SECOND AMENDED AND RESTATE ADEQUATE PUBLIC FACILITIES
LETTER OF UNDERSTANDING
WESTVIEW SOUTH MXD
Preliminary Plat #S905      AP #13146

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: 5/12/14

FREDERICK COUNTY PLANNING COMMISSION:

By: ________________________________  
Date: ______________________________

ATTEST:

By: ________________________________  
Gary Hessong, Director, Permits & Inspections  
Date: ______________________________