network will link existing and planned road networks, promote safe and efficient circulation and allow shared access and circulation between properties.

  Parking standards for the Project are provided within Zoning Ordinance §1-19-6.220 and §1-19-3.300.4(B). The Applicant is requesting a modification for parking because the provided on-lot parking is less than what is required by the Zoning Ordinance. The Applicant has provided a justification for this request that describes how the provision of on-street parking provides capacity in excess of the requirement (See Exhibit 2). The Zoning Ordinance (section 1-19-6.220(A)(1)) provides that the Planning Commission may grant an increase or reduction in the number of required parking spaces based on characteristics of the proposed use. Similar to other recent projects with a mixture of dwelling types and density, the Applicant proposes a combination of on-street and on-lot parking to meet the target parking standards.

  In only the portion of the Project currently under review (part 2), the total required parking is 910 spaces: 122 required for single family detached dwellings, 245 required for townhouses, 95 required for two over two units, and 448 required for multifamily. The Project proposes a supply of parking spaces in the revised plan area in the following quantities:
<table>
<thead>
<tr>
<th>Unit Type</th>
<th># of Dwellings</th>
<th>Parking Spaces Required (Part 2)</th>
<th>Parking Spaces Provided(^1) (Part 2)</th>
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<tbody>
<tr>
<td>Single Family Detached</td>
<td>61</td>
<td>122</td>
<td>115</td>
</tr>
<tr>
<td>Single Family Attached</td>
<td>98</td>
<td>245</td>
<td>261</td>
</tr>
<tr>
<td>Two Over Two</td>
<td>38</td>
<td>95</td>
<td>57</td>
</tr>
<tr>
<td>Multifamily</td>
<td>224</td>
<td>448</td>
<td>315</td>
</tr>
<tr>
<td><strong>On-Street Parking(^2)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>910</strong></td>
<td></td>
<td><strong>1,033</strong></td>
</tr>
</tbody>
</table>

1) Based on the policy that only ½ of a garage parking space is counted toward provided parking.
2) Combination of off-lot public on-street, off-lot private on-street, and off-lot private parking bays.

With the provision of 285 on-street parking spaces, the proposed supply of parking exceeds the number required.

**PUBLIC FACILITIES AND UTILITIES**

- **Public Facilities - Road Adequacy §1-16-12**
  The Project has one limited access point (no left out movement permitted) to New Design Road (an 80’ paved width major arterial adjacent to the project site). There also are three access points (two full-movement and one right-in only) along Executive Way, which is a designated local road that functions as a collector. Access and proposed sight distance at entry points along Executive Way and New Design Road are adequate.

  The subdivision would be served by the Westview/United Fire Company Service Area. The fire company is located on and would utilize New Design Road to serve the project.

- **Parks §1-16-111**
  The proposed development is a portion of the Westview South MXD. At the time of Phase I rezoning, open space/green area requirements were set at 63 acres. Condition 3 of the Phase I rezoning approval (Ord.# 13-10-638) requires dedication by the developer, if desired by the County, of a 22.49 +/- acre public use site for park purposes prior to recordation of the Project’s first residential lot. This public use site is planned to provide a portion of the Ballenger Creek Trail. This site was conveyed to the County on February 17, 2015 per the deed recorded in the Frederick County land records in book 10423 on page 0083.

  In the currently approved version of the plan, the Applicant provided a recreation area containing a community center and pool. A separate site development plan for this community center/pool was approved on June 10, 2015 (AP#15160).

  The proposed revised Combined Preliminary/Site Development Plan identifies a recreation/open space area in addition to the approved community center/pool. This located between Constitution Street and MacDonough Place along McHenry Mews. The total additional recreation area provided by new open space is approximately 27,000 square feet. The proposed additional recreation area increases the amount of amenity relative to the approved amenities plan and enhances the open space network provided in the original plan.
Public Utilities §1-19-3.300.4 (C)
Where the proposed development will be served by publicly owned community water and sewer, the facilities shall be adequate to serve the proposed development.

The Project is to be served by public water and sewer service and carries a current Water and Sewerage Plan classification of W-3, S-3. The Site will be served by the New Design Water System and the Ballenger-McKinney Waste Water Treatment Plant. The project has been reviewed and approved by the Division of Utilities and Solid Waste Management.

A second amended and restated Adequate Public Facilities Ordinance Letter of Understanding (LOU) was approved in May of 2014 as part of the prior application. The amended LOU set forth the minimum necessary improvements related to school mitigation and transportation. It was approved in tandem with the 2013 rezoning of the Site. The project is increasing the number of proposed dwellings, but is not exceeding the threshold for pupil yield and trip generation already established in the LOU.

NATURAL FEATURES

Land Requirements §1-16-217(B)
The subdivision design shall take advantage of the uniqueness of the site reflected by the topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.

A major feature of the Site that contributes to its uniqueness is the Ballenger Creek corridor and the associated trail network being developed along the length of the creek. The Project takes advantage of this adjacent feature by providing a planned connection to the open space corridor and trail along Ballenger Creek. This proposed revision does not affect trail access. As part of this project, +/-22 acres of open space have been conveyed to the County, enabling the construction of a portion of the trail system. The Site does not contain wet or flooding soils or wooded areas.

Floodplain Developments §1-16-220
There is no development proposed in the mapped FEMA 100-year floodplain on the Project Site.

Natural features §1-19-3.300.4 (D)
Natural features of the site have been evaluated and to the greatest extent practical maintained in a natural state and incorporated into the design of the development. Evaluation factors include topography, vegetation, sensitive resources, and natural hazards.

The Project Site has low topographical gradients and has undergone mass grading in preparation for development. The Site has no existing forest cover and other existing natural resources, such as Ballenger Creek, have been identified, preserved, or integrated into the recreational amenity of the development in a fashion that maintains a natural state.

COMMON AREAS

Common Areas §1-19-3.300.4 (E)
If the plan of development includes common areas and/or facilities, the Planning Commission as a condition of approval may review the ownership, use and maintenance of such lands or property to ensure the preservation of such areas, property, and facilities for their intended purposes.

The Project proposes a centrally located open area for use as a community park. Additionally, another park is proposed within an area planned for multifamily dwellings. With the exception of the Ballenger Creek Trail corridor, proposed open space and common areas will be owned and maintained by the community homeowners association.
Other Applicable Regulations

- **Moderately Priced Dwelling Units – Chapter 1-6A**
  Per Section 1-19-8.620.2, all residential developments consisting of 25 units or more on public water and sewer are required to provide no less than 12.5% of the total units as MPDU’s. Accounting for the current revision of the plan, an overall total of 600 dwellings is proposed. Therefore, 75 MPDU’s are required. However, the Applicant has elected to utilize the Payment-in-Lieu of building option as allowed in accordance with §1-6A-5.1 of the Frederick County Code.

- **Stormwater Management – Chapter 1-15.2**
  A stormwater management concept plan for the entire project was approved on February 25, 2014. Changes proposed in this revision will be addressed as the plan proceeds through Improvement Plan review.

- **APFO – Chapter 1-20**
  **Schools**
  An analysis of student yield of the change in dwelling unit mix proposed in the current project was undertaken. Using the current (2012) student yield rates, the site, combined with the remainder residential portion of Westview South, is projected to generate 115 elementary school students, 40 middle school students and 59 high school students, equal to or less than the three school categories in the previous 2013 APFO approval, which was for 116, 40 and 59 students respectively. Therefore, even though there was an overall increase in total units from 531 to 600, because of the new mixes of units, there is no increase in student yield and this application is therefore exempt from APFO re-testing.

  **Water/Sewer**
  The property has a current Water and Sewerage Plan classification of W-3/Dev, S-3/Dev and will be served by public water and sewer facilities. APFO findings were included in the approved LOU dated February 12, 2013. The Division of Utilities and Solid Waste Management reviewed and approved the proposed plan.

  **Roads**
  Trip allocation for the entire Westview South Project was determined by the APFO findings of the Planning Commission in February 2003 and as memorialized in the original LOU from September of 2005, with total trip caps as follows: 2048 am and 2186 pm peak hour trips. While the trip generation of this latest change in residential unit number (531 to 600) and mix results in an increase of 31 am and 33 pm peak hour residential trips, the overall forecasted trips for the entire development now stands at 1,710 am and 2,140 pm peak hour trips, both below the trip cap stated above. Therefore because there is no increase in trip intensity with the changes proposed in this application, it is exempt from any further APFO testing.

  The LOU is still valid until February 12, 2019, which is based on the original APFO approval date (February 12, 2013) plus two previously approved three year extensions

- **Forest Resource – Chapter 1-21:**
  The FRO plan for this Project was approved in 2008 (AP7278) and the required FRO easements were recorded. Therefore the proposed plan is exempt from further FRO review.

- **Historic Preservation – Chapter 1-23:**
  No historically significant structures or other resources are present on this Site.
### Summary of Agency Approval Status

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<th>Other Agency or Ordinance Requirements</th>
<th>Comment</th>
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<td>Conditionally Approved</td>
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<td>State Highway Administration (SHA)</td>
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<td>Division of Utilities and Solid Waste Management (DUSWM)</td>
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<td>Health Department</td>
<td>Approved</td>
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<td>Office of Life Safety</td>
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<tr>
<td>Development Review Traffic Engineering</td>
<td>Approved</td>
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<tr>
<td>Historic Preservation</td>
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<td>Forest Resource (FRO)</td>
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</tbody>
</table>
RECOMMENDATION

Staff has no objection to conditional approval of the Westview South Combined Preliminary Subdivision/Site Development Plan.

If the Planning Commission conditionally approves the Combined Preliminary Subdivision/Site Development Plan, the Site Development Plan is valid for a period of three (3) years from the date of Planning Commission approval and the Preliminary Plan is valid for a period of five (5) years or the term of the APFO approval, whichever is less. The APFO approval is valid until February 12, 2019.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following modifications are approved and conditions are met:

1. Planning Commission approval of the proposed setbacks and height as requested by the Applicant and as shown on the combined preliminary/site plan.

2. Planning Commission approval of the requested parking modification to allow a combination of on-street and off-street parking to be utilized to meet Zoning Ordinance parking requirements.

3. Planning Commission approval of the requested street tree modification to allow planting of street tees within a planting strip of reduced width and a spacing that is intermittently greater than 35’.

4. The Applicant shall address all agency comments as the plan proceeds through to completion.

5. Cover sheet note 6. Shall be amended to include the following language “Lighting shall be designed and installed to be fully shielded. Lighting shall be directed downward to prevent glare and light trespass onto adjacent properties, roadways, and the nighttime sky.”

6. Complete the requirements of the Second Amended and Restated Letter of Understanding valid through February 12, 2019.
PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission APPROVE the Westview South MXD Combined Preliminary Subdivision/Site Development Plan for 421 residential dwellings on a +/- 24.57 acre site, (AP#15579, S-905, SP-98-36) with modifications and conditions as listed in the staff report based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.
Revised May 1, 2014
March 13, 2014

John Dimitriou
Frederick County Development Review
30 N. Market Street
Frederick, MD 21701

Re: Modifications – Westview South Phase II
Project Number 14262
HSA Job No. 7281

Dear John:

As discussed at the TAC, there are two modifications identified at this time associated with the Phase II plan for this project. One involves parking spaces and the other street tree landscaping. In both cases, we believe the requirements are adequately met for the overall project yet the modifications are limited to smaller areas within the site. The modifications are as follows:

1. Street Tree Requirements – Section 1-19-6.400 (A)
   Street trees are required to be planted in a 7’ strip adjacent to the road every 35 linear feet of roadway. In this project based on the linear feet of road, 273 trees are required. However, due to the urban streetscape design of a neotraditional neighborhood and the utility laterals to serve each unit, it is difficult to absolutely meet these requirements. The typical planting bed width is 5-6’ wide although there are a few areas where the planting bed is 4’ wide (at the entrances on New Design and Executive Way where the road is wider). The planting bed width is consistent with urban design and the tree species will be selected to thrive within this area. In terms of the number of trees, at least 273 street trees will be provided. However, because of utility laterals they cannot occur every 35’ on every street. We have shown that through open space plantings and adjusting street tree spacing we were able to plant 436 trees on site. We would like to request that the street tree planter width and spacing be modified as described above to accommodate the design and constraints associated with the site.

2. Parking Policy
   Although not specifically in the code, the policy on garage parking spaces in the County is that those spaces can only be counted as half spaces. Public on-street parking spaces are also not normally counted towards meeting the on-lot parking requirements for residential units. Sheet 17 in the set has been created to show the actual parking provided (on and off lot) versus the parking per the policy on garage spaces and public parking. The actual parking provided throughout the neighborhood shows a surplus of 526 parking spaces. The policy, however, shows only 154 surplus spaces. This surplus includes 241 on-street public parking spaces. We would like to request a modification to allow the public on-street spaces and the garage spaces to count towards the overall requirement for the site. In a neotraditional
neighborhood that is more urban than suburban in design (similar to the Historic District in Frederick), streets interconnect and create blocks which encourage people to drive around the block to look for parking if they need street parking. It functions very differently than a suburban cul-de-sac design where there is no interconnection. Residents in the neighborhood also appreciate the off-street spaces provided and tend to utilize them for parking instead of storage. The actual on-lot provided spaces which normally are accessible from alleys are a completely different situation than a suburban neighborhood where someone may not park in the garage but rather the driveway of the house. We are not providing or encouraging that type of suburban parking in this layout. We believe this modification is consistent with others allowed in recent neotraditional designs in the County and most effective and appropriate for the site especially considering the differences between urban and suburban design.

We look forward to discussing this with the Planning Commission at the hearing.

Sincerely,

[Signature]

Chris Smariga

President

CC: Karl Morris
Mitchell and Best

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THE EFFECTIVE DATE OF THIS ORDINANCE IS June 13, 2013

ORDINANCE NO. 13-10-638

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: WESTVIEW SOUTH MXD
(REZONING CASE NO. R-00-02(A))

OPINION/FINDINGS

Westview South Holdings LLC, representing several separate LLCs for individual parcels, filed this application to amend the Phase I Plan for the Westview South MXD to include a residential component of up to 615 dwelling units and to rezone an additional 9.33 acres from Limited Industrial (LI) to Mixed-Use Development (MXD). The property is located between New Design Road and Maryland Route 85 on the north and south sides of Executive Way in the Frederick Planning Region. The property is more precisely defined in the record.

The bulk of this property was originally zoned to the MXD floating zone in Ordinance No. 94-14-109 covering 377 acres. This MXD Zoning Ordinance included 13 conditions.

By Ordinance No. 01-15-289, upon the application of Old Chapel Corporation and the Chevy Chase Bank F. S. B. (Case No. R-00-02), this MXD floating zone classification was modified to eliminate the residential component. In addition, the 13 conditions were modified (including some were deleted) and eight letter conditions were
added. Ordinance No. 01–15–289 covers an approximately 209 acre parcel (all of which was part of the 377 acres rezoned in Ordinance No. 94–14–109).

As indicated, the Applicant’s request is to add a residential component with up to 615 dwelling units; to further modify the conditions; and to add an additional adjoining 9.33 acre tract to be rezoned from the Limited Industrial zone to the MXD zone.

In considering a zoning amendment, the Board of County Commissioners is to consider the following six criteria as found in Frederick County Code Section 1–19–3.110.4. The Board makes the following findings of facts on each of these approval criteria.

1. **CONSISTENCY WITH THE COMPREHENSIVE PLAN.** This property is within the Ballenger Creek community growth area as designated on the County Comprehensive Plan and has a land use plan designation of Office Research Industrial and Limited Industrial. As such, it is identified as an area that has been targeted for growth. Development of this area is therefore consistent with the General Policy of the Comprehensive Plan that supports location of growth in designated areas. The MXD floating zone can only be applied to land use designations of mixed-use development, limited industrial or office/research/industrial. The Applicant’s request is consistent with the County Comprehensive Plan.

2. **AVAILABILITY OF PUBLIC FACILITIES.** The proposed 615 residential dwelling units are projected to generate an additional 189 students. In Condition 1, the Applicant is committing to making a substantial payment of $800,000 toward the acquisition, planning or construction of an elementary school. In addition,
this property will generate substantial School Impact Fees and School Construction Fees to mitigate the impact of this development on the public schools.

The majority of the site is designated as S-3/W-3 in the Master Water and Sewerage Plan. This denotes properties where publicly owned community sewer and water systems are planned to be completed and operational within three years. Properties classified as S-3/W-3 are required to connect to the public water and sewer system. The 9.3 acre portion proposed to be added to the MXD is currently designated as S-3/W-3 in the Master Water and Sewerage Plan. Water is supplied to the site from the Potomac River by way of the New Design Water Treatment Plant. Wastewater is treated by the Ballenger/McKinney Wastewater Treatment Plant. Water and sewerage facilities are available and adequate to serve this proposed development.

The nearest fire station is the Westview Fire Station, located approximately 1.5 miles from the site.

The site is within the area defined in the Ballenger Creek Trail Master Plan for a comprehensive system serving the entire Ballenger Creek community. A large portion of the trail has been constructed by the Applicant. This project will be required to provide a minimum of 18 acres of open space and green area. The total open space provided in this project is 63 acres. The Applicant has provided adequate parks and recreation area to meet the MXD standards.

3. ADEQUACY OF EXISTING AND FUTURE TRANSPORTATION SYSTEMS. The site has approximately 2,200 feet of frontage along New Design Road and approximately 2,900 feet of frontage along Maryland Route 85. These are major
arterials. Access to the project is from both New Design Road and Maryland Route 85 and from Executive Way. These roads are adequate to serve the proposed development (subject to any future testing required by County law such as the Adequate Public Facilities Ordinance).

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT. The layout is influenced by a strategy of matching land use types to surrounding conditions by employing common tactics of access and adjacency. The proposed project is compatible with existing and proposed development.

5. POPULATION CHANGE. The potential additional population change as a result of the proposed 615 dwelling units equates to 1,661 persons based on 2.7 persons per household.

6. TIMING OF DEVELOPMENT AND FACILITIES. Mitigation of impacts that this development will have on public facilities are required as the development proceeds through the review process as provided in the Frederick County Code, including the Zoning Ordinance, Subdivision Rules and Regulations and the Adequate Public Facilities Ordinance. Mitigation measures are required to be satisfied at development milestones such as recordation of plats or the issuance of building permits.

The Board of County Commissioners is persuaded that the granting of this request is appropriate and serves the public interest. The Board finds that the proposed development is compact, employing design principles that result in an efficient consumption of land, efficient extension of public infrastructure, and efficient provision of public facilities. The proposed development design and building siting are in
accordance with the County Comprehensive Plan and any applicable community and corridor plans.

The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping and the proposal provides for mitigation of any differences in appearance or scale through such means as setbacks, screening, and landscaping all in accordance with the County Comprehensive Plan, including any applicable community and corridor plans.

The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems.

The transportation system will be adequate to serve the proposed development in addition to existing uses in the area.

The proposed development provides design and building placement that optimizes walking, biking, and use of public transit.

Existing fire and emergency medical service facilities are adequate to serve the increased demand from the proposed development in addition to existing uses in the area.

Natural features of the site have been adequately considered and utilized in the design of the proposed development.

The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designations including any applicable community or corridor plans.
This planned development is served adequately by public facilities and services.

The Planning Commission made all required findings during its April 24, 2013, public hearing.

The proposed amended Phase I plan will be granted subject to the conditions below. The 9.33 acre tract of land shall be rezoned from LI to MXD.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the amendment to the Phase I plan in Rezoning Case No. R–00–02(A) is hereby granted subject to the following conditions¹.

1. The residential component of the MXD shall be limited to a maximum of 615 dwelling units. The mix of unit types, and the number of each unit type, shall be determined during the Phase II – Execution Phase.

2. The developer of the Project shall pay Eight Hundred Thousand Dollars ($800,000.00) toward the acquisition, planning and/or construction of an elementary school in the vicinity of the Project within 30 days after final non-appealable approval by the Frederick County Planning Commission and Staff signature of Phase II of the Project. This payment shall be in addition to, and not in lieu of, School Construction Fees or School Impact Fees, and shall not be eligible for any offsets.

¹ The term “applicant” or “developer” as used in this Ordinance includes all present and future owners and developers of the properties. These conditions run with the land.
3. Prior to recordation of the Project’s first residential lot, the developer of the Project shall dedicate, if desired by the County, a 22.49 –/- acre public use site generally located as shown on the Concept Plan of the Project’s MXD Phase I Plan (the “Park Site”) for park use by the County. The Applicants shall be responsible for preparing a plat describing the Park Site, and the County shall advise the Applicants if the County wishes to take title to the Park Site.

BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the request to rezone the 9.33 acre parcel of land from the LI zoning district to the MXD floating zone is granted subject to the same three conditions specified in the preceding paragraph.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD that the Zoning Administrator is hereby authorized and directed to make the appropriate change, if any, on the zoning map showing this MXD floating zone classification with conditions as indicated above.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD that Ordinance No. 94–14–109 and Ordinance No. 01–15–289 shall remain in effect to the extent not inconsistent with this decision and the conditions granted herein and as to the remainder of the property which was the subject of previous Ordinance No. 94–14–109 and Ordinance No. 01–15–289 and which was not the subject of this application. For the properties to which this Ordinance is applicable, the three conditions specified in this
Ordinance apply and the conditions imposed by Ordinance No. 94–14–109 and Ordinance No. 01–15–289 do not apply.

The conditions included as part of the granting of this MXD floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the zoning shall revert to the MXD floating zone classification without a residential component.

The undersigned hereby certifies that this Ordinance is adopted by the Board of County Commissioners on the 13th day of June, 2013.

BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND

Blaine R. Young, President

C. Paul Smith, Vice President

ATTEST:

Lori L. Depies, CPA County Manager

Kirby Delauter

Commissioner David P. Gray voted against this motion.
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement"), made as of the 3rd day of June, 2013, by and between WVS PARCEL 102, LLC; WVS PARCEL 200, LLC; WVS PARCEL 204, LLC; WVS PARCEL 300, LLC; WVS PARCEL 400, LLC; WBP PARTNERS II, LLC; and ITB2, LLC, all Maryland limited liability companies1 (collectively, the "Developer"); and THE BCARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate of the State of Maryland (the "BOCC").

RECITALS

1. Maryland law, Land Use Article §7-301 through §7-306 (formerly Article 66B, § 13.01) of the Maryland Annotated Code, grants the BOCC the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

2. The BOCC has adopted Ordinance No. 07-33-473, effective as of November 16, 2007, creating Chapter 1-25 of the Frederick County Code authorizing Development Rights and Responsibilities Agreements ("County Ordinance").

3. This document is intended to constitute a Development Rights and Responsibilities Agreement as provided for in Land Use Article §7-301 through §7-306 of the Maryland Annotated Code, and the County Ordinance, and includes a determination of adequacy under the Adequate Public Facilities Ordinance as permitted by Section 1-20-20(C) of the County Code.

4. Developer owns certain real property in Frederick County, Maryland, described in EXHIBIT A attached hereto and made part hereof (the "Property").

5. The names of all parties having an equitable or legal interest in the Property, including lienholders, are set forth in EXHIBIT B. Attached hereto and made a part hereof as EXHIBIT C is certification by counsel to the Developer that the Developer has a legal interest in the Property.

6. On November 8, 2012, Developer petitioned the BOCC to enter into this Agreement.

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1 Applicant ownership interests are as follows: (i) WVS Parcel 102, LLC (fee simple owner of Lot 102); (ii) WVS Parcel 200, LLC (fee simple owner of Lot 200); (iii) WVS Parcel 204, LLC (fee simple owner of Lot 204); (iv) WVS Parcel 300, LLC (fee simple owner of Parcel 300); (v) WVS Parcel 400, LLC (fee simple owner of Parcel 400 and Parcel G); and WBP Partners II, LLC and ITB2, LLC (fee simple owners of Lot 26, Wedgewood Business Park).
7. During a public meeting held on December 13, 2012, the BOCC reviewed this petition and determined to accept this petition and initiate the process of considering a Development Rights and Responsibilities Agreement.

8. This Agreement was referred to the Frederick County Planning Commission for determination of whether this Agreement is consistent with the Countywide Comprehensive Plan for Frederick County ("Comprehensive Plan"). This determination was made by the Planning Commission at a public meeting held on April 24, 2013.

9. On May 21, 2013, the BOCC held a duly advertised public hearing on this Agreement. The public had an opportunity to comment at this public hearing.

10. The Developer is pursuing the Development Approvals necessary to develop the Property in accordance with the Rezoning Ordinance approved by the BOCC concurrent with the review and approval of this DRRA. This DRRA is expressly intended to contractually bind the Developer and the County as to the development of the Property in accordance with the terms hereof. This DRRA is intended to protect, preserve and facilitate the full development of the Project pursuant to the Development Approvals, the APFO LOU, and this DRRA, including, but not limited to, residential and non-residential uses and densities as set forth herein and in the Rezoning Ordinance.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the BOCC and the Developer hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. The following words, when used in this Agreement, shall have the following meanings:

A. “Agreement” means this Development Rights and Responsibilities Agreement.

B. “APFO LOU” means the Adequate Public Facilities Ordinance Letter of Understanding that is pending approval by the BOCC concurrent with Phase I approval and approval of this DRRA, attached hereto as EXHIBIT D.
C. "BOCC" means the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, also sometimes referred to as "County Commissioners."

D. "County Code" means the Code of Frederick County, Maryland in effect on the Effective Date of this Agreement.

E. "County Ordinance" means County Ordinance No. 07-33-473 creating Chapter 1-25 of the Frederick County Code and authorizing Development Rights and Responsibilities Agreements.

F. "Developer" means WVS Parcel 102, LLC; WVS Parcel 200, LLC; WVS Parcel 204, LLC; WVS Parcel 300, LLC; WVS Parcel 400, LLC; WBP Partners II, LLC; and ITB2, LLC, all Maryland limited liability companies, and their respective successors and assigns in ownership of the Property.

G. "Development Approvals" means final governmental approval of Subdivision Plat(s), Adequate Public Facilities Ordinance ("APFO") requirements, MXD Phase I and II for Westview South (including all Preliminary Plans and Site Plans as applicable), and all conditions of said approvals that have been satisfied, or acceptable accommodations and/or guarantees have been put in place to satisfy such conditions, and all applicable appeal periods have expired without the filing of any appeal, or, if an appeal(s) was filed, the appeal has been defeated beyond the possibility or existence of further appeal of any kind.

H. "Effective Date of this Agreement" means the date the last party executes this Agreement.

I. "Existing LOU" means the approved Adequate Public Facilities Ordinance Letter of Understanding, signed by the Frederick County Planning Commission on September 14, 2005, valid through February 12, 2019.

J. "Improvements" or "improvements" means those improvements referenced herein or in the APFO LOU to be constructed, but only to the extent not previously constructed, in connection with roads, sewer, water, stormwater, parks and other facilities necessary to service the Property.

K. "Westview South" means the approved Mixed Use Development to be constructed on the Property, sometimes also referred to as the "Project."

L. "Phase" means any portion or section of the Project which has received Development Approval.
M. "Planning Commission" means the Planning Commission for Frederick County Maryland.

N. "Project" means the remaining portions of Westview South owned by Developer, to be constructed on the Property.

O. "Property" means all of the real property described in EXHIBIT A attached hereto.

P. "Rezoning Ordinance" means Ordinance No.13-10-635 approving the revised Phase I MXD Plan for the Property.

Q. "Subdivision Plat" means final plat(s) of subdivision for the Project, or any Phase or portion thereof, prepared in accordance with the County Code and approved by the Planning Commission.

ARTICLE II
ZONING, DEVELOPMENT LIMITATIONS, PLAN APPROVALS AND PLAN CONSISTENCY

2.1 Zoning and Plan Designations. The Property is zoned Mixed Use Development ("MXD"). The Property is located within the Community Growth Limit of the Ballenger Creek Community Growth Area as shown on the 2010 Frederick County Comprehensive Plan as amended on September 13, 2012; designated Office/Research/Industrial and Limited Industrial on the 2010 Frederick County Comprehensive Plan as amended on September 13, 2012; and located within the Water and Sewer Service Areas on the current Frederick County Water and Sewerage Plan.

2.2 Development Limitations.

A. Permissible Uses and Density. The permissible uses on the Property are those permitted in the County Code. The Project shall be developed as an MXD pursuant to and in accordance with the provisions of Section 1-19-10.500 of the County Code. The Project will contain a mix of employment uses, commercial/retail uses and housing types. A maximum of six hundred and fifteen (615) residential dwelling units are permitted in the Project pursuant to the Rezoning Ordinance. The density and/or intensity of the non-residential portions of the Project shall be governed by the applicable provisions of the Frederick County Zoning Ordinance.

B. Development Requirements. The Property shall be developed in accordance with, and subject to, the conditions and requirements of the Development
Approvals that are required pursuant to County Code, which Development Approvals shall be based upon the terms and conditions of this Agreement. Setbacks, building size and other development standards shall be as approved by the Planning Commission in accordance with the Development Approvals and applicable sections of the County Code. The maximum height for residential units in the Project shall be 50 feet for single family structures and 120 feet for multifamily structures. The maximum height for non-residential structures in the Project shall be 120 feet. The final height of all structures shall be determined by the Planning Commission at the time of preliminary plan or site plan review process. No individual building in the Project shall exceed 500,000 square feet of gross floor area. The parties acknowledge and agree that the County Code contemplates flexibility for MXD projects, in order to facilitate excellence of design and responsiveness to market conditions.

C. Revision of Use Mix. Subject to compliance with the Rezoning Ordinance and applicable provisions of the land development and APFO provisions of the County Code, Developer shall have the ability to revise the mix of residential unit types in the Project (subject to the cap of 615 residential dwelling units established in the Rezoning Ordinance) and to revise the mix of square footage allocated to commercial and employment uses in the Project without the need to obtain further revisions to the MXD Phase I Plan. Developer shall be permitted to stage the timing of development of the various uses in the Project in response to market demand.

D. Historic Structures. There are no historic structures on the Property.

2.3 Other Development Approvals and Permits. The Project has obtained certain Development Approvals, including, but not limited to, those noted in EXHIBIT F, attached hereto and made a part hereof:

The Project shall be required to comply with all other applicable requirements of the County Code for land development, including, but not limited to, site improvement plans (for water, sanitary sewer, and storm drainage and sediment, and erosion control improvements), water and sewer amendments, Subdivision Plats, building permits, and occupancy permits. The Project shall also be required to obtain all applicable State or federal approvals and permits.

2.4 Consistency with Comprehensive Plan. On April 24, 2013, the Planning Commission made the necessary determination as to whether this Agreement is consistent with the Frederick County Comprehensive Plan. By execution of this Agreement, the BOCC has determined that this Agreement is consistent with the Frederick County Comprehensive Plan and with the development regulations of Frederick County, Maryland.
2.5 Public Health, Safety and Welfare. The BOCC has determined that the conditions, terms, restrictions or other requirements of this Agreement are necessary to ensure that the public health, safety and welfare of the citizens of Frederick County are protected.

ARTICLE III
ROAD IMPROVEMENTS, SEWER IMPROVEMENTS, WATER IMPROVEMENTS, SCHOOL IMPROVEMENTS, AND OTHER COMMUNITY FACILITIES

3.1 Road Improvements.

A. Road Improvements. Road Improvements have been satisfied, pursuant to the Existing LOU, and further evidenced by the APFO LOU, a copy of which is attached hereto as EXHIBIT D.

B. Building Excise Tax. Currently, the building excise tax provided for in Section 1-8-73 of the County Code is established at zero dollars ($0.00). In recognition of the overall package of road improvements constructed or to be constructed by the Developer and/or Developer's predecessor, including substantial funding contributions for regional road improvements beyond the requirements of the APFO, the excise tax shall be zero dollars ($0) for the term of this Agreement.

3.2 Sewer Improvements. Public sewer shall be extended to the Property as provided for in the APFO LOU. The Project will pay tap fees in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request sewer capacity fee credits pertaining to the provision of public sewer to the Property if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied.

3.3 Water Improvements. Public water shall be extended to the Property as provided for in the APFO LOU. The Project will pay tap fees in accordance with the current fee schedule in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request water capacity fee credits pertaining to the provision of public water to the Property, if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied.

3.4 Schools and Community Facilities.

A. School Construction Fee. The School Construction Fee was established by Ordinance 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO, with a sunset provision of five (5) years from the effective date. Notwithstanding a sunset of the School Construction Fee Ordinance, the parties intend: (i) that the Developer
shall be bound to pay the School Construction Fee as a condition of APFO approval for the Project, (ii) that this provision shall survive the sunset of the Ordinance, which shall be deemed to run with the full term of this Agreement and any duly approved extensions thereof and (iii) that payment of the School Construction Fee shall satisfy the Developer’s school adequacy obligations under the APFO (unless the density or intensity of the Project is increased) and any school adequacy obligations that may be enacted in the future. The School Construction Fee shall be paid as provided in Section 1-20-62 of the APFO and in accordance with the fee schedule in effect at the time of plat recordation or the issuance of building permit, as applicable. If after the five year sunset the Frederick County Code no longer provides for the calculation of the School Construction Fee, then the school construction fee for purposes of this Agreement shall thereafter be based on the previous year’s fee schedule, adjusted annually per the State of Maryland School Construction Cost Index, for the duration of this Agreement.

B. School Impact Fees. Applicable School Impact Fees shall be paid at the time of the issuance of building permits in accordance with the fee schedule in effect at the time of the issuance of building permits.

C. Payment for School Site. In lieu of dedicating a school site at the Project, Developer shall pay Eight Hundred Thousand Dollars ($800,000.00) toward the acquisition, planning and/or construction of an elementary school site in the vicinity of the Project within 30 days after final approval by the Frederick County Planning Commission and Frederick County staff signature of Phase II of the Project. For purposes of this provision, “final approval” shall be deemed to be the approval referenced above and the expiration of any applicable appeal period with no appeals being filed. In the event of a timely appeal of the Project’s Phase II approval, “final approval” shall be deemed to have occurred upon the successful defense of any such appeal with no further appeal rights of the Project’s Phase II approval. This payment shall not be used as an offset against or credit toward impact fees or School Construction Fees paid in connection with the Project.

D. Public Use Site. Prior to recordation of the Project’s first residential lot, Developer shall convey, if desired by the County, a 22.49 +/- acre public use site generally located as shown on the Concept Plan of the MXD Phase I Plan (the “Park Site”) for future discretionary use by the County. In the event the County requires access to Park Site prior to fee simple conveyance, the Developer will provide easements as reasonably necessary. The Developer shall not be responsible for any Park Site improvements.

ARTICLE IV
[INTENTIONALLY OMITTED]

ARTICLE V
MODERATELY PRICED DWELLING UNITS
5.1 In accordance with the provisions of Section 1-6A-5.1(G) of the County Code regarding moderately priced dwelling units ("MPDUs"), Developer hereby elects to utilize, and the BOCC agrees to permit Developer to utilize, the Payment in Lieu of Building MPDUs as provided in Section 1-6A-5.1 aforesaid, as in existence as of the date hereof, in lieu of the prior MPDU requirements for a residential developer. A draft Moderately Priced Dwelling Unit Payment In Lieu Agreement is attached hereto and made part hereof as EXHIBIT E.

ARTICLE VI
DEVELOPMENT REVIEW

6.1 **Timely Development Review.** The BOCC agrees to use reasonable efforts to ensure that all remaining Development Approvals, including but not limited to, preliminary plan approval, site development plan approval, final subdivision and final improvement plan review are performed in a succinct, timely manner, without undue delay, consistent with the County’s development review process.

6.2 **Timely Submission of Documents.** The Developer agrees to submit complete and succinct plans and documents for the remaining Development Approvals as required per County codes, ordinances, policies or procedures, in a timely manner.

ARTICLE VII
SURVIVAL AND TRANSFER OF OBLIGATION

7.1 **Nature, Survival, and Transfer of Obligations.** The Developer agrees that this Agreement shall run with the land and be binding upon and inure to the benefit of the Developer and its successors and assigns (except owners of an individual lot, unit or parcel improved pursuant to a validly issued building permit or dwelling purchased solely for use as a private residence and except owners of finished non-residential buildings constructed pursuant to validly issued building permits), and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot or unit improved pursuant to a validly issued building permit or dwelling purchased solely for use as a private residence and except owners of finished non-residential buildings constructed pursuant to validly issued building permits). To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer agrees that it shall:

A. Have this Agreement recorded among the Land Records of Frederick County within twenty (20) days after the Effective Date of this Agreement; and
B. Use commercially reasonable efforts to incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the Effective Date of this Agreement for the sale of all or any portion of the Property.

7.2 Binding Upon Successors and Assigns of The BOCC. The BOCC agrees that all obligations assumed by the BOCC under this Agreement shall be binding on the BOCC, its agencies, governmental units, the Planning Commission and its and their respective successors and assigns, including, but not limited to, the future County Council and County Executive, when Frederick County transitions to a charter form government.

ARTICLE VIII
BREACH AND REMEDIES

8.1 Breach by Developer.

A. Breach-General. If the Developer shall fail or refuse to perform its obligations as required hereunder, then the BOCC shall provide written notice to the Developer indicating the nature of the default. Developer shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the Developer shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the Developer has not cured the default within the said cure period, the BOCC may seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to the BOCC because of actions of Developer, then the BOCC shall be entitled to bring a legal action for damages.

B. Developer hereby waives trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

8.2 Breach by BOCC.

A. Breach-General. If the BOCC shall fail or refuse to perform its obligations as required hereunder, then the Developer shall provide written notice to the BOCC indicating the nature of the default. The BOCC shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the BOCC shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the BOCC has not cured the default within the cure period, the Developer may seek and obtain equitable relief to enforce the terms and conditions of this
Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to the Developer because of actions of the BOCC, then the Developer shall be entitled to bring a legal action for damages.

B. The BOCC does hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

ARTICLE IX
EFFECT OF DEVELOPMENT REGULATIONS

9.1 **Effect of Agreement.**

A. Except as otherwise specifically provided herein, the laws, rules, regulations and policies governing the use, density or intensity of the Property, including, but not limited to, those governing development, subdivision, growth management, impact fee laws, water, sewer, stormwater management, environmental protection, land planning and design and adequate public facilities (hereafter collectively the "Development Laws"), shall be the laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement, and the Developer shall comply with all such federal, state and local Development Laws.

B. If the BOCC determines that compliance with Development Laws enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Frederick County, the BOCC may impose the change in laws, rules, regulations and policies and the effect thereof upon the Property.

9.2 **Approvals Required.** Developer shall obtain all approvals necessary under any provision of local, state or federal law before proceeding with development of the Project. Notwithstanding anything to the contrary contained herein, this Agreement does not control or affect laws, regulations or approvals which are not within the control of the County. This Agreement does not address any approvals required by state or federal law and Developer shall be responsible for obtaining any approvals required by state or federal law.

9.3 **Fees.** Except as provided in Sections 3.1.B and 3.4.A above, Developer shall pay all fees (specifically including, but not limited to, impact fees, school mitigation fees and water and sewer connection fees) required by Frederick County at the rate in effect at the time the fee is due. In the event that any such fees, including the school construction fee referenced in Section 3.4.A above, are eliminated by a change in the law and replaced with a procedure or requirement that would impose some other burden on the Developer, the Developer may elect to pay the fee in effect prior to the change in the law. Impact fees shall be paid at the time of issuance of building permits. Developer does not waive the right to claim credits for impact fees, excise taxes, surplus capacity reimbursements, water and sewer connection fees, school impact fees and
any similar fees or tax credits which may be available in accordance with County policies and regulations. Nothing in this Agreement shall be construed as a waiver or reduction of any such fees.

9.4 **Developer’s Reliance.** The BOCC acknowledges that the Developer would not make the long term financial commitments necessary to build out the Project in accordance with the approved MXD Phase I Plan or to provide the proffered infrastructure improvements, without Frederick County’s commitment to allow the Project to be governed by and subject to the development laws in effect as of the Effective Date of this Agreement, to the maximum extent permitted by law.

9.5 **Moratorium.** In the event that a “moratorium” (as hereinafter defined) is declared or imposed, then any lot recordation and the Developer’s rights to construct residential units and commercial structures on the lots or on the Property pursuant to any Development Approval for any section of the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subject to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, then any deadline concerning the Developer’s obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any Development Approval for the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. The term “moratorium” shall mean the implementation or declaration by the United States Government, State of Maryland, Frederick County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction upon lots in the Project as intended by Developer, or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Developer the ability to record lots or obtain permits for the Project pursuant to any Development Approval. Nothing in this Agreement shall be interpreted as exempting Developer from compliance with laws, regulations, and policies of the County or the State, including, without limitation, those of the Maryland Department of the Environment or the Frederick County Division of Utilities and Solid Waste Management concerning the allocation of water and sewer and related matters.

**ARTICLE X**

**MISCELLANEOUS**

10.1 **Time of Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.
10.2 *Term.* This Agreement shall constitute covenants running with the land and shall run with and bind the Property so long as the Project is under development. This Agreement shall terminate and be void twenty-five (25) years after the Effective Date of this Agreement unless extended by an amendment complying with all procedures required in this Agreement, the County Ordinance and the State Law. The parties acknowledge and agree that the Term of this Agreement is justified by the: (1) substantial economic investment made by the Developer for the development of the Project; (2) substantial economic investment made by the Developer in public facilities which serve to advance public purposes; (3) public purposes to be advanced by development of the Project in accordance with the Development Laws; (4) uncertainty of future market demands and political pressures; and (5) expectations of the parties.

10.3 *Notices.* All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below; or (2) on the third business day after being deposited in any main or branch United States post office for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below; (3) upon transmission, if sent by electronic mail, to the e-mail addresses set forth below; or (4) on the day following deposit with Federal Express or other national overnight courier.

Notices and communications to the Developer shall be addressed and delivered to the following address:

c/o Matan Development, LLLP  
4600 Wedgewood Blvd, Suite A  
Frederick, MD 21703  
Attn: Karl A. Morris, Director of Development  
Phone: 301-694-9200  
Email: karl@mataninc.com

with a copy to:

Law Offices of Rand D. Weinberg, LLC  
15 North Court Street  
Frederick, Maryland 21701  
Attn: Rand D. Weinberg, Esquire  
Telephone: (301) 698-2350  
E-mail: rweinberg@rdweinberglaw.com

Philip D. Topper, Jr., LLC  
110 North Court Street  
Frederick, Maryland 21701  
Attn: Philip D. Topper, Jr., Esquire  
Telephone: (301) 696-9780  
E-mail: PhilipTopper@aol.com

Notices and communications to the BOCC shall be addressed and delivered to the following address:
The Board of County Commissioners for
Frederick County
12 East Church Street
Frederick, Maryland 21701
Attn: Lori L Depies, County Manager
Telephone: (301) 600-1100
E-mail: ldepies@frederickcountymd.gov

With a copy to:

John S. Mathias, Esquire
County Attorney
12 East Church Street
Frederick, Maryland 21701
Telephone: (301) 600-1030
E-mail: jmathias@frederickcountymd.gov

Gary Hessong, Director
Director of the Dept. of Permits and
Inspections
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028
E-mail: ghessong@frederickcountymd.gov

Eric Soter, Director
Community Development Division
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-1153
E-mail: esoter@frederickcountymd.gov

By notice complying with the requirements of this Section, each party shall have the right
to change the address or addressee or both for all future notices and communications to such
party, but no notice of a change of address shall be effective until actually received.

10.4 Amendments.

A. The parties to this Agreement may amend this Agreement by mutual
consent after the BOCC holds a public hearing and complies with all applicable laws
concerning amendment of a Development Rights and Responsibilities Agreement. All
amendments to this Agreement shall be in writing and shall be executed by the BOCC
and the Developer.

B. This Agreement may be amended in accordance with the applicable
provisions of Chapter 1-25 of the Frederick County Code to incorporate subsequent
Development Approvals and requirements for Phases of the Project.
10.5 **Termination or Suspension.** The parties to this Agreement may terminate or suspend this Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning termination or suspension of a Development Rights and Responsibilities Agreement as set forth in the County Ordinance. If the BOCC determines that a suspension or termination is essential to ensure the public health, safety or welfare, as determined in accordance with Section 9.1.B above, the BOCC may suspend or terminate this Agreement following a public hearing. Any such unilateral termination of this Agreement by the BOCC shall not in any way affect the validity of any Development Approvals which have been obtained for the Project at the time of termination, including, but not limited to, APFO Approvals.

10.6 **Authority to Execute.** The BOCC hereby acknowledges and agrees that all required notices, meetings, and hearings have been properly given and held by the County with respect to the approval of this Agreement, and the Developer agrees not to challenge this Agreement or any of the obligations created by this Agreement on the grounds of any procedural infirmity or any denial of any procedural right. The BOCC hereby warrants and represents to the Developer that the person(s) executing this Agreement on its behalf have been properly authorized to do so. The Developer hereby warrants and represents to the BOCC (1) that it is the fee simple, record owner of the Property, (2) that it has the right, power and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Property as set forth herein, and (3) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken.

10.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

10.8 **Consent to Jurisdiction and Venue.** The parties irrevocably consent to the jurisdiction and venue of the Circuit Court for Frederick County, Maryland or any federal court sitting in the District of Maryland for any proceedings brought with respect to this Agreement.

10.9 **Remedies Cumulative.** Each right, power and remedy of a party provided for in this Agreement, or any other agreement between the parties, now or hereafter existing, shall be cumulative and concurrent and in addition to every other right, power or remedy provided for in this Agreement or any other agreement between the parties, now or hereafter existing.

10.10 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
10.11 **Recordation.** As set forth in Section 7.1.A, the Developer shall have this Agreement recorded among the Land Records of Frederick County, Maryland within twenty (20) days after the Effective Date of this Agreement. In the event the Agreement is terminated following an appeal as provided for in Section 10.12 below, the parties agree to execute and record a document in the aforesaid Land Records to terminate this Agreement.

10.12 **Appeals.** Appeals by any person aggrieved by this Agreement shall be in accordance with applicable state law.

10.13 **No Obligation to Approve.** This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC or any of its boards, agencies, commissions or employees to approve any development, use, density or intensity other than as provided specifically in this Agreement. This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC to accept any other development requests.

10.14 **No Third Party Beneficiary Status.** The parties specifically agree that this Agreement is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Agreement without the written consent of the BOCC and notwithstanding the BOCC’s concurrence in or approval of the award of any contract or subcontract or the solicitation in fulfilling the obligations of this Agreement.

10.15 **Appropriation Contingency.** The BOCC’s financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the BOCC for the performance of this Agreement. The BOCC’s decision as to whether sufficient appropriations are available shall be accepted by the other parties to this Agreement and shall be final.

10.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]
WVS PARCEL 102, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager
By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager

By: Mark C. Matan
Manager

Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me,
the undersigned Notary Public of said State, personally appeared Mark C. Matan, who
acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a
Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland
limited liability company, Manager of WVS Parcel 102, LLC, a Maryland limited liability
company, known to me (or satisfactorily proven) to be the person whose name is subscribed to
the within instrument, and acknowledged that he executed the same for the purposes therein
contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the
Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 102, LLC.

WITNESS my hand and Notarial Seal.  

My Commission Expires: 11-22-15

KATHRYN M. KEHR
Notary Public
WVS PARCEL 200, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: ________________________________________
Mark C. Matan
Manager

Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12th day of June, 2013, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland limited liability company, Manager of WVS Parcel 200, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 200, LLC.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 11-22-15
WVS PARCEL 204, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager
By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager

By: ____________________________
Mark C. Matan
Manager

Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me,
the undersigned Notary Public of said State, personally appeared Mark C. Matan, who
acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a
Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland
limited liability company, Manager of WVS Parcel 204, LLC, a Maryland limited liability
company, known to me (or satisfactorily proven) to be the person whose name is subscribed to
the within instrument, and acknowledged that he executed the same for the purposes therein
contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the
Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 204, LLC.

WITNESS my hand and Notarial Seal. ____________________________
Kathryn M. Keir
Notary Public

My Commission Expires: 11-22-15
WVS PARCEL 300, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: _____________________________
Mark C. Matan
Manager

Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland limited liability company, Manager of WVS Parcel 300, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 300, LLC.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 11-22-15
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland limited liability company, Manager of WVS Parcel 400, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 400, LLC.

WITNESS my hand and Notarial Seal.

My Commission Expires: 11-22-15
WBP PARTNERS II, LLC,
a Maryland limited liability company
By: Wedgewood Investment Group 2008, LLC,
a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC,
a Maryland limited liability company,
Manager

By: ________________________________

Mark C. Matan
Manager

Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12th day of June, 2013, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Wedgewood Investment Group 2008, LLC, a Maryland limited liability company, Manager of WBP Partners II, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the Manager of Wedgewood Investment Group 2008, LLC, the Manager of WBP Partners II, LLC.

WITNESS my hand and Notarial Seal. ________________________________

Notary Public

My Commission Expires: 11-22-15

[Notary Public Seal]
ITB2, LLC,
a Maryland limited liability company
By: Wedgewood Investment Group 2008, LLC,
a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC,
a Maryland limited liability company,
Manager

By: Mark C. Matan
Manager
Date: 6/12/13

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me,
the undersigned Notary Public of said State, personally appeared Mark C. Matan, who
acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a
Maryland limited liability company, Manager of Wedgewood Investment Group 2008, LLC, a
Maryland limited liability company, Manager of ITB2, LLC, a Maryland limited liability
company, known to me (or satisfactorily proven) to be the person whose name is subscribed to
the within instrument, and acknowledged that he executed the same for the purposes therein
contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the
Manager of Wedgewood Investment Group 2008, LLC, the Manager of ITB2, LLC.

WITNESS my hand and Notarial Seal.

My Commission Expires: 11-22-15
THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND

BY:  

Blaine R. Young, President

Date:    

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 13th day of June, 2013, before me, the undersigned officer, personally appeared Blaine R. Young, President of the Board of County Commissioners for Frederick County, Maryland, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

Patricia A. Morrow
NOTARY PUBLIC

My Commission Expires: Jan 2016
AUTHORIZATION OF LIENHOLDER

Nancy W. Greene and Jeffrey H. Seibert, Trustees of the indebtedness secured by the deed of trust against a portion of the property described herein, namely an Indemnity Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated April 10, 2012, and recorded among the Land Records of Frederick County, Maryland, in Liber 8844, folio 468, hereby assent to the terms and provisions of this Development Rights and Responsibilities Agreement, and do hereby further agree that the terms contained herein shall survive any sale under its deed of trust, as evidenced by the signature of one or more of the undersigned trustee(s) under the above-described deeds of trust.

NAME

BY: Nancy W. Greene, Trustee

BY: Jeffrey H. Seibert, Trustee

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 10th day of June, 2013, before me, the undersigned officer, personally appeared Nancy W. Greene, Trustee, who acknowledged the foregoing instrument to be her act and deed in such capacity, and that she is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

My Commission Expires: 1/20/2016

CYNTHIA R. HAPPEL
Notary Public-Maryland
Howard County
My Commission Expires January 20, 2016

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 10th day of June, 2013, before me, the undersigned officer, personally appeared Jeffrey H. Seibert, Trustee, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

My Commission Expires: 1/20/2016

CYNTHIA R. HAPPEL
Notary Public-Maryland
Howard County
My Commission Expires January 20, 2016
AUTHORIZATION OF LIENHOLDER

Michael P. Fitzgerald and Jeff Hedderly, Trustees of the indebtedness secured by the deeds of trust against a portion of the property described herein, namely (i) an Indemnity Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated December 21, 2010, and recorded among the Land Records of Frederick County, Maryland, in Liber 8163, folio 236, as affected by the Deed of Appointment of Substitute Trustee dated November 27, 2012, and recorded in Liber 9260, folio 356, among the aforesaid Land Records, and (ii) the Indemnity Deed of Trust and Security Agreement dated November 27, 2012, and recorded in Liber 9230, folio 154, among the aforesaid Land Records, hereby assent to the terms and provisions of this Development Rights and Responsibilities Agreement, and do hereby further agree that the terms contained herein shall survive any sale under its deeds of trust, as evidenced by the signature of one or more of the undersigned trustee(s) under the above-described deeds of trust.

NAME

BY: Michael P. Fitzgerald, Trustee

BY: Jeff Hedderly, Trustee

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 6th day of June, 2013, before me, the undersigned officer, personally appeared Michael P. Fitzgerald, Trustee, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

EDWARD J. GOEDECKE
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 14, 2014

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 6th day of June, 2013, before me, the undersigned officer, personally appeared Jeff Hedderly, Trustee, who acknowledged the foregoing instrument to be his act and deed in such capacity, and that he is authorized to make this acknowledgment.

WITNESS my hand and Notarial Seal.

My Commission Expires:

EDWARD J. GOEDECKE
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 14, 2014
ATTORNEY’S CERTIFICATION

This is to certify that the undersigned is a member in good standing of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by him or under his supervision.

Rand D. Weinberg

Rand D. Weinberg
In General: The following Second Amended and Restated Adequate Public Facilities Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Planning Commission") and WVS Parcel 102, LLC, WVS Parcel 200, LLC, WVS Parcel 204, LLC, WVS Parcel 300, LLC, WVS Parcel 400, LLC, WBP Partners II, LLC and ITB2, LLC (collectively, the "Applicant"), together with its/their successors or assigns, sets forth the conditions and terms which the Planning Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the approved amendment to the Westview South MXD Phase I (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Applicant, its successors or assigns, hereby agrees and understands that unless the required contributions are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Applicant's parcels of land totaling 117.83 +/- acres, zoned Mixed Use Development (MXD), and located on the north and south sides of Executive Way. This APFO approval will be effective for development of (a) the additional 122,500 square feet of employment use approved under, and set forth in, the 2013 LOU (defined below); and (b) 531 dwelling units, including approximately 125 single family detached units, 188 single family attached units (townhomes), 62 two-over-two units and 156 multi-family units (apartments/condos), or any variation of dwelling unit mix such that the intensity of total peak hour vehicle trips or the school student generation is not increased above that analyzed in the "Westview South Land Bays 2, 3, and 4" memorandum prepared on behalf of the Applicant by Wells and Associates, LLC, dated February 22, 2013 (as amended by the Table 2 Update by Wells and Associates, LLC, dated January 16, 2014) or the student projections described below. This Letter does not affect the Project's allowed maximum density of 615 residential dwelling units, as designated pursuant to the Project’s Phase I Plan (Ordinance No. 13-10-638, dated June 13, 2013) and Development Rights and Responsibilities Agreement (dated June 13, 2013).

The current APFO approval for the Westview South MXD is valid through February 12, 2019, as evidenced by the existing APFO Letter of Understanding, signed by the Frederick County Board of County Commissioners ("BOCC") on June 13, 2013 (the "2013 LOU"). The Applicant and the Planning Commission enter into this Letter as part of the Project’s Phase II approvals, pursuant to Chapter 1-20, Section 1-20-20 of the Frederick County Code, and this Letter replaces the 2013 LOU.

Schools: The Project is projected to generate 100 elementary school students, 44 middle school students and 60 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary level for Tuscarora ES. The Applicant has chosen the option to mitigate the inadequacy of the public elementary school capacity by paying the School Construction Fee for the elementary school.
level in accordance with the criteria set forth in Section 1-20-62 of the APFO (and in accordance with the DRRA). The Applicant shall pay the School Construction Fee, based upon the fee schedule in effect at the time of residential subdivision plat recordation and payment, as set forth in Section 1-20-62(E) of the APFO, per unit type for the elementary school level.

**Water and Sewer:** While the public sewer and water facilities are currently adequate to serve the Project, the Applicant acknowledges that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

**Road Improvements:** All identified road improvements in the APFO Letter of Understanding signed by the Planning Commission on September 14, 2005 have been satisfied to date except for a signal installation on New Design Road and Executive Way (Phase 1, #8) and a turning movement restriction at Pegasus Ct. and MD 85 (Phase 3, #1). Restated below, and still in force and effect under this Letter, are the replacement requirements set forth in the 2013 LOU, with updated amounts in Paragraph 1 below reflecting current costs as of the date of this Letter:

1. Install a traffic signal when warranted, justified and deemed necessary by the County. The current estimated cost of the signal is $175,000. The Applicant shall be entitled to meet its obligations by placing with the County a letter of credit or cash payment in the amount of $218,750 (125% of the estimated cost of the signal including the contingency). The Applicant shall be entitled to continue with the Project after acceptance of the surety, and shall install the signal at such time as approved by the County. The Applicant is responsible for conducting a traffic signal warrant analysis prior to the issuance of the last building permit, when deemed necessary by the County. Should the signal still not be warranted and justified by the time of issuance of the last building permit, then the County shall thereafter be responsible for its implementation using the surety funds provided by the Applicant, with unused surety, if any, returned in full to the Applicant upon completion of the signal work.

2. The County will establish an escrow account for the creation of a channelized island (a "pork chop") at Pegasus Court and Maryland Route 85, and the Applicant shall make a total fee-in-lieu payment of $50,000 to said escrow account.

The payments/surety for Road Improvements stated above shall be made prior to recordation of the Project’s first residential lot.

**Period of Validity:** The effective date of this LOU for the commencement of all APFO approvals referenced herein shall be May 21, 2014, and this LOU shall remain valid through February 12, 2019.

**Disclaimer:** This Letter pertains to APFO approval only, and shall not be construed to provide
any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The BOCC's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

APPLICANT:

**WVS PARCEL 102, LLC,**
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14

**WVS PARCEL 200, LLC,**
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14

**WVS PARCEL 204, LLC,**
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14
WVS PARCEL 300, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14

WVS PARCEL 400, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14

WBP PARTNERS II, LLC,
a Maryland limited liability company
By: Wedgewood Investment Group 2008, LLC, a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager
Date: 5/12/14
ITB2, LLC,
a Maryland limited liability company
By: Wedgewood Investment Group 2008, LLC,
a Maryland limited liability company, Manager
By: Wedgewood Investment Management, LLC,
a Maryland limited liability company,
Manager
By:
Mark C. Matan
Manager
Date: 5/21/14

FREDERICK COUNTY PLANNING COMMISSION:
By: Dwayne E. Dell
Date: 5/22/14

ATTEST:
By: Gary Hessong, Director, Permits & Inspections
Date: 6/2/14