

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 22, 2008

CALL TO PODIUM:

Fred Felton
Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

<input checked="" type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:
Presentation on proposed amendments to the Crown Farm Annexation Agreement (X-182)

SUPPORTING BACKGROUND:
<p>On August 6, 2006, the Mayor and City Council approved an agreement to annex the Crown Farm. For your review, I have attached a detailed summary of the agreement and the actual agreement itself.</p> <p>The annexation agreement and the approved sketch plan divided the farm into six Pods. Pods #1, #2, #3, and #5 are to be developed as mixed-use projects. Pod #4 will become a City park, and Pod #6 is the high school site.</p> <p>At this point, the schematic development plan (SDP) for Pods #2 and #3 have been approved, and staff has been working with the development team for approximately six months on a proposed SDP for Pod #1. In order to accommodate this plan, that our staff and the developer believe is desirable, it is necessary to reallocate 60 residential units from Pod #5 to Pod #1. Please note that his proposed SDP does not impact the overall cap of 2250 residential units for the entire project. Additionally, staff believes some office in POD #5 would be desirable.</p> <p>Staff has negotiated an agreement in principle with the development team on proposed amendments to the annexation agreement with the following key provisions:</p> <ol style="list-style-type: none"> 1. A total of 60 residential units will be reallocated from Pod #5 to Pod #1. 2. The developer would no longer be required to build multi-family dwellings above the proposed grocery store in Pod #1. <p>-Continued-</p>

DESIRED OUTCOME:
Hear presentation.

MAYOR & COUNCIL AGENDA COVER SHEET

Supporting Background Continued:

3. If they obtain County Council consent in the future, the developer could convert up to 400 multi-family residential units in Pod #5 to up to 400,000 square feet of office at a conversion rate of one residential unit for each 1,000 square feet of office. Please note that the existing agreement calls for a payment of \$2,500 to our affordable housing fund for each residential unit in POD #5. The proposed amendment would call for a \$2,500 contribution for each 1,000 square feet of office in POD #5 in addition to the payment for residential units.
4. If the City obtains County Council consent in the future, the 12.5 % MPDU component on the project will be administered under the City MPDU regulations rather than the County MPDU regulations.
5. The developer will contribute \$1 million for construction of the new senior center or any other recreational amenity upon the issuance of the 51st building permit or June 1, 2010.
6. Under the current agreement, the developer may require the purchaser to make a 10% down payment on Work Force Housing Units. The proposed amendment would cap the down payment at 5%.
7. The developer will reimburse the Washingtonian Towers Condominium Association and the Courtyards at Rio Homeowners Association \$10,000 each in the event these communities install fencing within the next three years.

If the Mayor and City Council agree with these terms, staff recommends that an annexation agreement amendment be approved concurrently with the proposed sketch plan amendments.

Attachments

1. Summary of existing Annexation Agreement
2. Approved Annexation Agreement dated August 7, 2006

Summary of Annexation Agreement X-182 Crown Farm Annexation July 2006

Paragraph 1

- (a) Property to be zoned MXD and sketch plan approved concurrently.
- (b) Total density of 2,250 residential units and 320,000 sf. of commercial/retail as outlined in chart below.

Residential Development (Total Density Cap 2,250, including Moderately Priced Dwelling Units and Workforce Housing Units*)				
	Pod 1	Pod 2	Pod 3	Pod 5
Permitted Range	820-867	310-325	280-290	768-1,010
Single-Family Dwellings	0-6	59-98	95-131	0
Townhouses	70-80	155-228	126-162	0
2-over-2 Dwellings	20-30	31-65	28-44	0
Multi-Family Dwellings	740-750	0	0	768-1,010
Commercial/Retail Density	300,000 sf	0	0	20,000 sf

** Pursuant to Paragraph 1(c)(i) below, at maximum development density (2,250 dwelling units), 281 Moderately Priced Dwelling Units would be included (final number to be determined based on final development density). Based on the ranges provided in the chart for Pods 1, 2 and 3, 46 to 54 Workforce Housing Units would be included, however, the final number of Workforce Housing Units included is subject to adjustment based upon final density and unit types provided in accordance with this Paragraph 1.*

12.5% of the dwellings will be MPDUs. MPDUs will be administered under Montgomery County criteria; however, people working or currently renting in the City of Gaithersburg can get preference. MPDUs will be generally evenly dispersed throughout the development and will have the same general exterior materials and architecture.

In addition to the 12.5% MPDUs, the agreement calls for 4% of the townhouses and two-over two units in PODS 2 and 3 and 4%

of the total density in POD1 to be workforce housing units. Depending on ultimate density, this will be a range of 46 to 54 workforce housing units. These units will be administered under criteria to be developed by the City.

Paragraph 2

The developer will dedicate 4.2 acres of land for the Corridor Cities Transitway (CCT) alignment and the transit station. The alignment is proposed to be in the median of Fields Road or abutting Fields Road. We have been working very closely with representatives of the Maryland Transit Administration and have received positive feedback.

The developer is obligated to construct 250 parking spaces for the CCT in POD 1. If these parking spaces are constructed prior to the commencement of CCT operations, the City or the County may operate a Park and Ride facility. With concurrence of the County Council, the City may accept a \$3 million payment in lieu of constructing parking spaces if so desired by the Maryland Transit Administration.

Paragraph 3

The developer is required to construct all on-site roads in accordance with the road profiles in exhibit F. Staff is very pleased with the road profiles which generally provide for on-street parking, a planting strip, hiker/biker trail, and sidewalk. Even the private alleys will have curb and gutter. These profiles require a road code waiver which the annexation agreement obligates the City to approve.

Paragraph 4

Based on a detailed traffic analysis reviewed by staff in consultation with both Park and Planning staff and DPWT staff, it has been determined that 11 off-site road improvements must be implemented to meet the City's goal of Critical Lane Volumes not exceeding 1450 CLV. I would note that the methodology generally applied to the traffic analysis followed the Planning Board's Local Area Review process; however, the test was made more restrictive by requiring the developer count significantly more background traffic than Local Area Review required.

The timing of the developer funded off-site road improvements will be determined at SDP. The developer will be required to post bond for each improvement if the approving authority has not approved permit applications (the County or State) for a period of five years. If the County or State does not approve a permit for a given improvement, the developer will pay the City the cost of the improvement and the City can use the funds for any other traffic or transit improvement.

Paragraph 5

Simply notes that Fields Road is owned by Montgomery County, and that the County's consent is required for modifications. If a mutually acceptable agreement is reached with Montgomery County, the City may assume ownership and responsibility for the road.

Paragraph 5 also requires that a traffic signal warrant study be submitted with the initial SDP to determine if a traffic signal rather than a traffic circle is appropriate at the intersection of Fields Road and Decoverly Drive.

Paragraph 6

Paragraph 6 places certain restrictions on the design guidelines for the community that will be approved at SDP. The design guidelines will require a minimum of 8-foot separation between homes, and prohibit vinyl siding or similar materials.

Paragraph 6 also acknowledges that construction of the proposed development will require waivers of the City's environmental standards to accommodate two water and sewer crossing within the Stream Valley buffer, three storm water management outfalls in the Stream Valley buffer and the potential conversion of the Farm Pond currently in the buffer to a SWM facility. The agreement obligates the City to approve waivers as generally shown on exhibit I subject to the following:

(1) Submission of all customary engineering details and a formal waiver application that demonstrates the encroachments are the minimum necessary to accommodate the Permitted Development and satisfy the waiver criteria as outlined in Section 38 of the City Environmental Standards for Development Regulation;

(2) Crown Village obtaining all necessary approvals, permits, or waivers from Montgomery County, Maryland Department of Environment, Natural Resources Conservation Services, and the U.S. Army Corps of Engineers; and

(3) As mitigation, Crown Village paying a fee of \$1.00 per square foot of encroachment into the stream valley buffer, at a rate of 1.5 to 1.0, to be used by Gaithersburg to enhance stream quality at a location to be determined off-site within the Muddy Branch Watershed.

Paragraph 7

This paragraph addresses technical issues associated with the SDP submission. At this point it appears the initial SDP submission will be infrastructure only for PODs 1, 4, 5 and 6. PODs 2 and 3 will be started first, and the remaining PODs will have to go back to the Council for future SDP approval.

Paragraph 8

This paragraph places some substantial design requirements for the community above and beyond existing code requirements. The HOA Clubhouse is required to obtain LEED certification from the US Green Building Council. 40% of the commercial/retail development in POD 1 must be certified by a LEED credited professional as likely to yield 20 points on the LEED rating system. Finally, all the builder installed kitchen appliances and washers and dryers throughout the community are required to meet or exceed the current standards for Energy Star rated appliances.

Paragraph 9

This paragraph requires donation of a 32.1 acre high school site. The agreement requires the developer to convey the school site to the City upon recordation of the initial subdivision plat; however, an easement and maintenance agreement will be executed to stage and stockpile material for a period of 7 years or until such time as the school system is ready to construct school—whichever is sooner.

In the event MCPS does not move forward with the construction of a high school within 20 years, the City may use the land for a public recreational amenity.

Paragraph 10

This paragraph requires the dedication of a five acre park to the City. Two acres will be graded as usable open space the remaining three acres will be reforested .

The developer is required to preserve and improve the existing farmhouse and the associated tenant log house. Once renovated, an historic easement will placed on the property and the house will be sold as a historically designated single-family residential home.

Paragraph 11

Indicates no dedication of land or contributions of funds not covered in this agreement can be required by the City.

Paragraph 12

Addresses a requirement for the City to grant storm drain, water and sewer, and other utility easements through City property as long as such easements have no adverse material impact on the City's property.

Paragraph 13

Is a finding of adequacy of water and sewer service and indicates the City will ask the County and the State the 10 year water and sewer plan to designate this property as W-3 and S-3.

Paragraph 14

Requires the developer to implement a shuttle bus program similar to the one operating at King Farm. While the cost of operating the shuttle bus will shift from the developer to the Homeowners association over time as the community is built out, the agreement requires that it operate for a period of 25 years or until such time as the CCT is in operation. The developer's total contribution to the shuttle bus service will be \$2 million.

Paragraph 15

As required by the County Council's approval of the annexation, the developer must contribute \$2 million to the Montgomery County Agricultural Land Preservation Easement Fund. This payment is made in lieu of the County's requirement to purchase transfer of development rights.

Paragraph 16

This paragraph requires a \$5 million contribution to the City for a regional recreational facility. Payment must be made by July 1, 2007 as long as the final site plan for POD 2 and 3 have been approved by that date.

Paragraph 17

Requires a \$150,000 commitment for public art in POD 1 in conjunction with the City's Art in Public Places Committee. Additionally, the developer must work with staff on public art in PODs 2 and 3 not exceed \$50,000.

Paragraph 18

Requires \$30,000 for bus shelters and \$200,000 for off-site sidewalk. We believe a good pedestrian connection from the transit station to the employment base at Washingtonian Center is critical.

Paragraph 19

Addresses phasing of the project. Under the agreement, the developer will be limited to a total of 225 building permits per year in PODs 1, 2, and 3 which would permit a six to seven year build out. The multi-family dwellings in POD 5 could be developed three years after the effective date of this agreement

Paragraph 20

This paragraph commits the City in supporting the developers request to receive impact tax credits for various transportation improvements.

Paragraph 21

This paragraph accepts MCPS's findings, that pursuant to the current Montgomery County Annual Growth Policy, the schools are adequate to support the student generation for this development, and agrees that Gaithersburg will not further consider the adequacy of schools to support this development for a period of 20 years.

The remaining paragraphs in the draft agreements are the routine legal language so I will only address them if anyone has questions. At this point, I would be pleased to answer any questions you will have.

ANNEXATION AGREEMENT

(X-182)

THIS ANNEXATION AGREEMENT ("Agreement"), made this 7th day of August, 2006, by and between (i) the CITY OF GAITHERSBURG, MARYLAND (the "City"), a municipal corporation of the State of Maryland, and the MAYOR AND COUNCIL OF GAITHERSBURG (the "Mayor and Council") (the City and Mayor and Council being collectively referred to as "Gaithersburg"), and (ii) CROWN VILLAGE FARM, LLC ("Crown Village").

RECITALS:

WHEREAS, Crown Village is the owner of approximately 176 acres of land located generally along the south side of Fields Road, extending to and including a portion of the right-of-way for Sam Eig Highway, and west of Omega Drive, as more particularly described in the metes and bounds description attached hereto and made a part hereof as Exhibit "A" (hereinafter referred to as the "Crown Village Property"); and

WHEREAS, Crown Village, along with Catherine C. Stinson and Clyde A. Stinson (who are the only persons residing in the area to be annexed who are registered as voters in County elections in the precinct in which the territory to be annexed is located), have petitioned Gaithersburg to annex the Crown Village Property, as well as property owned by Meridian/Northwestern Shady Grove West, LLC and portions of certain public roads in Montgomery County, Maryland, which together total approximately 183 acres of land, as more particularly described in the metes and bounds description attached hereto and made a part hereof as Exhibit "B" (collectively, the "Property"), pursuant to Annexation Petition No. X-182 (the "Petition"); and

WHEREAS, the Property is contiguous to and adjoins the existing corporate boundaries of the City and annexation of the Property as proposed does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the City as a result of the proposed annexation, or any combination of such properties; and

WHEREAS, pursuant to the requirements of Section 19(c) of Article 23A of the Annotated Code of Maryland, 1957, 2003 Replacement Volume (the "Code"), Gaithersburg has verified the signatures on the Petition and ascertained that the persons signing the Petition are the owners of not less than twenty-five percent (25%) of the assessed valuation of real property located in the area to be annexed and constitute not less than twenty-five percent (25%) of the

persons who reside in the area to be annexed, and who are registered as voters in County electives in the precincts in which the territory to be annexed is located; and

WHEREAS, pursuant to the provisions of Section 19(c) of Article 23A of the Code, a resolution has been introduced by Gaithersburg, designating the Annexation as X-182, proposing to change the municipal boundaries of the City as requested in the Petition (the "Resolution"); and

WHEREAS, pursuant to Section 19(d) of Article 23A of the Code, all required public notice and hearings pertaining to the proposed annexation have been published and conducted by Gaithersburg; and

WHEREAS, Gaithersburg has found and determined that annexation of the Property will (i) promote the themes, guidelines, recommendations and criteria of the City of Gaithersburg 2003 Master Plan (the "2003 Master Plan") and the City of Gaithersburg 1997 Master Plan, including the City of Gaithersburg Neighborhood Three Land Use Plan; (ii) establish more concise and reasonable corporate boundaries for the City; and (iii) encourage efficient and effective delivery of public services and placement of public facilities; and

WHEREAS, Gaithersburg intends to annex the Property as requested by the Petition; and

WHEREAS, the Montgomery County July 1990 Approved and Adopted Shady Grove Study Area Master Plan ("County Master Plan") currently covers the Property and recommends that the Crown Village Property be developed in the County's R-200/TDR and PD-20-25 Zones with approximately 2,250 dwelling units of various unit types [including MPDUs (defined below)] and 50,000 square feet of retail commercial uses; and

WHEREAS, Gaithersburg has recommended that the Property be placed in the MXD, Mixed Use Development Zone, Chapter 24 of the Code of the City of Gaithersburg (the "Gaithersburg Code"), Article III, Division 19, Section 24-16D.1, *et seq.* (the "MXD Zone"); and

WHEREAS, in an ordinance to accompany the Resolution, Gaithersburg intends to place the Property in the MXD Zone for development in accordance with and subject to certain development provisions and restrictions contained in this Agreement; and

WHEREAS, on December 1, 2005, Crown Village filed a Sketch Plan in compliance with the requirements of the MXD Zone ("Sketch Plan") as part of its annexation request; and

WHEREAS, in an effort to achieve approval of the Sketch Plan, schematic development plan, final site plan(s), and record plat(s) and issuance of all necessary development approvals and permits for development and construction of the "Permitted Development," as hereinafter defined, in an efficient manner which recognizes that time is of the essence, the parties have agreed to certain modifications to the Sketch Plan as originally filed and to certain conditions of development; and

WHEREAS, the parties acknowledge that time is of the essence and that they will work together to process and complete development approvals in a reasonably expeditious manner and in conformance with this Agreement in an effort to avoid substantial or material delay of Crown Village's desired development schedule for construction of the "Permitted Development" [defined in Paragraph 1(b)], as such schedule is generally expressed and described in the development schedule attached hereto and incorporated herein as Exhibit 'C' (the "Development Schedule"), subject to required public hearings, work sessions, and meetings and reasonable review time by governmental agencies and departments. Gaithersburg agrees to use its best efforts to reasonably expedite its required reviews, hearings, actions, and approvals ("City Reviews") so as to facilitate Crown Village's efforts to meet the Development Schedule. Nothing in this Recital or Agreement is intended to relieve Crown Village from any procedural requirement applicable by statute to applications for development and construction approvals and permits similar to those required for the "Permitted Development" and "Development Approvals," including, but not limited to, the filing of a "Complete Application(s)," as said terms are hereinafter defined, including payment of any required fees and charges and posting of surety as required by the Gaithersburg Code. "Complete Application(s)" is defined as a standard application for development and permit review and approval which complies with applicable laws, regulations, and administrative interpretations for an application of its general type and may, therefore, be processed for approval by Gaithersburg; and

WHEREAS, the Sketch Plan has been revised to reflect modifications requested by Gaithersburg and has been accepted by Gaithersburg as fully complying with all requirements of Section 24-160D.1, *et seq.*, of the Zoning Ordinance (the "Revised Sketch Plan"), a copy of which is attached hereto and made a part hereof as Exhibit "D"; and

WHEREAS, the Revised Sketch Plan proposes development of the "Permitted Development," as said term is hereinafter defined, on the Crown Village Property pursuant to the MXD Zone; and

WHEREAS, Gaithersburg has reviewed the Revised Sketch Plan and finds that the classification of the Property in the MXD Zone and the Revised Sketch Plan complies with all requirements of law, including, without limitation, the requirements of the MXD Zone, and promotes the public interest; and

WHEREAS, on April 25, 2006, in accordance with Section 9(c)(1) of Article 23A of the Code, the County Council for Montgomery County, Maryland, sitting as a District Council for that portion of the Maryland-Washington Regional District within Montgomery County (the "County Council"), adopted Resolution No. R-15-1428, expressly approving the placement of the Property by Gaithersburg in the MXD Zone as proposed in this Agreement; and

WHEREAS, all parties desire to execute this Agreement to establish the conditions under which the Property shall be annexed, rezoned and developed.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which shall be deemed a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. **Zoning and Permitted Development**

(a) Upon annexation of the Property into Gaithersburg, the Property shall be validly classified in the MXD Zone and the Revised Sketch Plan shall be approved by the Mayor and Council. The Revised Sketch Plan as so approved is referred to in this Agreement as the "Approved Sketch Plan."

(b) Crown Village and Gaithersburg agree that all subdivision and development on the Property shall be pursuant to the MXD Zone as presently in effect and contained in Section 24-160D.1, *et seq.*, of the Gaithersburg Code and the terms of this Agreement. Crown Village agrees that development of the Property shall be substantially in accord with the Approved Sketch Plan and that the schematic development plan applications required pursuant to the MXD Zone (the "SDP Application(s)") and final site plan(s) to implement the Approved Sketch Plan (the "Final Site Plan(s)") shall provide for (i) 2,250 residential units in a variety of dwelling types, including single-family detached, single-family attached (including 2-over-2 units) and multi-family dwellings (the "Residential Development"), and (ii) 320,000 square feet of commercial/retail development (the "Commercial/Retail Development"). Gaithersburg acknowledges and agrees that the SDP Application(s) and Final Site Plan(s) for the "Permitted Development," as said term is hereinafter defined, may provide for (i) a residential unit mix for the development pods identified on the Approved Sketch Plan (the "Pods") as "Pod 1," "Pod 2," "Pod 3," and "Pod 5" with the following number and types of units: (A) Pod 1 – a total of 820 to 867 dwelling units, consisting of a range of 40 to 50 units contained in three (3)-story multi-family buildings (exclusive of ground floor uses) located over Commercial/Retail Development, up to 700 units contained in four (4)-story multi-family buildings (exclusive of ground floor uses) located over Commercial/Retail Development, 20 to 30 2-over-2 units, and 70 to 80 single-family units (excluding 2-over-2 units), of which up to 6 may be single-family detached units; (B) Pod 2 – a total of 310 to 325 dwelling units, of which 59 to 98 may be single-family detached units, 155 to 228 may be single-family attached units (excluding 2-over-2 units), and 31 to 65 may be 2-over-2 units; (C) Pod 3 – a total of 280 to 290 units, of which 95 to 131 may be single-family detached units, 126 to 162 single-family attached units (excluding 2-over-2 units), 28 to 44 2-over-2 units; and (D) Pod 5 – a total of 768 to 1,010 multi-family units; (ii) multi-family buildings in Pod 5 that are 4 to 20 stories in height and that may include ground floor Commercial/Retail Development; (iii) up to 300,000 square feet of gross leasable area of Commercial/Retail Development in Pod 1; and (iv) up to 20,000 square feet of gross leasable area of Commercial/Retail Development in Pod 5. Gaithersburg finds that 2,250 units within the unit ranges, unit mixes, and heights specified represents an acceptable number, mix and variety of dwelling types and Commercial/Retail Development as required by this Paragraph 1(b). Notwithstanding anything to the contrary contained in this Paragraph 1(b), Crown Village and Gaithersburg agree that, as part of the "Permitted Development", as said term is hereinafter defined, (i) all multi-family buildings in Pod 1 shall also contain

Commercial/Retail Development, but such requirement shall not prohibit stand-alone single-family detached and single-family attached units (including 2-over-2 units), (ii) Crown Village may, but shall not be obligated to, provide office uses as part of the Commercial/Retail Development permitted in Pod 1 and Pod 5, (iii) to achieve the 700 multi-family units permitted in Pod 1, Crown Village must construct multi-family units above any grocery store provided as part of the Commercial/Retail Development in Pod 1; (iv) Gaithersburg shall not require multi-family units or other development over any gas station or bank use if such use is provided as part of the Commercial/Retail Development in Pod 1; (v) with the exception of the 40 to 50 units contained in three (3)-story multi-family buildings permitted over the Commercial/Retail Development in Pod 1, Gaithersburg shall permit the multi-family units in Pod 1 to be contained in structures containing up to 4 stories of residential uses over Commercial/Retail Development (resulting in up to 5-story structures); (vi) Gaithersburg shall permit up to 19 stories of residential uses over Commercial/Retail Development in Pod 5; (vii) no more than forty percent (40%) of the total number of multi-family units permitted under the Approved Sketch Plan shall be initially offered or thereafter operated as rental units, provided that the restriction contained in this clause (vii) shall terminate and be of no further force or effect upon conveyance of all or part of the Property through foreclosure and shall in no event apply to owners leasing 5 or fewer residential condominium units, and (viii) there shall be at least four (4) lot sizes for single-family detached units located in Pods 2 and 3 collectively and three (3) lot widths for single-family attached units located in Pods 1, 2, and 3 collectively. It is expressly understood that the City is not obligated to grant a parking waiver to reduce the number of required parking spaces in Pod 1 to accommodate the multi-family dwellings in Pod 1. The number, type, height, location, and mix of Residential Development and Commercial/Retail Development and limitations and benefits regarding same described in this Paragraph 1(b) and in the Approved Sketch Plan shall be collectively referred to as the "Permitted Development." The mix of residential units for each of the Pods, as described in this Paragraph 1(b), is summarized in the chart below:

Residential Development				
(Total Density Cap 2,250, including Moderately Priced Dwelling Units and Workforce Housing Units*)				
	Pod 1	Pod 2	Pod 3	Pod 5
Permitted Range	820-867	310-325	280-290	768-1,010
Single-Family Dwellings	0-6	59-98	95-131	0
Townhouses	70-80	155-228	126-162	0
2-over-2 Dwellings	20-30	31-65	28-44	0
Multi-Family Dwellings	740-750	0	0	768-1,010

* Pursuant to Paragraph 1(c)(i) below, at maximum development density (2,250 dwelling units), 281 Moderately Priced Dwelling Units would be included (final number to be determined based on final development density). Based on the ranges provided in the chart for Pods 1, 2 and 3, 46 to 54 Workforce Housing Units would be included, however, the final number of Workforce Housing Units included is subject to adjustment based upon final density and unit types provided in accordance with this Paragraph 1.

(c) (i) Gaithersburg and Crown Village agree that twelve and one-half percent (12.5%) of the residential units constructed on the Property will comply with the standards and requirements of the Moderately Priced Dwelling Unit Law of Montgomery County, Chapter 25A, Montgomery County Code, and implementing regulations (the "County MPDU Law and Regulations") as in effect from time to time, including, but not limited to, the provisions of the County MPDU Law and Regulations pertaining to income eligibility, control periods, pricing, and management criteria. Notwithstanding the provisions of the County MPDU Law and Regulations, the City will administer the MPDU program required by this Agreement under the County MPDU Law and Regulations and may establish a preference for City residents and workers. In compliance with County law and regulations, Gaithersburg acknowledges and agrees that the required number of MPDUs for all single-family detached units constructed on the Property shall be satisfied by the construction of multi-family units in the same number as would be required for the total number of single-family units constructed based on the 12.5% requirement and, with the exception of single-family detached units, the 12.5% MPDU requirement shall be satisfied by the construction of MPDUs of the same general unit type, exterior building materials, and appearance as the market rate unit type that the requirement is applied to, *i.e.*, single-family attached (including 2-over-2 units) and multi-family units. Nothing in the preceding sentence, however, shall be deemed to require that the MPDUs have the same features, interior finishes, amenities, or dimensions as corresponding market-rate units. As a part of the SDP Application(s), Crown Village shall submit an MPDU staging and location plan which will be mutually and reasonably agreed to by Gaithersburg and Crown Village and which is to reflect a general integration of MPDUs among market rate units and construction of MPDUs in stages concurrently with the construction of market rate units.

(ii) In addition to MPDUs, Crown Village will provide certain work force housing as part of the Permitted Development as provided in this Paragraph. In Pods 2 and 3, four percent (4%) of the single-family attached units and four percent (4%) of the 2-over-2 units will be "Workforce Housing Units" (defined below). In Pod 1, the number of Workforce Housing Units to be provided shall equal four percent (4%) of the total number of single-family attached, 2-over-2, and multi-family units to be constructed in Pod 1. All of the Workforce Housing Units required in Pod 1 may be located in the multi-family component of Pod 1. Workforce Housing Units shall be of the same general appearance as and use comparable exterior building materials to market rate units of the same unit type as such Workforce Housing Units. Nothing in the preceding sentence, however, shall be deemed to require that Workforce Housing Units have the same features, interior finishes, amenities, or dimensions as corresponding market rate units. The purpose of the Workforce Housing Program as provided in this Paragraph 1(c)(ii) (the "Workforce Housing Program") shall be to promote the construction of housing affordable to households with incomes at 90% of the area-wide median income for the Washington Metropolitan area as determined by the U.S. Department of Housing and Urban Development, adjusted for household size ("AMI"), under a program to be administered by Gaithersburg. "Workforce Housing Units" shall mean residential units that are sold or rented to households with income of 90% of AMI. As a part of the SDPs for Pods 1, 2 and 3, Crown Village shall submit a Workforce Housing Program which will include a staging plan, to be reasonably agreed upon by Gaithersburg and Crown Village, and other details necessary for the

implementation of the Workforce Housing Program. The Workforce Housing Program shall also include (i) restrictions on the resale prices of Workforce Housing Units for a period of twenty (20) years and on the rental rates of Workforce Housing Units for a period of twenty (20) years after the initial sale or lease of such units, as the case may be, limiting such resale prices and rental rates during the applicable restriction period to the original sales prices or rental rates, plus increases to reflect increases in the relevant consumer price index, as such index is designated by Gaithersburg, and (ii) a provision that if Workforce Housing Units are marketed under the Workforce Housing Program for a period of one hundred eighty (180) days and not sold or rented to qualified buyers or tenants, then Crown Village may sell or rent the units without the Workforce Housing restrictions required by this Agreement and Crown Village shall be deemed to have satisfied the Workforce Housing obligations of this Paragraph 1(c)(ii) for the number of units so marketed.

(iii) Within thirty (30) days after final approval by Gaithersburg of a Final Site Plan for Pod 5, Crown Village shall make a contribution to Gaithersburg of \$2,500 for every market rate [non-MPDU] unit approved for Pod 5 by such final approval. The contribution shall be used by Gaithersburg in its affordable housing programs in a manner determined by Gaithersburg. For purposes of this Paragraph 1(c)(iii), the Final Site Plan for Pod 5 shall be deemed to have been finally approved when the conditions for final approval set forth in Paragraph 16 have been met with respect to such Final Site Plan.

(d) Gaithersburg agrees that it will (i) permit construction of the Permitted Development on the Property as provided in this Agreement and the Approved Sketch Plan, (ii) use its best efforts to reasonably expedite the processing of Crown Village's SDP Applications, Final Site Plan(s), record plat(s), and all other required development approvals and permits to allow the development, construction, and occupancy of the Permitted Development in accordance with this Agreement and the Approved Sketch Plan (collectively, the "Development Approvals"), and (iii) grant the Development Approvals that are in compliance with the terms of this Agreement, without additional material conditions or requirements other than Customary Conditions. "Customary Conditions" means conditions and requirements of approval generally applicable as of the date of this Agreement to development and construction in the City similar to the Permitted Development, including those necessary to assure compliance with applicable building, zoning, subdivision, environmental, health, and safety codes and regulations and those addressing routine land planning issues. In connection with the Development Approvals, Crown Village shall file customary engineering details and applications and pay the customary fees charged by Gaithersburg. Gaithersburg further acknowledges and agrees that the development density to be permitted on the Property shall (i) be in compliance with the unit numbers and gross floor area specified for the Permitted Development in Paragraph 1(b) of this Agreement; and (ii) not be reduced as a result of dedications, donations, reservations and/or acquisitions for public use as identified in this Agreement (*i.e.*, the density shall be based on the area of the Crown Village Property, prior to dedications, donations, reservations and/or acquisitions). Additionally, Gaithersburg acknowledges and agrees that the development of the Property as set forth in this Agreement is suitable for use of certain flexible standards and waivers contemplated in the MXD Zone and Approved Sketch Plan, such as reduced setbacks, reduced parking standards for the

multi-family units in Pod 5, variations in building heights, and waivers to road code standards and environmental standards. Gaithersburg further agrees to cooperate and support Crown Village's use of additional flexible standards and waivers to achieve construction of the Permitted Development if determined to be in the public interest.

2. Transit Dedication and Parking

(a) As part of an SDP Application(s) and Final Site Plan(s) for the Property, Crown Village agrees to provide for the dedication of that portion of the right-of-way and one transit stop for the Corridor Cities Transitway ("CCT") on the Property at the location shown on Exhibit "E" (the "Transit Project Dedication Area"). Subject to Paragraphs 3 and 5 of this Agreement, the SDP Application(s), Final Site Plan(s) and final record plats for the portion of the Property that includes the Transit Project Dedication Area submitted by Crown Village and approved by Gaithersburg shall provide for the dedication of the Transit Project Dedication Area on the earlier to occur of the issuance of the 500th residential building permit or approval of the final record plat for the Permitted Development. Crown Village shall be allowed to incorporate the Transit Project Dedication Area within the 50-foot median of Decoverly Drive as shown on Exhibit "F" as "Section 'E'." Should the Transit Project Dedication Area be located in the median of Decoverly Drive, then, subject to the same provisions of this Paragraph 2(a) governing the timing and phasing of dedication of the Transit Project Dedication Area, Crown Village agrees to construct the roadway portion of Decoverly Drive only of such on-site roadway but shall not be obligated to construct the transitway, station, or any facilities or appurtenances serving the same. Any dedication pursuant to this Paragraph 2 shall also be subject to the following terms and conditions:

(i) The cumulative land area of the Transit Project Dedication Area and all related facilities shall not exceed 4.2 acres, as shown on Exhibit "E".

(ii) The location of the Transit Project Dedication Area shall be substantially in accordance with the location shown on Exhibit "E" and the limits of the Transit Project Dedication Area shall not, at any point, exceed the dimensions shown on the right-of-way cross-sections described as "Section 'E'" on Exhibit "E".

(b) For a period of twenty-five (25) years from the issuance of the first residential building permit for the Permitted Development:

(i) Crown Village agrees that, at such time as Crown Village has (A) completed construction of the parking facility(ies) to serve one or more of the multi-family residential buildings containing a minimum of 500 total units in Pod 5, and (B) obtained all required permits permitting occupancy and use of such residential building(s) and parking facility(ies), Crown Village will offer 250 parking spaces (the "Transit Parking Spaces") located in the parking facility(ies) to the Maryland Transit Administration of the Maryland Department of Transportation ("MTA") for MTA's use in connection with the operation of the CCT on the Property. However, should Crown Village construct these parking facility(ies) and residential

building(s) and obtain these required permits prior to the MTA's constructing and placing the CCT in operation, then, at the time such parking facilities and buildings are constructed and such permits are obtained, Crown Village or its designee(s) shall offer the Transit Parking Spaces to Gaithersburg or, if designated by Gaithersburg, to Montgomery County for the sole purpose of providing a park-and-ride facility. If Gaithersburg (or, if applicable, Montgomery County) accepts this offer, Gaithersburg (or Montgomery County) shall, in turn, offer all of the Transit Parking Spaces to MTA, for MTA's use as set forth above in this subparagraph, at such time as the CCT has been completed and CCT service to the Shady Grove Metro Station from the Property is operational. If Gaithersburg (or Montgomery County) rejects Crown Village's offer of the Transit Parking Spaces, then Crown Village or its designees shall have the exclusive right to use and shall retain exclusive control and ownership of the Transit Parking Spaces until the CCT has been completed and CCT service to the Shady Grove Metro Station from the Property is operational. At that time, Crown Village shall offer the Transit Parking Spaces to MTA for use as provided above in this subparagraph. Any offer of the Transit Parking Spaces made by Crown Village under this subparagraph shall be accepted or rejected in writing by the governmental authority receiving the offer within thirty (30) days after receipt of the offer. Failure by such authority to accept or reject the offer by written notice to Crown Village given within the thirty (30)-day period shall conclusively be deemed to be a rejection of the offer. As a term of any offer by Crown Village, Crown Village may require that, from and after the time that the Transit Parking Spaces are made available to and accepted by any governmental authority, such governmental authority shall pay its pro-rata share of the costs incurred by the owner of the parking facility to maintain, repair, operate, and manage the parking facility, including any access roadways serving the parking facility. Such pro-rata share shall be based upon the number of Transit Parking Spaces as compared to the total number of parking spaces contained in the parking facility in which the Transit Parking Spaces are located. The pro-rata share of these costs payable by the applicable governmental authority shall be paid monthly or as otherwise agreed between Crown Village and such governmental authority. Notwithstanding anything in this Agreement to the contrary, a determination by Gaithersburg, Montgomery County, or MTA not to accept an offer of the Transit Parking Spaces shall not delay the Development Schedule or construction and occupancy of the Permitted Development, constitute a default under this Agreement, or result in the imposition by Gaithersburg of additional development conditions or obligations on Crown Village.

(ii) The City of Gaithersburg agrees that the required parking standard that shall be applied to all multi-family units constructed in Pod 5 shall not exceed 1.7 spaces per unit and, as part of the approval of the SDP Application for Pod 5, will grant necessary parking waivers (the "Parking Waivers") to permit Crown Village or its designees to implement this parking standard.

(iii) Notwithstanding anything in this Paragraph 2 to the contrary, if, prior to submission of Final Site Plan approval for any residential construction in Pod 5, Gaithersburg obtains the approval of the Montgomery County Council to modify County Council Resolution No. R-15-1428 to permit a payment in lieu of the construction of the Transit Parking Spaces as described in this Paragraph 2(b), then, upon occupancy of the 500th dwelling unit in

Pod 5 and upon at least thirty (30) days' written notice by Gaithersburg to Crown Village that the CCT has been completed and CCT service to the Shady Grove Metro Station from the Property is operational, Crown Village will make a contribution of \$3,000,000 to Gaithersburg in lieu of providing the Transit Parking Spaces to MTA to be used for parking or other enhancements to the CCT (the "Transit Contribution"). The payment of the Transit Contribution shall satisfy all requirements pursuant to this Paragraph 2(b). Gaithersburg agrees that it will not seek the modification to the Resolution as provided in this Paragraph 2(b) prior to the "Effective Date of Annexation," as said term is hereinafter defined.

3. **On-Site Roadways**

(a) Crown Village agrees to dedicate and construct the following roadways within the boundaries of the Property at the locations generally shown for such roadways on Exhibit "F": Diamondback Drive, Decoverly Drive, the "Spine Road," and other internal subdivision streets schematically shown on Exhibit "F" to serve the Permitted Development (collectively, such roadways, with the exception of Fields Road discussed at Paragraph 5 of this Agreement, are hereinafter referred to as the "On-Site Roadways"), subject to the following conditions:

(i) The SDP Application(s) shall include a provision for the staging of the dedication and construction of the On-Site Roadways to correspond with development of the Property covered by such applications (hereinafter referred to as "On-Site Roadway Staging Plan"). Dedication and construction of any of the On-Site Roadways shall be in accordance with the On-Site Roadway Staging Plan and shall not be required until construction in accordance with an approved Final Site Plan of that portion of the development served by the On-Site Roadway(s) in question has commenced. Gaithersburg agrees that the staging required will permit the Pods to be developed individually or concurrently and without a prescribed sequence, so long as On-Site Roadways necessary to serve development of the Pod(s) in question are provided.

(ii) The limits of dedication and cross-sections of the On-Site Roadways shall be in substantial accordance with cross-sections as set forth on Exhibit "F" (the "Cross-Sections"). Gaithersburg acknowledges that the implementation of the Cross-Sections as proposed by Exhibit "F" will necessitate the approval of Road Code Waivers as described in the Draft Road Code Waiver Application dated May 18, 2006, from Rodgers Consulting to Jim Amoult of the City of Gaithersburg, attached hereto and made a part hereof as Exhibit "F-1" (the "Road Code Waiver Letter"). Gaithersburg has reviewed the Cross-Sections and the Road Code Waiver Letter and finds that construction of the On-Site Roadways described therein and the "Fields Road Improvements," as such term is hereinafter defined, in accordance with the Cross-Sections and Road Code Waiver Letter (collectively, the "Road Code Waivers") is necessary for the implementation of the Permitted Development, promotes the public interest, and complies with requirements of law and agrees to grant the Road Code Waivers in a timely manner as part of the approval of the Initial SDP Application, as defined in Paragraph 7 herein, subject to the receipt of all customary engineering details and formal submission by Crown Village of

applications for the Road Code Waivers, including payment of all required fees. Notwithstanding anything in this Paragraph 3(a) to the contrary, the parties recognize that Gaithersburg does not currently have jurisdiction over a portion of Fields Road as more particularly described in Paragraph 5. Therefore, the grant by Gaithersburg of the Road Code Waivers for any portion of Fields Road for which Gaithersburg does not have jurisdiction shall be conditioned on Gaithersburg's reaching agreement with Montgomery County permitting Gaithersburg to maintain Fields Road as described in Paragraph 5.

(iii) Notwithstanding anything in this Agreement to the contrary, consistent with applicable laws and regulations of Gaithersburg regarding traffic circulation, safety and roadway maintenance, Gaithersburg shall count the parking provided on all On-Site Roadways in Pod 1, whether public or private, as required parking. Private roadways shall be built to Gaithersburg standards, except as may otherwise be approved by Gaithersburg. Gaithersburg agrees that, upon the request of Crown Village, Gaithersburg will enter into a mutually acceptable agreement with Crown Village or its designee and acting reasonably to (A) allow Crown Village to construct, plant, maintain, repair and replace non-standard pavers and other hardscape elements, landscaping, streetscape elements, lighting and signage in the public right-of-way, and (B) utilize the public right-of-way for street furnishings, including tables and chairs associated with restaurants and other retail/commercial establishments.

4. **Off-Site Road Improvements**

(a) As part of the Annexation Petition, Crown Village has submitted a transportation analysis in accordance with the requirements of Gaithersburg for a determination of the adequacy of roadways to support full build-out of the Permitted Development. Gaithersburg has reviewed this analysis and finds and concludes that, with the construction or participation in the cost of construction of the off-site road improvements identified on Exhibit "G" ("Off-Site Road Improvements") in accordance with the provisions of this Paragraph 4, all roads are adequate to support the Permitted Development [as described in Paragraph 1(b) above] and obtain the Development Approvals. Further, Gaithersburg agrees that no other off-site road improvements shall be required by Gaithersburg to support the Permitted Development or obtain the Development Approvals, and that no further transportation studies pursuant to the Zoning Ordinance, Subdivision Regulations, Gaithersburg Code, or otherwise to evaluate the adequacy of existing and proposed roadways to serve the traffic to be generated from the Permitted Development or to obtain the Development Approvals shall be required. Crown Village agrees to construct or participate in the cost of the Off-Site Road Improvements, subject to the following conditions:

(i) Subject to Paragraph 19, construction and/or participation in the construction of any Off-Site Roadway Improvements shall be staged based upon building permit release pursuant to a staging plan for public facilities (the "Off-Site Road Improvements Staging Plan") approved as part of the SDP Application. The Off-Site Road Improvements Staging Plan shall determine the number of building permits for the Permitted Development to be linked to construction and/or participation in the construction of any of the Off-Site Road Improvements;

provided, however, the Off-Site Road Improvements Staging Plan shall not require construction of any Off-Site Road Improvement, compliance with the Guarantee requirements of this Paragraph 4, or payment of any participation amount until the earliest to occur of approval for recordation of all record plats for 500 residential units, or approval for recordation of record plats for 80,000 square feet of Commercial Retail Development, or issuance of the 250th residential building permit for the Permitted Development.

(ii) The right-of-way for any Off-Site Road Improvement shall be either presently available or made available by Gaithersburg, the Maryland State Highway Administration or Montgomery County, as applicable, in a timely manner, at no cost to Crown Village for construction of the Off-Site Improvements. If the right-of-way or necessary permits or approvals for construction of one or more of the Off-Site Road Improvements are not available or made available to Crown Village by Gaithersburg, Maryland State Highway Administration, or Montgomery County, or others, as applicable, in compliance with the Off-Site Road Improvement Staging Plan, then Crown Village agrees to provide Gaithersburg with a bond, letter of credit or other security (the "Guarantee") in an amount which covers the design, engineering, and construction costs only of the Off-Site Road Improvement(s) in question and to construct the Off-Site Road Improvement(s) in question within a five (5)-year period from the date Crown Village posts the Guarantee with Gaithersburg but only if the required governmental approvals and rights-of-way are available, whereupon the Guarantee will be promptly released by Gaithersburg and returned to Crown Village. The cost estimates for the Guarantee shall be reviewed and approved by Gaithersburg in accordance with customary practices for the review and approval of bonds or letters of credit securing road work of a similar type, and such approval shall not be unreasonably withheld or conditioned. Should the approvals and/or rights-of-way not be available within the five (5)-year period, Crown Village shall not be obligated to construct the Off-Site Road Improvements in question but agrees to pay an amount equal to the amount of the Guarantee to Gaithersburg for use by Gaithersburg for the Off-Site Improvement(s) in question or such other transportation improvements related to the Permitted Development as Gaithersburg may determine, whereupon the Guarantee shall be promptly returned to Crown Village by Gaithersburg. The posting of a Guarantee and payment of required participation amounts by Crown Village as provided by this Paragraph 4 shall be considered full compliance with the requirements of this Agreement and the Development Approvals and shall entitle Crown Village to have building permits and occupancy permits and all other Development Approvals processed, approved and issued by Gaithersburg.

5. Fields Road

(a) Gaithersburg acknowledges that the proposed improvements to Fields Road on and adjacent to the Property as shown on Exhibit "F" (the "Fields Road Improvements") can only be implemented with the consent and approval of Montgomery County. Gaithersburg agrees that it will cooperate with Crown Village to obtain such consent and approval, including any necessary permits. If a mutually acceptable agreement is reached between Montgomery County and Gaithersburg, Gaithersburg agrees to accept jurisdiction and maintenance of the portion of Fields Road currently under the jurisdiction of Montgomery County as shown on

Exhibit "H" and to permit Crown Village to construct the improvements as shown in the Cross-Sections for Fields Road on Exhibit "F". Crown Village shall not, however, be required to construct any portion of the CCT in the Fields Road right-of-way. Should any right-of-way, approvals or permits necessary to construct the Fields Road Improvements not be obtainable from Gaithersburg, Montgomery County, Maryland State Highway Administration, MTA, or others, as applicable, in compliance with the Development Schedule, then Crown Village shall be deemed to have fully satisfied the requirements of this Paragraph 5 by dedicating that portion of the Fields Road right-of-way on the Crown Village Property as shown on Exhibit "H" to public use as a roadway and following the bonding provisions set forth at Paragraph 4(a)(i) of this Agreement for the Off-Site Road Improvements. The dedication and posting of bond(s) as provided in this Paragraph 5 shall entitle Crown Village to have building permits and occupancy permits and all other Development Approvals processed and issued by Gaithersburg.

(b) Concurrent with the submission of the Initial SDP Application, Crown Village will submit a traffic signal warrant study to determine if a traffic signal, in lieu of a traffic circle as shown on Exhibit "F", is appropriate at the intersection of Fields Road and Decoverly Drive. If, as part of the Initial SDP approval, Gaithersburg determines that a traffic signal is preferable to a circle at this intersection, then the signal shall be substituted for the circle shown on Exhibit "F" as part of the Fields Road Improvements and be subject to the terms of Paragraph 5(a).

6. **SDP Application(s)**

At the option of Crown Village, SDP approval for the Permitted Development may be obtained by approval of one or more SDP Application(s) covering one or more of the Pods. Gaithersburg agrees and acknowledges that no Residential Development or Commercial/Retail Development is proposed on Pods 4 and 6 and that one or both of these Pods may be included in the SDP Application(s) for any other Pod. For that portion of the Property covered by an SDP Application or for a larger area of the Property as determined by Crown Village, the SDP Application shall (unless previously approved by Gaithersburg for the Permitted Development or included in a prior SDP Application or a Forest Conservation Plan):

(a) include a stormwater management concept plan to address both quality and quantity facilities for the proposed development. Gaithersburg agrees that, subject to compliance with all other customary standards of Gaithersburg and the State of Maryland pertaining to stormwater management, (i) the stormwater management ponds provided on the Property may be wet ponds, (ii) Crown Village may reconstruct the existing farm pond and incorporate it into the proposed stormwater management facilities as generally shown on Exhibit "T", and (iii) a plan for maintenance and the funding of the cost of maintenance for stormwater management facilities.

(b) include a utility plan to address the location of utilities to serve the Permitted Development. Gaithersburg agrees that necessary water and sewer connections to serve the Permitted Development may be located in the stream valley buffer as generally shown

on Exhibit "I" and that water and sewer utilities serving the Permitted Development may be placed within the public rights-of-way with the remaining utilities (*i.e.*, gas, electric, phone) in public utility easements in the private alleys;

(c) demonstrate compliance with Chapter 22 of the Gaithersburg Code and all applicable forest conservation regulations as said requirements currently exist (collectively, the "Forest Conservation Law"). With regard to the approval of any Forest Conservation Plan for the Property or compliance with this Agreement, Gaithersburg agrees that (i) all areas included within the stream valley buffer on the Property as shown on the Natural Resources Inventory/ Forest Stand Delineation approved by Gaithersburg on December 1, 2005 (the "NRI/FSD"), and the land to be dedicated for the Neighborhood Park (excluding, however, that portion of the Neighborhood Park located west of the extension of Decoverly Drive as shown on Exhibit "J" attached hereto and incorporated herein) may be used, where forested, as a credit for afforestation and/or reforestation requirements for the Permitted Development and may be afforested, where not forested, to comply with afforestation and/or reforestation requirements for the Permitted Development, (ii) the area of the Property to be used to determine the required afforestation threshold (the "Threshold") shall be net of the Transit Project Dedication Area and existing WSSC water line easement, as said term is hereinafter defined, (iii) a credit toward the Threshold shall be allowed for landscaping installed by Crown Village within the right-of-way for Fields Road, and (iv) a maximum of two (2) acres of required afforestation and/or reforestation may be located off-site. Gaithersburg agrees to cooperate, assist and support Crown Village in locating such afforestation and/or reforestation off-site. Further, Gaithersburg agrees that, if Crown Village is unable to reasonably locate an off-site area for afforestation and/or reforestation, Crown Village may pay a fee in lieu thereof to Gaithersburg at customary rates for a maximum of four (4) acres as necessary to implement the Permitted Development.

(d) include design guidelines that are approved by Gaithersburg, said approval not to be unreasonably withheld or conditioned (the "Design Guidelines"). The purpose of the Design Guidelines is to establish a flexible framework of design criteria and standards for development of the Property in a manner which encourages and rewards high quality development. The Design Guidelines shall (i) provide that the single-family detached units shall have a minimum distance between adjacent units of 8 feet (excluding accessory buildings), (ii) contain a detailed illustration showing the placement of exterior HVAC equipment, fences, downspouts, and exterior lighting on single-family attached and single-family detached units (including 2-over-2's), (iii) contain architectural standards for the Residential Development addressing materials for elements including, but not limited to, exterior finishes, roofing, windows, door trims, exterior ceilings and cornices, and (iv) contain architectural standards for the Commercial/Retail Development addressing items including, but not limited to, exterior colors, exterior materials, windows, doors and entries, exterior lighting, and awnings. Once approved as part of the SDP Application, the Design Guidelines shall be administered and implemented by the applicable community association, and be subject to any required approvals set forth in the Gaithersburg Code or regulations, for the development. The parties agree that vinyl siding or similar material shall not be permitted by the Design Guidelines.

(e) Gaithersburg acknowledges and agrees that the implementation and construction of the Permitted Development will require the following waivers of City environmental standards (the "Environmental Waivers") as generally shown on Exhibit "T": two water and sewer crossings within the stream valley buffer, three storm water management outfalls in the stream valley buffer, and the potential conversion of the existing farm pond in the stream valley buffer into a stormwater management facility. Gaithersburg agrees that approval of the necessary Environmental Waivers shall be granted, subject to compliance with the following:

(1) Submission of all customary engineering details and a formal waiver application that demonstrates the encroachments are the minimum necessary to accommodate the Permitted Development and satisfy the waiver criteria as outlined in Section 38 of the City Environmental Standards for Development Regulation;

(2) Crown Village obtaining all necessary approvals, permits, or waivers from Montgomery County, Maryland Department of Environment, Natural Resources Conservation Services, and the U.S. Army Corps of Engineers; and

(3) As mitigation, Crown Village paying a fee of \$1.00 per square foot of encroachment into the stream valley buffer, at a rate of 1.5 to 1.0, to be used by Gaithersburg to enhance stream quality at a location to be determined off-site within the Muddy Branch Watershed.

7. **Processing of Initial Schematic Development Plan**

In an effort to allow Crown Village to proceed as expeditiously as possible and comply with the Development Schedule, the City agrees that, pursuant to Section 24-160D.9, the initial SDP for the Property may contain minimum details for Pods 1, 4, 5, and 6 (the "Initial SDP"). Crown Village acknowledges that Gaithersburg's approval of the Initial SDP may include a requirement that Crown Village obtain an amendment to the Initial SDP for Pods 1, 4, 5, and 6, including submission of the Design Guidelines and final architectural elevations for Pods 1 and 5 prior to seeking Final Site Plan approvals for Pods 1, 4, 5, and 6.

Upon approval of the Initial SDP, Gaithersburg agrees that the Gaithersburg Planning Commission (the "Planning Commission") will review and process for action a final forest conservation plan and a final wildlife conservation plan for the Property to facilitate the issuance of grading and storm water management permits which may be issued once these approvals are obtained. Prior to submitting the final forest conservation plan and a final wildlife conservation plan, Crown Village must receive the Environmental Waiver as provided in Paragraph 6(e) from the Mayor and City Council and submit final storm water management plans for the Property. Based on these approvals, Gaithersburg shall issue a grading permit for the Property, prior to Final Site Plan(s) being approved by the Planning Commission.

8. **LEED Certification**

(a) Crown Village shall design the Community Recreation Building in Pod 3 to comply with the now existing LEED (Leadership in Energy and Environmental Design) Green Building for New Construction Certified Level [*i.e.*, qualifying for 26 points pursuant to the LEED Rating System for New Construction and Major Renovation, Version 2.2, developed by the Green Buildings Council (the "LEED Rating System")]. Within ten (10) business days following receipt of evidence of such certification by the United States Green Buildings Council ("USGBC"), Gaithersburg shall refund twenty percent (20%) of the building permit fee charged to Crown Village for the Community Recreation Building. If the Community Recreation Building fails to receive certification from the USGBC, Crown Village shall pay Gaithersburg five percent (5%) of the construction cost as shown on the building permit application for the Community Recreation Building, to be used by Gaithersburg for environmental enhancements to the City.

(b) Prior to issuance of building permits for 40% of the Commercial/Retail Development to be constructed in Pod 1, Crown Village agrees to submit certification by a LEED accredited professional that said construction is likely to yield twenty (20) points on the LEED Rating System. As used in this Paragraph 8(b), a "LEED Accredited Professional" means an individual who has passed the LEED Professional Accreditation Exam administered by the USGBC.

(c) Builder-installed kitchen appliances, washers, dryers and applicable HVAC equipment in all units of the Residential Development shall equal or exceed the standards for Energy Star rated appliances in effect as of the date of this Agreement.

(d) Prior to issuance of building permits, Crown Village shall consult with Environmental Affairs staff in a good faith attempt to develop and implement a Construction, Demolition, and Landclearing (CDL) Waste Management Plan with a goal of diverting up to 50% (by weight) of CDL waste from the landfill by one, or a combination of the following activities: salvage, reuse, source-separated CDL recycling, or co-mingled recycling. However, the failure to agree with staff on a CDL Waste Management Plan ("CDL Plan") or achieve any goals established by the CDL Plan shall not delay or prevent the issuance of any building permit or other Development Approvals for the Permitted Development or constitute a default under the CDL Plan or this Agreement.

9. **School Site Donation**

(a) Crown Village has voluntarily agreed to donate to Gaithersburg a parcel of land from the Crown Village Property, not to exceed 32.1 acres, at the location shown in the Approved Sketch Plan and as otherwise generally shown on Exhibit "K" attached hereto and incorporated herein (the "School Site"), for the use and construction of a public high school by Montgomery County Public Schools ("MCPS") and for no other use except as expressly

provided in this Paragraph 9. Such donation shall occur by conveyance of the School Site by Crown Village to Gaithersburg upon recordation of the initial subdivision plat for the Permitted Development in Pod 2 or Pod 3 or at such earlier time as determined by Crown Village, in its sole discretion.

(b) At the time of the conveyance, Crown Village and Gaithersburg will enter into an easement and maintenance agreement that will require Crown Village to maintain the School Site and enable Crown Village to clear, rough grade, and stockpile materials on the site until the earlier to occur of seven (7) years from the date of the conveyance or until such time as MCPS notifies Crown Village that it is ready to begin construction of the school (the "School Site Easement"). The School Site Easement shall also provide Gaithersburg with reasonable controls over where materials may be stockpiled, shall provide for any fencing or other security measures necessary to protect the property and safety of adjoining properties and residents as reasonably determined by Gaithersburg, and provide mechanisms and/or remedies for protecting the School Site during the easement period.

(c) MCPS shall be deemed to be ready to begin construction of the school when the school is fully funded for construction in the first two (2) years of the applicable Montgomery County Capital Improvement Program. Gaithersburg acknowledges that it has obtained confirmation from MCPS that MCPS has agreed to accept the parcel as proposed and shown on the Approved Sketch Plan and described in this Agreement as a site for the construction of a public high school. Gaithersburg agrees that when the construction of the public high school is reasonably determined by MCPS to be needed to serve the students of Montgomery County, Gaithersburg will convey the School Site without cost or payment to MCPS for said construction. Any costs of said conveyance by Crown Village to Gaithersburg or by Gaithersburg to MCPS shall be paid by Gaithersburg.

(d) Prior to conveyance of the School Site, Crown Village shall have the right to clear, rough grade and stockpile materials on the School Site consistent with customary development construction practices for construction of the Permitted Development, subject to receipt of any permits required by law for such activities. Crown Village shall have the right to grant or consent to be granted easements on, over, across, under, and through the School Site as may be required in connection with the Proposed Development, provided that none of such easements shall materially interfere with the construction and use of a school on the School Site.

(e) In the event that MCPS does not move forward with the construction of a high school on the School Site within twenty (20) years of the "Effective Date of this Annexation," as said term is hereinafter defined, Gaithersburg, at its sole discretion, may use the School Site for a public recreational amenity.

(f) Gaithersburg acknowledges that the need for a high school site is not reasonably related to the demand created by the Permitted Development and acknowledges that Gaithersburg or other government entities could not require dedication of a school site as a result of the students to be generated by the Permitted Development or otherwise and that Crown

Village's agreement to convey the School Site to Gaithersburg was completely voluntary and not a requirement or condition imposed by Gaithersburg or other governmental authorities.

(g) The use limitations of this Paragraph 9 shall be contained in the instrument of conveyance from Crown Village to Gaithersburg and deemed a covenant running with the land enforceable by the grantor, and its successors and assigns to whom such right of enforcement is assigned in writing.

10. **Neighborhood Park and Historic Structures**

(a) Crown Village agrees to dedicate a neighborhood public park to Gaithersburg in the location shown on the Approved Sketch Plan (the "Neighborhood Park") and more particularly shown on Exhibit "J". The area to be dedicated for the Neighborhood Park shall contain approximately 5 acres. Gaithersburg acknowledges and agrees that (i) the Neighborhood Park may be used to satisfy any recreation and open space requirements applicable to the Permitted Development, (ii) the dedication of the Neighborhood Park site shall not be required prior to the issuance of the 300th residential building permit for the Permitted Development, (iii) Crown Village may afforest that area of the Neighborhood Park as shown on Exhibit "J", except approximately two (2) acres which Crown Village will grade as open space, as such area is identified on Exhibit "J", and shall receive appropriate forest conservation credits; (iv) Crown Village may install utilities, grade, and stockpile materials in, over and on the Neighborhood Park as required for construction of the Permitted Development, and (v) Crown Village may reserve those easements on or in the Neighborhood Park in the instrument of conveyance of the Neighborhood Park to Gaithersburg as may be necessary for the development or use of the Permitted Development, provided that such easements do not materially and adversely impact the use of the Neighborhood Park for its intended purpose. Crown Village agrees to grade the Neighborhood Park for recreational use as determined by Gaithersburg as part of the SDP Application approval that includes Pod 4, and to raze those existing structures within the Neighborhood Park, including the removal of any underground storage tanks and remediation associated with such removal, at the expense of Crown Village, as may be requested by Gaithersburg during grading of the Neighborhood Park and subject to Gaithersburg's providing all necessary demolition and other permits and approvals for such purpose.

(b) Crown Village agrees to preserve and improve the existing farmhouse located at 9800 Fields Road and the associated tenant log house (the "Historic Structures") which are to be located on the proposed lot as shown on Exhibit "L" (the "Historic House Lot"). Crown Village agrees to improve the Historic Structures for sale as a single-family residential home site, subject to plans and specifications to be mutually approved by Gaithersburg and Crown Village, said approvals not to be unreasonably conditioned or withheld, prior to dedication of the Neighborhood Park. Prior to sale of the Historic Structures and Historic House Lot by Crown Village as provided in this Paragraph 10(b), Crown Village shall record a covenant that provides for the designation of the Historic Structures as historic resources in accordance with applicable Gaithersburg law and regulations and this Agreement. In addition, prior to the alteration or removal of any of the existing structures located within the boundaries of the Neighborhood Park

(the "Existing Parkland Structures"), Gaithersburg shall cause the Gaithersburg Historic Preservation Advisory Committee ("HPAC") to review and provide recommendations to the HDC as to whether any of the Existing Parkland Structures should be preserved by Gaithersburg or designated by Gaithersburg as historic; however, this review process shall not delay the processing and approval of any SDP, Final Site Plans, or other Development Approvals for the Property. The Gaithersburg Historic District Commission ("HDC") shall determine the extent of the appropriate environmental setting for the Existing Parkland Structures (if such structures are designated as historic) within the boundaries of the land to be dedicated for the Neighborhood Park. Gaithersburg acknowledges and agrees that the Historic House Lot and the Neighborhood Park include all of the historic structures located on the Property and the environmental setting associated therewith. Any cost or expense associated or in any way related to preservation or historic designation of the Existing Parkland Structures shall be the sole responsibility of Gaithersburg. Compliance by Crown Village with its obligations under this Paragraph 10 (which relate only to the Historic Structures) shall satisfy all responsibilities of Crown Village for historic preservation associated with the Property, and, except as expressly provided in this Paragraph 10, no other area, structures or resource on the Property shall be considered historic or regulated under any historic law or regulation. Compliance with this Paragraph 10(b) shall not be required prior to receipt or implementation of any of the Development Approvals. Gaithersburg agrees that, upon the "Effective Date of Annexation," as hereinafter defined, Gaithersburg shall issue all necessary approvals and permits for the improvement of the Historic Structures, after a review by HPAC and approval by HDC, without further subdivision, SDP approval, or Final Site Plan approval and, once improved, permit the conveyance by Crown Village of the Historic Structures and Historic House Lot to a third party. Subject to receipt of all necessary permits and approvals for the improvements to the Historic Structures, such improvements shall be completed by the issuance of the 300th building permit for Pods 2 and 3 combined.

11. **Satisfaction of Requirements for Dedications, Reservations and Contribution of Public Use**

Gaithersburg agrees that the dedications, School Site donation, and contributions set forth in Paragraphs 2, 3, 5, 9, 10, 15, 16, 17, and 18 of this Agreement fully satisfy any and all requirements for dedications and/or reservations of, or contributions for, public parks, roads, transit rights-of-way, transit facilities, public open spaces, recreational facilities, schools, or other public uses or public improvements on or off the Property and that no additional dedications, reservations, or acquisitions of the Property or monetary contributions to implement the Permitted Development will be required by Gaithersburg or pursued by Gaithersburg on behalf of others.

12. **Utility Connections**

To the extent locations for connections to existing storm drain, water and sewer facilities and other utility connections or easements are deemed necessary by Crown Village to serve the Permitted Development, Gaithersburg will grant and approve such connections and

grant the easements so long as said connections and easements have no adverse material impact on the existing storm drain, water and sewer facilities, or land owned by Gaithersburg and subject to the receipt of all customary engineering detail and required applications for approvals and permits and payment of all required fees. Crown Village agrees to indemnify and hold Gaithersburg and its officers harmless for any suit, action or damages resulting from the use of the easements by Crown Village, its agents, employees, or contractors.

13. **Water and Sewer Service**

(a) Gaithersburg has found and determined that the provision of community sewer service to the Property for purposes of implementing the Permitted Development is consistent with the recommendations of the City of Gaithersburg 1997 Master Plan, including the Neighborhood Three Land Use Plan, the 2003 Master Plan and all other applicable plans and policies of the City, and complies with the general policies of the Comprehensive Ten-Year Water and Sewer Plan (the "Ten-Year Plan"). Gaithersburg agrees to make a written request in required form to Montgomery County and the State of Maryland to change the Ten-Year Plan to designate the Water and Sewer Category for the Property as W-3 and S-3. Should Crown Village choose to pursue such a sewer category change, Gaithersburg shall promptly provide written approval and support of such change to Montgomery County and the State of Maryland upon request by Crown Village, including, without limitation, approval and support of the category change under the administrative policies of the Ten-Year Plan as consistent with the City of Gaithersburg 1997 Master Plan, the 2003 Master Plan, and all applicable master plans and the policies of Gaithersburg and the general policies of the Ten-Year Plan.

(b) Gaithersburg recognizes that the Property is entitled to receive adequate public water and sewer treatment capacity to serve the Permitted Development. If requested by Crown Village, Gaithersburg agrees to cooperate, assist and support Crown Village in obtaining such service from the Washington Suburban Sanitary Commission ("WSSC").

14. **Traffic Mitigation Plan**

Crown Village agrees that, as part of the Initial SDP Application, Crown Village will submit a Traffic Mitigation Plan to include a shuttle bus program (the "Shuttle Bus Program") (collectively, the "Traffic Mitigation Plan"). Details of the Shuttle Bus Program shall be submitted for review and approval by Gaithersburg, which approval shall not be unreasonably conditioned or withheld. The Shuttle Bus Program will provide for the operation and funding by Crown Village, its successors or assigns, of a private shuttle bus service to the Shady Grove Metro Station and provision of other transit management components to serve the Permitted Development. Implementation of the Shuttle Bus Program shall commence by the occupancy of the 250th residential unit (the "Date of Commencement"). Crown Village shall have the right, but not the obligation, to initiate the Shuttle Bus Program prior to the Date of Commencement. However, should Crown Village elect to operate the Shuttle Bus Program prior to the Date of Commencement, any costs incurred by Crown Village for operation of the Shuttle Bus Program prior to the Date of Commencement shall not be considered part of the "Shuttle Bus

Contribution,” as said term is hereinafter defined, and any period of time prior to the Date of Commencement that the Shuttle Bus Program is operational shall not be included in calculating compliance with the “Term,” as said term is hereinafter defined. Subject to the limitations set forth below in this Paragraph, Crown Village shall bear the costs of operating the Shuttle Bus Program, except that, when the following levels of building permit issuance have been reached for the Permitted Development, Crown Village may cause the community association for the Property (the “Association”), excluding Crown Village, to pay the following percentages of such costs:

<u>Number of Units for Which Building Permits Issued</u>	<u>Percentage of Costs Paid by Association (Excluding Crown Village)</u>
500	25%
1,000	50%
1,500	75%
2,000	100%

In any event, from and after the date that is twelve (12) years from the Date of Commencement, Crown Village may cause one hundred percent (100%) of the costs of operating the Shuttle Bus Program to be paid by the Association (excluding Crown Village). Crown Village shall submit for review and approval by Gaithersburg appropriate language to be incorporated into the Association documents to implement the requirements of this paragraph, such approval not to be unreasonably withheld or conditioned.

The required term of the Traffic Mitigation Plan shall begin on the Date of Commencement and end upon the earlier of the commencement of operation of the CCT between the Property and the Shady Grove Metro Station or twenty-five (25) years from the Date of Commencement (the “Term”). Further, notwithstanding any other provision in this Paragraph, Crown Village shall not be required to expend in connection with the Traffic Mitigation Plan more than a cumulative amount equal to \$2,000,000 during the Term (the “Shuttle Bus Contribution”) or more than \$300,000 during each year of the Term. At the time that the Association (exclusive of Crown Village) assumes full responsibility for operating and paying all costs of the Shuttle Bus Program, if Crown Village has not incurred the full Shuttle Bus Contribution in operating the Shuttle Bus Program, Crown Village shall deliver the unused balance of the Shuttle Bus Contribution to the Association, to be applied solely by the Association to fund the continuing costs of operating the Shuttle Bus Program during the Term. Gaithersburg acknowledges that the Traffic Mitigation Plan will also require the Property to participate in the Greater Shady Grove Transportation Management District subject to Crown Village or its designees receiving credit for all capital and operating costs and expenses of the Shuttle Bus Program and other transit management components provided as a part of the Traffic Mitigation Plan or otherwise.

15. Contribution to Montgomery County Agricultural Land Preservation Easement Fund

Crown Village agrees to make a total contribution of \$2,000,000 to the Montgomery County Agricultural Land Preservation Easement Fund. The payments shall be made by Crown Village or its designees in four (4) equal installments of \$500,000 as follows: (a) Installment 1 – upon recordation of record plat(s) for 375 residential units of the Permitted Development; (b) Installment 2 – upon recordation of record plat(s) for 750 residential units of the Permitted Development; (c) Installment 3 – upon recordation of record plat(s) for 1,125 residential units of the Permitted Development; and (d) Installment 4 – upon recordation of record plat(s) for 1,500 residential units of the Permitted Development. Nothing in this Agreement shall prevent Crown Village from satisfying this requirement at an earlier time than required by this Paragraph 15 or accelerating the payment of any installment. No transferable development rights shall be required to be provided by Crown Village in connection with the Permitted Development.

16. Regional Recreation Contribution

Crown Village agrees to make a contribution to Gaithersburg in the total amount of \$5,000,000 for off-site regional recreation improvements and amenities to be used at Gaithersburg's discretion (the "Regional Recreation Contribution") pursuant to the payment schedule contained in this Paragraph 16. The Regional Recreation Contribution shall be made on or before July 1, 2007. However, if the SDP Application(s) and Final Site Plan(s) for Pods 2 and 3 have been submitted as Complete Applications and are not finally approved by the Mayor and Council and Planning Commission prior to July 1, 2007, then the Regional Recreation Contribution shall not be due until the SDP Application(s) and Final Site Plan(s) are finally approved by the Mayor and Council and Planning Commission for Pods 2 and 3.

For the purposes of this Paragraph 16, the SDP Applications and Final Site Plans referred to shall be deemed to have been finally approved when (a) the approvals of the same have been granted, (b) all appeal periods from such approvals have expired without any appeals having been filed or, if any appeals have been timely filed, upon a final resolution of the appeals which upholds the validity of the approvals, and (c) no governmental moratoria or other restrictions exist which would prevent the approval and recordation of final record plats or the issuance of building permits in accordance with the approvals in the ordinary course.

17. Public Art

Crown Village agrees that, in conjunction with the construction of the Permitted Development, it will participate in Gaithersburg's Public Art Program. As its total contribution under the Public Art Program, Crown Village shall be obligated to commit \$150,000 for public art in Pod 1 for art to be selected through the City's Art in Public Places Committee. In addition, Crown Village will work with staff to select appropriate public art in Pods 2 and 3. However,

Crown Village shall not be obligated to spend more than a total of \$50,000 on public art for Pods 2 and 3.

18. **Bus Shelters and Off-Site Sidewalk Connections**

Notwithstanding anything in this Agreement to the contrary, the parties agree as follows:

(a) In lieu of any requirement that Crown Village construct bus shelters for the Permitted Development, Crown Village shall contribute \$30,000 to Gaithersburg prior to issuance of the initial building permit for the Permitted Development for the construction of four (4) bus shelters to serve the Permitted Development.

(b) Crown Village shall design and construct not more than four (4) off-site sidewalks connecting to the Property at the locations generally shown on Exhibit "L-1" (the "Off-Site Sidewalk(s)") to Gaithersburg standards and requirements for such comparable sidewalks, provided that all rights-of-way and all necessary permits and approvals for construction of the Off-Site Sidewalks are made available by Gaithersburg to Crown Village in a timely manner consistent with Gaithersburg's obligations under this Agreement. Prior to commencing construction of the Off-Site Sidewalk(s), Crown Village shall prepare a cost estimate for the engineering, design and construction of the Off-Site Sidewalk(s) for submission to Gaithersburg (the "Cost Estimate(s)"). Crown Village shall not be required to expend more than \$200,000 for the design and construction of the Off-Site Sidewalk(s). If the Cost Estimate, or actual engineering, design and construction cost of the Off-Site Sidewalk(s), at any point exceed \$200,000 in the aggregate, Gaithersburg shall have the right to enter into a mutually acceptable agreement with Crown Village to pay all design, engineering and construction fees for the Off-Site Sidewalk(s) in excess of \$200,000. In the event the Cost Estimate(s) or actual engineering, design and construction costs exceed the \$200,000 in the aggregate and Gaithersburg does not elect to pay all design, engineering, and construction costs above that amount as provided in this Agreement or a mutually acceptable participation agreement as provided in this Paragraph 18(b) is not agreed to by the parties, Crown Village may pay to Gaithersburg the sum of \$200,000, less all sums actually incurred by Crown Village for the design, engineering, and construction of the Off-Site Sidewalk(s), in full satisfaction of the requirements of this Paragraph 18(b), and said contribution shall entitle Crown Village to have building permits and occupancy permits and all other Development Approvals processed and issued by Gaithersburg.

19. **Development Phasing Schedule**

(a) The parties agree that construction of the Residential Development located in Pods 1, 2 and 3 shall be subject to the phasing schedule set forth below in this Paragraph 19. The residential units in Pod 5 may be constructed at any time following the date that is three (3) years after the Effective Date of this Agreement. Subject to the preceding sentence, any phase may be constructed simultaneously with any other phase or in any order.

(i) During each of the first six (6) years after the date of this Agreement, or until building permits for all of the residential units in Pods 1, 2, and 3 are issued, Crown Village shall be entitled to receive an allocation of 225 building permits per year for the Residential Development in Pods 1, 2 and 3. Any annual allocation of building permits pursuant to this Paragraph 19(a) not actually used by Crown Village in any given year may be carried over into the subsequent year or years and said allocations shall be cumulative;

(ii) The construction of the LEED Certified Community Recreation Building in Pod 3 shall be completed prior to the issuance of a total of 400 building permits for the Residential Development in Pods 2 and 3; and

(iii) The construction of the Community Recreation Building in Pod 1 shall be completed prior to the issuance of building permits for a total of 275 single-family detached, single-family attached and 40 to 50 three (3)-story multi-family units over the Commercial/Retail Development which comprise a portion of the Residential Development in Pod 1.

(b) Notwithstanding anything in this Paragraph 19 to the contrary, construction of 80,000 square feet of Commercial/Retail Development in Pod 1 must be commenced by the issuance of the 470th building permit in Pods 2 and 3 and prior to the issuance of any single-family dwelling building permits in Pod 1.

20. Impact Taxes

Gaithersburg finds that, pursuant to Section 52-55 of the Impact Tax Law, or any existing or future memorandum of understanding or other agreement with Montgomery County regarding impact taxes, the Off-Site Road Improvements, the Traffic Mitigation Plan, including without limitation, the capital and operating expenses of the Shuttle Service Program, construction of the Transit Parking Spaces or, in the alternative, the Transit Contribution, construction of Decoverly Drive, Diamondback Drive and the "Spine Road," and any construction of or payment for bus shelters or transit management features qualify for impact tax credit(s), and upon written request of Crown Village, agrees to recommend in writing that Montgomery County grant the impact tax credits. Except as necessary to comply with the obligations of the Greater Shady Grove Transportation Management District as provided in Paragraph 14 of this Agreement and without limiting the generality of the foregoing, Gaithersburg agrees it will not levy or impose any impact tax or similar fee or charge, and shall withhold its consent to any levy or imposition of any special benefit assessment by Montgomery County upon the Property or Permitted Development for transportation, transportation management, sidewalk, or utility improvements. Gaithersburg agrees that construction of the Permitted Development or issuance of the Development Approvals shall not be subject to any further charges, fees, or taxes (including, without limitation, front-foot benefit charges or assessments) to finance or mitigate the costs of schools, recreation facilities, transportation improvements, transit programs, or other public facilities, including public art, bus shelters, bus stops, hiker/biker paths and trails, other than those specified in this Agreement, which

Gaithersburg has the authority to impose or for which Gaithersburg's consent is required. Crown Village shall be subject to the imposition of typical permit and approval fees, including building and occupancy permits and stormwater management fees, for development and construction of the Permitted Development generally applicable to similar development and construction in Gaithersburg.

21. **Public Facilities**

(a) Gaithersburg concurs in the finding of MCPS that, pursuant to the County's Annual Growth Policy and generation figures developed by MCPS, the schools are adequate to support the student generation proposed by the Permitted Development and to obtain all Development Approvals and agrees that Gaithersburg shall not require any further analyses, studies, conditions, or staging pursuant to the Zoning Ordinance, Gaithersburg Subdivision Regulations, City Code or otherwise, to address or evaluate the adequacy of schools to construct the Permitted Development for a period of twenty (20) years from the issuance of the first residential building permit for the Permitted Development. Subject to Paragraphs 4 and 19 of this Agreement, Gaithersburg agrees that none of the Development Approvals shall be subject to any restrictions regarding construction and occupancy phasing.

(b) Similarly, Gaithersburg finds that all utilities (including water and sewer service), fire, police and emergency services, in addition to roads, are adequate to serve the Permitted Development and obtain all Development Approvals and shall not require any further studies, evaluations, or determinations regarding adequacy for the Permitted Development before issuance of the Development Approvals. This finding, however, does not supersede the permitting requirements of the applicable utility agencies (*i.e.*, WSSC) which must be met to obtain the Development Approvals.

22. **Master Plans**

Gaithersburg agrees that any revision to the City's master plans, including, without limitation, any special study area provisions for the Property to be included in the City's 2003 Master Plan, shall be consistent with the terms and conditions of this Agreement.

23. **Setbacks from Outlot**

Gaithersburg acknowledges that a 0.31-acre unimproved outlot is included on the Property (the "Outlot"), shown on Exhibit "M" attached hereto and incorporated herein, and the Outlot is zoned R-6 under the Gaithersburg Code. Under City of Gaithersburg Code, Section 24-1, Gaithersburg defines "outlot" as a parcel of land shown on a record plat but inadequate as a buildable lot due to insufficient size or frontage. Gaithersburg finds that (i) pursuant to Section 24-160D.5(a)(2)(a) of the Gaithersburg Code, the setback of any multi-family building in Pod 5 shall, at the request of Crown Village, be reduced to zero (0) feet from the Outlot (the "Setback Reduction") in order to maintain an appropriate street line and building orientation for the Permitted Development on the Property, and (ii) in accordance with Section 24-160D.5(c) of the Gaithersburg Code, a waiver of the requirement that a building in the MXD

Zone be set back the distance of its height from an adjoining property not zoned MXD (the "Setback Waiver") will not adversely affect the Outlot. Therefore, upon receipt of a formal application for the Setback Waiver, Gaithersburg agrees to permit and approve said request and Setback Waiver, in order to implement the Permitted Development.

24. **Cooperation**

(a) Gaithersburg and Crown Village agree to execute any and all documents and take such actions that are necessary to carry out the terms and conditions of this Agreement.

(b) The parties shall cooperate with one another with respect to the development of the Property, which shall include, without limitation, the best efforts of Gaithersburg to process Complete Applications in a reasonably expeditious manner and, at the request of Crown Village, to assemble the necessary staff on at least a weekly basis to meet with Crown Village and review all submissions, issues and other matters related to the City Reviews so that all Development Approvals may be granted and the Permitted Development implemented in such expeditious manner.

(c) At the request of Crown Village, Gaithersburg shall record plat(s) to be prepared, at the sole cost and expense of Crown Village, to place the Neighborhood Park and/or School Site in reservation until such time as the dedication of the Neighborhood Park or donation of the School Site is made by Crown Village. During the reservation period, Crown Village shall maintain the ability to exercise all rights specified in Paragraphs 9 and 10 of this Agreement regarding the School Site and Neighborhood Park.

25. **Effective Date of Agreement**

This Agreement shall not become effective until the Resolution becomes effective pursuant to Section 19(e) of Article 23A of the Annotated Code of Maryland, including the conclusion of any referendum instituted pursuant to Article 23A, Section 19(g) through (l) of the Code (hereinafter "Effective Date of Annexation"). At any time prior to the Effective Date of Annexation, Crown Village shall have the right, in its sole discretion, upon written notice to Gaithersburg, to withdraw the Petition, and the Resolution, by its terms, shall not become effective pursuant to Article 23A, Section 19(e) of the Code, and annexation of the Property shall not occur. In such event, this Agreement shall be terminated, whereupon the parties shall have no further rights or obligations with regard to this Agreement. The failure of Crown Village to exercise its right to withdraw the Petition as provided in this Paragraph shall not be deemed a waiver or release of any right or remedy of Crown Village as provided by law or this Agreement.

26. **Assignment**

This Agreement shall be assignable, in whole or in part, by Crown Village, without the consent of Gaithersburg, any of its elected officials, employees or agents, provided that Gaithersburg shall be given at least thirty (30) days' advance written notice prior to any such assignment.

27. **Binding Effect**

(a) The provisions of this Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Crown Village and its respective successors and assigns with an interest in the Property, and upon Gaithersburg and any successors to Gaithersburg. Notwithstanding the foregoing, the obligations and liabilities under this Agreement of any owner of the Property shall apply to such party only during the period of time such party is a fee simple owner of all or any portion of the Property and only as such obligations and liabilities relate to and concern the portion of the Property then owned by such party. If Crown Village or its successors and assigns convey their respective fee simple interest in the Crown Village Property, or any portion of the Crown Village Property, then at the time of conveyance, unless the instrument of conveyance provides otherwise, the transferor automatically shall be relieved of any and all obligations and liabilities under and pursuant to this Agreement with respect to the portion of the Crown Village Property so conveyed, and the transferee automatically shall assume and take title subject to all of the transferor's obligations and liabilities under and pursuant to this Agreement with respect to the portion of the Crown Village Property so conveyed. If the Crown Village Property is owned by more than one owner, a default or failure of compliance by an owner with respect to any of its obligations or covenants under this Agreement or with respect to the implementation of the Proposed Development which relates solely to such owner's portion of the Crown Village Property shall not constitute a default or failure of compliance under this Agreement by any non-defaulting owners, impair the issuance or effectiveness of any approvals or permits for the Permitted Development located on portions of the Crown Village Property owned by non-defaulting owners, or otherwise subject non-defaulting owners to adverse action by Gaithersburg under this Agreement or otherwise. For the purposes of the preceding sentence and notwithstanding any other provision of this Paragraph 27, the obligations of Crown Village set forth in Paragraphs 4, 14-17, 18(a), and 18(b) of this Agreement (the "Master Developer Obligations") shall be deemed to be solely the obligations of Crown Village unless and until Crown Village assigns in writing any of the Master Developer Obligations to another owner of all or part of the Property. Upon such assignment, the Master Developer Obligations so assigned shall be deemed to be solely the obligations of the assignee or, upon any subsequent assignment of such Master Developer Obligations, solely the obligations of the subsequent assignee or assignees of those obligations.

(b) Although Annexation Petition No. X-182 includes property owned by Meridian/Northwestern Shady Grove West, LLC (hereinafter referred to as "Meridian") and Montgomery County, Maryland ("Montgomery County"), Meridian and Montgomery County are not parties to this Agreement, and this Agreement and all of the obligations and conditions contained herein do not affect or otherwise bind, obligate or inure to the benefit of Meridian or Montgomery County, or the property owned by Meridian and Montgomery County. Meridian and Montgomery County have no obligations or liabilities under this Agreement.

(c) Subject to the provisions of Paragraph 27(a) above, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

28. **Default**

Any party to this Agreement may seek relief and remedies in any court of competent jurisdiction for the breach or default of the provisions of this Agreement by any other party. The non-breaching party or parties shall be entitled to seek all available legal and equitable remedies and relief from the court, including (but not limited to) specific performance, injunctive relief, and damages. The prevailing party or parties in any such litigation shall be entitled to an award of reasonable attorneys' fees, expenses, and court costs. Notwithstanding anything in this Agreement to the contrary, the rights and remedies provided herein are cumulative and not exclusive, and the failure of a party to exercise any said right or remedy shall not be deemed a waiver or release of any other right or remedy of that party or of any breach or default by the other party.

29. **Amendment**

This Agreement shall be amended only in writing, signed by (or on behalf of) Gaithersburg and Crown Village. Notwithstanding anything else contained in this Agreement, for so long as Crown Village owns a fee simple interest in any portion of the Crown Village Property, no owner of any other portion of the Crown Village Property shall be entitled or required to join in any amendment of this Agreement in order for such amendment to be fully effective and binding, unless Crown Village expressly assigns to such owner, by an instrument in writing recorded in the Land Records of Montgomery County, the right to execute amendments of this Agreement.

30. **Representations and Warranties**

All parties hereto represent and warrant that the individuals executing this Agreement on their behalves have the full and complete authority to execute this Agreement and that the signatures which appear below bind the respective parties to the terms of this Agreement. Gaithersburg further represents and warrants that it has the legal authority, right, and power to enter into this Agreement and is bound by its terms.

31. **Right to Waive Conditions**

Crown Village reserves the right to waive any of the terms and conditions of this Agreement that inure to its benefit but not any terms or conditions which benefit Gaithersburg, in whole or in part. Any such waiver must be in writing signed by Crown Village.

32. **Governing Law**

All questions with respect to the construction of this Agreement shall be determined in accordance with the laws of Maryland.

33. **Interpretation**

The paragraph headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation of this Agreement. Wherever this Agreement requires the computation of time from or after a particular triggering date, the triggering date shall not be included in the computation. If any date upon which action is required under this Agreement shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. This Agreement represents the results of bargaining and negotiations between the parties and of a combined draftsmanship effort. Consequently, Crown Village and Gaithersburg expressly waive and disclaim, in connection with the interpretation of this Agreement, any rule of law requiring that ambiguous or conflicting terms be construed against the party whose attorney prepared this Agreement or any earlier draft of this Agreement. Time is of the essence with respect to the obligations of the parties hereunder. If any of the covenants, restrictions, or other provisions of this Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. No agreement, obligation, or covenant of Crown Village set forth in this Agreement shall be deemed to be for the benefit of or shall be enforceable by any third party not a party to this Agreement.

34. **Counterparts; Facsimile Signatures**

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute a single Agreement. All parties may rely upon a facsimile copy of this Agreement executed by any other party, and such copy of this Agreement shall be deemed an original executed copy for all purposes.

35. **Recordation**

This Agreement shall be recorded in the Land Records of Montgomery County, Maryland.

36. **Notices**

Any notice required to be given by this Agreement shall be in writing and shall be sent by hand delivery (with signed receipt), commercial overnight courier (which requires a signed receipt), certified mail – return receipt requested, or facsimile transmission (accompanied by one of the preceding forms of transmission) to the following:

- (a) **To Crown Village, LLC:**

Mr. Steven J. Coniglio
Crown Village, LLC
8219 Leesburg Pike, 3rd Floor
Vienna, VA 22182-2625
Fax No.: (703) 883-2060

with copies to:

Barbara A. Sears, Esq.
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, MD 20814-4842
Fax No.: (301) 654-2801

and

Centex Homes Crown, LLC
c/o Centex Homes
3684 Centerview Drive, Suite 100
Chantilly, VA 20151
Attention: Division President
Fax No.: (703) 691-3437

and

KB Home
5975 South Quebec Street, Suite 300
Centennial, CO 80111
Attention: Regional Legal Counsel
Fax No.: (720) 488-3862

and

Centex Homes
5400 Glenwood Avenue, Suite 100
Raleigh, NC 27612
Attention: Regional Legal Counsel
Fax No.: (919) 789-4882

and

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Annexation Agreement as of the date first set forth above, as evidenced by their respective signatures and acknowledgments on the following pages.

WITNESS: CITY OF GAITHERSBURG, MARYLAND, a municipal corporation of the State of Maryland

Monica C. Gomez Sanchez

By: [Signature]

Name: Frederick J. Felton

Title: Acting City Manager

STATE OF Maryland

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 7th day of August, 2006, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Frederick J. Felton, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and who acknowledged himself to be the Acting City Manager of the City of Gaithersburg, Maryland, and that such Acting City Manager, being so authorized to do, executed the foregoing Annexation Agreement for the purposes therein contained by signing the name of the City.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: March 4, 2008

[NOTARIAL SEAL]

Doris Renee Stokes
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires 03/01/08

WITNESS:

MAYOR AND CITY COUNCIL OF
GAITHERSBURG, MARYLAND

Maurice C. Honey, Sanchez

By: [Signature]

Name: Frederick J. Felton

Title: Acting City Manager

* * *

STATE OF Maryland

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 7th day of August, 2006, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Frederick J. Felton, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and who acknowledged himself to be the Acting City Manager of the City of Gaithersburg, Maryland, a municipal corporation, and acknowledged that he as such Acting City Manager, being so authorized to do, executed the foregoing Annexation Agreement on behalf of the Mayor and City Council of Gaithersburg for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]

Notary Public

My Commission Expires: March 1, 2008

[NOTARIAL SEAL]

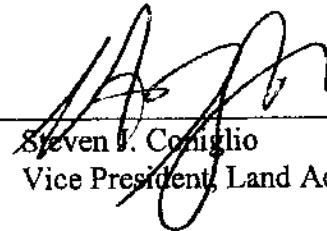
Doris Renee Stokes
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires 03/01/08

WITNESS:

**CROWN VILLAGE FARM, LLC,
a Delaware limited liability company**

By: KB Home Maryland Inc.,
a Delaware corporation,
d/b/a KB Home Mid-Atlantic,
Managing Member

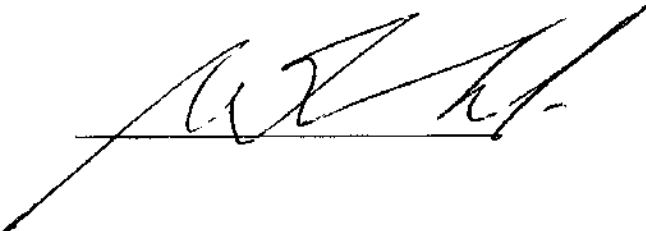


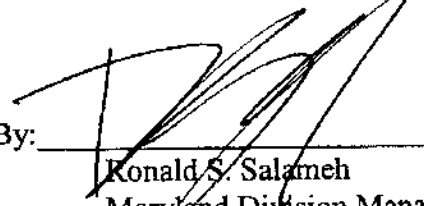
By: 
Steven F. Coniglio
Vice President, Land Acquisitions

By: Centex Homes Crown LLC,
a Delaware limited liability company,
Member

By: Centex Homes,
a Nevada general partnership,
its Sole Member

By: Centex Real Estate Corporation,
a Nevada corporation,
its Managing General Partner



By: 
Ronald S. Salameh
Maryland Division Manager