

COMPREHENSIVE AGREEMENT

by and between

THE TOWN OF HERNDON, VIRGINIA

and

COMSTOCK HERNDON VENTURE, LC

for the Herndon Downtown Redevelopment Project

November 1, 2017

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (“**Agreement**”) is entered into as of November 1, 2017 (“**Effective Date**”), by and between **THE TOWN OF HERNDON, VIRGINIA** (“**Herndon**” or the “**Town**”), and **COMSTOCK HERNDON VENTURE, LC**, a Virginia limited liability company (“**Comstock**”).

RECITALS:

R-1. Herndon currently owns certain parcels of land in historic downtown Herndon, Virginia consisting of approximately 4.675 acres of land and known by Fairfax County Tax Map Numbers 0162-02-0017, 0162-02-0018, a portion of 0162-02-0010B, 0162-02-0010E, 0162-02-20C, 0162-02-0020D, 0162-02-0020E, 0162-02-0010F, 0162-02-0026, 0162-02-0027A and 016-02-0029, together with that certain portion of the right-of-way known as Vine Street running between such parcels, which parcels also are known by the addresses 750 Center Street, 726 Center Street, 724 Center Street, 731 Station Street, 782 Elden Street and 770 Elden Street, all as more particularly described in Exhibit A attached hereto and incorporated by this reference (“**Land**”).

R-2. The Land is currently improved by three buildings, a culvert and a surface parking lot (“**Existing Improvements**”) which, together with the Land, and all rights, privileges, and interests appurtenant to the Land and Existing Improvements, including all rights-of-way, easements, development rights, density, appurtenances, water and other subsurface rights, profits, sewer and other utility rights, air rights, privileges, and all other rights pertaining to the Land and the Existing Improvements are referred to collectively as the “**Property**”).

R-3. Herndon has determined that it is in the best interests of the Town to redevelop the Property as a mixed use town center (the “**Project**”) through a competitively negotiated public-private partnership under the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (“**PPEA**”), and has accordingly adopted to accomplish such goal certain “Town of Herndon Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended - August 11, 2015” (“**Guidelines**”) by vote of the Herndon Town Council (the “**Town Council**”) on August 1, 2015.

R-4. On November 2, 2015, Herndon issued a "Request for Proposals for Herndon Downtown Development Project, RFP 16-05," (“**RFP**”) and as permitted by the PPEA and the Guidelines, determined to use the procedures of competitive negotiation of other than professional services for the procurement initiated by the RFP.

R-5. Herndon subsequently (1) amended the RFP, (2) received two conceptual proposals in response to the RFP, one from Comstock, (3) posted the proposals for public review and comment, (4) invited and received detailed-phase proposals, (5) posted those detailed-phase proposals, (6) received additional submissions, (7) held multiple negotiation sessions with proposers, (8) held public meetings regarding the procurement and the proposals, (9) requested

public comment on the proposals, (10) gave Fairfax County the opportunity to comment on the proposals, and (11) had staff and outside advisors evaluate the proposals.

R-6. Herndon's town manager ("**Town Manager**") designated persons to evaluate the proposals in accordance with the Guidelines and the evaluation criteria for the RFP.

R-7. On November 30, 2016, following review of evaluations of the proposals, the Town Council concluded that the proposal submitted by Comstock was the best proposal and provided the best value to Herndon under the evaluation criteria and selected Comstock as the private entity with which to finalize a comprehensive agreement for the Project.

R-8. The Town Council has found that the purposes of the PPEA would be met by the Project based upon the criteria in Virginia Code § 56-575.4 c.1-3.

R-9. The parties have now finalized a comprehensive agreement consistent with the PPEA and the Guidelines, the terms and conditions of which are set out in this Agreement and its exhibits.

AGREEMENT:

In consideration of the mutual promises, conditions and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Herndon and Comstock hereby agree as follows.

ARTICLE 1. PROJECT OVERVIEW.

It is the intent of Herndon and Comstock that Comstock develop and construct on the Property a multi-level retail and residential complex anchored by an arts center owned and operated by Herndon. The Project is intended to be constructed as a single project comprised of three buildings, a pedestrian plaza, and a parking garage, generally described as follows: (i) Building A, consisting of approximately 104 residential units; (ii) Building B, consisting of approximately 14,000 square feet of ground level retail space and approximately 123 residential units in three stories above the ground level retail space; (iii) Building C, consisting of approximately 3,600 square feet of ground level retail space, an adjacent 18,000 square foot arts center with exhibition and meeting space, and approximately 54 residential units located in three stories above the ground level retail space and the Arts Center; (iv) a structured parking garage ("**Parking Garage**") containing approximately 763 parking spaces, of which approximately 61 parking spaces shall be allocated for the use of the customers, vendors and employees of the retail spaces, approximately 422 parking spaces shall be allocated for the use of the residents of the residential units, approximately 60 parking spaces shall be allocated for use by the employees, patrons and visitors of the Arts Center, and approximately 220 parking spaces shall be allocated for the use by the general public; and (v) a pedestrian plaza and arts walk, consisting of three plazas (Elden Street plaza, W&OD plaza and Station Street plaza) connected by a pedestrian-only 'Arts Walk Loop' which will include art exhibits, historic references, and retail and public outdoor seating ("**Arts Walk**").

The parties contemplate that the Property will be conveyed to Comstock after Comstock and Herndon have agreed upon detailed specifications and plans for the construction of all elements of the Project, including exterior improvements, landscaping, amenities, plazas, walkways, lighting, storm water and utility systems, and environmental remediation, and the Project is ready to be financed and permitted. Upon the substantial completion of the buildings, the Parking Garage and the site improvements, the parties intend that the Project will be made subject to a condominium regime of which the Arts Center will be one subdivided condominium unit. The Arts Center condominium unit and certain parking spaces in the parking garage will then be conveyed back to Herndon and the remainder of the condominium units and Parking Garage shall be retained by Comstock. Thereafter, the Project shall be operated and managed in accordance with the condominium documents creating the regime.

Comstock shall cause such development, design and construction to be performed subject to and upon the terms and conditions set forth in this Agreement, at Comstock's sole cost and expense, except for such payments and allowances as are specifically required to be made by Herndon pursuant to this Agreement.

ARTICLE 2. RECITALS, DEFINITIONS.

Section 2.1 Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated by reference.

Section 2.2 Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth below.

(1) **"Affiliate"** means any person or entity that controls, is controlled by or is under common control with a person or entity.

(2) **"Approved Mortgagee"** has the meaning given in Section 14.1.

(3) **"Architect"** means Torti Gallas and Partners, Inc. or such other professional design firm that will provide certain architectural services for the Project, including design and construction administration services, approved in accordance with this Agreement.

(4) **"Arts Center"** means that certain ±18,000 square foot cold, dark shell space to be constructed within Building C as part of the Project and conveyed to Herndon at the Arts Unit Closing, for use thereafter by Herndon for public purposes, initially as a center for the exhibition, performance and encouragement of the arts, as generally described in the Project Overview and further defined in the Final Project Plans. The conceptual design for the Arts Center is attached hereto as **Exhibit B-1** and incorporated by this reference. The minimum design criteria, including the specifications for the cold dark shell condition, for the Arts Center are attached hereto as a part of **Exhibit B-5** and incorporated by this reference.

(5) **"Arts Center Buildout"** means the fit out of the Arts Center in accordance with Section 4.12.

(6) “**Arts Center Buildout Amendment**” has the meaning set forth in Section 4.12(3).

(7) “**Arts Center Buildout Option Period**” has the meaning set forth in Section 4.12(3).

(8) “**Arts Center Design**” means the design, budget and schedule for the interior of the Arts Center in accordance with Section 4.12(2).

(9) “**Arts Center Design Amendment**” has the meaning set forth in Section 4.12(2).

(10) “**Arts Center Design Option Period**” has the meaning set forth in Section 4.12(2).

(11) “**Arts Center Temporary Relocation Plan**” means that certain plan whereby the Existing Arts Center shall be temporarily relocated during construction of the Project until the Arts Unit is conveyed to Herndon, built-out and re-opened to the public, as further set forth in Section 4.1(1).

(12) “**Arts Unit**” means that certain condominium unit comprising the Arts Center, as further set forth in Article 8.

(13) “**Arts Unit Closing**” means that certain closing on the conveyance to Herndon of the Arts Unit as further described in Article 8.

(14) “**Arts Unit Closing Date**” means the date that the Arts Unit Closing occurs in accordance with Section 8.1.

(15) “**Arts Unit Closing Conditions**” means those conditions precedent to the parties’ obligation to close on the transfer of the Arts Unit to Herndon in accordance with Section 8.3.

(16) “**Arts Unit Deed**” has the meaning set forth in Section 8.2(1).

(17) “**Arts Walk**” means certain portions of the Site Improvements, integrated with the public plazas and retail amenities and connected by a pedestrian-only ‘Arts Walk Loop,’ which will include art exhibits, historic references, and public outdoor seating, as generally described in the Project Overview and further defined in the Final Project Plans.

(18) “**Bonds**” means those certain payment and performance bonds required pursuant to Article 18.

(19) “**Buildings**” means that portion of the Project consisting of the three principal buildings within which the residential units, retail spaces and Arts Center will be located, as generally described in the Project Overview and further defined in the Final Project Plans.

(20) “**Certificate of Termination and Release**” means that certain certification in the form of **Exhibit G** hereto executed by Comstock and Herndon and recorded in the land records in accordance with Section 8.6.

(21) “**Change**” means any addition to, deletion from, or modification of the Final Project Plans, Construction Drawings or Site Plan made after Closing, including a “Change Requiring Approval”, “Change Not Requiring Approval” and “Herndon Change,” which is governed by the provisions of Section 5.5.

(22) “**Change Order**” means a modification to the Construction Contract and, as applicable, a modification to the contract(s) with the Architect or Other Contractors for a change to the Work.

(23) “**Close-Out**” has the meaning set forth in Section 5.8(1).

(24) “**Closing**” means the closing on the transfer of the Property from Herndon to Comstock in accordance with Article 3.

(25) “**Closing Date**” means the date that Closing occurs in accordance with Section 3.1.

(26) “**Codes and Standards**” means all local, state and federal regulations, ordinances, codes, laws, or requirements applicable to the Project, including the Virginia Uniform Statewide Building Code.

(27) “**Comstock Parent**” means Comstock Partners, LC, a Virginia limited liability company.

(28) “**Comstock’s Conditions Precedent**” means those conditions precedent to Comstock’s obligation to close on the transfer of the Property at Closing in accordance with Section 3.4.

(29) “**Conditions to Closing**” means all Comstock’s Conditions Precedent and Herndon’s Conditions Precedent as set forth in Section 3.4.

(30) “**Condominium Documents**” means the condominium instruments creating the Condominium substantially in accordance with the forms attached hereto as **Exhibit I** and incorporated by this reference, and including those terms set forth in Section 8.2.

(31) “**Condominium**” means that certain condominium created by recordation of the Condominium Documents which converts the Project into a condominium in accordance with Article 8.

(32) “**Construction Contract**” means one or more contracts between Comstock and the General Contractor for performance of the Work to construct the Project. The Construction Contract shall be a modified American Institute of Architects (AIA) form of agreement with modified AIA General Conditions, in a form reasonably acceptable to Herndon and Comstock and in compliance with the requirements of this Agreement.

(33) “**Construction Drawings**” means the sealed drawings, plans specifications developed through the design process by the Architect (and, as applicable, Other Contractors and consultants) for the construction of the Work, and approved by Comstock and Herndon in accordance with Article 4.

(34) “**Construction Manager**” has the meaning set forth in Section 21.6(1).

(35) “**Contract Documents**” means collectively the following: (i) this Agreement, including all exhibits and amendments thereto; (ii) the Final Project Plans; (iii) the Construction Contract; and (iv) any Change Orders approved in accordance with this Agreement.

(36) “**Culvert Allowance**” has the meaning set forth in Section 6.5.

(37) “**Culvert Repairs and Maintenance**” means all those repairs to the culvert currently existing on the Property in order for the culvert to be in good repair and condition as required by Comstock to develop the Project as a first class town center, together with all maintenance and preservation measures need to protect the culvert during construction until the Project is substantially completed.

(38) “**Day-to-Day Decisions**” has the meaning set forth in Section 21.6(1).

(39) “**Decision Maker**” has the meaning set forth in Section 21.6(2).

(40) “**Default**” means a failure to perform any material obligation or requirement under this Agreement or failure to comply with any material term or provision of this Agreement beyond any applicable notice and cure period as set forth in Sections 10.2 and 10.3.

(41) “**Designated Employees**” has the meaning set forth in Section 11.2.

(42) “**Environmental Laws**” has the meaning set forth in Section 11.1(12).

(43) “**Environmental Remediation**” means the remediation of any and all hazardous materials and other environmental conditions at the Property and from the Existing Improvements required in order to construct and develop the Project as reasonably necessary (i) to comply with VBAF requirements or the requirements of any other regulatory body or agency or judicial authority, or to comply with any applicable environmental law or (ii) to comply with any requirement of Comstock’s Lender or insurer. Environmental Remediation shall include the removal and disposal of contaminated soils and arsenic from the Land and the removal and disposal of asbestos, petroleum based contaminants, perchloroethylene, cleaning solvents and lead paint from the Existing Improvements. As part of the Environmental Remediation, Comstock shall be responsible for causing hazardous soils and other materials that are to be removed from the Land to be transported by licensed professionals to appropriate waste disposal sites, and for causing fill, if any, to be deposited onto the Land to be examined or tested, as necessary or appropriate, all as determined in Comstock’s reasonable discretion.

(44) **“Environmental Remediation Allowance”** has the meaning set forth in Section 6.3.

(45) **“Environmental Reports”** means the following reports on the environmental condition of the Property provided by Herndon to Comstock: (i) Phase I Environmental Site Assessment Report, ECC Project No. 07-8936, for 762, 770, and 782 Elden Street, 724 and 726 Center Street, and 731 Station Street, Town of Herndon Virginia, dated August 10, 2007 and prepared by Environmental Consultants and Contractors, Inc. for JPI Development Services, LP, (ii) Phase I Environmental Site Assessment for 770 Elden Street dated February 10, 1995 by Chester Environmental for Town of Herndon; (iii) Phase I Environmental Site Assessment Report, ECS Project No. 01-24770, for 770-786 Elden Street and 724 Center Street, Herndon, Virginia dated July 21, 2015 by ECS for Reed Smith LLP; (iv) Phase II Environmental Site Assessment, ECS Project No. 01-24770-A, for 770 and 782-786 Elden Street and 724 Center Street, Herndon, Virginia dated July 10, 2015 by ECS for Reed Smith LLP; (v) Report of Hazardous Materials Survey, ECS Project No. 01:24770-B, for 770 Elden Street, Herndon, Virginia dated July 23, 2015 by ECS for Reed Smith, LLP; (vi) Additional Environmental Soil Borings, ECS Project No. 01:24770-C for 770 Elden Street, Herndon, Virginia dated August 19, 2015 and revised September 2, 2015 by ECS for Reed Smith, LLP; (vii) Phase II Environmental Site Assessment Herndon Assemblage Center Street, Elden Street, Haley Place, Locust Street, Spring Street, Station Street, and Vine Street, Town of Herndon, Virginia, October 24, 2007 and prepared by ECC Project Nos. 07-9010, 07-9132, and 07-9133 Prepared For: JPI Development Services, L.P.; (viii) Phase I Environmental Site Assessment entitled Parcel JJ, Hands, Inc., 750 Center Street, Town of Herndon, Virginia, May 8, 2002 and prepared by Froehling and Robertson, Inc. Project Number C68-220E for Wilson, Butler, Lodge Inc.; and (ix) Phase II Environmental Site Assessment entitled Herndon Cultural Arts Center Hands, Inc. Property, 750 Center Street, Town of Herndon, Virginia, February 24, 2003 and prepared by Froehling & Robertson, Inc. Project Number C68-220E for Wilson, Butler, Lodge, Inc.

(46) **“Excess Culvert Costs”** means those costs to perform the Culvert Repair and Maintenance in excess of the Culvert Allowance in accordance with Section 6.5.

(47) **“Excess Environmental Costs”** means those costs for Environmental Remediation in excess of the Environmental Remediation Allowance in accordance with Section 6.3.

(48) **“Excess Relocation Costs”** means those costs for the relocation of the Arts Center in excess of the Relocation Allowance in accordance with Section 6.4.

(49) **“Excess Transitional Parking Costs”** means those costs to implement the Transitional Parking Plan in excess of the Transitional Parking Allowance in accordance with Section 6.6.

(50) “**Existing Arts Center**” means that certain studio and related arts center space currently located in the Existing Improvements.

(51) “**Existing Improvements**” means those three buildings, a culvert and surface parking located on the Property and used for the Arts Center and public parking, among other things, upon the Effective Date of this Agreement.

(52) “**Final Completion**” means when all the Work has been completed in accordance with the Contract Documents except for warranty work that is not a punch list item.

(53) “**Final Project Plans**” has the meaning given in Section 4.1(2).

(54) “**Fixed Payment**” means the payment to be paid by Herndon to Comstock in accordance with Section 6.2.

(55) “**Force Majeure**” means any cause beyond the control of Comstock (or any person providing any of the Work through Comstock) or Herndon, as applicable, including without limitation and whether similar or dissimilar: a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance or dispute (provided that Comstock shall not be required to settle any strike or labor disturbance in which it may be involved), freight embargo, act of public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance, sabotage, inability to procure materials, or act of God.

(56) “**General Contractor**” means the general contractor(s) engaged by Comstock, and approved by Herndon (which approval shall not be unreasonably withheld, conditioned or delayed) to perform the construction of the Project in accordance with the Contract Documents.

(57) “**Governmental Approvals**” means all approvals, permits and other entitlements for the Project required, as applicable, from Fairfax County, Virginia, the Town of Herndon in its governmental capacity (and not as a party to this Agreement) and any other governmental agency, including without limitation the Heritage Preservation Review Board and proffer requirements, approval of the Site Plan and Construction Drawings, building and demolition permits, public bonds, water and sewer authority permits, fire marshal approvals, any permits or approvals with regard to the Environmental Remediation or Culvert Repair and Maintenance, and all other regulatory or governmental approvals, permits or consents required to commence and diligently prosecute the Work and Substantially Complete the Project. Governmental Approvals shall in all events expressly not include any Proprietary Approvals of Herndon required as a party to this Agreement.

(58) “**Guidelines**” means Herndon’s Guidelines for Implementation of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended, (“**PPEA**”) as adopted by Herndon on August 1, 2015.

(59) “**Hazardous Materials**” has the meaning set forth in Section 11.1(12).

(60) “**Herndon Components**” means those portions of the Project comprising the Arts Center, the Arts Walk and the Public Parking Spaces.

(61) “**Herndon’s Conditions Precedent**” means those conditions precedent to Herndon’s obligation to close on the transfer of the Property at Closing in accordance with Section 3.4.

(62) “**Interest Rate**” means the annual rate of simple interest of four percent (4%).

(63) “**Land**” means that certain approximately 4.675 acres of real property located in Herndon, Virginia identified in Recital R-1, and further described on Exhibit A attached hereto and incorporated by this reference.

(64) “**Land Records**” means the land records for Fairfax County, Virginia.

(65) “**LEED**” means Leadership in Energy and Environmental Design.

(66) “**Lender**” means any of Comstock’s lenders, equity participants or other financing or funding sources for the acquisition of the Property and construction of the Project.

(67) “**Loan Documents**” has the meaning set forth in Section 14.1(1).

(68) “**Major Decisions**” means all of those decisions identified on Exhibit M hereto.

(69) “**Memorandum of Comprehensive Agreement**” means the memorandum of this Agreement to be recorded in the Land Records at Closing substantially in the form attached hereto as Exhibit D and incorporated by this reference, as further set forth in Section 3.2(4).

(70) “**Mortgage**” has the meaning given in Section 14.1.

(71) “**Non-Monetary Default**” has the meaning given in Section 10.2(1).

(72) “**Notice**” has the meaning set forth in Section 21.7.

(73) “**Offsite Easements**” means all those easements, licenses, rights of way, and other rights or interests in land required from adjacent or offsite properties necessary to obtain the Governmental Approvals and perform the Work, as determined in accordance with Section 4.9.

(74) “**Other Contractors**” means all other contractors, consultants and/or vendors, other than the General Contractor, engaged directly by Comstock to perform any of the Work.

(75) “**Parent Guaranty**” has the meaning given in Section 18.2.

(76) “**Parking Garage**” means the parking structure to be designed and constructed as part of the Project, as generally described in the Project Overview and further

defined in the Final Project Plans. The minimum design criteria for the Parking Garage are attached hereto as a part of Exhibit B-5 and incorporated by this reference.

(77) “**Parking Unit**” means that certain condominium unit or units comprising the Public Parking Spaces, as further set forth in Article 8, and being a portion of the Parking Garage.

(78) “**Permitted Exceptions**” means those certain exceptions to title to the Property permitted to remain encumbering the Property at Closing in accordance with Section 2.3(3).

(79) “**Permitted Transfer**” has the meaning set forth in Section 13.3.

(80) “**PPEA**” has the meaning given in Recital R-3.

(81) “**Preliminary Project Plans**” means all those certain preliminary conceptual designs, schematics, plans, schedule and criteria for the Project approved by Comstock and Herndon as of the date of this Agreement, a copy of which are attached hereto as Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4 and Exhibit B-5 and incorporated by this reference.

(82) “**Project**” means the development, design, financing and construction of the buildings, facilities, utilities, infrastructure, utility connections and amenities on the Property by Comstock as generally described in the Project Overview and further defined in the Final Project Plans.

(83) “**Project Budget**” means the budget for the total estimated Project Costs for the Project.

(84) “**Project Costs**” means all hard and soft costs for the Project, including pre-Closing design services under Article 3, construction and performance of the Work and all labor and materials under Article 4, costs of financing, Governmental Approvals and development fees, overhead and profit, taxes and fees, costs for Environmental Remediation and Culvert Repair and Maintenance, costs for the Arts Center Relocation Plan, costs for the Transitional Parking Plan, and all other costs and expenses of any kind or nature with regard to the Project.

(85) “**Project Schedule**” means the schedule for the Project, including certain milestones for performance of design, permitting and Substantial Completion of the Project, as the same may be modified from time to time in accordance with this Agreement.

(86) “**Property**” means the Land, Existing Improvements and all other property of Herndon described in Recital R-2 to this Agreement.

(87) “**Property Deed**” has the meaning set forth in Section 3.2(1).

(88) “**Proposed Transfer**” has the meaning set forth in Section 13.4(1).

(89) “**Proprietary Approvals**” means all approvals by Herndon for any element of the Project identified in this Agreement as requiring the approval or consent of Herndon in its proprietary capacity as the initial owner of the Property and/or party to this Agreement. Proprietary Approvals shall in all events expressly not include any Governmental Approvals of Herndon given in its governmental or regulatory capacity. For each instance in which Herndon’s Proprietary Approval shall be required under this Agreement, Herndon’s Proprietary Approval shall be provided or deemed provided in accordance with the provisions of Section 4.8.

(90) “**Public Parking Easement**” means the Declaration of Parking Easement to be recorded in the Land Records at Closing substantially in the form attached hereto as **Exhibit E** and incorporated by this reference.

(91) “**Public Parking Spaces**” means those approximately 341 parking spaces in the Parking Garage, to be constructed as part of the Project.

(92) “**Relocation Allowance**” has the meaning set forth in Section 6.4(1).

(93) “**Responsible Bidder**” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.

(94) Deleted.

(95) “**Settlement Agent**” means Stewart Title and Escrow, Inc. located at 10505 Judicial Drive, Suite 300, Fairfax, Virginia 22030, Attn: Mark Fitzgerald, or such other settlement or escrow agent required by Comstock’s Lender.

(96) “**Site Improvements**” means the exterior improvements, landscaping, amenities, plazas, walkways, hardscaping, sculptures, seating, lighting and storm water and utility systems for the Project, including the Arts Walk, and all sidewalks, curbs, private streets, streetlights, benches, bus shelters, bicycle racks and similar exterior improvements not within a Building.

(97) “**Site Plan**” means that certain final site plan for the Project prepared in accordance with Section 4.2 for which all Governmental Approvals have been obtained, all beyond any applicable appeal periods.

(98) “**Substantial Completion**” means that: (i) the General Contractor has substantially completed the construction of the Project in accordance with the Construction Drawings, other than correction of customary punch list items, and (ii) Comstock has obtained a base building (i.e., core and shell) certificate of occupancy (or non-residential use permit) for the Arts Unit and the Parking Garage.

(99) “**Survey**” has the meaning set forth in Section 3.3(3).

(100) “**Title Commitment**” means the ALTA commitment for owner’s and lender’s policy of title insurance obtained by Comstock pursuant to Section 3.3(3).

(101) “**Title Cure Cap**” has the meaning set forth in Section 3.3(3) (a).

(102) “**Title Defect**” has the meaning set forth in Section 3.3(3) (a).

(103) “**Town Council**” means the governing body for the Town of Herndon, Virginia.

(104) “**Transfer**” shall have the meaning set forth in Section 13.1.

(105) “**Transitional Parking Allowance**” has the meaning set forth in Section 6.6(1).

(106) “**Transitional Parking Plan**” means that certain plan to provide 162 parking spaces for use by the public during construction of the Project, as further set forth in Section 4.1(6).

(107) “**Tri-Party Agreement**” has the meaning set forth in Section 14.1(2).

(108) “**Unwind Event**” means an event that occurs prior to Closing that permits Comstock to terminate this Agreement in accordance with Article 7.

(109) “**Unwind Notice**” means a written notice delivered from Comstock to Herndon whereby Comstock elects to terminate this Agreement prior to Closing due to an Unwind Event in accordance with Article 7.

(110) “**VBAF**” means the Virginia Brownfields Restoration and Economic Development Assistance Fund.

(111) “**VMLIP**” means the Virginia Municipal League insurance program.

(112) “**Work**” means all the design, development and construction services provided after Closing to construct the Project in accordance with the Contract Documents.

ARTICLE 3. TRANSFER OF PROPERTY.

Section 3.1 Property Conveyance. Subject to the terms, covenants and conditions of this Agreement, Herndon shall convey the Property to Comstock, in fee simple subject to only those title exceptions approved or deemed approved by Comstock, on the date which is thirty days (or sooner, as the parties may agree) after all Conditions to Closing have been fully satisfied hereunder or waived by Comstock and Herndon, as applicable (“**Closing Date**”). Closing on the Property conveyance (“**Closing**”) shall be conducted in accordance with the requirements of Section 3.2.

Section 3.2 Closing.

(1) **Deed.** The Property conveyance shall be made by special warranty deed in the form attached hereto as **Exhibit C** and incorporated by this reference (“**Property Deed**”).

The Property shall be conveyed free and clear of the lien of any deed of trust or mortgage, and subject only to those matters approved or deemed approved by Comstock in Section 3.3.

(2) Other Closing Deliveries. Closing shall be administered by the Settlement Agent on the Closing Date via escrow closing. At Closing, Herndon shall deliver to the Settlement Agent the Property Deed, the Memorandum of Comprehensive Agreement, Parking Easement, an owner's affidavit sufficient for Comstock to obtain title insurance with the pre-printed exceptions for mechanic's liens and parties in possession removed, a settlement statement, authority documentation, and such other documents necessary to satisfy its obligations under this Article 3, all fully executed, witnessed and notarized, as applicable, in a form suitable for recordation among the Land Records. In addition, Herndon and Comstock shall each deliver to the Settlement Agent: (i) such documents as required by applicable local, state and federal law; and (ii) such other documents reasonably requested by the Settlement Agent or otherwise necessary to consummate the transaction.

(3) Taxes, Expenses and Prorations. At Closing, Comstock shall pay the premium for Comstock's owner's title insurance obtained by Comstock, all costs associated with Comstock's financing of the Project, the Settlement Agent's fee, and the preparation fee for the Property Deed, all applicable recording and transfer taxes and fees (or claim applicable exemptions therefor), and any real estate taxes for the Property prorated after the date of Closing. Notwithstanding the foregoing, Herndon hereby represents, warrants and covenants to Comstock that Herndon is exempt from the payment of real estate taxes on the Property and that Herndon shall use good faith efforts to assist Comstock in obtaining any real estate tax exemptions that may be available on the Property during the construction of the Project. Herndon will bear all costs associated with the release of the existing lien of any deed of trust or mortgage or other lien encumbering the Property at the time of Closing (except those liens resulting from Comstock's actions), including recording fees and taxes. Each party will bear its own legal fees and expenses.

(4) Memorandum of Comprehensive Agreement. Comstock and Herndon shall execute a Memorandum of Comprehensive Agreement substantially in the form attached hereto as **Exhibit D**. At Closing, the parties shall cause the Memorandum of Comprehensive Agreement to be recorded in the Land Records immediately prior to the Property Deed.

(5) Public Parking Easement. Comstock and Herndon shall sign the Public Parking Easement substantially in the form attached hereto as **Exhibit E**. At Closing, the parties shall cause the Public Parking Easement to be recorded in the Land Records prior to the Memorandum of Comprehensive Agreement and Property Deed.

Section 3.3 Due Diligence; Title; Survey.

(1) Delivery of Documents. Herndon has provided Comstock with copies of certain due diligence documents in its possession or control regarding the Property, including environmental reports. Any studies, reports, inspections, or other documentation in the

possession or control of Herndon and not yet provided to Comstock or which become available after the Effective Date, regarding the condition of the Property, the proposed development of Project, or otherwise relevant for Comstock's due diligence and inspection of the Property and creation of detailed Final Project Plans shall be promptly delivered to Comstock.

(2) Access; Inspections. From and after the Effective Date until conveyance of the Property to Comstock at Closing, Comstock shall be entitled to unrestricted access to the Property for purposes of inspecting the Property, planning the Project, or any other investigations thereon as Comstock may deem appropriate. The cost of the inspections undertaken by Comstock pursuant to this paragraph shall be borne solely by Comstock.

(3) Title Commitment. Comstock shall obtain, at Comstock's expense, a current ALTA commitment for owner's and lender's policies of title insurance (hereinafter referred to as the "**Title Commitment**") issued by such title company on behalf of an underwriter acceptable to Comstock and Comstock's Lender, whereby said title company commits to issue owner's and lender's policies of title insurance ("**Title Policies**") to Comstock and its Lender covering the Property and the Project. Herndon will convey good and marketable fee simple title to the Property at Closing, and except as provided for herein, the Property shall be conveyed subject only to the Permitted Exceptions (hereinafter defined) and free, clear and unencumbered of all tenancies and parties in possession on the Closing Date. Comstock shall further obtain at its expense a survey of the Property prepared in accordance with Comstock's and its Lender's requirements therefor (the "**Survey**").

(a) Objections. Comstock shall have a period ending at 5:00 p.m., Eastern time, on the date which is sixty days after the Effective Date in which to review the Title Commitment and Survey and deliver to Herndon, in writing, such objections as Comstock may have to any defect or other matter contained or set forth therein which would impede Comstock's ability, or increase Comstock's costs, to develop the Property in accordance with this Agreement ("**Title Defect**"). Any encumbrances of record or matters identified on the Title Commitment or Survey which are not identified by Comstock as a Title Defect shall be deemed accepted by Comstock and a Permitted Exception hereunder. Herndon will have sixty days following Comstock's notice of Title Defects to cure any Title Defects at Herndon's sole cost and expense; provided, however, that in the event any Title Defect cannot reasonably be cured within such sixty-day period, Herndon shall have such additional time as is reasonably necessary to cause such cure so long as Herndon promptly commences the cure within the sixty-day period and diligently prosecutes it until completion. In the event that Herndon fails to cure any Title Defect within such sixty-day period (or longer period as is reasonably necessary pursuant to the foregoing sentence), Comstock shall have the right to: (i) extend the time period provided to Herndon to cure the Title Defect, without waiving Comstock's rights under the following sub-clauses (ii), (iii) and (iv) in the event such Title Defect is still not cured by the end of such extended period; (ii) cure such Title Defect on behalf of Herndon in which event Herndon shall reimburse Comstock's actual costs and expenses, up to the amount of \$50,000 ("**Title Cure**

Cap”), but in all events subject to Article 15; (iii) waive the Title Defect, in which event the parties shall continue hereunder; or (iv) unwind this Agreement in accordance with the terms set forth in Article 7.

(b) Permitted Exceptions. Notwithstanding anything to the contrary contained herein, the following shall be deemed Permitted Exceptions hereunder:

- (i) The lien for real estate taxes not yet due and payable;
- (ii) Zoning ordinances and proffers;
- (iii) Any easements, restrictions, encumbrances, exceptions or encroachments and all other matters of record identified on the Title Commitment or identified on the Survey which are accepted or waived or deemed accepted or waived by Comstock pursuant to this Section 3.3;
- (iv) All liens and encumbrances caused by Comstock;
- (v) All easements, rights of way, restrictions, covenants, licenses, improvements, and other instruments and encumbrances recorded against or placed upon the Property by or at the direction of Comstock in connection with development of the Project in accordance with Sections 4 and 5, including any Off-Site Easements which may encumber the Property, or otherwise as approved by Comstock.

Notwithstanding the foregoing, all matters reflected on Schedule B-1 of the Title Commitment, liens, and items which are designated by the title company as matters to be satisfied by Herndon prior to Closing, and all other mortgages and other monetary liens and monetary encumbrances shall not constitute Permitted Exceptions and shall be discharged and satisfied by Herndon prior to Closing without application towards the Title Cure Cap.

Section 3.4 Conditions to Closing.

(1) Conditions to Comstock’s Obligation to Close. The following shall each be a condition precedent to Comstock’s obligation to acquire the Property at the Closing hereunder (“**Comstock’s Conditions Precedent**”):

(a) Herndon shall have caused that portion of the Land known as Fairfax County Tax Map No. 0162-02-0010B to be subdivided or modified by a boundary line adjustment as set forth on Exhibit A such that the applicable portion can be legally conveyed to Comstock at the Closing and shall have caused the vacation of that certain portion of the right-of-way known as Vine Street described in Exhibit A.

(b) Comstock and Herndon shall have agreed upon the Final Project Plans, Construction Drawings and Site Plan in accordance with Article 4, and shall have agreed upon the substantially final form of the Condominium Documents in accordance with Section 8.2.

(c) Comstock shall have received all final and non-appealable Governmental Approvals for the Project, subject only to conditions approved by Comstock and posting the required bonds and escrow and paying all fees.

(d) Herndon shall have provided its Proprietary Approval of Comstock's proposed Mortgage in accordance with Section 14.1(1), and Comstock, Herndon and the Approved Mortgagee shall have agreed on the form of the Tri-Party Agreement in accordance with Section 14.1(2)

(e) Comstock's Approved Mortgagee shall be ready to close, concurrently with Closing, on all financing required by Comstock for the construction and Substantial Completion of the Project, and all Loan Documents (including without limitation the Tri-Party Agreement) shall be finalized and ready to be executed by all parties thereto, including Herndon.

(f) All Offsite Easements shall have been determined by Comstock in accordance with Section 4.9, and shall have been obtained in the form required by Comstock or as is otherwise necessary to obtain all Governmental Approvals. All Off-Site Easements requiring recordation shall have been recorded or shall be fully and duly executed, notarized and delivered to the Settlement Agent for recordation at Closing.

(g) There shall be no mechanic's liens, or other liens or judgments encumbering the Property or threatened to be recorded against the Property.

(h) No lawsuit, appeal or other action shall have been filed by any party, directly or indirectly, involving the Property or the development of the Property in accordance with this Agreement, including any such lawsuit, appeal or other action regarding the environmental condition of the Property or for the purpose of challenging, contesting or seeking to prohibit, restrain, enjoin or delay any change in zoning or restrictive covenants required to permit development of the Project in accordance with the Final Project Plans.

(i) There shall exist no moratorium or other action or directive by any governmental authority which would prohibit Comstock from developing the Property in accordance with the Final Project Plans.

(j) All of Herndon's representations and warranties set forth in Section 11.1 shall be true and correct in all material respects or Herndon has notified Comstock of any changes in such representations and warranties and Comstock has accepted such.

(k) Title to the Property shall be in the condition required by Section 3.3, and the Title Company shall have irrevocably committed to issue an owner's policy and lender's policy, as applicable, insuring Comstock's title in and to the Property and Lender's lien thereon in the form required by Comstock and Comstock's Lender.

(l) The General Contractor shall have been selected by Comstock and approved by Herndon, and the Construction Contract shall be in form required by this Agreement and ready to sign or have been signed.

(m) Subject to the relocation of the Existing Arts Center after Closing in accordance with the Arts Center Temporary Relocation Plan and Section 5.4, Herndon shall have caused all tenants and other occupants of the Existing Improvements to have vacated the Property and removed all personal property therefrom. If any personal property remains in the Existing Improvements as of the Closing Date, then such personal property shall be deemed abandoned and Comstock shall have the right to remove, dispose, store, sell or otherwise handle such abandoned personal property as Comstock deems appropriate in its sole discretion at Comstock's sole cost and expense, without any liability to Comstock whatsoever.

(n) Comstock and Herndon shall have agreed upon a final form of the Transitional Parking Plan and Herndon shall have provided its Proprietary Approval thereof.

(o) Herndon shall have duly appropriated all funds necessary to pay the amounts required by Article 6, including reasonable and appropriate contingencies for Excess Transitional Parking Costs, Environmental Remediation and Culvert Repairs and Maintenance, as further set forth in Article 15, and all such funds shall be held by Herndon in a secure manner, available for disbursement in accordance with this Agreement.

(p) Herndon shall have duly appropriated and paid all funds required to be paid to Comstock, if any, in accordance with Sections 3.3(3), 4.9 and 4.12, together with all other amounts then due to Comstock by Herndon under this Agreement.

(q) Herndon shall have provided its Proprietary Approval to the Tri-Party Agreement, and the Approved Mortgagee shall have provided its approval to the Tri-Party Agreement, and both Herndon and the Approved Mortgagee shall be ready and willing to sign the Tri-Party Agreement at Closing.

(2) Conditions to Herndon's Obligation to Close. The following shall each be a condition precedent to Herndon's obligation to convey the Property at the Closing hereunder ("**Herndon's Conditions Precedent**", which together with Comstock's Conditions Precedent are the "**Conditions to Closing**"):

(a) All of Comstock's representations and warranties set forth in Article 12 shall be true and correct in all material respects or Comstock has notified Herndon of any changes in such representations and warranties and Herndon has accepted such.

(b) Comstock and Herndon shall have agreed upon the Final Project Plans, Construction Drawings and Site Plan in accordance with Article 4, and shall have agreed upon the substantially final form of the Condominium Documents in accordance with Section 8.2.

(c) Comstock and the General Contractor shall have agreed on the form of a Construction Contract, and the Construction Contract shall have been approved by Herndon in accordance with Article 4.

(d) Comstock shall have provided to Herndon the Parent Guaranty required pursuant to Section 18.2.

(e) Comstock shall have obtained from the General Contractor and provided to Herndon the Bonds required in accordance with the provisions of Article 18.

(f) Comstock and the Approved Mortgagee shall have provided their approval to the Tri-Party Agreement and shall be ready and willing to sign the Tri-Party Agreement at Closing.

(g) Comstock shall have determined and provided to Herndon a good faith estimate for the anticipated Excess Culvert Costs, anticipated Excess Relocation Costs, and anticipated Excess Transitional Parking Costs in accordance with Sections 4.1(6) and 4.12, and the parties shall have agreed upon the Excess Culvert Costs Cap set forth in Section 6.5.

(h) Comstock and Herndon shall have agreed upon a final form of the Transitional Parking Plan and Herndon shall have provided its Proprietary Approval thereof.

Section 3.5 Covenants and Agreements of Herndon Prior to Closing. Herndon covenants and agrees with Comstock that, prior to Closing:

(1) Herndon shall not, without obtaining Comstock's prior written consent in each instance: (i) make any changes or alterations to the Property; (ii) execute or create any contract to sell or option to purchase the Property; (iii) create any easement, right-of-way, covenant, condition, restriction, lease, license, occupancy agreement, lien or encumbrance with respect to the Property or any portion thereof, except with regard to the Off-Site Easements, the DVP easement described at Exhibit N, or as otherwise approved by Comstock in accordance with Article 4; or (iv) make any commitments to any governmental authorities, utility company, school board, church or other religious body, or any homeowner or homeowners' association, or to any other organization, group or individual, relating to the Property which would impose any obligation on Comstock, its successors or assigns, after the Closing Date to make any contributions of money, dedications of land or grant of easements or rights-of-way, or to construct, install or maintain any improvements of a public or private nature on or off the Property, except as approved by Comstock in accordance with Article 4.

(2) Herndon shall promptly notify Comstock in writing of any litigation, arbitration or administrative hearing concerning the Property of which Herndon obtains knowledge, any casualty affecting the Property, any notices from governmental authorities relating to the Property, or any information which shall causes any representation or warranty of Herndon to become untrue in any material respect.

(3) Herndon shall not engage in any activity or effect any transaction that adversely affects title to the Property or the physical condition of the Property (including expressly but without limitation the environmental condition), except as expressly permitted in this Agreement or as otherwise approved by Comstock.

Section 3.6 Risk of Loss. All risk of loss prior to Closing with respect to the Property or any portion thereof or any existing improvements thereon shall be borne by Herndon until the Closing.

ARTICLE 4. DESIGN; PERMITS AND APPROVALS; OFFSITE EASEMENTS.

Section 4.1 Project Plans.

(1) **Preliminary Project Plans.** Comstock and Herndon hereby approve the Preliminary Project Plans for the Project attached hereto, including preliminary versions of: (i) the conceptual design for the Arts Center and Public Parking Spaces attached hereto as **Exhibit B-1**; (ii) the plan to ensure adequate parking for downtown Herndon during construction of the Project until the Public Parking Spaces in the Parking Garage are available for public use ("**Transitional Parking Plan**"), attached hereto as **Exhibit B-2**; (iii) the plan to provide temporary relocation of the Existing Arts Center during construction of the Project until the Arts Unit is conveyed to Herndon, built-out and re-opened to the public ("**Arts Center Temporary Relocation Plan**"), attached hereto as **Exhibit B-3**; and (iv) a preliminary Project Schedule, attached hereto as **Exhibit B-4**. Comstock and Herndon hereby further approve the minimum design criteria for the Arts Walk, Parking Garage, and Arts Center, including without limitation the specifications for the cold dark shell condition of the Arts Center, attached hereto as **Exhibit B-5**.

(2) **Final Project Plans.** Comstock will prepare detailed, final plans and strategies for developing, constructing, and financing the Project based on the Preliminary Project Plans. The "**Final Project Plans**" are: (i) the issued-for-construction drawings for the Herndon Components, including the Arts Center, Public Parking Spaces and Arts Walk (which may be portions of the unified Construction Drawings for the entire Project), (ii) the Site Plan, (iii) the Transitional Parking Plan, (iv) the Arts Center Temporary Relocation Plan, and (v) the Project Schedule. Herndon shall have the right to provide its Proprietary Approval to each item comprising the Final Project Plans in accordance with Section 4.8.

(3) **Cooperation During Design.** Comstock and Herndon shall cooperate in good faith during the development of the Site Plan and Construction Drawings. Comstock shall review all plans and specifications prepared by the Architect and Other Contractors and evaluate them considering the Preliminary Project Plans and the parties' objectives. Comstock shall assist in evaluating alternative design and construction solutions where appropriate.

(4) **Approval of Final Project Plans.** Upon Proprietary Approval by Herndon of all items comprising the Final Project Plans in accordance with Section 4.8, Herndon and

Comstock shall jointly execute a memorandum identifying the Final Project Plans. The Final Project Plans shall not be revised in any material respect after Proprietary Approval thereof, except as expressly permitted herein, and Comstock shall be entitled to rely upon the approved Final Project Plans for purposes of completing the Construction Drawings and other final plans for the Project.

(5) LEED Silver or Equivalent. Comstock shall cause the Project to be designed to meet the requirements for LEED Silver Certification. Following Substantial Completion, Comstock shall either obtain the certification from the US Green Building Council or provide evidence reasonably satisfactory to Herndon that Comstock has met such certification requirements

(6) Transitional Parking Plan Costs. As soon as practical during design development, Comstock will analyze available options for providing transitional parking during construction of the Project, which shall include an analysis of Project Costs and Project Schedule impacts associated with delivering the required parking onsite, offsite and potential combinations thereof, in accordance with the Preliminary Transitional Parking Plan attached at Exhibit B-2. Not later than 60 days prior to starting any activities that will displace a majority of the existing spaces on the Property, Comstock shall present these analyses, together with a proposed Transitional Parking Plan, including, as applicable, any extended Project Schedule and any anticipated Excess Transitional Parking Costs (payable by Herndon under Section 6.6), for Herndon's Proprietary Approval.

Section 4.2 Site Plan. Comstock shall cause the Architect or Other Consultants, as applicable, to prepare the Site Plan for the Project, which Site Plan is subject to Herndon's Proprietary Approval. Upon receipt of Herndon's Proprietary Approval, Comstock shall pursue all Governmental Approvals of the Site Plan. Following receipt of all Governmental Approvals, the Site Plan shall not be revised in any material respect, except as expressly permitted herein.

Section 4.3 Construction Drawings.

(1) Comstock shall coordinate with the Architect, and with the Other Contractors, as appropriate, to create Construction Drawings for the Project, which shall be consistent with the Preliminary Project Plans with respect to the Herndon Components. As necessary, if design details appear to adversely affect construction feasibility or the Project Schedule or to deviate from the Preliminary Project Plans, Comstock shall solicit recommendations from Herndon regarding alternative design and construction solutions.

(2) Comstock shall cause the Architect to submit progress sets of the Construction Drawings (or relevant excerpts thereof) at 35%, 75% and 90% of design development, and upon completion of the issued-for-construction set, for Herndon's review and Proprietary Approval with respect to the Herndon Components. So long as the Construction Drawings comply with this Agreement and the Codes and Standards, and reflect iterative design development from the prior approved set, as applicable, Herndon shall grant its Proprietary

Approval. Upon approval of the Construction Drawings in accordance with this Section 4.3(2), Herndon and Comstock shall jointly execute a memorandum confirming the approved Construction Drawings, and all attachments thereto. The Herndon Components of the Construction Drawings shall not be revised in any material respect, except as expressly permitted herein.

Section 4.4 No Approval of Non-Herndon Components. Given the integrated nature of the Project, Herndon may provide comments to components of the Project other than the Herndon Components for Comstock's due consideration, in its sole but reasonable discretion. Notwithstanding the foregoing, the interior of the residential units, retail spaces and other portions of the Project that do not comprise the Herndon Components may be designed and constructed by Comstock in its discretion and Herndon shall have no Proprietary Approval rights over them under this Agreement. Further, Herndon shall not have Proprietary Approval of the exterior appearance or any other elements of the Project not part of the Herndon Components provided that the same remain substantially consistent with Comstock's proposal in response to the RFP selected by the Town Council. The foregoing in no way waives any Governmental Approval rights Herndon may have over the Project or any element thereof.

Section 4.5 Engagement of the General Contractor; Construction Contract.

(1) Contractor. Comstock shall select a competent, reputable and licensed general contractor, with requisite experience and reputation for safety which would qualify as a Responsible Bidder to be the General Contractor and perform the Work. As part of the selection process, Comstock may competitively bid the Work to multiple general contractors reasonably acceptable to Herndon. Herndon shall timely provide its Proprietary Approval of the proposed General Contractor in accordance with Section 4.8.

(2) Construction Contract. Comstock shall enter into the Construction Contract with the General Contractor for all labor and materials to construct the Project and perform the Work for a "fixed price" or "guaranteed maximum price" consistent with the Project Budget. The Construction Contract shall (i) require the insurance coverages specified in Section 9.8, (ii) require that Herndon be copied in writing with any notice of breach, default or termination; (iii) be assignable to Herndon or its designee; and (iv) require payment and performance bonds in accordance with Article 18. Herndon shall have the right to review the Construction Contract to confirm compliance with the terms of this Agreement and shall provide its Proprietary Approval thereof.

Section 4.6 Retention of Architect and Other Contractors. Comstock shall contract for the services of the Architect and such Other Contractors as necessary or appropriate to provide design services for construction of the Project. The Architect shall be registered or licensed (as appropriate) to practice architecture or engineering in Virginia and shall qualify as a Responsible Bidder. Comstock's contracts with such persons shall, unless otherwise agreed in writing by Herndon, (1) be assignable to Herndon or its designee, at Herndon's election, upon Default by Comstock; (2) require that a copy of any notice of breach, default or termination also

be provided to Herndon in writing; (3) require the Architect to be insured for professional liability in accordance with Section 9.8(2); and (4) not limit the Architect's liability to a ceiling amount. Comstock shall obtain the Proprietary Approval of Herndon as to the identity of the Architect to be engaged by Comstock, and the form of the contract which shall be entered into in connection with such professional. Notwithstanding the foregoing, Herndon's Proprietary Approval rights to the form of any contract with Architect shall be limited to such contract's compliance with this Agreement, including the provisions relating to construction defects and warranty coverage.

Section 4.7 Governmental Approvals and Permits.

(1) Obtaining Approvals. Comstock, at its sole cost and expense, shall be responsible for timely processing and obtaining all Governmental Approvals required for the construction and Substantial Completion of the Project. Comstock shall use diligent efforts to obtain all Governmental Approvals and to keep Herndon reasonably apprised of the status of its efforts to obtain the Governmental Approvals by the dates set forth in the Project Schedule, including providing copies of all applications for Governmental Approvals and of all final Governmental Approvals issued by the permitting authority. Herndon shall timely cooperate, as reasonably requested by Comstock, to assist in obtaining the Governmental Approvals. Such cooperation shall include facilitating in its proprietary capacity timely regulatory review of applications and other materials submitted to the Town of Herndon for approval in its governmental capacity, and execution by Herndon (in its capacity as a party to this Agreement and not its governmental capacity) of any applications, requests, plats and other documents. Governmental Approvals shall be subject to only those conditions approved by Comstock in its discretion. If an appeal or challenge is filed with respect to any of the Governmental Approvals, Comstock shall use diligent efforts to defend such appeal or challenge, at Comstock's sole cost and expense.

(2) Certification of Approvals. The Architect or the General Contractor, as applicable, shall submit written confirmation to Herndon that all Governmental Approvals have been obtained and that, in their professional judgment, no other Governmental Approvals are required for the construction of the Project.

(3) Appeal of Approvals. For purposes of this Section 4.7, no approval, permit or other entitlement for the Project shall be deemed to have been obtained and constitute a "Governmental Approval" unless and until (a) such approval, permit or entitlement has been reviewed and finally approved by the appropriate governmental agencies, (b) any ordinances with respect thereto have taken effect, and (c) the time has passed for appeal of such Governmental Approval with no appeal being filed, or any appeal or litigation with respect to such Governmental Approval has been prosecuted and resolved in a manner which is satisfactory to the parties and is not subject to remand to lower courts or governmental agencies. Comstock shall take all reasonable actions to maintain such Governmental Approvals and resolve any

litigation or appeal of any Governmental Approval, and any deadline or delivery date under this Agreement or the Project Schedule shall be extended during the period necessary therefor.

Section 4.8 Herndon's Proprietary Approvals. Proprietary Approval of the Final Project Plans, the General Contractor, Architect or other matters in accordance with this Agreement shall be provided by Herndon in its capacity as a party to this Agreement, and not in its governmental capacity. Nothing in this Agreement is intended to, and no provision shall be interpreted as, imposing an obligation upon the Town of Herndon to grant any Governmental Approval. For each instance in which Herndon's Proprietary Approval shall be required hereunder, including (without limitation) with respect to those portions of the Construction Drawings reflecting the Herndon Components of the Project, the General Contractor, the Architect and any Mortgage, the grant or denial of Herndon's Proprietary Approval shall not be unreasonably withheld, conditioned or delayed, unless stated expressly otherwise herein, and shall be subject to the procedure set forth in this Section 4.8. Herndon shall substantively respond to any request for its Proprietary Approval by Comstock within ten business days after receipt of Comstock's written request unless approval is sought from the Town Council, in which case Herndon shall have fifteen business days to respond; provided, however, that if Herndon determines it should comply with any public notice, advertising or hearing requirements, then Herndon shall have thirty business days to respond. If Herndon fails to substantively respond to any request for Proprietary Approval within ten business days after the request is received (or within such longer period as is otherwise expressly provided for Herndon's response), then Comstock shall send a second notice to Herndon advising that the requested Proprietary Approvals shall be deemed granted for all purposes under this Agreement if Herndon fails to substantively respond to Comstock's request for Proprietary Approval within five business days after the date of receipt of such second notice. If Herndon has still not provided a substantive response to Comstock's request within such five-business day second notice period, then Herndon's Proprietary Approval to such request shall be deemed granted hereunder. Comstock shall be entitled to a day-for-day extension under the Project Schedule at no cost to Herndon for any response by Herndon that is received after ten business days. For purposes of this paragraph, the term "substantively respond" or "substantive response" or words of similar import shall mean a written affirmative consent, a written denial of consent with itemized reasons for such denial described with specificity, or written itemized conditions to consent described with specificity. Herndon shall provide all Proprietary Approvals in writing.

Section 4.9 Off-Site Easements.

(1) **Offsite Easements Required.** The parties acknowledge that certain Offsite Easements may be required for Comstock to obtain the Governmental Approvals, to perform the Work, and to construct and operate the Project, but that all Offsite Easements may not be known until the design process for the Project is completed in accordance with this Article 4. Accordingly, as soon as practicable during the design process, Comstock shall determine all Offsite Easements that may be required for the Project, and shall promptly provide notice thereof

to Herndon. Comstock will use commercially reasonable efforts to avoid the need for Offsite Easements.

(2) Herndon Responsibility. Herndon shall be responsible for obtaining all Offsite Easements as a Comstock Condition Precedent to Closing in accordance with Section 3.4(1) but Herndon shall not be responsible for the cost of installation of any utilities. Herndon shall be responsible for all costs to obtain Offsite Easements; provided, however, that if any such costs to obtain Offsite Easements exceed \$50,000, then Herndon and Comstock shall share equally such costs over \$50,000 up to \$150,000. In the event that the costs to obtain the Offsite Easement are more than \$150,000 and accordingly result in an expense to Herndon in the aggregate of more than \$100,000 ("**Offsite Easement Cap**"), then Herndon shall have the right to terminate this Agreement upon no less than ten business days' notice to Comstock; provided, however, that Comstock shall have the right to elect by written notice provided to Herndon during such ten business day period to pay all excess costs for the Offsite Easements applicable to Herndon in excess of the Offsite Easement Cap, in which event this Agreement shall remain in full force and effect. Herndon shall pursue the Offsite Easements as set forth herein, and Comstock shall reimburse Herndon for all costs to obtain the Offsite Easements in excess of the Offsite Easement Cap. All Offsite Easements shall be in form and content acceptable to Comstock in its sole discretion. Comstock shall use good faith efforts to assist Herndon in obtaining the Offsite Easements, including by preparing and/or reviewing easement documents on behalf of Herndon, participating in negotiations for Offsite Easements, obtaining any Governmental Approvals of Offsite Easements, if required, and providing supporting documentation to Herndon to assist in the negotiation with offsite property owners for the Offsite Easements.

(3) Timing for Offsite Easements. Herndon shall use diligent, good faith efforts to obtain the Offsite Easements in form acceptable to Comstock by the date set forth in the Project Schedule. Comstock shall have the right to modify the Project Schedule as necessary as a result of any delay in obtaining any required Offsite Easements.

(4) Comstock Right to Acquire. Notwithstanding the foregoing, if Herndon shall fail to timely obtain any Offsite Easement, Comstock shall have the right to elect to obtain any or all Offsite Easements on behalf of Herndon in which event Herndon shall reimburse Comstock's actual costs and expenses, together with interest at the Interest Rate from the date such costs are incurred by Comstock until the date paid, up to the amount of the Offsite Easement Cap, but in all events subject to Article 15.

Section 4.10 Project Schedule; Market Pause; Pre-Closing Delay

(1) Schedule of Performance. The Preliminary Project Schedule attached hereto at **Exhibit B-4** shall be revised from time to time during the design phase of the Project prior to final approval of the Project Schedule with the other items comprising the Final Project Plans in accordance with Section 4.1(2). Both Comstock and Herndon have an affirmative obligation to comply with the time periods identified on the Project Schedule, as such time

periods may be extended or waived pursuant to express provisions of this Agreement. The foregoing notwithstanding, if Comstock's performance is delayed by Herndon's failure to comply with the time periods provided in the Project Schedule or this Agreement, including Herndon's failure to timely provide any required approvals or comments, or to appropriate or disburse funds required to be paid by Herndon hereunder, or if Comstock's performance is delayed due to Force Majeure or due to the failure of the Architect, General Contractor, other Contractors or other third parties to perform (provided that Comstock is diligently seeking to enforce the terms of its contract with such party or diligently seeking to replace such party or otherwise cure the failure), then Comstock shall be entitled to an extension in the date of performance of any obligation contained in the Project Schedule for the period caused by such failure by Herndon or a third party or Force Majeure, and the Project Schedule will be adjusted accordingly. The Project Schedule approved with the Final Project Plans may be amended or modified by Comstock at any time but only for (i) the reasons set forth in this paragraph upon notice to Herndon so long as such modification is approved by the Approved Mortgagee, or (ii) as expressly set forth otherwise herein, or (iii) upon agreement of the parties hereto.

(2) Market Pause. Notwithstanding anything to the contrary contained herein, Comstock shall have the right at any time prior to Closing, by delivery of written notice to Herndon, to delay the Closing and the performance of any obligations contained in the Project Schedule for up to twenty-four months if Comstock deems such delay is necessary due to adverse changes in the multifamily or retail market in Herndon, Virginia, which affect the feasibility of the Project. If Comstock delays the Closing pursuant to this Section 4.10(2) and then subsequently does not proceed to Closing due to any reason other than Herndon's default hereunder, then Comstock shall assign to Herndon, at no cost to Herndon, all of Comstock's right, title and interest to all Project plans and designs and Construction Drawings (if and to the extent they exist) and shall promptly deliver all such plans, designs, and Construction Drawings to Herndon in paper and electronic form (to the extent they exist). Comstock shall include in its contracts with the Architect and other design professionals for the Project provisions allowing Comstock to convey such rights.

(3) Pre-Closing Delay. Upon written request of either party, and with the reasonable consent of the other party, the parties may delay the Closing and the performance of any obligations contained in the Project Schedule for up to twenty-four months if Herndon cannot proceed to Closing due to any unforeseen regulatory and/or governmental requirements outside its control, including rules, regulations, requirements or actions from any federal or state government or regulatory agency or legislative body.

(4) Coordination of Plans. Comstock has coordinated the preparation of the Preliminary Project Plans, and shall coordinate the completion of the Final Project Plans, Site Plan and Construction Drawings, including all architectural and engineering plans and specifications for the Project, and shall cause such applicable portions thereof to be submitted to Herndon for Proprietary Approval in accordance with this Article 4.

(5) Compliance with Codes and Standards. Comstock shall ensure that the design of the Project and all plans related thereto, including the Final Project Plans, Site Plan and Construction Drawings, (i) conform with standards for a first-class, mixed-use development in Fairfax County, Virginia, and (ii) comply with all applicable Codes and Standards. Herndon shall in good faith cooperate with Comstock to achieve compliance with the Codes and Standards.

(6) Payment for Design. Comstock shall, at its sole cost and expense, pay all sums and expenses incurred in connection with the design of the Project, including for (i) preparing the Final Project Plans, Construction Drawings, Site Plan, and any Changes thereto (other than Herndon Changes, for which Herndon has the responsibility for payment), and (ii) obtaining the Governmental Approvals.

(7) Pre-Closing Meetings. Comstock and Herndon shall meet (either in person or by telephone) monthly during the pre-Closing design phase to provide updates on the status and approvals of the design elements described in this Article 4.

(8) Cost Controls. Comstock shall, and shall cause Contractor to, use reasonable efforts to obtain subcontracts, equipment, and materials that represent the best value (but not necessarily the lowest cost) as determined by Comstock and Contractor in their reasonable, professional discretion. Comstock shall, and shall cause Contractor to, use reasonable efforts (but neither Comstock nor Contractor shall be required hereunder) to use competitive processes wherever practicable and advantageous for such subcontracts, equipment and materials. Upon request of Herndon, Comstock shall provide any documents or information Herndon reasonably requests relating to Comstock's performance of its obligations under this paragraph.

Section 4.11 Estimated Appropriation Amounts. As soon as practicable during the design process, but in any event prior to Closing, Comstock shall provide to Herndon good faith estimates for anticipated Excess Culvert Costs, anticipated Excess Relocation Costs, and anticipated Excess Transitional Parking Costs, as set forth in Article 6, in order for Herndon to appropriate such funds as required hereunder.

Section 4.12 Option for Design and Construction of Interior of Arts Center.

(1) To maximize the utility of the Arts Center and to ensure efficiency in design and construction of the interior improvements, Herndon shall contract for the interior design of the Arts Center concurrently with Comstock's advancement of the overall Project design hereunder. The parties shall coordinate to advance iterative design development of both the interior of the Arts Center and those facilities outside the Arts Center required for its operation (e.g., utilities, mechanical equipment, etc.). If Herndon elects to defer the interior design process for any reason, Herndon shall be responsible for any modifications to the Arts Unit or Buildings later required to accommodate its build out..

(2) Upon the written request of Herndon given no later than ninety days after the Effective Date, which request shall include Herndon's anticipated program and preliminary design requirements, Comstock, with input from Herndon, shall engage in the informal procurement and negotiation of a potential contract to engage a third-party designer to design the interior of the Arts Center and all related and necessary infrastructure to provide a wholly and operational functioning Arts Center on behalf of Herndon ("Arts Center Design"). Third-party designers shall be limited to Responsible Bidders reasonably acceptable to Comstock and Herndon, and may be limited to a single third-party designer if Comstock and Herndon agree. Comstock shall, with Herndon's input, develop a contract with terms and conditions reasonably acceptable to Comstock and Herndon for the selected third-party designer to perform all services necessary to the creation of separate plans and specifications for the Arts Center Design, including the issued-for-construction documents. For ten business days after Herndon's receipt of the final draft contract ("Arts Center Design Option Period"), Herndon shall have the option to engage Comstock to coordinate and manage the Arts Center Design on behalf of Herndon for a fee of five percent of the total cost, with Comstock entering into the proposed contract with the third-party design professional. Herndon shall exercise its option hereunder by delivery of written notice to Comstock prior to the expiration of the Arts Center Design Option Period. If the option is exercised by Herndon, then (i) the parties shall enter into an amendment or supplement to this Agreement or a separate agreement (in both cases reasonably acceptable to both parties) for the performance of such work by Comstock and the third-party design professional ("Arts Center Design Amendment"), and (ii) Herndon shall appropriate the funds necessary to pay Comstock for such work. The Arts Center Design Amendment shall provide (x) that Herndon shall pay Comstock all amounts due to the third-party design professional under its contract with Comstock and a management fee in the amount of 5% of amounts due to the third-party design professional under its contract, which amounts shall be payable in periodic installments during the design process, and (y) such other reasonable terms for the design management services as are usual and customary.

(3) For ninety days after the Arts Center Design is completed in accordance with the Arts Center Design Amendment ("Arts Center Buildout Option Period"), Herndon shall have the option to engage Comstock to manage the development and construction of the interior of the Arts Center on behalf of Herndon in accordance with the final Arts Center Design and to contract with a general contractor for such construction ("Arts Center Buildout"). Herndon shall exercise its option hereunder by delivery of written notice to Comstock prior to the expiration of the Arts Center Buildout Option Period. If the option is exercised by Herndon, then (i) the parties shall enter into an amendment or supplement to this Agreement or a separate agreement (in both cases reasonably acceptable to both parties) for the performance of such work by Comstock ("Arts Center Buildout Amendment"), (ii) the parties shall cooperatively select the General Contractor or other contractor reasonably acceptable to both Comstock and Herndon and approve a Guaranteed Maximum Price or Lump Sum Price contract for the construction reasonably acceptable to both Comstock and Herndon, and (iii) Herndon shall appropriate the

funds necessary (including appropriate contingencies) to pay Comstock for such work. The Arts Center Buildout Amendment shall provide (x) that Herndon shall pay Comstock for all amounts payable to the contractor under its contract and a construction management and development fee for such work in the amount of 5% of all amounts paid to the contractor, which amounts shall be payable in periodic installments during construction, (y) that the general contractor selected shall be a Responsible Bidder, and (z) such other reasonable terms for construction management as are usual and customary. The Arts Center Buildout shall be performed in accordance with a project schedule developed by Comstock and its contractor and reasonably approved by Herndon, which will result in the coordination of the Arts Center Buildout with the Project; provided, however, that the Arts Center Buildout shall not delay occupancy of any building in the Project.

(4) All approvals provided by Herndon pursuant to this Section 4.12 shall be Proprietary Approvals.

ARTICLE 5. CONSTRUCTION OF PROJECT; REPORTING; INSPECTION.

Section 5.1 Owner-Developer; Obligation to Construct Project. In accordance with the terms and conditions of this Agreement, Comstock shall provide for construction of the Project at no cost to Herndon, except as otherwise expressly provided in this Agreement. Comstock is not a licensed contractor pursuant to Chapter 11 of Title 54.1 of the Code of Virginia. As such, for purposes of this Agreement, Comstock shall serve as an "Owner-developer," as defined in Virginia Code § 54.1-1100, which means Comstock shall supervise the construction of the Project and shall contract as may be required with licensed contractor(s). Without limitation of the foregoing, as further consideration for Herndon conveying the Property to Comstock, after the Closing (but subject to the pre-Closing design obligations set forth in Article 4) Comstock shall coordinate construction of the Project in its entirety in accordance with the Final Project Plans and the terms and conditions of this Agreement.

Section 5.2 Period of Construction. The Work shall be commenced and performed within the times set forth on the Project Schedule, subject to day for day extensions due to Force Majeure, delays caused by Herndon, and other delays expressly permitted pursuant to Section 4.10(1).

Section 5.3 Construction Phase Services. Comstock, by enforcement of the Construction Contract, Architect's contract and contracts with Other Contractors, will perform the following services relating to the construction of the Project:

(1) **Maintaining Appearance of Project Site.** Comstock shall cause the Project site to be kept in a neat and orderly manner, with trash and construction debris, dust, water flows or other similar circumstances applicable to typical construction sites of size and scope as the Project controlled in accordance with all applicable Codes and Standards, including siltation controls, fencing, pedestrian and public signage. Comstock shall maintain public access to downtown Herndon during construction.

(2) Project Team Engagement/Dismissal. Comstock shall manage the contractors and consultants performing any part of the Work, including the General Contractor, Architect and Other Contractors. Comstock shall have the right to replace and substitute any such consultants during the construction of the Project as Comstock deems necessary or appropriate in its reasonable, professional judgment; provided, however, that Herndon shall have the right to provide its Proprietary Approval for any replacement general contractor or architect, and their applicable contracts of service (but only for compliance with the terms of this Agreement).

(3) Lien Claims. Comstock shall keep the Project free from any mechanics, materialmen and subcontractor liens, and if any mechanic's, materialman's or similar liens are filed with respect to the Project, take such action, or cause the General Contractor to take such lawful action, as Comstock deems appropriate in its sole and absolute judgment to remove any such liens of record. Such actions may include contesting or settling and discharging such lien or liens, and removing the same by bonding or otherwise.

(4) Warranty Corrections. As applicable during the ongoing construction of the Project, Comstock shall enforce all warranties and guaranties of manufacturers supplying materials and equipment used in construction of the Project, and warranties and guaranties of the General Contractor and its subcontractors and materialmen specified in their respective contracts, to correct any known or identified defects in the construction of the Project or in the installation or operation of any equipment or fixtures therein.

(5) Safety and Security. Comstock shall cause the General Contractor to establish and maintain during construction a proper safety and security program as needed for prudent safety and risk management at the site. Compliance shall be monitored through quarterly (or more frequent, as necessary) inspections of the site. Comstock shall notify Herndon of any material accidents, damage or injury claims, or security-related incidents.

(6) Contract Enforcement. Comstock shall enforce the terms of the Construction Contract, and shall exercise all prerogatives under the Construction Contract as and when deemed necessary by Comstock to comply with Comstock's obligations hereunder.

(7) Technical Inspections. In instances where technical inspection and testing are being provided by a third party, Comstock shall cause the General Contractor or Architect to coordinate with the third party in such technical inspection and testing. All technical inspection reports will be in a format approved by and will be reviewed by Comstock.

(8) Claims. Comstock shall keep track of material delays in progress of the Work and perform a preliminary evaluation of the contents of all claims (including claims for increases in the contract sum or extensions to the Project Schedule under the Construction Contract), obtain the information concerning the claim, review the time/cost impact of the alleged cause, all in accordance with Comstock's usual and customary practices. Comstock shall coordinate the submission of all insurance claims (whether by the General Contractor, Comstock,

Herndon or others) and, to the extent applicable, shall process all paperwork relating to such claims.

(9) Inspection of Work by Comstock. Comstock shall inspect, either through employees of Comstock or through Comstock's construction manager or Contractor, and at such intervals reasonably determined by Comstock in the diligent performance of its obligations hereunder, the progress of the construction of the Project. It shall be the obligation of Comstock to monitor that all materials and labor furnished in connection with the Work are supplied or performed in a good and workmanlike manner in compliance with applicable Codes and Standards and the Approvals, and that the Work is performed (1) within the time frames allocated thereto under the Project Schedule and (2) in accordance with the Final Project Plans and the Construction Drawings.

Section 5.4 Temporary Relocation of the Arts Center. Herndon or Comstock, as applicable, in accordance with the Arts Center Temporary Relocation Plan, shall cause the Existing Arts Center to be relocated no later than thirty days after Closing, or otherwise as set forth in the Project Schedule. Comstock shall have no obligation to commence the demolition of the Existing Improvements, the Environmental Remediation or any other portion of the Work until the Existing Arts Center has been relocated and, if a delay occurs, the Project Schedule shall be accordingly modified. If Herndon fails to perform its obligations under the Arts Center Temporary Relocation Plan to relocate the Existing Arts Center in accordance with the Project Schedule, Comstock shall have the right to perform such obligations at Herndon's cost. In such event, Herndon shall reimburse Comstock within thirty days after receipt of written invoice with supporting documentation evidencing Comstock's actual costs and expenses, subject to Article 15. Without limitation or modification of the foregoing, Comstock shall have the right to perform such other Work at the Property after Closing hereunder as Comstock deems appropriate so long as such other Work does not interfere with the relocation of the Existing Arts Center in accordance with the Arts Center Temporary Relocation Plan.

Section 5.5 Changes to Design.

(1) Changes Made by Comstock without Herndon Approval. Comstock shall have the right to make the following Changes to the Construction Drawings, Site Plan and Final Project Plans, after the same have been finally approved, without the further consent or Proprietary Approval of Herndon, so long as written notice is provided to Herndon of such changes and such changes do not result in any additional cost or expense to Herndon (each a "**Change Not Requiring Approval**"):

(a) Any Change required by any governmental authority to obtain any Governmental Approval, so long as the Change does not materially affect the appearance of the Arts Walk or Arts Center, reduce the amenities included in the Site Improvements, reduce the size of the Arts Center, adversely affect the operation of the Arts Center, or reduce the Public Parking Spaces or parking spaces for the Arts Center within the Parking Garage.

(b) Any Change required by Comstock's Lender, so long as the Change does not materially affect the appearance of the Arts Walk or Arts Center, reduce the amenities included in the Site Improvements, reduce the size of the Arts Center, adversely affect operation of the Arts Center, or reduce the Public Parking Spaces or parking spaces for the Arts Center within the Parking Garage.

(c) Any Change due to actual site conditions, including unforeseen or unknown environmental hazards, unsuitable soils conditions, or other matters requiring remediation or correction in order to construct the Project.

(d) Any Change that is not material in nature and is required in order to adjust to market conditions for labor and materials for construction.

(e) Any Change to a Building that does not affect the Arts Center, or that affects the interior of any residential or retail components of the Project.

(f) Any other Change not affecting the Herndon Components of the Project, so long as such Change complies with the terms and conditions of this Agreement.

(2) Changes Made by Comstock Requiring Herndon Approval. The following Changes to the Construction Drawings, Site Plan and Final Project Plans, after the same have been finally approved, may be made by Comstock only with the prior Proprietary Approval of Herndon (each a "**Change Requiring Approval**"):

(a) Any Change that materially alters the appearance of the Project, materially reduces the amenities included in Site Improvements or size of the Arts Center, materially affects the functioning and operation of the Arts Center, or reduces the number of Public Parking Spaces or parking spaces applicable to the Arts Center within the Parking Garage.

(b) Any material Change to the interior of the Arts Center.

(3) Changes Requested by Herndon. Herndon shall have the right to require Comstock to make the following Changes to the Construction Drawings, Site Plan and/or Final Project Plans, after the same have been finally approved, with the prior written consent of Comstock (which consent shall not be unreasonably withheld, conditioned or delayed), so long as all costs incurred by Comstock due to such Changes are paid by Herndon, and the Project Schedule is accordingly modified as reasonably necessary to accommodate such Change at no additional cost or liability to Comstock (each a "**Herndon Change**"):

(a) Any Change to the interior of the Arts Center that does not materially affect the structure or systems of the Building in which the Arts Center is located, nor materially affect the residential and retail components contained within such Building.

(b) Any Change to the Arts Walk, so long as such Change does not affect any other portion of the Project nor materially affect the Project Schedule.

(c) Any Change to the Public Parking Spaces so long as such Change does not affect the remainder of the Parking Garage nor materially affect the Project Schedule.

It shall not be deemed unreasonable for Comstock to reject or condition any Herndon Change if such Change (i) materially modifies the Project Schedule or delays Substantial Completion of the Project, or (ii) increases Comstock's liability under this Agreement, or (iii) is, in Comstock's reasonable and good faith determination, unfeasible, or (iv) is incompatible with Comstock's intended development of a first class mixed use project on the Property, or (v) is not recommended by the General Contractor or Architect. The costs for any Herndon Change shall include a market development fee of five percent of the total costs of such Change, and shall be payable to Comstock by Herndon prior to the commencement of the work included within such Change Order. Comstock shall have no obligation to make any Herndon Change until all costs estimated to be incurred by Comstock for such Herndon Change are appropriated.

(4) Change Orders; Corresponding Changes to Project Schedule. A Change shall be made by a written Change Order approved by Herndon (as a Proprietary Approval) and Comstock, as applicable, under the terms of this Section 5.5. Change Orders shall include the scope of the Change, the costs of such Change (including a development fee to Comstock, if applicable) and corresponding modifications of the Project Schedule, if any. Comstock shall coordinate the negotiation and processing of all Change Orders to the Construction Contract with Contractor, and shall, if required by this Section 5.5, obtain Herndon's Proprietary Approval to any Change Order prior to Comstock's execution thereof. Upon receipt of Herndon's Proprietary Approval to any Change, Comstock shall have the right to rely upon such approval to process any Change Orders with the General Contractor, Architect and Other Consultants and Herndon shall be bound by such Change.

(5) Costs of Change Orders. Except for Herndon Changes consented to in writing by Comstock, the cost and expense of any and all Change Orders shall be borne solely by Comstock. Notwithstanding the foregoing, if Herndon requires any Herndon Change that results in a Change Order (i) that does not result from errors or omissions by Comstock, the Architect, the Contractor or from a failure by Comstock to comply with any term of this Agreement, and (ii) that has the effect of increasing the total cost of the Project in excess of the Project Budget, then, in addition to the cost of any Herndon Change, Herndon shall appropriate and pay all direct design and direct construction costs and expenses incurred respecting such Change Order prior to Comstock commencing the work set forth in the Change Order.

(6) Extension of Schedule for Changes. If Herndon requests or consents to any Change Order that necessitates a change to the Project Schedule, then Herndon shall agree to extend any deadlines or delivery dates under this Agreement or the Project Schedule as required by the Change.

(7) Withholding Consent to Herndon Change. Notwithstanding anything to the contrary contained in this Agreement, Comstock has the right to withhold its consent to any

Herndon Change for which Herndon has not or cannot appropriate funds, for which Herndon does not agree to pay in full, or for which Herndon withholds its consent to extend corresponding deadlines or dates in the Project Schedule.

Section 5.6 Records, Reports, Meetings and Inspections.

(1) Maintenance of Records. Comstock shall develop and maintain on a current basis a system of accounts and a document filing system with respect to the Project and the performance of Comstock's obligations under this Agreement, in accordance with Comstock's usual and customary practices. All records shall be maintained at the address specified in this Agreement for notices to Comstock or at such other location in Northern Virginia elected by Comstock. All records received or maintained by Comstock relating to the Project pursuant to this Agreement are and shall remain the property of Comstock. Each party shall not destroy any material records relating to this Agreement for a period of at least five years following termination or Final Completion.

(2) Reports. During the design phase, Comstock shall provide periodic reports in a form reasonably acceptable to Herndon. Following Closing and commencement of construction, Comstock shall provide monthly reports containing (i) a status of construction; (ii) a summary of Change Orders made during the month covered by the report; and (iii) any revision to the Project Schedule made during the month covered by the report. Monthly reports will be provided on or about the fifteenth day of each calendar month following commencement of construction and continuing through the month following Final Completion of the Project. The parties may, from time to time, mutually agree to modify, supplement or amend the reporting requirements of this Agreement. Comstock shall supply such additional information as Herndon reasonably may request about each Herndon Component.

(3) Meetings. During the design phase, Herndon's representatives designated in accordance with Section 21.6 shall attend periodic design meetings, as coordinated by Comstock, to advance design of the Herndon Components. Following Closing and commencement of construction, Comstock shall schedule monthly on-site meetings with the General Contractor, the Architect and the Other Contractors (as necessary), and representatives of Herndon to update Herndon on the progress of the Work.

(4) Inspections. During construction, Herndon's representatives designated in accordance with Section 21.6 shall have reasonable access to the Property to inspect the progress of the Work, review plans and monitor compliance with this Agreement. Other Herndon personnel may visit the site with reasonable prior notice to Comstock. All Herndon personnel having access to the site shall comply with the General Contractor's on-site rules and regulations for safety and security, including any requirements regarding the provision to General Contractor or Comstock with prior notice.

Section 5.7 Insurance of Architect, General Contractor and Other Contractors.

Comstock shall require that the Architect, the General Contractor, the Other Contractors, and

their respective subcontractors and subconsultants maintain all insurance policies required by Section 9.8. Comstock shall ensure that such policies (except for Worker's Compensation and professional liability policies) name Herndon, Comstock, and Comstock's Lender as additional insureds. Comstock shall obtain appropriate certificates of insurance evidencing the same, from the Architect and the General Contractor in form reasonably acceptable to Herndon. Upon request by Herndon given at the time of Herndon's approval of the General Contractor and the Architect, as applicable, Comstock shall obtain and furnish to Herndon the insurance policies, amendments, and endorsements thereto evidencing that the General Contractor and the Architect are maintaining the insurance required by this Agreement. If requested by Comstock in writing, Herndon shall treat the policies, amendments, and endorsements so furnished to it as confidential and proprietary and exempt from public release to the extent allowed by law to do so.

Section 5.8 Substantial Completion; Punchlists.

(1) Close-Out Services. Upon Substantial Completion of the Herndon Components, Comstock shall advise Herndon thereof in writing. Within sixty days following delivery of such notice, Comstock shall complete the following (herein sometimes referred to as "Close-Out" of the Project):

(a) Prepare an updated statement setting forth the costs incurred in connection with the completion of the Herndon Components to date and the estimated costs for those items of Work not completed on the Herndon Components due to punch list or warranty issues or not yet billed. Herndon acknowledges that Comstock will not have a final accounting of the Project until Final Completion;

(b) Deliver to Herndon, to the extent not previously delivered, all reports regarding the successful Environmental Remediation;

(c) Obtain and deliver to Herndon a certification of Substantial Completion from the Architect on AIA Form G704-2000 or such other mutually acceptable form as may reasonably be requested with regard to the Herndon Components and the structures containing the Herndon Components;

(d) Obtain and deliver copies to Herndon of lien waivers from the General Contractor for the Herndon Components and the common elements of the Condominium; provided, however, that such lien waivers may be conditional upon payment of retainage and amounts related to completion of punch list and warranty items; and provided, further, that such lien waivers shall not be required if Comstock cannot obtain such from General Contractor due to Herndon's failure to pay any amounts due hereunder;

(e) Provide to Herndon for Herndon's signature the Certificate of Termination and Release in accordance with Section 5.8(2).

(f) Coordinate and schedule with the General Contractor for the timely completion of any 'punch list' items remaining with regard to the Herndon Components in compliance with the Construction Contract and Section 5.8(4).

(2) Certificate of Termination and Release. Upon Substantial Completion of the Herndon Components and satisfaction of all Close-Out obligations in accordance with Subsection 5.8(1), Herndon shall furnish a Certificate of Termination and Release substantially in the form attached hereto as Exhibit G and incorporated by this reference. The Certificate of Termination and Release shall be in recordable form, and shall be recorded in the Land Records at Comstock's expense once the conditions of Section 8.6 have been satisfied.

(3) As Built Plans. Comstock shall require that the General Contractor and/or Architect promptly provide to Herndon half-size "as-built" plans for the Herndon Components and any Building or structure containing the Herndon Components. Upon request, Comstock shall also deliver to Herndon an electronic copy of the as-built plans for the Herndon Components.

(4) Preparation of Punchlists. Comstock shall assist the General Contractor and the Architect in scheduling inspections to determine the dates of Substantial Completion of the Project and in preparing punchlists. Comstock shall notify Herndon in writing five days prior to any such inspections of the Herndon Components, and allow Herndon to participate in such inspections and incorporate Herndon's comments on the Herndon Components into the inspection results. Comstock shall include comments from Herndon with regard to the Herndon Components in the punch list and interface between the Architect and the General Contractor in coordinating completion of all open items. Comstock shall monitor the General Contractor's completion of all items on the punchlists and coordinate final inspections to confirm the date of Final Completion.

Section 5.9 Final Completion. Comstock shall provide unconditional lien waivers from the General Contractor concurrently with delivery of such lien waivers to the Approved Mortgagee.

Section 5.10 Herndon's Audit Rights. Upon no less than ten business days' prior written notice, and no more often than twice per calendar year during the design and construction of the Project and once following Final Completion, Herndon may, at its option and at its expense (except as set forth below), conduct an examination of the books, records and accounts of Comstock for the purpose of auditing the Herndon Components, and the payments owed or paid by Herndon in accordance with Article 6 of this Agreement. Comstock shall reasonably cooperate to make all Project records and Article 6 payments available to Herndon and its auditor; provided that Herndon shall conduct any auditor's inspections solely during normal business hours. If the final audit performed following Final Completion discloses an overpayment to Comstock in excess of five percent, then the cost of the final audit shall be borne by Comstock; otherwise, the cost thereof shall be borne by Herndon.

ARTICLE 6. HERNDON CONTRIBUTION.

Section 6.1 Payment of Project Costs. Comstock shall be responsible for all Project Costs, except as set forth expressly otherwise in this Article 6 or elsewhere in this Agreement.

Section 6.2 Fixed Payment to Comstock. As additional consideration for the development and construction of the Project and conveyance of the Arts Unit at the Arts Unit Closing, Herndon shall pay Comstock the stipulated amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00), subject to adjustment in accordance with the provisions of this Article 6 ("**Fixed Payment**"). The Fixed Payment shall be payable by Herndon to Comstock in equal pro rata monthly amounts (to be determined prior to Closing based upon the Project Schedule) contemporaneously with the monthly construction draw, commencing on the General Contractor's first draw request. The Fixed Payment does not include other amounts payable by Herndon hereunder, including (without limitation) for Offsite Easements, Excess Culvert Costs, Excess Environmental Costs, Excess Relocation Costs, Excess Transitional Parking Costs, Herndon Changes, costs under any Arts Center Design Amendment and Arts Center Buildout Amendment or otherwise due under this Agreement.

Section 6.3 Payment for Costs for Environmental Remediation. The Allowance for the Environmental Remediation in the Project Budget is Five Hundred Thousand and No/100 Dollars (\$500,000.00) ("**Environmental Remediation Allowance**"). Any Project Costs incurred by Comstock to perform the Environmental Remediation (including all costs of obtaining third party reports, maintaining and providing records of remediation and compliance with the VBAF and other governmental authorities) in excess of the Environmental Remediation Allowance shall be the responsibility of Herndon ("**Excess Environmental Costs**"). Herndon shall pay to Comstock all Excess Environmental Costs upon the earlier to occur of (i) thirty days after receipt by Herndon of written invoice from Comstock detailing the Excess Environmental Costs, together with third party invoices, environmental reports and other reasonable supporting documentation evidencing such Excess Environmental Costs, or (ii) the Arts Unit Closing. Comstock overhead and general and administrative expenses are specifically excluded from amounts counted toward this Allowance and toward any excess costs.

Section 6.4 Payment of Excess Costs of Arts Center Temporary Relocation Plan.

(1) The Allowance for the Arts Center Temporary Relocation Plan in the Project Budget is Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) ("**Relocation Allowance**"). Project Costs incurred by Comstock to relocate the Existing Arts Center in excess of the Relocation Allowance shall be the responsibility of Herndon ("**Excess Relocation Costs**"). Herndon shall pay to Comstock all Excess Relocation Costs upon the earlier of (i) thirty days after receipt by Herndon of written invoice from Comstock detailing the Excess Relocation Costs, together with third party invoices and other reasonable supporting documentation evidencing the Excess Relocation Costs, or (ii) the Arts Unit Closing. Comstock

overhead and general and administrative expenses are specifically excluded from amounts counted toward this Allowance and toward any excess costs.

(2) Notwithstanding the foregoing, Herndon may elect, prior to Closing, to perform the Arts Center Relocation at Herndon's sole cost, expense and liability, in which event the relocation shall be performed in accordance with a schedule mutually agreed upon by Comstock and Herndon, but not later than thirty days after Closing. If Herndon elects to undertake responsibility for relocating the Existing Arts Center and successfully completes the relocation without any cost, expense, or liability being incurred by Comstock (and without delay), then the Fixed Payment shall be reduced by the amount of the Relocation Allowance.

Section 6.5 Payment of Excess Costs for Culvert Repair and Maintenance. The Allowance for the Culvert Repair and Maintenance in the Project Budget is One Hundred Thousand and No/100 Dollars (\$100,000.00) ("**Culvert Allowance**"). Any Project Costs incurred by Comstock to perform the Culvert Repair and Maintenance (other than to repair any damage caused during development and construction of the Project) in excess of the Culvert Allowance shall be the responsibility of Herndon ("**Excess Culvert Costs**"); subject, however, to a reasonable cap on Herndon's obligation to pay Excess Culvert Costs determined by the parties during the design process for the Project and identified as a Herndon Condition Precedent to Closing in accordance with Section 3.4(b) ("**Excess Culvert Costs Cap**"). Herndon shall pay to Comstock all Excess Culvert Costs upon the earlier of (i) thirty days after receipt by Herndon of written invoice from Comstock detailing the Excess Culvert Costs, together with third party invoices and other reasonable supporting documentation, or (ii) the Arts Unit Closing. Comstock overhead and general and administrative expenses are specifically excluded from amounts counted toward this Allowance and toward any excess costs.

Section 6.6 Payment of Excess Costs for Transitional Parking Plan.

(1) The Allowance for the Transitional Parking Plan in the Project Budget is Five Hundred Thousand and No/100 Dollars (\$500,000.00) ("**Transitional Parking Allowance**"). Any Project Costs incurred by Comstock to provide transitional parking during the construction of the Project in accordance with the Transitional Parking Plan in excess of the Transitional Parking Allowance shall be the responsibility of Herndon ("**Excess Transitional Parking Costs**"). Herndon shall pay to Comstock all Excess Transitional Parking Costs upon the earlier to occur of (i) thirty days after receipt by Herndon of written invoice from Comstock detailing the Excess Transitional Costs, together with third party invoices or other reasonable supporting documentation, or (ii) the Arts Unit Closing.

(2) Notwithstanding the foregoing, Herndon may elect, by written notice to Comstock given within one hundred twenty days after the Effective Date, to provide transitional parking for the Project by negotiating off-site leases or licenses at rates which reduce the total costs for transitional parking to an amount less than the Transitional Parking Allowance, in which event Comstock shall be relieved of all obligation to perform the Transitional Parking Plan. If Herndon timely elects to undertake responsibility for providing transitional parking

without any cost, expense, or liability being incurred by Comstock (and without delay), then the Fixed Payment shall be reduced by the amount of the Transitional Parking Allowance. Herndon's failure to timely exercise its right to provide the transitional parking for the Project in accordance with this Section 6.6 shall be deemed Herndon's waiver of such right, unless otherwise consented to by Comstock in writing.

Section 6.7 Plan of Finance. Herndon, through the Herndon Town Manager, shall request that the Herndon Town Council either (1) include in its annual operating or capital budget or (2) finance or cause financing of the those amounts it is obligated to pay Comstock for the Project in accordance with this Article 6 in a manner that results in the availability of funds in the amounts required herein by Closing.

Section 6.8 Use of Virginia Brownfields Restoration and Economic Development Assistance Fund Grant. Herndon is pursuing a matching grant from the VBAF for the Environmental Remediation. Comstock shall reasonably cooperate with Herndon to allow Herndon, to the extent reasonably practical, to obtain such grant money from VBAF and to use such money to provide the contribution amounts required by Herndon in this Article 6. Comstock's cooperation in accordance with this Section 6.8 shall include, among other things, (i) maintaining appropriate records as required by the Grant Performance Agreement, so long as such Grant Performance Agreement records requirements are approved by Comstock (which approval shall not be unreasonably withheld, conditioned or delayed) and providing records and data to Herndon to fulfill reporting requirements associated with the grant, (ii) ensuring data collected reflects those certain certifications by the Virginia Environmental Laboratory Accreditation Program attached hereto as Exhibit H and incorporated by this reference, and (iii) using good faith efforts to complete abatement by the applicable dates set forth in the Project Schedule unless that date can be extended with the VBAF. All costs incurred by Comstock to comply with this Section 6.8 shall be deemed Project Costs applicable to the Environmental Remediation in accordance with Section 6.3.

Section 6.9 Failure to Make Payments. If Herndon fails to make timely payment of any amounts due to Comstock under this Article 6 or otherwise that have been previously appropriated for such purpose and are not in dispute, such failure shall be a default by Herndon under this Agreement, subject to any applicable notice and cure period. Any payment hereunder received more than thirty days past due shall accrue interest at the Interest Rate from the date such installment or payment became due to the date of payment.

Section 6.10 Precedent to Arts Unit Closing. Notwithstanding anything to the contrary contained herein, Comstock's obligation to convey the Arts Unit to Herndon in accordance with Article 8 shall be expressly conditioned upon Herndon paying to Comstock all amounts owed to Comstock hereunder which are not in dispute.

Section 6.11 Excess Costs Caused by Comstock. Notwithstanding anything to the contrary set forth herein, in no event shall Herndon be responsible for paying that portion of any Excess Environmental Costs, Excess Relocation Costs, Excess Culvert Costs or Excess

Transitional Parking Costs which are caused by the negligence or willful misconduct of Comstock or any person providing any of the Work under Comstock. Notwithstanding the foregoing, if the negligence or willful misconduct of anyone other than Comstock, its agents or employees is the primary cause of such excess costs, and Comstock demonstrates that (i) it has exercised diligent efforts in its contracting and administration of the Work resulting in any such excess costs, and (ii) despite diligent efforts it cannot recover all such excess costs from the party responsible therefore, then Herndon shall remain responsible for them.

Section 6.12 Herndon Payment Responsibility. Notwithstanding any other provision of this Agreement, Herndon shall not be required to pay Comstock any amount if the Closing does not occur.

ARTICLE 7. UNWIND.

Section 7.1 Unwind Event. Each of the following will constitute an “Unwind Event” under this Agreement: (i) the failure of Herndon to obtain any Offsite Easements prior to Closing in accordance with Section 7.2; (ii) the failure or inability of Herndon to provide its Proprietary Approval to the Herndon Components of the Project, the Final Project Plans, the Site Plan, the Construction Drawings, the Architect, the General Contractor, or any other matter for which Herndon is to provide its Proprietary Approval hereunder in order for Comstock to design, develop and construct the Project and obtain the Governmental Approvals; (iii) the failure of any of Comstock’s Conditions Precedent to Closing set forth in Section 3.4 which are not waived by Comstock; and (iv) the Project Costs are determined to be materially greater than anticipated and result in the Project being economically infeasible in Comstock’s sole determination, as set forth in Section 7.4.

Section 7.2 Exercise of Unwind. If any Unwind Event occurs prior to Closing, except as otherwise set forth in Section 7.3 and 7.4, Comstock shall have the right to terminate this Agreement by delivering an Unwind Notice to Herndon. Within ten business days after receipt of an Unwind Notice, and provided the Unwind Event has not been cured within such ten business day period, this Agreement shall be deemed terminated and of no further force and effect. Following a termination for an Unwind Event, the parties shall have no further rights, obligations or liabilities hereunder except for those that expressly survive termination, and each party shall bear its own costs and expenses incurred prior to termination.

Section 7.3 Unwind for Inability to Obtain Offsite Easements. If the Unwind Event is the result of the inability to obtain Offsite Easements or other interests in land prior to Closing which are necessary for the development and construction of the Project, Comstock shall provide written notice to Herndon of the occurrence of such Unwind Event and thereafter Herndon and Comstock agree to cooperate and work together in good faith for sixty days to attempt to resolve the issue to Comstock’s satisfaction. If the Offsite Easements are not obtained by the expiration of such 60-day period, then Comstock may terminate this Agreement by delivery to Herndon of an Unwind Notice.

Section 7.4 Unwind for Project Costs. If the Unwind Event is the result of the Project Costs being materially greater than anticipated in the Project Budget and Comstock determines in its reasonable discretion that the Project is financially infeasible, then the parties shall use good faith efforts for sixty days to value engineer the Project. If the parties are unable through value engineering to obtain an estimate of Project Costs in amount acceptable to Comstock in its discretion, then Comstock may terminate this Agreement by delivery to Herndon of an Unwind Notice.

Section 7.5 Prior to Closing Only. Notwithstanding anything to the contrary contained herein, Comstock's right to unwind this Agreement in accordance with this Article 7 shall only be effective prior to Closing. Upon Closing and the transfer of the Property from Herndon to Comstock in accordance with Article 3, Comstock's right to terminate this Agreement in accordance with Article 7 shall be void and of no further force and effect.

ARTICLE 8. CREATION OF CONDOMINIUM; TRANSFER OF ARTS UNIT AND PARKING UNIT; DEED COVENANTS; TRANSFER OF WARRANTIES.

Section 8.1 Conveyance of Arts Unit and Parking Unit. Subject to the terms, covenants and conditions of this Agreement, the creation of the Condominium, and the satisfaction of the Arts Unit Closing Conditions contained in Section 8.3, after Substantial Completion of the Project, Comstock shall convey the Arts Unit and Parking Unit to Herndon ("**Arts Unit Closing**"), in fee simple subject to only those permitted title exceptions set forth herein, on the date which is thirty days after Substantial Completion of the Project ("**Arts Unit Closing Date**"). The Arts Unit Closing shall be conducted in accordance with the requirements of Section 8.2.

Section 8.2 Arts Unit Closing.

(1) **Deed.** The Arts Unit and the Parking Unit shall be conveyed at the Arts Unit Closing by special warranty deed. The deed may be in form substantially as set forth on **Exhibit K** attached hereto and incorporated by this reference ("**Arts Unit Deed**") or in separate deeds, as appropriate. The Arts Unit and the Parking Unit shall be conveyed free and clear of the lien of any deed of trust or mortgage, and subject only to those permitted exceptions set forth in Section 8.3.

(2) **Other Closing Deliveries.** The Arts Unit Closing shall be administered by the Settlement Agent on the Arts Unit Closing Date via escrow closing. At the Arts Unit Closing, Comstock shall deliver to the Settlement Agent the Arts Unit Deed, an owner's affidavit sufficient for Herndon to obtain title insurance with the pre-printed exceptions for mechanic's liens and parties in possession removed, a settlement statement, and such documents necessary to satisfy its obligations under this Section 8.2, all fully executed, witnessed and notarized, as applicable, in a form suitable for recordation among the Land Records. In addition, Herndon and Comstock shall each deliver to the Settlement Agent: (i) such documents as required by applicable local, state and federal law; (ii) the Certificate of Termination and Release; and (iii)

such other documents reasonably requested by the Settlement Agent or otherwise necessary to consummate the transaction. Herndon shall pay at the Arts Unit Closing all undisputed amounts that are due and owing from Herndon to Comstock and remain unpaid pursuant to Article 6 and/or other express provisions of this Agreement, but no other consideration shall be due.

(3) Arts Unit Taxes, Expenses and Prorations. At the Arts Unit Closing, Comstock shall pay all costs to record the Condominium Documents creating the Arts Unit and Parking Unit, all costs to release the lien of any Lender of Comstock's from the Arts Unit and Parking Unit, the Settlement Agent's fee, any unpaid real estate taxes due and owing from the date of the Closing until the date of the Arts Unit Closing, and the preparation fee for the Arts Unit Deed. Herndon shall pay all applicable recording and transfer taxes and fees (or claim applicable exemptions therefor). Any other real estate taxes for the Arts Unit not yet due and owing shall be prorated as of the date of the Arts Unit Closing. Each party will bear its own legal fees and expenses.

(4) Creation of Condominium. Comstock and Herndon hereby approve the Preliminary drafts of the Condominium Documents, the forms of which are attached hereto as Exhibit I. During the design and development of the Project in accordance with Article 4 and Article 5, the draft Condominium Documents shall be revised, as appropriate, from time to time. Prior to Closing, Comstock and Herndon shall have agreed upon a substantially final form of the Condominium Documents and Herndon shall have provided its Proprietary Approval thereof. The Arts Unit and Parking Unit shall be created as separate condominium units within the Condominium established on the Project by Comstock concurrently with or prior to the Arts Unit Closing. The Parking Unit shall be required by the Condominium Documents to be solely for use as vehicular parking and to be expressly available at all times to the owners of units in the Condominium and their employees, vendors, invitees and residents. Prior to the Arts Unit Closing, Comstock shall have caused condominium plats and plans to be created for the Project which comply with the Virginia Condominium Act and shall prepare a final, recordable version of the Condominium Documents for recordation in the Land Records prior to the recordation of the Arts Unit Deed.

Section 8.3 Arts Unit Closing Conditions. The following shall each be a condition precedent to Comstock's obligation to transfer the Arts Unit and Parking Unit to Herndon at the Arts Unit Closing (each an "Arts Unit Closing Condition"):

(1) Herndon shall have appropriated in accordance with Article 15 all amounts required to be paid by Herndon to Comstock under this Agreement that have not previously been appropriated, and shall have paid to Comstock all undisputed amounts due to Comstock in accordance with Article 6 and all those amounts payable to Comstock pursuant to any other express provision of this Agreement.

(2) The Project has been Substantially Completed in accordance with this Agreement and the requirement of any financing documents with the Approved Mortgagee, and

the Approved Mortgagee is ready, willing and able to release its lien from the Arts Unit and the common elements of the Condominium.

(3) The Condominium Documents shall have been prepared and approved in their final form by both Comstock and Herndon, will duly create the Arts Unit and Parking Unit as separate condominium units, and shall have been recorded or are ready for recordation in the Land Records.

(4) Title to the Arts Unit and Parking Unit is in the form required by Section 8.4.

(5) Herndon is not in default under this Agreement, and all representations and warranties of Herndon remain true and correct in all material respects.

(6) Herndon has delivered to Comstock the Certificate of Termination and Release, executed and notarized by Herndon and in form reasonably acceptable to Comstock and ready for recordation.

Section 8.4 Condition of Title to Arts Unit and Parking Unit. The Arts Unit shall be conveyed to Herndon at the Arts Unit Closing subject to no encumbrances and easements of record except the following:

- (1) The lien for real estate taxes not yet due and payable;
- (2) Zoning ordinances and proffers;
- (3) The Condominium Documents;
- (4) All liens and encumbrances caused by Herndon;
- (5) Permitted Exceptions applicable to the Property at the Closing, to the extent still applicable; and

(6) All easements, rights of way, restrictions, covenants, licenses, improvements, and other instruments and encumbrances placed on the Property with respect to the ongoing development thereof for the Project, in accordance with the obligations of the parties in accordance with this Agreement, including the Off-Site Easements, or otherwise as approved by Herndon in accordance with this Agreement.

Section 8.5 Additional Deliveries at Arts Unit Closing. At the Arts Unit Closing, Comstock shall ensure that each of the following additional items shall have been completed and delivered to Herndon with respect to the Arts Unit: (i) operation and maintenance manuals for all equipment within the Arts Unit; (ii) construction and development warranties or guaranties (or assignments thereof, if applicable), including but not limited to warranties and guaranties required hereunder; and (iii) keys for all locks.

Section 8.6 Certificate of Release. Prior to the Arts Unit Closing, Herndon shall deliver the Certificate of Termination and Release to the Settlement Agent. The Certificate of Termination and Release shall be held in escrow and recorded in the Land Records as part of the

Arts Unit Closing prior to the recordation in the Land Records of the Condominium Documents and the Arts Unit Deed. If Comstock has satisfied all conditions to the Arts Unit Closing and is ready, willing and able to proceed with the Arts Unit Closing, but Herndon is unwilling or unable to do so through no fault of Comstock or anyone providing any of the Work through Comstock, then, upon Comstock's written request, Herndon shall instruct the Settlement Agent shall deliver the Certificate of Termination and Release to Comstock for recordation.

ARTICLE 9. INSURANCE AND INDEMNIFICATION.

Section 9.1 Comstock Required Insurance. Comstock shall carry insurance coverage as specified below during the term of this Agreement (except for Builder's Risk, which shall be maintained only during periods of construction) for not less than the following limits, unless a greater amount is required by law:

(1) Workers' Compensation. Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of \$1,000,000 per occurrence. The Workers' Compensation insurance will conform to the laws of the Commonwealth of Virginia.

(2) Employer's Liability. Employer's Liability insurance with minimum limits of \$1,000,000 for each employee for bodily injury by accident and for each employee for injury by disease.

(3) Commercial General Liability. Commercial General Liability insurance (excluding Automobile Liability), including liability for this project and blanket coverage, Personal and Advertising Injury subject to the following provisions:

(a) Products-Completed Operations (including Broad Form Property Damage), Medical Payments, Owner's and Contractor's Protective Liability, Bodily Injury, and Property Damage, with minimum limits of \$2,000,000 per occurrence, \$5,000,000 general annual aggregate and completed operations aggregate, \$500,000 personal and advertising injury per occurrence, and \$5,000 medical expense.

(b) Each insurance policy shall be endorsed to provide per occurrence and aggregate limits for the Project and, to the extent not covered in the main policy, to provide express coverage for punitive damages where permitted by law.

(c) Contractual liability coverage with minimum limits of \$2,000,000 per occurrence, and \$3,000,000 in the aggregate, insuring all liability assumed by Comstock pursuant to this Agreement.

(d) This insurance shall not be self-funded (beyond the first \$25,000 of coverage), collateralized or based on any type of fronting arrangement, or issued through a captive insurance company.

(4) Umbrella Liability. Umbrella/Excess Liability Insurance (excluding Automobile Liability), including coverage for bodily injury, personal injury and property damage liability, with minimum limits of \$10,000,000. Comstock shall cause the insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required in this Agreement. This insurance shall not be self-funded, collateralized or based on any type of fronting arrangement, or issued through a captive insurance company.

(5) Builder's Risk. "All Risk" Builder's Risk Insurance for the Project with minimum limits in an amount that will cover full construction costs of the Project as of the date it will be Substantially Completed, the aggregate sum payable under the applicable Construction Contract, any increased costs from Change Orders, profit and overhead, or, if greater, the property values at risk in the Project. This coverage shall include insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary buildings, and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for services and expenses of Comstock as a result of such insured loss.

(6) Automobile Liability. Commercial/Business Automobile Liability insurance with minimum combined single limits of \$1,000,000 per occurrence (bodily injury and property damage liability). Comstock shall cause each insurance company to provide coverage for liability arising out of the use or operation of owned, hired, leased and non-owned vehicles. As used herein, "automobile" shall mean any vehicle licensed or required to be licensed under any applicable state vehicle code.

Section 9.2 Acceptable Insurers; Duration of Coverage. All insurance required herein must be carried with insurance companies licensed to do business in the Commonwealth of Virginia, that are rated by A.M. Best A-1 or better as to quality/financial strength and VIII or larger as to size, and have received Herndon's Proprietary Approval. Comstock shall maintain such insurance, at its sole cost and expense, in full force and effect until this Agreement has been fully performed, the Condominium has been created, and the Arts Unit Closing has occurred. The insurance coverage required by this Agreement shall continue for the duration of the statute of limitations on any declarant warranty period applicable to the Condominium.

Section 9.3 Policy Requirements. Except for professional liability and workers' compensation policies, Comstock shall cause the insurance required by this Agreement: (i) to be issued on an occurrence basis; (ii) to provide defense coverage for liability insurance policies as an additional benefit and not within the limits of liability; (iii) to be written in as primary coverage (i.e., Herndon's policies of insurance shall be excess, secondary and noncontributing); (iv) to have an endorsement issued to all policies to provide a waiver of subrogation in favor of Herndon; (v) to have an endorsement issued for all policies, except the auto and employer's liability insurance policies, to include Herndon as an "additional insured;" and (vi) to include in

each insurance policy a provision that the insurance company or companies shall not cancel or materially reduce coverage without providing at least thirty days' advance written notice to Herndon, substantially in the following form: "This insurance shall remain in force and not be cancelled, or have any material change in coverage unless insurer has provided written notice of such cancellation, or material change to the Town of Herndon, Virginia and thirty days have elapsed after receipt by the Town of Herndon of such written notice." If the provision required by clause (vi) is not obtainable, then Comstock shall obtain insurance that conforms to the maximum extent possible with the requirement of notice by the insurer. Comstock shall obtain and provide to Herndon certificates of insurance that include this notice requirement. In addition, Comstock shall notify Herndon in writing at least thirty days before any of the insurance required by this Article 9 may be cancelled, allowed to lapse or have a material change. If Comstock cannot do so because it first learned of the impending cancellation, lapse, or material change in coverage less than thirty days in advance, then Comstock shall immediately notify Herndon in writing. Such notice in no way shall excuse Comstock from its obligation to maintain the insurance coverages required by this section.

Section 9.4 Evidence of Insurance. Comstock shall provide to Herndon before the Work is commenced, and at least thirty days prior to the expiration of a policy or policies of insurance in effect during the term of this Agreement, a certificate or certificates of insurance evidencing all required insurance in this Agreement, in form reasonably acceptable to Herndon. All certificates, among other things, shall:

- (1) Identify Herndon as a certificate holder or additional insured and Herndon's address as 777 Lynn Street, Herndon, Virginia 20170.
- (2) Show the names of the insurance companies providing each coverage, their addresses, the policy numbers of each coverage, and policy dates of each coverage.
- (3) Show the name of the person providing the certificate and that person's address and telephone number.
- (4) Contain the signature of an authorized representative of the person providing the certificate.
- (5) Show that each insurance company, except the professional liability, auto and workers' compensation carriers, named Herndon and its elected officials, officers and employees as additional insureds in each insurance policy.
- (6) Confirm waivers of subrogation.
- (7) Show the amounts of all deductibles and self-insured retentions.
- (8) Show that insurance company shall give to Herndon at least thirty days' advance written notice in the event of cancellation or reduction of coverage of any insurance policy.

Section 9.5 Herndon Required Insurance. At all times during the term of this Agreement, Herndon shall carry insurance coverage for general liability in accordance with the VMLIP with coverage limits for the Town and its employees in no less than the following amounts:

•Each occurrence limit	\$1,000,000 No Aggregate
•Damages to Premises Rented to Town	\$1,000,000 Any one fire
•Defense of Certain Excluded Occurrences	\$ 100,000
•Land Use Coverage	\$ 100,000
•Medical expense limit	\$ 10,000

subject, however, to all those exclusions and provisions applicable to the VMLIP coverage held by Herndon.

Section 9.6 No Limitation. The foregoing requirements as to types and limits of insurance coverage to be maintained under this Agreement are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed under this Agreement.

Section 9.7 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Comstock hereby waives any and all right to recover against Herndon (or against its respective officers, directors, trustees, partners, joint venturers, employees or agents) for any loss or damage to arising from any cause covered by any property damage insurance carried or required to be carried pursuant to this Agreement. Comstock shall secure appropriate waivers of subrogation from its insurance carriers and, upon request, will deliver to Herndon a certificate evidencing such waiver of subrogation by the insurer.

Section 9.8 Insurance Requirements for Architect, General Contractor and Other Contractors.

(1) Contractor's Insurance. Comstock shall require that the General Contractor and each Other Contractor with a contract in excess of One Hundred Thousand Dollars maintain, during the term of their respective contracts Worker's Compensation, Commercial General Liability and Automobile Liability insurance of the type and in the amounts specified in Section 9; provided, however, that the requirements of Section 9.1(c)(4) shall be waived for any General Contractor approved by Herndon under Section 4.5(a); and provided further, that General Contractor's products/completed operations coverage shall be maintained for five years and six months from the Arts Unit Closing or such lesser period during which claims may be made under the statutory warranty imposed by the Condominium Act.

(2) Architect's Insurance. Comstock shall require that the Architect and any other design professional with a contract in excess of One Hundred Thousand Dollars maintain: (i) during the term of their respective contracts, Worker's Compensation, Commercial General Liability and Automobile Liability insurance of the type and in the amounts specified in Section 9.1, and (ii) for at least as long as such period during which claims may be made under the statutory warranty imposed by the Condominium Act, professional liability and errors and

omission insurance in the amount of \$2,000,000 per claim occurrence and \$2,000,000 aggregate combined claims limit.

Section 9.9 Comstock Indemnification. To the extent permitted by law, Comstock shall indemnify and hold Herndon and its officials and employees harmless from and against any and all cost, lien, liability, damage, loss, claim, demand, action and expense (including reasonable legal fees and disbursements) for: (i) bodily injury and tangible property damage or wrongful death to the extent sustained or incurred in connection with the performance of the Work under this Agreement to the extent caused by the negligent acts or omissions of Comstock or anyone providing any of the Work through Comstock under this Agreement; or (ii) any mechanics', construction or other liens arising as a result of the Work not caused by Herndon, except to the extent such claim relates solely to a particular process or product directed by Herndon that was not offered or recommended by Comstock or that such claim arises from modifications to the Work by Herndon after its acceptance. Such obligation by Comstock to indemnify and hold Herndon harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, caused by the negligence or misconduct by Herndon or any official, employee, agent, representative or separate contractor of Herndon. Comstock's obligations to indemnify Herndon and hold it harmless under this section do not supersede any obligations by Comstock elsewhere in this Agreement to indemnify Herndon and hold it harmless, any such indemnification obligations being intended to be cumulative. The provisions of this section shall survive the expiration or sooner termination of this Agreement.

ARTICLE 10. TERM; DEFAULTS AND REMEDIES.

Section 10.1 Term. The term of this Agreement shall commence on the Effective Date. Except as expressly provided otherwise herein (including without limitation the insurance requirements set forth in Article 4 and Sections 9.1 and 9.8, the indemnification obligations set forth in Section 9.9, the representations and warranties of the parties as set forth in Articles 11 and 12, and the guaranty and warranty provisions of Article 18, which shall expressly survive the expiration or earlier termination of this Agreement), the term shall end on the date which is the later to occur of (i) Close-Out of the Project, (ii) the recordation of the Condominium Documents and transfer of the Arts Unit and Parking Unit or (iii) thirty days after Final Completion of the Herndon Components and the common elements containing the Herndon Components. Notwithstanding the foregoing, with regard to the Arts Center Buildout, this Agreement shall survive in accordance with the Arts Center Amendment.

Section 10.2 Default by Comstock.

(1) **Generally.** It shall be a Default by Comstock hereunder if Comstock fails to perform any material obligation or requirement under this Agreement or fails to comply with any material term or provision of this Agreement and such default remains uncured for thirty days after receipt of written notice of such failure from Herndon for a monetary default, and sixty days after receipt of written notice of such failure from Herndon for a non-monetary

default. If such failure does not involve the payment of money (“**Non-Monetary Default**”) and cannot reasonably be cured within sixty days, Comstock shall have such additional time as is reasonably necessary, not to exceed an additional ninety days, to cure such failure; provided, however, that Comstock must commence the cure within such sixty-day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, provided that Comstock has commenced to cure any Non-Monetary Default within sixty days and is diligently pursuing such cure and such Non-Monetary Default cannot reasonably be cured within ninety additional days, Comstock shall have such additional time as may be reasonably necessary to cure as determined by Herndon in its reasonable discretion.

(2) Notices Sent to Mortgagee. Copies of all notices of Default to Comstock under this Section shall be sent contemporaneously to any Mortgagee pursuant to Article 14.

(3) No Default by Comstock for Delay Caused by Herndon or Force Majeure. If Comstock’s Substantial Completion of the Project or performance of any other obligation hereunder or any milestone set forth on the Project Schedule is delayed at any time due to (i) the failure or inability of Herndon to appropriate or disburse funds required to be paid by Herndon hereunder, or (ii) Herndon’s failure or delay in performing any obligation of Herndon hereunder, including without limitation providing its Proprietary Approval, or (iii) Force Majeure, then Comstock shall not be in Default hereunder or rendered liable, nor shall Herndon be relieved from fulfillment of any covenant or agreement hereof, but the Project Schedule and all other obligations hereunder shall be deemed extended on a day for day basis to accommodate such delay, failure or event.

(4) No Default by Comstock for Delay Caused by Others. If Comstock’s Substantial Completion of the Project or performance of any other obligation hereunder or any milestone set forth on the Project Schedule is delayed at any time due to the failure of the Architect, General Contractor, Other Contractors or other third party to perform, then, provided that Comstock is diligently seeking to enforce the terms of its contract with such party or diligently seeking to replace such party or otherwise cure the failure, Comstock shall not be in Default hereunder or rendered liable, nor shall Herndon be relieved from fulfillment of any covenant or agreement hereof, but the Project Schedule and all other obligations hereunder shall be deemed extended on a day for day basis to accommodate such delay, failure or event.

Section 10.3 Default by Herndon. It shall be a Default by Herndon hereunder if Herndon fails to perform any material obligation or requirement under this Agreement or fails to comply with any material term or provision of this Agreement and such default remains uncured (x) for thirty days after receipt of written notice of such failure from Comstock for a monetary Default, (y) thirty days after receipt of written notice from Comstock for Herndon’s failure to close on its transfer of the Property in accordance with Article 3 or failure to close on its acquisition of the Arts Unit in accordance with Article 8, or (z) sixty days after receipt of written notice of such failure from Comstock for a Non-Monetary Default. If any Non-Monetary Default (except a failure to convey the Property at Closing or acquire the Arts Unit at the Arts

Unit Closing) cannot be reasonably cured within sixty days, Herndon shall have such additional time as is reasonably necessary, not to exceed an additional ninety days, to cure such failure; provided, however, that Herndon must commence the cure within such thirty-day period and diligently pursue completion of such cure thereafter. For purposes of this Section 10.3, Herndon's failure to pay any amounts due to Comstock hereunder after such funds have been duly appropriated in accordance with Article 15, and after any applicable notice and cure period, shall be deemed a monetary Default by Herndon; provided, however, that in no event shall an event of non-appropriation be a Default hereunder. Notwithstanding the foregoing, if any delay is caused by (i) Comstock's failure or delay in performing any obligation of Comstock hereunder or (ii) Force Majeure, then Herndon shall not be in Default hereunder or rendered liable, nor shall Comstock be relieved from fulfillment of any covenant or agreement hereof, but the Project Schedule and all other obligations hereunder shall be deemed extended on a day for day basis to accommodate such delay, failure or event.

Section 10.4 Herndon Remedies in the Event of Default By Comstock.

(1) Default Before Closing. If Comstock fails to timely cure any Default under this Agreement that occurs before conveyance of the Property at Closing, Herndon shall have the following remedies, subject to the prior rights of Comstock's Lender:

(a) Herndon may cure Comstock's Default, at Comstock's sole cost and expense. Comstock shall reimburse Herndon its actual out-of-pocket costs for such cure within thirty days after written demand therefor with reasonable supporting documentation.

(b) Herndon may pursue any other remedies available at law and/or in equity, including injunctive relief.

(c) Herndon may terminate this Agreement.

(2) Default After Closing. If neither Comstock nor its Approved Mortgagee timely cures any Default by Comstock under this Agreement that occurs after conveyance of the Property at Closing, Herndon shall have the following remedies, subject to the prior rights of the Approved Mortgagee and the terms of the Tri-Party Agreement:

(a) Herndon may cure Comstock's Default, at Comstock's sole cost and expense. Comstock shall reimburse Herndon its actual out-of-pocket costs for such cure within thirty days after written demand therefor with reasonable supporting documentation.

(b) Herndon may seek specific performance.

(c) Herndon may pursue any other remedies available at law and/or in equity, including injunctive relief.

(3) Limitation. Notwithstanding anything to the contrary contained herein, Herndon may not call Comstock in default hereunder due to (i) the refusal of any governmental authorities to issue or provide any Governmental Approvals; (ii) the failure or refusal of any person or entity (other than Comstock) to act, or a default by any other person or entity under the

Architect's contract, the Construction Contract or any other contract or subcontract arising out of this Agreement, so long as Comstock is attempting to enforce the same or is otherwise mitigating such matters in a commercially reasonable manner; or (iii) inaccurate, incorrect or erroneous information provided by third persons for the reports required to be prepared or delivered by Comstock pursuant to this Agreement, so long as Comstock is diligently pursuing the correction of such information. Upon the occurrence of any of the foregoing, Comstock shall consult with Herndon and advise Herndon of the actions that Comstock recommends be taken to address such refusal. If Herndon believes that Comstock has not exercised the requisite standard of care, then Herndon shall provide written notice to Comstock specifying such failure, whereupon Comstock shall remedy such failure as soon as reasonably possible.

Section 10.5 Comstock Remedies in the Event of Default by Herndon.

(1) Default Before Closing. If Herndon fails to timely cure any Default by Herndon under this Agreement that occurs before conveyance of the Property at Closing, then Comstock shall have the following remedies:

- (a) Comstock may terminate this Agreement.
- (b) Comstock may seek specific performance.
- (c) Comstock may pursue any rights or remedies that may be available in equity, including injunctive relief, but not including any monetary relief from Herndon or any payment by Herndon.

Herndon hereby agrees that if all conditions of Closing are met, Herndon defaults and Comstock does not terminate this Agreement, then specific performance is an appropriate remedy for Comstock.

(2) Default After Closing. If Herndon fails to timely cure any Default by Herndon under this Agreement that occurs after conveyance of the Property at Closing, then Comstock shall have the following remedies:

(a) Comstock may cure Herndon's default at Herndon's cost and expense, which Herndon shall reimburse to Comstock within thirty days after written demand therefor with reasonable supporting documentation, together with interest at the Interest Rate from the date incurred until the date paid, subject to Article 15.

- (b) Comstock may seek specific performance.
- (c) Comstock may pursue any other rights and remedies that may be available at law and/or in equity, subject to Article 15.

(d) Notwithstanding anything to the contrary contained herein, if any Default by Herndon consists of Herndon's failure to pay any amounts due to Comstock hereunder as a result of Herndon's failure to appropriate sufficient funds in accordance with Article 15 of this Agreement, then Comstock's sole remedy shall be to terminate Comstock's

obligations to convey the Arts Unit to Herndon at the Arts Unit Closing and to retain ownership of the Arts Unit.

Section 10.6 No Consequential Damages; Rights Cumulative. Notwithstanding anything to the contrary contained herein, Comstock and Herndon hereby waive any claims for consequential, punitive or speculative damages under this Agreement. All rights and remedies of Comstock and Herndon set forth in Sections 10.4 and 10.5 above are cumulative.

Section 10.7 Assignment of Plans and Specifications. Subject to the rights of the Approved Mortgagee, if Comstock is in Default before Substantial Completion and Herndon terminates this Agreement, Comstock shall transfer and assign to Herndon all of Comstock's right, title and interest in and to the Construction Contract, all other architectural, engineering and related contracts, the Construction Drawings and all other plans and specifications (including the Final Project Plans), all Approvals and other building permits, bonds in favor of Comstock, sewer permits and tap fees, utility deposits and all other contracts, agreements, permits and authorizations in any way related to the development of the Project and construction of the Work which are transferrable or assignable. Such transfer or assignment shall be made at the sole cost and expense of Comstock, and shall be free of liens and any claims for payment, if any, except that such assignment shall be subordinate in all respects to the rights of the Approved Mortgagee.

Section 10.8 Performance After Default. Notwithstanding the foregoing provisions of this Article 10, but subject to the terms of the Tri-Party Agreement or similar instrument delivered by Herndon for the benefit of the Approved Mortgagee in accordance with Section 14.2 or otherwise, both Comstock and Herndon shall continue to perform under this Agreement during any Default which does not result in termination of this Agreement.

Section 10.9 Interest. Any sums payable hereunder by Herndon to Comstock which remain unpaid thirty days after the date due shall bear interest at the Interest Rate from the due date until paid.

Section 10.10 Survival. The provisions of this Article 10 shall survive termination of this Agreement.

ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF HERNDON.

Section 11.1 Herndon's Representations and Warranties. Herndon hereby represents and warrants to Comstock as of the Effective Date and as of the Closing Date as follows:

(1) **Power and Authority.** Herndon is a municipal corporation duly formed and validly existing under the laws of the Commonwealth of Virginia. Herndon has the legal authority and power to enter into this Agreement upon approval by the Town Council and to perform all its obligations hereunder. The execution of this Agreement has been duly and properly authorized by the Town Council of Herndon, Virginia. The persons executing this Agreement on behalf of Herndon have been duly authorized to do so. The Town Manager has

the authority to approve changes to this Agreement to implement the Project consistent with this Agreement's material terms.

(2) Title to Property. Herndon holds good title to all of the Land and Existing Improvements; that the Land is appropriately zoned for the Project; and Herndon has full rights to, and hereby does allow Comstock full access to, the Land in all manners contemplated by this Agreement.

(3) Non-Contravention. Neither the execution and delivery of this Agreement by Herndon, nor the transactions contemplated hereby, will (A) violate, conflict with, or constitute a default under, the terms of the charter of Herndon, or any agreement or instrument to which Herndon is a party, or by which Herndon is bound or (B) to Herndon's knowledge, violate any law, statute, judgment, decree, order, rule or regulation of any governmental body applicable to Herndon.

(4) Parties in Possession. There are no parties in possession of any portion of the Property as lessees, licensees, or tenants at sufferance or trespassers, except Herndon as the occupant of the Existing Arts Center currently located in the Existing Improvements.

(5) Condemnation. There is no pending or threatened condemnation of all or any portion of the Property or the development rights thereto.

(6) Moratorium. There is no moratorium or other action or directive by any governmental authority which would prohibit Comstock from developing the Property in accordance with this Agreement and the Contract Documents.

(7) Litigation. There is no pending or threatened litigation or administrative proceeding affecting Herndon or the Property which would adversely impact (i) Herndon's ability to consummate the transactions described herein, or (ii) the development of the Property by Comstock in accordance with this Agreement or the Contract Documents.

(8) Other Interests. There are not any outstanding contracts, bids, or options to purchase or develop the Property or any portion thereof in favor of any third party, except as expressly described in this Agreement.

(9) Violations of Laws. Except to the extent indicated in the Environmental Reports, to the best of Herndon's knowledge the Property is not in violation of any federal, state, county or municipal laws, ordinances, orders, regulations and requirements, including environmental laws or regulations, which are unresolved.

(10) Unrecorded Encumbrances. There are no commitments, proffers, obligations, leases or other agreements of any kind which relate to the Property that are not recorded among the Land Records, or are not otherwise a matter of public record, other than this Agreement.

(11) Mechanic's Liens. No work has been performed by or on behalf of Herndon, or labor or materials supplied by or on behalf of Herndon, at the Property, or in

connection with the construction, maintenance, rehabilitation or alteration of the Property by or on behalf of Herndon, for which payment has not been made in full. To Herndon's knowledge, no contractor, subcontractor, materialman or other party has a claim against Herndon for payment of any of the same or, to the Herndon's knowledge, the right to place an enforceable lien against the Property.

(12) Hazardous Materials. To Herndon's knowledge, except as disclosed in the Environmental Reports, no Hazardous Materials (as defined below) have been released, deposited, stored or placed in, on, under or above the Property during Herndon's ownership of the Property or prior to Herndon's ownership thereof in violation of any applicable laws, ordinances, statutes or regulations, and to Herndon's knowledge, except as disclosed in the Environmental Reports, no such Hazardous Materials currently exist in, on, under or above the Property. "**Hazardous Materials**" means all toxic or hazardous materials, chemicals, wastes, pollutants or similar substances, including toxic mold, Petroleum (as hereinafter defined), asbestos containing materials, asbestos insulation and/or urea formaldehyde insulation, polychlorinated biphenyls, lead and lead-based paint, which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule, regulation or ordinance currently in existence or hereafter enacted or rendered (hereinafter collectively referred to as the "**Environmental Laws**") including, but not limited to, those materials or substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "pollutants" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and any applicable statutes, ordinances or regulations under the laws of the state in which the Property is located, and any rules and regulations promulgated thereunder, all as presently or hereafter amended. The term "Petroleum" means hydrocarbons, petroleum, gasoline, crude oil or any products or byproducts thereof. Comstock's sole remedy for breach of this representation is the allowance provided for in Section 6.3.

Section 11.2 Herndon's Knowledge. References to the "knowledge" of Herndon shall refer only to the current actual knowledge of the Designated Employees (as hereinafter defined) of Herndon, and shall not be construed, by imputation or otherwise, to refer to the knowledge of Herndon or to any other official, agent, manager, representative or employee of Herndon or to impose upon such Designated Employees any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "**Designated Employees**" shall refer to the following persons: Dennis Holste and his successor as Herndon Economic Development Manager.

Section 11.3 Change in Herndon Representations and Warranties. If there occurs any change in any of the foregoing representations or warranties by Herndon, Herndon shall notify Comstock promptly of such upon Herndon's knowledge thereof.

Section 11.4 Survival of Herndon's Representations and Warranties. Herndon's representations and warranties set forth herein shall survive the Arts Unit Closing, or such earlier expiration or sooner termination of this Agreement for a period of three hundred sixty-five days. Herndon shall have no liability to Comstock for a breach of any representation or warranty (i) unless the valid claims for all such breaches collectively aggregate more than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), in which event the full amount of such valid claims shall be actionable, and (ii) unless written notice containing a description of the specific nature of such breach shall have been given by Comstock to Herndon prior to the expiration of the three hundred sixty-five-day period and an action shall have been commenced by Comstock against Herndon within four hundred forty-five days after the expiration or sooner termination of this Agreement.

Section 11.5 No Other Warranties and Representations. Except as specifically set forth herein, Herndon has not made, does not make and has not authorized anyone to make, any warranty or representation of any kind or character, express or implied, with respect to the Property or any part thereof, including any written materials delivered to Comstock, the persons preparing such materials, the truth, accuracy or completeness of such materials, the present or future physical condition, development potential, zoning, building or land use law or compliance therewith, the operation, income generated by, or any other matter or thing affecting or relating to the Property or any matter or thing pertaining to this Agreement. Comstock expressly acknowledges that no such warranty or representation has been made and that Comstock is not relying on any warranty or representation whatsoever other than as is expressly set forth herein.

ARTICLE 12. REPRESENTATIONS AND WARRANTIES OF COMSTOCK.

Section 12.1 Comstock's Representations, Warranties and Covenants. Comstock hereby represents and warrants to Herndon as follows:

(1) **Power and Authority.** Comstock is a limited liability company in good standing, duly formed and validly existing under the laws of the Commonwealth of Virginia. Comstock has the legal authority and power to enter into this Agreement and to perform all of its obligations. The execution of this Agreement by Comstock has been duly and properly authorized and the person executing this Agreement on behalf of Comstock has been duly authorized to do so. Comstock shall provide Herndon with certified copies of any documents requested to evidence such authorization.

(2) **Non-Contravention.** Neither the execution and delivery of this Agreement by Comstock, nor the transactions contemplated hereby, will (A) violate, conflict with, or constitute a default under, the terms of the organizational documents of Comstock, or any agreement or instrument to which Comstock is a party, or by which Comstock is bound or (B) to

Comstock's knowledge, violate any law, statute, judgment, decree, order, rule or regulation of any governmental body applicable to Comstock.

(3) Specially Designated National or Blocked Person. Neither Comstock (including any and all of its general partners, managers, directors and officers), nor any of its affiliates or the funding sources for any of them is a Specially Designated National or Blocked Person. Neither Comstock nor any affiliate is directly or indirectly owned or controlled by the government of any country that is subject to an embargo by the United States government. Neither Comstock nor any affiliate is acting on behalf of a government of any country that is subject to such an embargo. Comstock shall notify Herndon in writing immediately upon the occurrence of any event which would render the foregoing representations and warranties incorrect. For purposes of this Agreement, "**Specially Designated National or Blocked Person**" means (a) a person or entity designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time to time as a "specially designated national or blocked person" or similar status, (b) a person or entity described in Section 1 of U.S. Executive Order 13224, issued on September 23, 2001 (the "**Executive Order**"), or (c) a person or entity otherwise identified by government or legal authority as a person with whom a United States Person (as defined below) is prohibited from transacting business. As of the Effective Date, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac. "**United States Person**" shall mean: (1) any individual or business entity, regardless of location, that is a resident of the United States; (2) any individual or business entity physically located within the United States; (3) any company or business entity organized under the laws of the United States or of any state, territory, possession, or district thereof; and (4) any individual or business entity, wheresoever organized or doing business, which is owned or controlled by those specified in clauses (1) or (3) above.

Section 12.2 Change in Comstock Representations and Warranties. If there occurs any change in any of the foregoing representations or warranties by Comstock, Comstock shall notify Herndon promptly of such upon Comstock's knowledge thereof.

Section 12.3 Survival of Comstock's Representations and Warranties. Comstock's representations and warranties set forth herein shall survive expiration or sooner termination of this Agreement for a period of three hundred sixty-five days. Comstock shall have no liability to Herndon for a breach of any representation or warranty (a) unless the valid claims for all such breaches collectively aggregate more than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), in which event the full amount of such valid claims shall be actionable, and (b) unless written notice containing a description of the specific nature of such breach shall have been given by Herndon to Comstock prior to the expiration of the three hundred sixty-five-day period and an action shall have been commenced by Herndon against Comstock within four hundred forty-five days after the expiration or sooner termination of this Agreement.

ARTICLE 13. ASSIGNMENT AND TRANSFER.

Section 13.1 Transfer by Comstock Prior to Creation of Condominium and Conveyance of Arts Unit. Except as expressly permitted in Section 13.3 and in Article 14, Comstock shall not assign or transfer this Agreement or any of Comstock's rights and duties herein (each, a "Transfer") prior to the creation of the Condominium and conveyance to Herndon of the Arts Unit and Parking Unit without the prior written approval of Herndon, which approval shall be approved, conditioned or denied in accordance with Section 13.4.

Section 13.2 Transfer by Comstock Subsequent to Creation of Condominium and Transfer of Arts Unit. Upon the Substantial Completion of the Project and subsequent creation of the Condominium and transfer of the Arts Unit and Parking Unit to Herndon in accordance with Article 8, Comstock shall have the right to sell, assign, pledge or transfer all remaining interests of Comstock in the Project and units in the Condominium at Comstock's sole discretion, subject only to the Condominium Documents.

Section 13.3 Permitted Transfers. After Closing, but prior to the Arts Unit Closing, the following transfers shall be permitted by Comstock without the prior consent of Herndon (but upon written notice to Herndon) ("**Permitted Transfers**"): (i) Comstock's creation of a Mortgage as permitted under Article 14 or any foreclosure sale or deed-in-lieu of foreclosure resulting from an Approved Mortgagee's exercise of its rights under an approved Mortgage permitted under Article 14 or any transfer by an Approved Mortgagee to a third party; (ii) any pledge of the ownership interests in Comstock or any affiliate, parent or subsidiary thereof to an Approved Mortgagee as permitted under Article 14, or any foreclosure of such ownership interests resulting from an Approved Mortgagee's exercise of its rights under a pledge permitted under Article 14 or any transfer by such Approved Mortgagee of such ownership interests to a third party; (iii) the creation of the Condominium on the Project; (iv) the lease of retail space in the Project to third party tenants and the lease of residential apartments to residents; (v) the granting of easements, rights-of-way and other interests required in connection with the development of the Property pursuant to the Final Project Plans; (vi) the assignment of Comstock's rights hereunder and transfer of the Property to an Affiliate formed to permit the admission of equity partners or members, provided that Dwight Schar and/or Christopher Clemente retain control of such Affiliate; (vii) with respect to a person holding a partnership interest or membership interest in Comstock, such person's interest may be transferred to a trust or other entity for estate planning purposes or, following death, to such person's estate, trust or beneficiaries under such person's will, but if the deceased person was a general partner, manager or managing member, the deceased person's interest shall be converted to that of a limited partner or non-managing member, as applicable; and (viii) the transfer or assignment of limited partnership interests, non-managing member interests, or stock, so long as Dwight Schar and/or Christopher Clemente remain in control of Comstock. Notwithstanding the foregoing, any transfer permitted pursuant to this Section 13.3 shall not alter the relationship between Herndon

and Comstock with respect to negotiations, design review, program or approvals, or construction of the Project.

Section 13.4 Criteria for Herndon Approval of Transfers.

(1) Proposed Transfer. Where approval of a proposed Transfer is required by the terms of this Agreement, at any time before the Arts Unit Closing, Comstock may submit a written request to Herndon for the approval of a proposed Transfer (a “**Proposed Transfer**”) with all relevant written documents and information pertaining thereto and such additional documents and information as Herndon may reasonably request. Within thirty days after the submission of the request (including all documents and information required by Herndon), Herndon shall notify Comstock in writing of Herndon’s decision with respect to the Proposed Transfer. If Herndon approves the terms, the Proposed Transfer shall occur within one hundred and twenty days following the date of Herndon’s approval or the approval shall lapse.

(2) Conditions To Transfer. Herndon’s approval of a Proposed Transfer shall be based upon the following conditions:

(a) Any proposed transferee shall have the professional and financial qualifications (as reasonably determined by Herndon) adequate to fulfill the obligations undertaken in this Agreement by Comstock.

(b) Any proposed transferee, by a writing in recordable form reasonably satisfactory to Herndon, for itself and its successors and assigns, and expressly for the benefit of Herndon, shall have expressly assumed all Comstock’s obligations, conditions and restrictions under this Agreement; provided, however, that the failure of any transferee or other successor in interest to the Property, or any part thereof, to assume such obligations, conditions or restrictions shall not deprive or limit Herndon of or with respect to any rights or remedies or controls with respect to the Property and the development and the construction of the Project under this Agreement.

(c) Any other legal documents (other than the writing delivered under clause (2) above) necessary to effectuate a Transfer shall be submitted to Herndon for review prior to execution.

(3) General. Herndon shall provide written notice to Comstock of any Transfer approved by Herndon under this Section 13.4. It is the intent of this provision, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no Transfer, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit Herndon of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the development, construction, operation and use of the Buildings and Site Improvements that Herndon would have had, had there been no such Transfer.

Section 13.5 No Release. In the absence of specific written agreement by Herndon to the contrary, no Transfer, or approval by Herndon thereof, shall be deemed to relieve Comstock, or any other party bound in any way by this Agreement, from any of its obligations under this Agreement.

Section 13.6 Transfer by Herndon. Notwithstanding anything to the contrary set forth herein, in the absence of specific written agreement by Comstock to the contrary, Herndon shall have no right to Transfer this Agreement or its interests or obligations herein to any party.

ARTICLE 14. MORTGAGE FINANCING.

Section 14.1 Limitation Upon Encumbrances Of Property.

(1) **Prior Approval of Mortgage Required.** Prior to Substantial Completion, neither Comstock nor any successor-in-interest to the Property or portion thereof shall create any Mortgage upon the Property without obtaining the Proprietary Approval of Herndon. A deed of trust or other instrument that secures financing for the Project with a security interest or lien on Comstock's interest in the Property is referred to herein as a "**Mortgage.**" The holder of a Mortgage that has received Herndon's Proprietary Approval pursuant to this Section 14.1(1), shall be referred to herein as an "**Approved Mortgagee.**" Without limitation of the foregoing, Herndon shall not withhold its Proprietary Approval of a Mortgage if: (i) it secures bona fide indebtedness, the proceeds of which will be applied only to the Project Costs, to other costs related to development of the Project, to commissions, improvement allowances, fit out work and other the costs of leasing the retail spaces, or to refinance or "take out" the loans or financing described above in this clause (i); and (ii) the documents evidencing and securing such indebtedness ("**Loan Documents**") shall require the Approved Mortgagee to provide Herndon with written notice of any default by Comstock prior to the Arts Center Closing and the cure period(s) specified in Section 14.4.

(2) **Subject to Tri-Party Agreement.** As part of the Loan Documents, and as a condition to Closing, Comstock, Herndon and the Approved Mortgagee shall enter into one or more tri-party agreements in order to provide the Approved Mortgagee and Herndon with protections and obligations with regard to the parties' rights under this Agreement (each, a "**Tri-Party Agreement**"). The Tri-Party Agreement shall be subject to Proprietary Approval by Herndon in its sole discretion and shall otherwise be in form acceptable to Comstock and its Approved Mortgagee. The Tri-Party Agreement shall address the following matters:

(a) The Approved Mortgagee shall at all times hold a first priority security interest in the Property, superior in payment and security to any other liens or encumbrances that may exist at any time other than liens made prior by law (such as any applicable real estate taxes); subject, however, to certain forbearance obligations of the Approved Mortgagee prior to Substantial Completion as further set forth in the Tri-Party Agreement, including the right for Herndon to exercise its remedies under the Comprehensive Agreement and cure any default by Comstock under the Loan Documents.

(b) As among the Loan Documents, the Comprehensive Agreement and the Tri-Party Agreement, the Tri-Party Agreement shall control.

(c) Notwithstanding any foreclosure or transfer in lieu thereof of the Property or the Project, Herndon shall at all times be afforded the rights under this Agreement to parking at the Project, including during the construction and development thereof via the Transitional Parking Plan.

(d) The Approved Mortgagee will be afforded mortgagee, lender or creditor protections including notices of Default, notices of amendments hereof, cure periods for Default and time to exercise and perfect the Approved Mortgagee's remedies hereunder in accordance with the terms of this Article 14.

(e) The addresses and manner of notice required by the Approved Mortgagee, Comstock and Herndon.

(f) That any transfer to an unrelated party must be mutually acceptable to the Approved Mortgagee and Herndon.

(g) Approved Mortgagee shall acknowledge the Right of Re-entry contained in the Property Deed for the benefit of Herndon which burdens the Property and runs with the land until released in accordance with this Agreement.

(h) Such other terms and conditions as Comstock, Herndon and the Approved Mortgagee shall reasonably require; provided, however, that (a) Comstock shall use commercially reasonable efforts in its negotiation of the Tri-Party Agreement to require Approved Mortgagee to continue funding Comstock's construction loan for the Project after default thereunder by Comstock so long as (i) Comstock's default has not been cured within any applicable notice and cure period, (ii) Approved Mortgagee has commenced disbursement of construction funds under the loan, and (iii) either Herndon has cured Comstock's default or the project has been conveyed to a substitute developer acceptable to Herndon and Approved Mortgagee who has cured Comstock's default, and (b) Herndon will consider incorporating additional Mortgagee protective provisions as may be reasonably required by such Approved Mortgagee but shall not be obligated to do so unless consistent with the terms of this Agreement.

(3) Limited Assumption.

(a) If the party acquiring title to the Property through foreclosure sale or deed in lieu thereof is an Approved Mortgagee or an Affiliate, such party shall not be required to assume the terms and provisions of this Agreement so long as the Approved Mortgagee or its Affiliate does not undertake or continue the construction or completion of the Project beyond the extent necessary to conserve or protect the improvements or construction already made. However, if the Approved Mortgagee or its Affiliate, having acquired the Property, thereafter undertakes or continues the construction or completion of the Project beyond the extent necessary to conserve or protect the Project or construction already made, then the Approved

Mortgagee or its Affiliate shall expressly assume all of the covenants, agreements and obligations under this Agreement by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth in the Project Schedule shall be extended for such reasonable period of time as may then be necessary to complete development and construction of the Project. The Approved Mortgagee or its Affiliate shall have no liability for any obligations under this Agreement arising after the date that such Approved Mortgagee or its Affiliate transfers title to the Property to an unrelated third party mutually acceptable to the Approved Mortgagee and Herndon.

(b) If the party acquiring title to the Property through foreclosure sale or deed in lieu thereof is an entity other than an Approved Mortgagee or if, after acquiring title to the Property but not having undertaken completion of the Project, an Approved Mortgagee or its Affiliate thereafter Transfers the Property, the ultimate purchaser, transferee or assignee shall expressly assume all of the covenants, agreements and obligations under this Agreement by a written instrument to be filed promptly and recorded among the Land Records, in which event the time limits set forth in the Project Schedule shall be extended for such reasonable period of time as may then be necessary to complete development and construction of the Project.

(4) Subsequent Financing. After the Substantial Completion of the Project, Comstock may elect to refinance, from time to time, all or portions the Project without any requirement to obtain the Proprietary Approval of Herndon. Notwithstanding the foregoing, all debt secured by a lien on the Condominium common elements and Herndon Components shall be released at the time of the Arts Center Closing. Herndon will reasonably cooperate with Comstock with respect to such refinance(s) including by delivering any reasonable certification or estoppel requested by any Lender.

Section 14.2 Copy of Notice of Default to Mortgagee. Whenever Herndon shall deliver any notice or demand to Comstock with respect to any breach or Default by Comstock in its obligations or covenants under this Agreement in accordance with Section 21.7 or otherwise, Herndon shall at the same time forward a copy of such notice or demand to each Approved Mortgagee, at the last address of such Approved Mortgagee provided to Herndon.

Section 14.3 Mortgagee Right To Cure Comstock Default. An Approved Mortgagee shall have the same period after receipt of notice (as provided to Comstock in Section 10.2) to remedy or cause to be remedied any Default by Comstock under this Agreement, plus an additional twenty business days to remedy or cause to be remedied any monetary Default and an additional sixty days to remedy or cause to be remedied any Non-Monetary Default. If an Approved Mortgagee has timely commenced to cure and thereafter commences foreclosure proceedings under the Loan Documents, then the Approved Mortgagee shall have such additional time beyond the additional cure period provided herein as is reasonably necessary to complete its foreclosure proceedings not to exceed one hundred twenty days. Herndon shall accept such performance by or at the instigation of such Approved Mortgagee as if the same had been done by Comstock, subject to the terms of the Tri-Party Agreement, hereby authorizes each

Approved Mortgagee to take any such action at such Approved Mortgagee's option, and hereby authorizes entry upon the Property by the Approved Mortgagee for such purpose.

Section 14.4 Notices to Mortgagee. Any notice or other communication which Herndon shall desire or is required to give to or serve upon the Approved Mortgagee shall be in writing and shall be served in the manner set forth in Section 21.7 addressed to the Approved Mortgagee at the address provided for pursuant to Section 14.2.

Section 14.5 Collateral Assignment. Comstock may assign this Agreement in connection with any financing by an Approved Mortgagee or, with the prior consent of Herndon, to secure any other funding obtained or to be obtained for the Project. Upon request of Comstock in connection with any financing for the Project, Herndon shall promptly execute and deliver a consent to the collateral assignments in favor of an Approved Mortgagee or any Lender approved by Herndon.

Section 14.6 Financing by Comstock after Substantial Completion. Notwithstanding any provision hereof to the contrary, Herndon shall have no approval right under this Agreement with respect to any Mortgage or other financing of Comstock's interests in the Project following Substantial Completion of the Herndon Components.

ARTICLE 15. SUBJECT TO ANNUAL APPROPRIATION.

The financial obligations of Herndon in this Agreement are subject to appropriation. Herndon shall use good faith efforts to appropriate prior to Closing all funds required to be paid by Herndon in accordance with this Agreement, together with a reasonable contingency. Notwithstanding any other provision of this Agreement, Herndon's inability or failure to obtain an appropriation of any funds in accordance with this Article 15 shall not constitute a Default under this Agreement.

ARTICLE 16. COPY OF AGREEMENT TO AUDITOR OF PUBLIC ACCOUNTS.

Herndon shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty days after its effective date.

ARTICLE 17. APPROVAL BY TOWN COUNCIL CONDITION PRECEDENT TO AGREEMENT'S EFFECTIVENESS.

It shall be a condition precedent to this Agreement's effectiveness that entry into it first be approved by the Town Council. If this Agreement is not approved by the Herndon Town Council by December 1, 2017, then it shall be null and void unless Comstock and Herndon both agree otherwise in writing.

ARTICLE 18. PERFORMANCE BONDS; PARENT GUARANTEES; WARRANTIES.

Section 18.1 Dual Oblige Bonds. Prior to the Contractor commencing performance of any of the Work upon the Property in accordance with the Construction Contract, Comstock

shall cause the General Contractor to provide payment and performance bonds in the full value of the Construction Contract, issued by a corporate surety or sureties licensed in Virginia, rated by A.M. Best A- or better as to financial strength/quality and VIII or larger as to size, in the current AIA form or such other form that is reasonably acceptable to Comstock and Herndon naming Herndon and Comstock as dual obligees (with those to be protected under the payment bond as intended third-party beneficiaries). If a surety upon any bond furnished in connection herewith becomes insolvent, or otherwise not authorized to do business in the Commonwealth of Virginia, Comstock shall promptly cause the replacement of the bond or cause equivalent security acceptable to Herndon to be furnished at no cost to Herndon.

Section 18.2 Guaranty of Comstock Parent. Herndon's selection of Comstock for the Project was premised upon receipt from Comstock Parent of a guaranty. Accordingly, as a condition of transferring the Property to Comstock at the Closing, Comstock shall furnish a guaranty from Comstock Parent in the form of, and for the maximum amounts indicated, in **Exhibit J** attached hereto ("**Parent Guaranty**").

Section 18.3 Contractor's Warranty and Condominium Act Warranty. Comstock shall provide to Herndon with respect to the Arts Unit and Parking Unit, and to the Condominium with respect to the common elements thereof, a written warranty from the General Contractor warranting that (i) all labor and materials furnished and all of the Work performed under this Agreement with respect to the Project are materially in conformity with the Construction Drawings, (ii) all materials and equipment installed within the Arts Unit and Parking Unit are free from defect in workmanship and materials, and (iii) for a period of two years from the date of Substantial Completion of the Project, the General Contractor shall promptly repair at the Contractor's sole cost and expense all of the Work found to be defective. The General Contractor's written warranty shall remain enforceable until the statute of limitations provided for in Section 55-79.79B of the Virginia Condominium Act expires. Comstock shall provide to Herndon with respect to the Arts Unit, and to the Condominium with respect to the common elements thereof, the warranty prescribed by Section 55-79.79B of the Virginia Condominium Act.

ARTICLE 19. PUBLIC-PRIVATE REQUIREMENTS.

Section 19.1 Equal Opportunity Employment. During the performance of this Agreement:

(1) Comstock shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of Comstock. Comstock shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) Comstock, in all solicitations or advertisements for employees placed by or on behalf of Comstock, shall state that Comstock is an equal opportunity employer.

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the notice, advertisement, and solicitation requirements of this paragraph.

(4) Comstock shall cause the provisions of the foregoing subsections (a), (b) and (c) (substituting the subcontractor or vendor for Comstock as the obligated party) to be included in the Construction Contract and contracts with the Architect and Other Contractors.

Section 19.2 Drug-Free Workplace. During the performance of this Agreement, Comstock shall: (i) provide a drug-free workplace for Comstock's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Comstock's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Comstock that Comstock maintains a drug-free workplace; and (iv) cause to be included the provisions of the foregoing clauses (substituting the contractor or vendor for Comstock as the obligated party) in the Construction Contract and contracts with the Architect and Other Contractors. For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with this Agreement by Comstock where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 20. DISPUTE RESOLUTION.

Section 20.1 Claims. Any disputes, claims or other matters arising between Comstock and Herndon (for purposes of this Article 20, each a "Party") under or relating to this Agreement (other than claims by Herndon to enforce rights under the Condominium Act, which Herndon may pursue without regard to this Article 20) that are not resolved in accordance with the express terms of this Agreement, including without limitation the provisions of Article 10, (collectively "Claims") shall be resolved pursuant to this Article 20.

(1) Either Party shall give the other Party written notice of any Claim for any additional compensation, damages, or delay under this Agreement within ten days of the beginning of the occurrence of the event leading to the Claim being made, and shall submit the actual Claim and any supporting data within thirty days after the occurrence giving rise to the Claim ends. The written notice shall be a document addressed to the other Party that clearly states the intention to make a Claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by the other Party. The Claim must be certified under oath as true and correct by a principal of the Party (in the case of Herndon, the Town Manager or his designee) making the Claim. The "occurrence" means the condition encountered in the field

giving rise to the Claim and not a later dispute about payment for that condition. For payment not involving a claim to extra payment due to a condition encountered in the field, "occurrence" means when a party makes written demand for payment provided by this Agreement and the other party fails or refuses to make payment within the time allowed by this Agreement. Claims of time impacts will be resolved as they occur, and no Claims of cumulative impacts or deferral of claimed impacts will be allowed. Complete satisfaction of this subsection is an absolute prerequisite for either Party to pursue a Claim against the other arising under or relating to this Agreement. Failure to satisfy this subsection shall constitute a waiver of the Claim for which such failure occurs.

(2) The Parties shall first endeavor to resolve any Claims between them through direct negotiations, and if such direct negotiations fail, by nonbinding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Herndon, Virginia. Such mediation shall be administered by the McCammon Group, and with use of a mediator from the McCammon Group. Should the Claim remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ninety days after mediation is requested by a Party, either Party may proceed in accordance with subsection (3). However, nothing in this subsection excuses either Party from compliance with all the provisions of this Section 20.1.

(3) If the procedures of subsection (2) have been followed, but, more than ninety days have passed since a Party has invoked mediation, and the Claim remains unresolved, then either Party may institute an action in the Circuit Court of the County of Fairfax, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of the County of Fairfax, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.

(4) Nothing in subsections 20.1(2) and 20.1(3) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Fairfax if circumstances so warrant.

(5) In the event of any Claim arising, each Party shall continue its performance diligently during its pendency as if no Claim had arisen. During the pendency of any Claim, Comstock shall be entitled to receive payments for non-disputed items, subject to any right of set-off by Herndon.

(6) This Article 20 and the other provisions of this Agreement supersede any right at common law by either Party for a claim of material breach or for rescission of this Agreement.

Section 20.2 Supplementary Provisions. The Parties may agree to supplement the provisions of this Article 20 by written agreement.

ARTICLE 21. MISCELLANEOUS

Section 21.1 Construction.

(1) Each party and its counsel have reviewed and revised this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement (including the exhibits) or any amendments hereto, and the same shall be construed neither for nor against Herndon or Comstock, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

(2) For the sake of consistency, the words “include” and “including” shall be construed for purposes of this Agreement as being followed by the phrase “without limitation.”

(3) Except as otherwise expressly noted, all references to an “Article” or “Section” are to the corresponding portion of this Agreement.

Section 21.2 No Waiver. A party’s failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein, or conformance with any of the time frames set forth in the Project Schedule, shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein, or conformance with any other time frames set forth in the Project Schedule by the same party. More specifically, the failure of Herndon to insist upon the strict performance of any provisions of this Agreement, the failure of Herndon to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Herndon of any act by Comstock requiring Herndon’s consent or approval shall not be construed to waive or render unnecessary the requirement for Herndon’s consent or approval of any subsequent similar act by Comstock. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

Section 21.3 Independent Contractor; Not a Partnership. In performing its obligations under this Agreement, Comstock shall be deemed an independent contractor and not an agent, employee or partner of Herndon. Nothing in this Agreement shall create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to “partners” or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

Section 21.4 Publicity. Neither Comstock nor Herndon shall refer to the other party or any Affiliate in any advertising or published communication without the prior written approval

of the other party in its reasonable discretion. Herndon shall not use, or allow to be used, Comstock or its Affiliates' names, logos, trademarks, service marks, patents, copyrights or trade dress without the prior written approval of Comstock in its discretion. Notwithstanding the foregoing, the parties shall reasonably cooperate in preparing and responding to any media or publicity with regard to the Project or this Agreement.

Section 21.5 Cooperation. The parties shall cooperate to achieve the objectives of this Agreement and use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Should any claim, demand, suit or other legal proceeding be made or instituted by or against either party by any non-party which arises out of any of the matters relating to this Agreement, each party shall give the other all pertinent information possessed by such party and reasonable assistance in the defense or other disposition thereof.

Section 21.6 Parties' Representatives.

(1) **Day-To-Day Decisions.** Herndon and Comstock shall each designate a construction manager who shall serve as the primary point of contact between Comstock and Herndon (each a "**Construction Manager**") for day-to-day communications between Herndon and Comstock, and who will also have authority to make the day-to-day decisions for construction matters delineated on **Exhibit L** attached hereto ("**Day-To-Day Decisions**"), excluding, however, Major Decisions. The initial Construction Managers are designated on **Exhibit L**. If a designated Construction Manager resigns or is removed, then the party shall designate a new Construction Manager within five business days thereafter. Each Construction Manager shall make or perform the Day-To-Day Decisions as soon as possible (preferably the same day) but no later than three business days after request by the applicable Construction Manager. Except as expressly stated to the contrary, all decisions of the Decision Makers shall be made in accordance with Section 4.8.

(2) **Major Decisions.** Herndon and Comstock shall each designate a person to serve as the decision maker for Comstock and Herndon (each a "**Decision Maker**") to perform or make the major decisions delineated on **Exhibit M** ("**Major Decisions**"). Each Decision Maker will have the authority to perform or make the Major Decisions. The initial Decision Makers are designated on **Exhibit M**. If a Decision Maker resigns or is removed, then the party shall designate a new Decision Maker within five business days thereafter. Each Decision Maker shall make or perform the Major Decision as soon as possible, but no later than ten business days after request by the other party. Except as expressly stated to the contrary, all decisions of the Decision Makers shall be made in accordance with Section 4.8.

(3) **Other Decisions.** For purposes of clarity, the purpose of this Section 21.6 is to designate the person who has the authority to grant certain types of approvals that may be required under this Agreement. Any decision required to be made by a party to this Agreement other than a Day-To-Day Decision or Major Decision, shall be made by the Town Manager (or his designee) for Herndon or by Christopher Clemente (or his designee) for Comstock. The Town Manager or Mr. Clemente, as applicable, shall decide within ten business days following

request by the other party. Except as expressly stated to the contrary, all decisions of the Town Manager or Mr. Clemente shall be made in accordance with Section 4.8.

Section 21.7 Notices. All notices, demands, consents, approvals and other communications (each, a "Notice") which are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, (c) sent by reputable and nationally recognized overnight courier service, or (d) transmitted by electronic mail with confirmation of receipt. Notices shall be effective when delivered, if delivered by hand, upon deposit with the courier if by overnight courier, three days after sending if by U.S. mail, or at the time of transmittal if sent by electronic mail so long as a hardcopy is concurrently transmitted by another means permitted hereunder. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notice addresses for the parties are as follows:

To Comstock: 1886 Metro Center Drive, 4th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
Email: cclemente@comstockcompanies.com

With a copy to: Comstock Partners
1886 Metro Center Drive, 4th Floor
Reston, Virginia 20190
Attn: J. Phillip London, Jr., Esq.
Email: plondon@comstockpartnerslc.com

And an additional copy to: Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
Attn: Ellen Farrell Sharpe, Esq.
Email: ellen.sharpe@ofplaw.com

To Herndon: 777 Lynn Street
Herndon, Virginia 20170
Attention: Town Manager
Email: town.manager@herndon-va.gov

With a copy to: 777 Lynn Street
Herndon, Virginia 20170
Attention: Town Attorney
Email: lesa.yeatts@herndon-va.gov

And an additional copy to: Reed Smith, LLP
7900 Tysons One Place
Suite 500
McLean, Virginia 22102-5979
Attention: Thomas R. Folk, Esquire
Email: tfolk@reedsmith.com

Notice may be given by counsel for the parties, and such Notice shall be deemed given by Herndon or Comstock, as the case may be, for all purposes under this Agreement.

Section 21.8 Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party and all covenants and agreements which are contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the parties hereto.

Section 21.9 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but this Agreement shall be reformed and construed and enforced to the maximum extent permitted by applicable law.

Section 21.10 Waiver of Jury Trial. Comstock and Herndon each hereby waive the right to a trial by jury in respect of any litigation based hereon, arising out of, under or in connection with this Agreement or any documents contemplated to be executed in connection herewith, or any course of conduct, course of dealings, statements (whether oral or written) or any actions of either party arising out of or related in any manner with this Agreement or the Property (including any action to rescind or cancel this Agreement or any claims or defenses asserting that this agreement was fraudulently induced or is otherwise void or voidable). This section shall survive the expiration or sooner termination of this Agreement.

Section 21.11 Entire Agreement. This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Comstock and Herndon concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than in this Agreement. No alteration, amendment, change or addition to this Agreement shall be binding upon Comstock or Herndon unless reduced to writing and signed by each party.

Section 21.12 Headings; Counterparts. Headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument, and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one of such counterparts. Signatures transmitted by email will be binding upon the party transmitting such signature and such party will not use as a defense against the enforceability of this Agreement the lack of an original signature.

Section 21.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 21.14 Time of the Essence. Time is of the essence in the performance of each provision of this Agreement.

Section 21.15 Waiver of Claims for Consequential Damages. Herndon and Comstock waive claims against the other for consequential, punitive and indirect damages arising out of or relating to this Agreement or the Contract Documents. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages or payment of any amount due in accordance with this Agreement.

Section 21.16 Brokers. Herndon and Comstock each represent and warrant one to another that neither of them has employed any broker, or had any dealings with any broker, relating to this Agreement. Herndon shall indemnify and hold Comstock harmless, and Comstock shall indemnify and hold Herndon harmless, from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty by the respective indemnitors.

Section 21.17 Estoppel. At any time and from time to time upon not less than fifteen business days' notice by Comstock, Herndon shall execute, acknowledge and deliver to Comstock or any other party specified by Comstock a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same as modified is in full force and effect and stating the modifications) and stating whether or not to the best of Herndon's knowledge Comstock is in default in the performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such Default of which Herndon may have knowledge, and certifying as to any other matter with respect to this Agreement as Comstock or such other addressee may reasonably request.

Section 21.18 Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by this reference and made a part of this Agreement as if fully set forth herein. The following constitute the exhibits to this Agreement:

Exhibit A	Description of Land
Exhibit B-1	Conceptual Design for the Arts Center, Parking Garage and Arts Walk

Exhibit B-2	Transitional Parking Plan
Exhibit B-3	Temporary Arts Center Relocation Plan
Exhibit B-4	Preliminary Schedule
Exhibit B-5	Design Criteria for Herndon Components
Exhibit C	Form of Property Deed
Exhibit D	Memorandum of Comprehensive Agreement
Exhibit E	Public Parking Easement
Exhibit F	Left Intentionally Blank
Exhibit G	Form of Certificate of Termination and Release
Exhibit H	VBAF Requirements
Exhibit I	Form of Condominium Documents
Exhibit J	Form of Comstock Parent Guaranty
Exhibit K	Form of Arts Unit Deed
Exhibit L	Construction Managers and Day-to-Day Decisions
Exhibit M	Major Decisions and Decision Makers
Exhibit N	DVP Easement

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Town of Herndon, Virginia



Lisa C. Merkel, Mayor



ATTEST:



Viki L. Wellershaus, Town Clerk
Town of Herndon, Virginia

APPROVED AS TO FORM



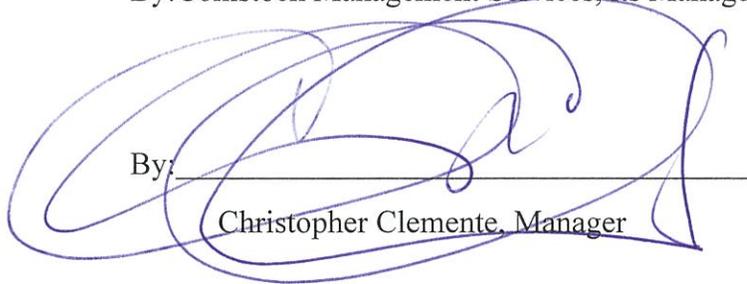
Lesa J. Yeatts, Town Attorney
Town of Herndon, Virginia

COMSTOCK:

COMSTOCK HERNDON VENTURE, LC

a Virginia limited liability company

By: Comstock Management Services, its Manager

By:  _____
Christopher Clemente, Manager

(Intentionally Deleted)

Exhibit A

Description of Land

Those certain Tax Map Parcels in the Town of Herndon, Virginia known as Fairfax County Tax Map Numbers 0162-02-0017, 0162-02-0018, that portion of 0162-02-0010B shown on the map attached hereto, 0162-02-0010E, 0162-02-20C, 0162-02-0020D, 0162-02-0020E, 0162-02-0020F, 0162-02-0026, 0162-02-0027A and 016-02-0029, together with that certain portion of the right-of-way known as Vine Street running between such parcels, which parcels also are known by the addresses 750 Center Street, 726 Center Street, 724 Center Street, 731 Station Street, 782 Elden Street and 770 Elden Street, all as further identified on the map attached to this Exhibit A.

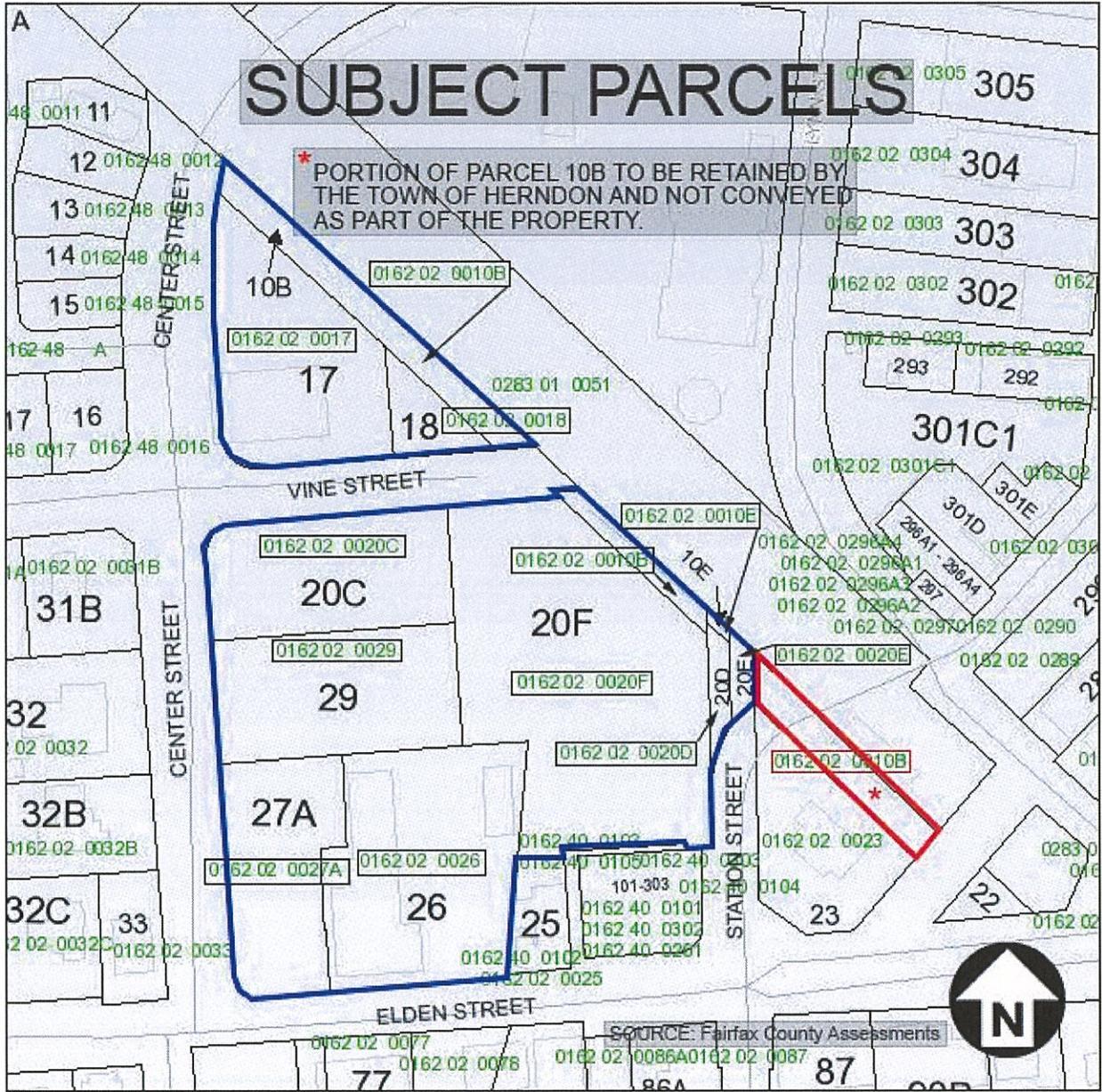
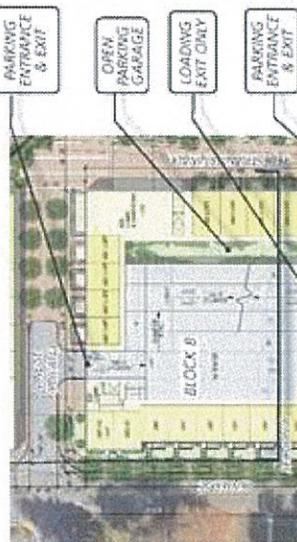
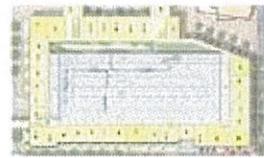
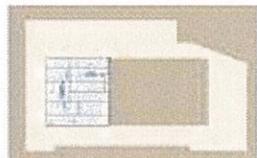
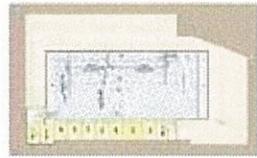


Exhibit B-1
Preliminary Conceptual Design for Arts Center and Parking Garage

GARAGE EXHIBIT



The parking garage for Herndon Town Center includes 761 parking spaces. 220 spaces are provided for the Town of Herndon, 60 spaces for the Arts Center, 59 spaces for the Retail, with the remainder being reserved for the residential units. Retail, residential, and Arts Center loading is also provided on the ground level. The garage will be an 8 level precast parking garage, with 6 levels being above grade, and 2 levels below grade. The garage is lined on all sides with residential tower, with one side being open to a courtyard area. Parking entrances and exits are located off private access drives from Station Street and Vine Street extended. A loading exit only is provided onto Center Street. Designated garage elevators and stairs will be provided for vertical circulation, and a public garage lobby is provided on the ground level.



COMSTOCK

Exhibit B-2

Preliminary Transitional Parking Plan

Comstock and Herndon shall approve a Transitional Parking Plan to satisfy parking obligations under the Public Shared Parking program during construction of the Project which meets the following requirements:

- 162 public shared parking spaces.
- Spaces shall be accessible 24-hours a day.
- Spaces may be located on the Property or offsite.
- Offsite parking spaces located within the areas identified on Schedule 1 attached hereto are approved; other areas are subject to Herndon's approval in its reasonable discretion.
- No charge to public parking patrons.
- Clear signage identifying location of the parking.

The approved Transitional Parking Plan shall be the most cost-effective means of satisfying the foregoing requirements, considering all anticipated costs to implement the plan – including without limitation costs incurred due to any extension to the Project Schedule resulting from delivering some or all parking spaces onsite, regardless of which party pays such costs. Any extension to the Project Schedule shall be confirmed at the time of approval of the Transitional Parking Plan.

The Transitional Parking Plan shall include the number and location of all spaces (including handicap spaces) from time to time during construction, parking stall dimensions and travel lane widths, and the location of parking signage.

Transitional Parking Allowance

The following amounts shall be included for purposes of making the calculations regarding the Transitional Parking Allowance and Excess Transitional Parking Costs under Section 6.6 of the Comprehensive Agreement:

- Costs to design and construct (or upgrade) and permit any surface parking spaces, travelways, sidewalks, etc., whether onsite or offsite.
- Costs to lease or license any offsite parking spaces.
- Costs to operate and maintain the public parking spaces, whether onsite or offsite (i.e., repairs, restriping, landscaping, snow removal, lighting, insurance, etc.).
- Costs of signage.
- Increased costs of construction caused by operation of parking spaces onsite during construction (whether surface parking or within the Parking Garage), including without limitation additional general conditions and administrative costs of the general contractor due to sequencing of work and extended Project Schedule resulting from delivering some or all parking spaces onsite, costs of temporary pedestrian and vehicular access, and overhead protection.

- Other direct costs actually and reasonably incurred in executing the Transitional Parking Plan.

Comstock overhead and general and administrative expenses and costs of capital and financing are specifically excluded from amounts payable under the Transitional Parking Allowance, but shall be includable together with the above-listed costs and other anticipated Project Costs for purposes of determining the cost-effectiveness of a proposed Transitional Parking Plan under Section 4.1(6).

Schedule 1

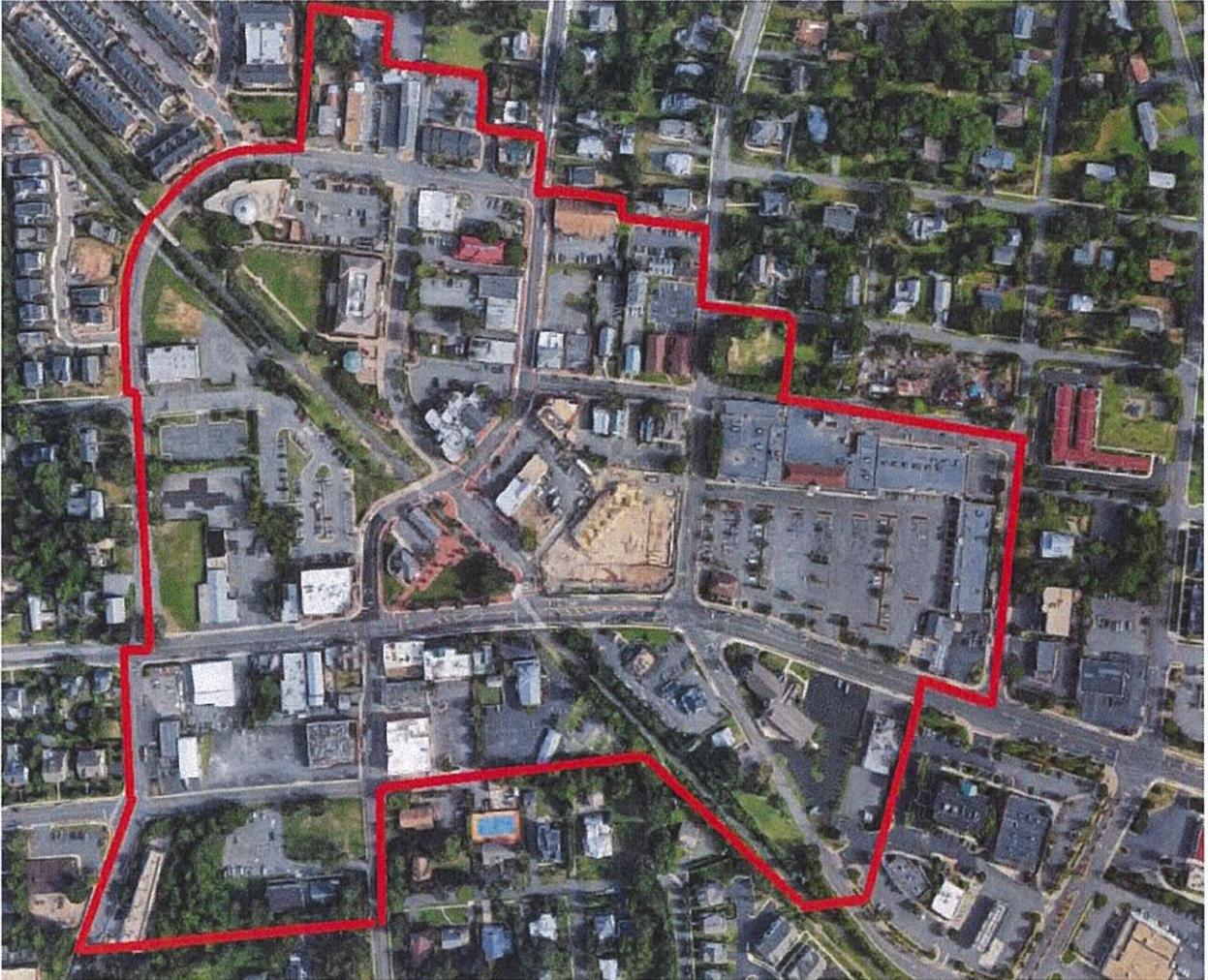


Exhibit B-3

Preliminary Arts Center Temporary Relocation Plan

The Existing Arts Center, located at 750 Center Street, shall be temporarily relocated in accordance with Section 5.4 of the Comprehensive Agreement and the below plan.

Site Approval

Comstock shall meet with the Herndon decision maker and a representative of Arts Herndon to confirm temporary space needs, anticipated to be $\pm 3,500$ sf., to satisfy Herndon's program requirements. Herndon shall determine program requirements in its reasonable discretion.

Comstock shall survey the Herndon market for space to accommodate these needs, including contacting property owners and potentially issuing an RFP.

Comstock shall present sites that substantially meet the program requirements to Herndon and Arts Center Herndon representatives for approval. Whether a site substantially meets space needs shall be determined by Herndon in its reasonable discretion.

Letter of Intent/Lease Negotiations

Comstock shall facilitate negotiation of a Letter of Intent and lease to secure the temporary space.

Arts Herndon (or another designee of Herndon) will be the tenant under the lease.

The lease shall provide for a term (and extension options or termination rights, as applicable) sufficient to allow for Substantial Completion of the Project and completion of the Arts Center Buildout. Budget and terms of the lease shall be determined by Herndon in its reasonable discretion. Comstock shall provide Herndon and Arts Herndon with periodic schedule updates so as to allow planning for lease terminations and extensions.

Project Coordination

Comstock shall provide project coordination and management services, including regular correspondence and meetings with Herndon and Arts Herndon representatives through the process of design, permitting, bidding, construction of tenant improvements and issuance of certificates of occupancy necessary to make the leased premises ready for Arts Herndon.

Tenant Improvements

Tenant improvements will include interior design, mechanical, electric and plumbing systems, and finishes substantially consistent with the existing location at 750 Center Street in the reasonable judgment of Herndon.

Delivery of Premises & Relocation

Comstock shall provide notice to Herndon and Arts Herndon 30 days prior to completion of the tenant improvements.

Relocation of existing operations and vacating of the 750 Center Street facility will occur promptly following issuance of the certificate of occupancy for the leased premises.

Schedule

Comstock and Herndon shall take all actions reasonably necessary under this Exhibit B-3 so as to facilitate the relocation of the Existing Arts Center to its temporary location in accordance with the Project Schedule.

Relocation Allowance

The following amounts are reasonable and directly related to the temporary relocation of the Existing Arts Center, and will be included for purposes of making the calculations regarding the Relocation Allowance and Excess Relocation Costs under Section 6.4 of the Comprehensive Agreement:

- Third party costs related to site acquisition, including broker fees and other costs approved in writing by Herndon.
- Costs and expenses paid to third parties for the design and construction of tenant improvements within the leased premises reasonably consistent with the existing location at 750 Center Street.
- Costs paid to third parties for relocation of the existing Arts Herndon operations into the leased premises and, following completion, from the leased premises into the new Arts Center.
- Base rent and common area maintenance charges under the lease during construction of the Project; provided, however, that additional amounts (e.g., due to tenant default, as penalties, for additional services, in connection with casualty or condemnation or for extensions) are the separate obligation of the tenant under the lease, and are excluded.
- Other direct costs actually and reasonably incurred in executing the Arts Center Temporary Relocation Plan, approved in writing by Herndon.

Comstock overhead and general and administrative expenses are specifically excluded from amounts payable under the Relocation Allowance.

Exhibit B-4 Preliminary Project Schedule

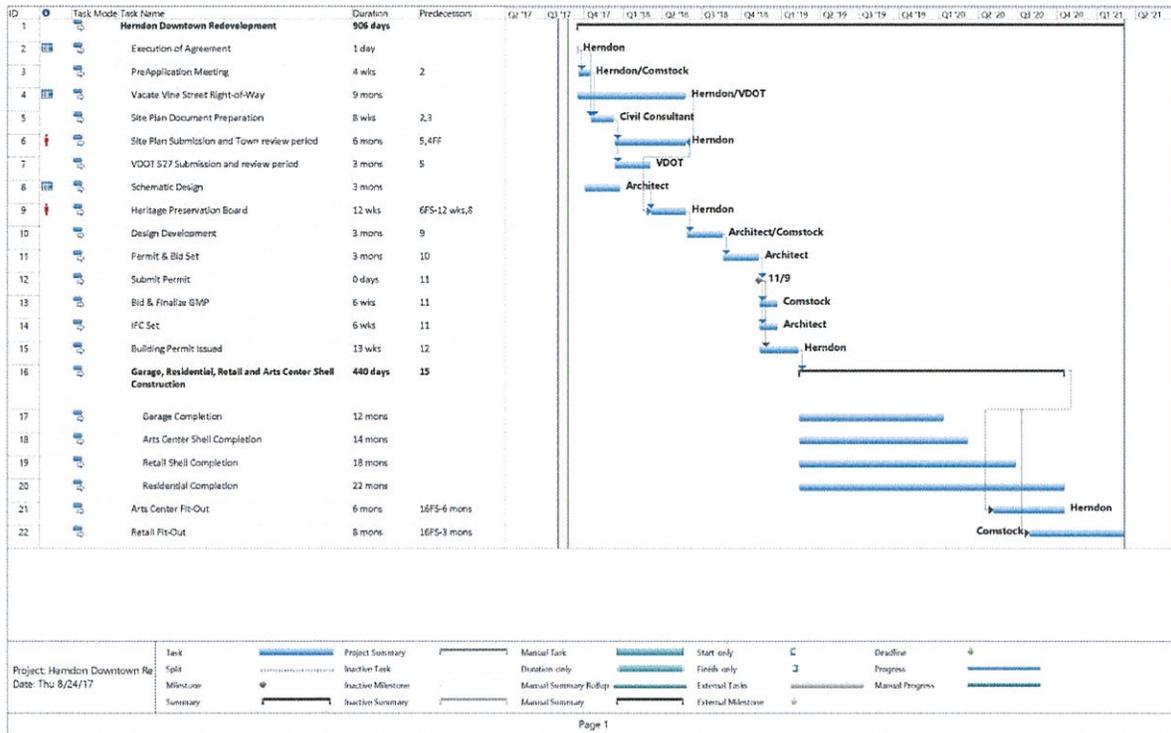


Exhibit B-5

Design Criteria for Herndon Components

The Project, including Herndon Components, shall be designed and constructed in compliance with the Codes and Standards, including applicable proffers.

The Project shall be designed and constructed to achieve LEED Silver certification or equivalent. Design and construction of the Arts Center interior (whether self-performed by Herndon or by Comstock on Herndon's behalf in accordance with Section 4.12) must be undertaken in a manner consistent with this requirement.

The following are the minimum specifications and design criteria for certain Herndon Components.

ARTS CENTER COLD DARK SHELL

The following comprise the cold dark shell condition of the Arts Center to be delivered by Comstock in accordance with the Agreement. All additional build out work within the Arts Center is to be performed by Herndon's selected general contractor pursuant to a separate agreement or, if applicable, by Comstock pursuant to an Arts Center Buildout Amendment in accordance with Section 4.12.

A. Structure

1. Frame: Poured in place concrete
2. Exterior Walls: Exterior walls shall be of non-combustible material and of finish consistent with the exterior of the Project and as designed by Comstock.
3. Partitions Separating Arts Center from Other Retail and Residential Lobby: The partitions shall be constructed of commercial gauge steel studs sized and spaced by engineer of design. The walls will be insulated, extend from the floor to the underside of the deck above with appropriate sealant applied to both sides top and bottom. Internal partitions, separating Arts Center uses, will be provided by Herndon in accordance with Section 4.12 of the Agreement.
4. Floors: Floor shall be a finished 4" concrete slab with mild steel reinforcement. Floors are designed in accordance with applicable building codes.
5. Storefront: Comstock to provide aluminum thermally broken storefront with 1" ESM insulated glazing. Glass tint shall be determined during design. The exterior storefront shall be consistent with or complimentary to the remainder of the structure's ground floor façade, as determined during design.

6. Roof: The roof shall be a modified bituminous membrane system or as determined during design, compliant with manufacturer's specifications and current applicable codes. A twenty-year, no dollar limit, labor and materials warranty, including insulation and accessories, will be provided.
7. Mezzanine: Whether to include a mezzanine within the Arts Center shall be determined by the parties during design development, with an emphasis on providing a functional, cost-effective design for each of the arts, retail and residential uses on the ground floor of the building. If the ±18,000 sf Arts Center is delivered on one level, no mezzanine will be provided as a part of the cold dark shell. If a mezzanine is to be provided as part of the cold dark shell, it shall be steel-framed structure with metal decking supporting a 4" concrete slab. Vertical access shall be provided in accordance with the Codes and Standards applicable for the approved mezzanine use.
8. Design of floor, ceiling and wall components (to be delivered by Comstock as part of the cold dark shell) shall be coordinated with design of the Arts Center interior so that the cold dark shell components accommodate future installation (in accordance with Section 4.12) of soundproofing and noise control systems (e.g., sound absorption, vibration isolation, etc.) necessary to meet the noise criteria ratings established by the parties, whose mutual intent is to have a fully functioning arts/theatre space without operating restrictions and without noise impact on adjacent residential and retail space users.

B. Utilities

1. Electric:
 - a. Herndon's electrical work commences at designated electrical disconnect and meter connection point in designated electrical switchgear room provided by Comstock and consists of all work (conduit, wire, gear, transformers, meter can and all other related items) necessary to distribute electrical power to and throughout the Arts Center. Herndon shall arrange with Virginia Dominion Power for installation of meter. Temporary or permanent power will not be available in the space until this occurs.
 - b. Service Description: 277/480 volts/3 phase and neutral.
 - c. Service Size and Capacity: Comstock will provide electric service as supported by a load letter, not to exceed 1000 Amps (for the Arts Unit) total connected load at the electrical vault. Any additional service capacity required shall be installed at Herndon's expense.
2. Telecommunication, Data and Video: Comstock shall provide 2 - 4" empty conduits with pull string from the telecommunications provider minimum point of

entry (MPOE) to the closest demising wall. Herndon will install internal distribution, equipment, outlets/ports, and wiring/conductors from the MPOE to the Arts Center and within the Arts Center at Herndon's sole expense.

3. Cold Domestic Water and Sanitary Waste/Vent Service: Comstock will provide an appropriately-sized, capped, valved domestic cold water line within a demising wall. Domestic water metering will be installed by Herndon's contractor at Herndon's expense. Waste lines will be available through knockout sleeves in floor slab in certain fixed locations. Cleanouts and heat trace to be installed as per local codes at Herndon's expense. Vent lines will be available for Herndon's contractor to tap at Herndon's sole cost.
4. Kitchen Exhaust Riser: None.
5. Gas: None
6. Toilet Exhaust Duct: Comstock will review Herndon's plans for the Arts Center interior buildout, and will provide accommodations for a toilet exhaust duct system. All connection work and ductwork will be at Herndon's sole cost.
7. Accommodations shall be made to permit any necessary vents to be routed through the roof and screened from view.

C. Fire Protection

Comstock will provide and install a fire sprinkler grid distribution system including backflow prevention, if required, inside a designated sprinkler room at Comstock's cost. This initial sprinkler grid distribution system will meet life safety code for assembly space and contain sufficient capacity for further Herndon alterations and additions for ordinary hazard occupancy. All alterations required to meet Herndon's specific design will be made by Herndon's contractor at Herndon's expense. Once occupancy of the Project has been attained, Herndon and Herndon's contractor will, upon prior coordination with property manager, be required to re-energize and re-fill the fire protection system within the Arts Center on a daily basis until completion of Herndon's fire protection alterations and occupancy.

D. Fire Alarm/Life Safety System

The Project plans will describe in detail the base fire alarm/life safety system which Comstock will install in the Arts Center to meet code for assembly space. Provisions will be made in this system for reasonable additions/modifications; however, should Herndon's requirement cause Comstock to upgrade the base system, those modifications will be at Herndon's expense. Work to tie in fire alarm to Comstock's base building system will be completed by Comstock's contractor at Herndon's sole cost.

PARKING GARAGE DESIGN CRITERIA

The following comprise the design criteria for the Parking Garage, including the Public Parking Spaces:

A. Site

1. Travel Lanes: Site travel lanes shall be a minimum of 11 feet wide per lane. Travel lane pavement sections shall consist of concrete pavement (minimum 3500 psi).
2. Utility Requirements:
 - a. The site shall be constructed and graded in a manner to drain surface water away from the Parking Garage.
 - b. Entryways to the Parking Garage shall have sufficient drainage and provide overland relief to eliminate the potential for flooding.
3. Electrical: The Parking Garage shall have adequate electrical service consistent with its intended use. Electrical room(s) shall be provided.
4. Communication/Telephone: Voice and data service shall be provided to the Parking Garage to accommodate parking controls for the residential components and security controls for all parking.
5. Signage and Way-Finding: Sufficient signage and other way-finding measures shall be provided throughout the project to ensure the public can easily find their way into and out of the Parking Garage.
6. Lighting: Sufficient vandal resistant high efficiency LED or equivalent site lighting shall be provided throughout the project to ensure the public can easily find their way into and out of the Parking Garage.

B. Parking Garage Design

1. Structural: The Parking Garage will be designed and constructed to achieve a 60-year useful life. It will be constructed as a Double-T precast concrete structure. Epoxy coated rebar will be incorporated into the design as needed to meet the life expectancy.
2. Parking Requirements: The Parking Garage shall have a minimum vehicle parking count of 280 cars (comprising 220 Public Parking Spaces and 60 spaces for the Arts Center) plus such additional number of spaces necessary to provide code compliant parking for the private uses in the project consistent with the Agreement.

3. Functional System: The Parking Garage functional system shall be a single thread parking ramp system with two-way traffic flow.
4. Parking Geometrics:
 - a. 90-degree parking.
 - b. Parking stall dimensions shall be = 8'-6" x 18'-0" (unencumbered by building elements). Structural elements must not impose on parking stall dimensions.
5. Floor to Floor clearance: Minimum 10'-6" floor-to-floor for typical tiers.
6. Ramp Slope: Maximum slope for parking ramp: 6.00%
7. Room Design
 - a. Equipment/Janitor's Room(s) (parking and security equipment): ±100 s.f.
 1. Walls: CMU with drywall finish, painted
 2. Floor: Resilient Tile
 3. Ceiling: Acoustic ceiling panels or drywall
 - b. Telecommunications Room(s): ±100 s.f.
 1. Walls: CMU with drywall finish, painted
 2. Floor: Resilient Tile
 3. Ceiling: Acoustic ceiling panels or drywall
 - c. Sprinkler Room (sized to accommodate fire protection system)
 1. Walls: CMU
8. Surface Finishes: The Parking Garage shall have walls and ceiling of exposed (precast) concrete.
9. Physical Security: The Parking Garage shall be sufficiently separated from the remaining private development so as not to allow passage between public and private uses.
10. Pavement Marking: Pavement marking in parking garage shall be as follows:
 - a. Line Striping: Thermoplastic
 - b. Crosswalks/traffic arrows: Thermoplastic
 - c. All pavement markings shall be compatible with deck sealants and traffic toppings installed in the Parking Garage, as applicable.
 - d. All pavement marking materials shall have a slip-resistant finish. Use of foundry grade sand is permissible to achieve a non-slip finish.

11. Access and Revenue Controls: Nested (restricted access) parking may be provided for residential and other uses within the Project, as applicable. The Parking Garage shall be designed to allow for installation (at delivery or in the future) of access control and revenue collection systems.

C. Mechanical

1. Non-Open Parking Levels: Parking levels not classified as "open", if any, shall be provided with a variable volume ventilation system and a carbon monoxide detection system meeting code requirements. Supply air shall be introduced as necessary to maintain required fresh air levels. Exhaust air shall be discharged at locations as necessary to maintain required fresh air levels. Circulating Fans shall be provided for all areas as necessary to maintain required fresh air levels.
2. Heating, Ventilating and Air Conditioning Systems: As required, heating, ventilating and air conditioning systems shall be provided for the electrical, janitor and sprinkler rooms to keep the temperature within the operating range of electronic equipment used for power and control of lighting and emergency lighting equipment. The HVAC system shall have provisions for fire dampers to meet applicable codes, thermostats for automatic operation and be designed for the loads encountered by the equipment to be installed.
3. Electrical:
 - a. Electrical Service: Electrical service, adequate to meet the Parking Garage requirements, shall be connected to an appropriate electric power company source by an underground service entrance.
 - b. Lighting System Design: A lighting system shall be provided to promote pedestrian and vehicle safety and security utilizing vandal-resistant high efficiency LED (or equivalent) light fixtures.
4. Illumination Levels: Minimum initial illumination levels (foot candles) at the floor level shall be as follows:
 - a. Entrance/Exit: 25 fc
 - b. Aisles: 10 fc
 - c. Stalls: 5 fc
 - d. Stairways: 10 fc
 - e. Lobbying/landing areas out of stairs and elevators: 10 fc
5. Plumbing:
 - a. Hose Bibs: Hose bibs shall be provided at convenient locations on each level of the garage.

- b. Stairwell Drains: Drains shall be provided at the bottom of stairwells. They shall either be located outside of the main pedestrian traffic area or be fitted with covers that do not pose a tripping hazard.

D. Security and Surveillance –

- 1. Objectives: The design objectives will include the following:
 - a. Control access between Public Garage and non-public areas within the project.
 - c. Enhance safety and security of residents, Arts Center patrons, visitors and other users of the Parking Garage. This shall include, as applicable, passive and active security features, such as stairwells with clear-glazed curtain walls, glass-enclosed elevators and no hidden corners.
 - d. Secure high-value and sensitive assets stored within the Parking Garage.
 - e. Detect and deter unauthorized access into the Parking Garage and to high-value and/ or sensitive assets.
 - f. Enable both proactive and reactive (forensic) monitoring and assessment of events using a combination of integrated sensors and surveillance cameras.
 - g. Minimize operator effort needed to monitor and control the Parking Garage.
 - h. Meet or exceed all applicable regulatory requirements governing life-safety and security systems as applicable to the Parking Garage.
- 2. Functional Requirements: The functional requirements for the physical security systems are derived from the Parking Garage design objectives:
 - a. Deter, detect and delay unauthorized entry into non-public areas of the project at perimeter doors (including access from the Parking Garage), while allowing easy access to public areas and the Public Parking Spaces via designated entryways, as applicable.
 - b. Electronically control, monitor and record access between public and non-public areas of the project.
 - c. Electronically control, monitor and record access between designated areas of the Parking Garage as appropriate.
 - d. Electronically control, monitor and record access to high-value and/or sensitive areas and assets within the Parking Garage such as network closets, electrical rooms and office areas, as appropriate.

3. Camera Surveillance System (CSS): Camera surveillance systems will be designed to operate over an IP network for improved system expandability, reliability, and ease of integration. Digital video recorders shall be located in the Security equipment room (which may be integrated within any equipment room serving the non-public portions of the project) where images shall be recorded and archived for a minimum of 30 days. Access to these recorders shall be provided via an Ethernet connection to the Internet, with sufficient bandwidth to allow remote monitoring of the cameras. The CSS may include a combination of fixed and pan-tilt-zoom (PTZ) units to monitor access to the Parking Garage and sensitive areas within. All video images will be recorded in digital format. The specific design criteria shall include:
 - a. PTZ and Megapixel cameras shall utilize automated call to doors and gates within the camera's field of view whenever an alarm event occurs.
 - b. Fixed cameras at the entry gates and garage locations. Cameras at the entry gates shall be capable of viewing license plates from either side of the gate, regardless of direction of travel.
 - c. Create a virtual perimeter using well-placed cameras equipped with video analytics.
 - d. Develop criteria for camera coverage throughout the Parking Garage, including stairways and ramps.
 - e. Cameras shall be equipped with vandal resistant, environmental housings rated for the conditions which exist at the Parking Garage.
 - f. Camera coverage at electrical and other maintenance areas, and areas where money is stored and handled, if applicable.

ARTS WALK DESIGN CRITERIA

Features to be provided in the Arts Walk are subject to Herndon's Proprietary Approval in accordance with the Agreement. Herndon shall engage members of the arts community to participate in the process of timely providing Proprietary Approval.

Features to be provided in the Arts Walk include the following:

1. The Arts Walk loop, around Block C and connecting plaza areas (by Comstock), will include art exhibits and historic references.
2. Hardscaping will include specialty brick pavers to highlight the walking loop. "Art" pieces – images, words, or sayings – will be incorporated into the paving patterns.

3. References to history of Town of Herndon and the site (vertical or as flatwork) will be incorporated (design-to budget of \$45,000).
4. Two permanent public art sculptures (not to exceed \$75,000 and \$50,000, installed).
5. Water fountain (design-to budget of \$333,000).
6. An outdoor art exhibit space for temporary installations.
7. Special overhead and/or in ground vandal resistant high efficiency LED or equivalent lighting.
8. Site fixtures will include benches, bike racks, trash receptacles, etc.
9. Landscape design and all plant materials.

Exhibit C
Form of Property Deed

This instrument was prepared by and
when recorded return to:
Ellen Farrell Sharpe, Esq., Bar No. 41429
Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, VA 20190

Parcel ID No. _____

SPECIAL WARRANTY DEED

THIS DEED is made on _____, 2017, by and between **THE TOWN OF HERNDON, VIRGINIA** ("Grantor"), and **COMSTOCK HERNDON VENTURE, LC**, a Virginia limited liability company ("Grantee").

W I T N E S S E T H:

THAT FOR and in consideration of the premises and the sum of TEN DOLLARS (\$10.00) cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, with SPECIAL WARRANTY OF TITLE, all of those certain lots or parcels of land situate, lying and being in the Town of Herndon, Fairfax County, Virginia, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference, together with all buildings and other improvements existing thereon, and all rights, privileges, and interests appurtenant to the land and existing improvements, including all rights-of-way, easements, development rights, density, appurtenances, water and other subsurface rights, profits, sewer and other utility rights, air rights, privileges, and all other appurtenant rights thereunto belonging (collectively, the "Property").

AND BEING the same real property acquired by the Grantor by Deed recorded in Deed Book _____, at page _____, and in in Deed Book _____, at page _____, and in in Deed Book _____, at page _____, all among the land records of the County of Fairfax, Virginia.

TO HAVE AND TO HOLD the aforesaid real property, together with all rights, privileges and advantages thereunto belonging or appertaining to the Grantee, its successors and assigns, forever.

SUBJECT TO all covenants, easements, conditions, restrictions and agreements contained in deeds forming the chain of title to said Property or any portion thereof including, without limitation, that certain Comprehensive Agreement dated _____, 2017 between Grantor and Grantee, a memorandum of which is recorded immediately prior to this

Deed in the land records for Fairfax County, Virginia as Instrument No. _____ (the "Comprehensive Agreement") (any defined terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Comprehensive Agreement); provided, however, that notwithstanding the foregoing, from and after the recordation of a Certificate of Termination and Release in accordance with Section 5.8(2) of the Comprehensive Agreement, the provisions of the Comprehensive Agreement shall be deemed automatically merged with this Deed and the Right of Re-entry set forth herein shall be of no further force or effect without need of further action by any party.

AND UPON CONDITION SUBSEQUENT THAT, if prior to recordation of a Certificate of Termination and Release (but not thereafter), Grantee or an Approved Mortgagee (as defined in the Comprehensive Agreement) fails to cure timely any default by Grantee under the Comprehensive Agreement (with Grantor having provided notice and any other cure periods having expired) that results in (i) an abandonment of the Project or suspension of construction work in violation of the Comprehensive Agreement, or (ii) the imminent foreclosure of the Project under any financing documents or tax liens, then, in addition to those other remedies identified in Article 10 of the Comprehensive Agreement, Grantor (but expressly not any successors or assigns of Grantor), at its option, shall have the exclusive, personal right to terminate all of Grantee's right, title and interests in and to the Property and to re-enter the Property (the "Right of Re-entry"), upon the following terms and conditions:

(a) Notice and Additional Cure Period. If an event occurs which gives rise to Grantor's Right of Re-entry, then Grantor shall provide written notice to Grantee and an Approved Mortgagee (the "Exercise Notice") specifically stating the nature of such default, the measures Grantee or an Approved Mortgagee must take to cure the same, and that Grantor intends to exercise its Right of Re-entry if Grantee or an Approved Mortgagee fails to commence to cure such default within thirty (30) days after the date of receipt of the notice and complete such cure within one hundred twenty (120) days after the Notice (collectively, the "Second Cure Period"). If Grantee (or an Approved Mortgagee) fails to commence to cure the default within the first thirty (30) days of the Second Cure Period, then Grantor must provide an additional written notice to Grantee ("Second Exercise Notice") within thirty (30) days thereafter that Grantor intends to exercise its Right of Re-entry upon the expiration of the Second Cure Period. Failure to properly provide the Exercise Notice or Second Exercise Notice will void Grantor's exercise of the Right of Re-entry until the Exercise Notice and Second Exercise Notice are properly given. If Grantor has timely delivered the Exercise Notice and Second Exercise Notice and otherwise strictly complied with all terms and conditions for exercise of the Right of Re-entry, Grantor may re-enter the Property upon the expiration of the Second Cure Period. Notwithstanding the foregoing, if the default is cured prior to the expiration of the Second Cure Period, then Grantor's exercise of its Right of Re-entry shall be deemed withdrawn.

(b) Termination of Interest, Re-entry. On the date designated for Re-entry, if Grantee or an Approved Mortgagee has not cured the default giving rise to the Right of Re-entry under Subsection (a), Grantor shall have the right to execute and record in the Land Records a declaration terminating the right, title and interest of Grantee in the Property ("Termination Declaration"), to terminate the estate conveyed to Grantee by this Deed (and re-vest such estate in Grantor), and to re-enter and take possession of the Property subject to all covenants,

easements, conditions, restrictions of record, including without limitation the Comprehensive Agreement and any Approved Mortgages (all such actions, collectively, "Re-entry"). Grantor shall have the right to re-vest such estate in a designee wholly-owned by Grantor.

(c) Obligation to Resell or Lease. Grantor shall use diligent, good faith efforts to resell and/or lease the Property as soon as practicable after Re-entry and in such a manner as is feasible, and consistent with the objectives embodied in the Final Project Plans and Construction Drawings, to a qualified and responsible party or parties who will assume the obligation of completing the Work in accordance with the Comprehensive Agreement. Upon such resale and/or lease of the Property, the proceeds thereof (and any income derived from the interim operation of the Property) shall be applied in the following order:

(1) First, to pay off the principal, unpaid and accrued interest thereon, and such other sums as are due and payable to an Approved Mortgagee pursuant to its Loan Documents, and, subject to the rights of the Approved Mortgagee and to any other Lenders, in order of priority.

(2) Second, to reimburse Grantor for all out-of-pocket costs and expenses, including reasonable attorneys' fees, reasonably incurred by Grantor in connection with the Re-Entry, management, lease and resale of the Property;

(3) Third, to pay any unpaid taxes, assessments, and water and sewer charges with respect to the Property or part thereof having accrued prior to Re-entry;

(4) Fourth, to pay costs reasonably incurred or necessary to discharge any other encumbrances or liens existing on the Property at the time of the Re-entry (all the Approved Mortgagees having been paid pursuant to clause (1), above) or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Grantee, its successors or transferees prior to Re-entry;

(5) Fifth, to pay expenditures made or obligations reasonably incurred by Grantor with respect to the performance of the Work or any part thereof on the Property;

(6) Sixth, to pay any amounts otherwise due and owing to Grantor by Grantee, its successors or transferees pursuant to the Comprehensive Agreement; and

(7) Seventh, to reimburse Grantee, its successors or transferees, up to the reasonable costs and expenses otherwise actually incurred by Grantee in designing the Project, obtaining Approvals, performing the Work on the Property in accordance with the Construction Drawings and Final Project Plans and otherwise performing under the Comprehensive Agreement, less any amounts received by Grantee from the Property.

(d) Termination of Obligations and Covenants. The exercise of the Right of Re-entry, and Grantor's Re-entry upon the Property in accordance therewith, shall terminate all obligations and covenants of Grantee under the Comprehensive Agreement, including those

which would otherwise survive termination of the Comprehensive Agreement or delivery of this Deed.

(e) Effective Upon Recordation. Grantor's Re-entry shall be effective upon recordation of the Termination Declaration among the Land Records.

(f) Applies to Whole Property. Grantor shall have the right to exercise its Right of Re-entry only with respect to the entirety of the Property or so much thereof as is owned by Grantee at the time of exercise of the Right of Re-entry.

(g) Subject to Foreclosure Proceedings. Grantor may not commence, nor continue to exercise, its Right of Re-entry, if an Approved Mortgagee institutes foreclosure or similar proceedings at any time prior to Re-entry and continues with commercially reasonable diligence to prosecute the same, until the earlier of either (x) such proceedings are terminated with Grantee retaining its interest in the Property or (y) the date which is twelve (12) months after the event occurs that gives rise to Grantor's Right of Re-entry.

(h) Rights Personal. The Right of Reentry is expressly personal to Grantor, and not any successors or assigns of Grantor, and may not be assigned by Grantor to any party whatsoever or exercised by any party but Grantor.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Deed to be signed by their authorized representatives as of the date set forth above.

[Signatures on following page]

GRANTOR:

TOWN OF HERNDON, VIRGINIA

In its proprietary capacity only and not in its governmental capacity

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

GRANTEE:

COMSTOCK HERNDON VENTURE, LC

a Virginia limited liability company

By: Comstock Management Services, LC, its Manager

By: _____

Christopher Clemente, Manager

COMMONWEALTH OF VIRGINIA

COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that Christopher Clemente, as Manager of Comstock Management Services, LC, the Manager of **COMSTOCK HERNDON VENTURE, LC**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of **COMSTOCK HERNDON VENTURE, LC**.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

Exhibit A to Property Deed
Legal Description of Property

Exhibit D

Memorandum of Comprehensive Agreement

This instrument was prepared by and
when recorded return to:
Ellen Farrell Sharpe, Esq., Bar No. 41429
Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, VA 20190

Parcel ID No. _____

MEMORANDUM OF COMPREHENSIVE AGREEMENT

THIS MEMORANDUM OF COMPREHENSIVE AGREEMENT is entered into as of the ___ day of _____, 2017, by and between **THE TOWN OF HERNDON, VIRGINIA** (“Herndon”), and **COMSTOCK HERNDON VENTURE, LC**, a Virginia limited liability company (“Comstock”).

1. Herndon is the owner of certain parcels of land in Herndon, Virginia consisting of approximately 4.675 acres of land and known by Fairfax County Tax Map Numbers 0162-02-0017, 0162-02-0018, a portion of 0162-02-0010B, 0162-02-0010E, 0162-02-20C, 0162-02-0020D, 0162-02-0020E, 0162-02-0010F, 0162-02-0026, 0162-02-0027A and 016-02-0029, together with that certain portion of the right-of-way known as Vine Street running between such parcels, which parcels also are known by the addresses 750 Center Street, 726 Center Street, 724 Center Street, 731 Station Street, 782 Elden Street and 770 Elden Street, all as more particularly described in Exhibit A attached hereto and incorporated by this reference (together with all improvements thereon, the “Property”).

2. Herndon and Comstock have entered into a certain Comprehensive Agreement dated _____, 2017 (as it may be amended or modified, the “Comprehensive Agreement”), whereby Comstock agreed to cause the design, development and construction upon the Property of a retail and residential complex anchored by an arts center (the “Project”) in exchange for the conveyance by Herndon to Comstock of the Property and all development rights thereon.

3. The Comprehensive Agreement obligates Comstock to: (1) make available public parking spaces at no charge to the public parking patrons during construction of the Project; (2) provide temporary space for an arts center during construction of the Project; (3), construct and transfer to Herndon an arts center condominium unit and a parking space condominium unit containing 341 parking spaces in the parking garage; and (4) construct and make available for public use an Arts Walk. All of the improvements referenced in clauses (3) and (4) are further described in the Comprehensive Agreement and defined as the “Herndon Components”).

4. Section 5.8(2) of the Comprehensive Agreement requires that, upon Substantial Completion of the Herndon Components of the Project and satisfaction of all Close Out obligations, Herndon will furnish the Settlement Agent with a “Certificate of Termination and Release”, which upon satisfaction of the conditions of Section 8.6 of the Comprehensive

Agreement, shall be recorded in the Land Records for Fairfax County, Virginia, and evidence the release of record of this Memorandum of Comprehensive Agreement, and the termination of the Right of Reentry and the termination of the Parking Easement identified in the Comprehensive Agreement. Comstock's other obligations to Herndon under the Comprehensive Agreement, which survive recordation of the Certificate of Termination and Release, shall not run with the land except to the extent contained in separate instruments recorded in the Land Records.

5. All covenants, terms, conditions and provisions set forth in the Comprehensive Agreement are incorporated herein by reference and made a part hereof. All terms not otherwise defined herein shall have the meanings ascribed thereto in the Comprehensive Agreement.

6. Herndon and Comstock enter into this Memorandum in order that third parties may have notice of the existence of the Comprehensive Agreement and of the obligations and covenants therein.

IN WITNESS WHEREOF, the parties have signed this Memorandum as of the date first set forth above.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Comprehensive Agreement on the day and year first above written.

HERNDON:

TOWN OF HERNDON, VIRGINIA

In its proprietary capacity only and not in its governmental capacity

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

COMSTOCK:

COMSTOCK HERNDON VENTURE, LC
a Virginia limited liability company

By: Comstock Management Services, LC, its Manager

By: _____
Christopher Clemente, Manager

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that Christopher Clemente, as Manager of Comstock Management Services, LC, the Manager of **COMSTOCK HERNDON VENTURE, LC**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of **COMSTOCK HERNDON VENTURE, LC**.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____
Notary Registration No.: _____

EXHIBIT A to Memorandum of Comprehensive Agreement

Legal Description of Property

Exhibit E

Declaration of Parking Easement

This instrument was prepared by and
when recorded return to:
Thomas R. Folk, Esq.
Reed Smith, LLP
7900 Tysons One Place, Suite 500
McLean, Virginia 22102-5979

Parcel ID Nos. _____

DECLARATION OF PARKING EASEMENT

THIS DECLARATION OF PARKING EASEMENT ("Parking Easement") is made on _____, 2017, by **THE TOWN OF HERNDON, VIRGINIA**, a body corporate and politic in its individual and proprietary capacity ("Herndon"), as GRANTOR and GRANTEE.

RECITALS:

A. Herndon is the fee simple owner of certain parcels of land in Herndon, Virginia known by Fairfax County Tax Map Numbers 0162-02-0017, 0162-02-0018, a portion of 0162-02-0010B, 0162-02-0010E, 0162-02-20C, 0162-02-0020D, 0162-02-0020E, 0162-02-0020F, 0162-02-0026, 0162-02-0027A and 016-02-0029, together with that certain portion of the right-of-way known as Vine Street running between such parcels, which parcels also are known by the addresses 750 Center Street, 726 Center Street, 724 Center Street, 731 Station Street, 782 Elden Street and 770 Elden Street (the "Property"), all as further described on **Exhibit A** attached hereto and incorporated by this reference.

B. Herndon and Comstock Herndon Venture, LC, a Virginia limited liability company ("Comstock"), are parties to a certain Comprehensive Agreement dated _____, 2017 (as it may be amended or modified, the "Comprehensive Agreement"), which provides for the conveyance of the Property by Herndon to Comstock in exchange for the design, development and construction upon the Property by Comstock of a retail and residential complex anchored by an arts center (the "Project"), including a multi-level structured parking garage ("Parking Garage") which shall include (among other parking spaces) approximately 341 parking spaces for the benefit of Herndon and the Project (the "Parking Spaces").

C. The Comprehensive Agreement further obligates Comstock to provide certain transitional parking during construction of the Parking Garage and Project ("Transitional Parking"), and upon completion of the Project, to convey the Parking Spaces to Herndon.

D. Prior to conveying the Property to Comstock, Herndon desires to establish, reserve and record a parking easement on the Property for the benefit of Herndon in order to assure that

parking is available at all times, either off the Property pursuant to the Comprehensive Agreement or on the Property subject to this easement.

AGREEMENT:

NOW, THEREFORE, WITNESSETH that Herndon, on behalf of itself and its successors and assigns, does hereby reserve and establish unto itself, in its individual, proprietary capacity (and not in its governmental capacity), an exclusive easement for the purpose of parking 162 vehicles, and does hereby subject the Property to a covenant running with the land requiring that parking for 162 vehicles be provided at or appurtenant to the Property, together with a nonexclusive easement for vehicular and pedestrian ingress and egress over and across the travelways and drive aisles located on the Property from time to time to access the parking, subject to the following:

1. Transitional Parking; Forbearance. The Comprehensive Agreement requires that from the date hereof until the conveyance of the Parking Spaces to Herndon, Comstock shall provide Transitional Parking. Transitional Parking shall consist of 162 parking spaces (or such lesser number of spaces as are acceptable to Herndon) for vehicular parking in accordance with Herndon's Public Shared Parking program, which may be located either on the Property or on adjacent or nearby land in accordance with a Transitional Parking Plan approved by Herndon in accordance with the Comprehensive Agreement. For so long as Comstock provides Transitional Parking off the Property or on-site in accordance with the Transitional Parking Plan, this easement shall be suspended and Herndon shall forbear and refrain from enforcing its rights under this easement (which forbearance shall include a prohibition on the filing of any action at law or in equity against Comstock or its successors, or otherwise with respect to the Property). Herndon's parking rights under this Parking Easement may be delegated for use by the general public as part of Herndon's Shared Parking program, enforceable by Herndon.

2. Rights of Owner. The provision of parking pursuant to this Parking Easement may be subject to such reasonable requirements and rules and regulations enacted from time to time by the party responsible for the maintenance and operation of the parking areas for the safe and orderly operation, maintenance, repair and replacement of the parking areas. The owner of the Property shall have the right to temporarily restrict access to the parking areas or travelways or drive aisles from time to time for such reasonable time as is necessary to prevent the accrual of any prescriptive rights to the public or an estoppel of such owner's rights hereunder, for repairs, maintenance or replacements, or as necessary to protect persons or property due to casualty or other force majeure events. The parking obligations set forth herein shall be for the parking of typical passenger vehicles and not commercial trucks, equipment or other non-passenger vehicles or the storage of materials.

3. Relocation of Easement. All of the rights, privileges and easements herein created and established shall apply and be limited, at any given time, to those areas actually improved for, constructed and maintained for parking and such rights, privileges and easements shall not be construed to prohibit or limit the right of an owner to build and construct improvements on the Property. An owner shall have the right, upon at least thirty days prior written notice to Herndon, to move and relocate (once or more often) parking facilities or travelways or drive aisles located on the Property, to such place(s) on the Property as it shall

designate, or to temporarily close all or any portion of such parking facilities or travelways or drive aisles located on the Property to prevent any dedication thereof or to make and permit to be made changes in and to the Property. Such relocation or temporary closing, and any changes in or to any parcel: (i) shall be permitted and approved by the applicable governmental authorities with jurisdiction therefor, if such approval is required; and (ii) shall be in compliance with all other provisions of this Parking Easement. Subject to typical construction requirements, the owner shall use diligent good faith efforts not to unreasonably interrupt access to or parking on the Property.

4. Duration and Termination. Until the conveyance of the Parking Spaces to Herndon, this Parking Easement shall remain in full force and effect and shall burden and run with the Property in perpetuity. Upon the conveyance of the Parking Spaces to Herndon, this easement and all obligations and covenants contained herein shall terminate automatically and shall be extinguished without the necessity of confirmation by any other document. Further, Herndon may at any time record a termination of this Parking Easement stating that Herndon no longer requires the provision of public parking on the Property, whereupon this easement shall be extinguished and become null and void.

5. In Gross. The easement rights provided hereunder shall be held by Herndon in its individual, proprietary capacity, and shall not be deemed a grant to the public or to Herndon on behalf of the public. This is an easement in gross. The rights provided hereunder shall be personal to Herndon and may not be assigned, conveyed, liened, encumbered, leased or transferred in any manner whatsoever except for assignment or conveyance to another local governmental entity implementing the Public Shared Parking program.

6. Governing Law. The provisions of this Parking Easement shall be governed by the laws of the Commonwealth of Virginia.

7. Severability. If any provision of this Parking Easement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Parking Easement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

8. Further Assurances. The easements granted herein shall exist by virtue of this Parking Easement without the necessity of confirmation by any other document.

9. Non-Merger. The rights, obligations, covenants and easements set forth herein shall continue in existence notwithstanding the common ownership of the Property and such common ownership shall not result in the application of the doctrine of merger or the termination of any such rights, obligations, covenants or easements. This easement is being reserved and granted in contemplation of the conveyance of the Property to Comstock until the construction of the Parking Garage and conveyance of the Parking Spaces to Herndon. Thus, it is Herndon's intent that this Parking Easement survive the conveyance to Comstock for the use and benefit of Herndon.

10. Comstock Acknowledgement. Comstock has executed this Parking Easement in the space provided below to evidence its acknowledgement and acceptance hereof.

WITNESS the following signatures and seals:

GRANTOR and GRANTEE:

TOWN OF HERNDON, VIRGINIA

In its proprietary capacity only and not in its governmental capacity

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA)

) to-wit:

COUNTY OF _____)

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public [SEAL]

My commission expires: _____

Notary Registration No.: _____

COMMONWEALTH OF VIRGINIA)
) to-wit:
COUNTY OF _____)

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for TOWN OF HERNDON, VIRGINIA, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

_____[SEAL]
Notary Public

My commission expires: _____

Notary Registration No.: _____

Exhibit A to Parking Easement

Description of Property

Exhibit F
Left Intentionally Blank

Exhibit G

Form of Certificate of Termination and Release

This instrument was prepared by and
when recorded return to:
Ellen Farrell Sharpe, Esq., Bar No. 41429
Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, VA 20190

Parcel ID Nos. _____

CERTIFICATE OF TERMINATION AND RELEASE
OF
MEMORANDUM OF COMPREHENSIVE AGREEMENT, PARKING EASEMENT,
AND RIGHT OF REENTRY

THIS CERTIFICATE OF TERMINATION AND RELEASE OF
MEMORANDUM OF COMPREHENSIVE AGREEMENT, PARKING EASEMENT, AND
RIGHT OF REENTRY (the “**Certificate**”) is made on _____, 20____, by and
between THE TOWN OF HERNDON, VIRGINIA (“**Herndon**” or the “**Town**”), and
COMSTOCK HERNDON VENTURE, LC, a Virginia limited liability company
 (“**Comstock**”).

RECITALS:

R-1. Herndon and Comstock are parties to that certain Comprehensive Agreement
dated _____, 2017 (as it may be amended or modified, the “**Comprehensive**
Agreement”), whereby Comstock agreed to cause the development of certain property located in
the Town of Herndon, Virginia and identified on **Exhibit A** attached hereto by this reference (the
“**Property**”) into a retail and residential complex anchored by an arts center (the “**Project**”).
The Comprehensive Agreement is evidenced of record by that certain Memorandum of
Comprehensive Agreement recorded in the land records for Fairfax County, Virginia (the “**Land**
Records”) on _____, 2018 as Instrument No. _____ (the
“**Memorandum of Comprehensive Agreement**”).

R-2. The Property is further burdened by that certain Declaration of Parking Easement
dated _____, 2018 and recorded _____, 2018 in the Land Records as
Instrument No. _____ which grants to Herndon certain rights for public parking
over and across the Property (the “**Parking Easement**”).

R-3 The Property is additionally burdened by and subject to the terms, provisions and covenants of that certain Right of Re-entry ("**Right of Re-entry**") contained within the Special Warranty Deed dated _____, 2018 and recorded _____ 2018 in the Land Records as Instrument No. _____ ("**Property Deed**") conveying the Property to Comstock.

R-4. The Comprehensive Agreement requires that upon Substantial Completion and Close-Out of the Herndon Components of the Project, Herndon and Comstock shall promptly execute and deliver this Certificate in recordable form in order to release of record the Memorandum of Comprehensive Agreement, [to terminate the Parking Easement,] and to terminate the Right of Re-entry.

R-5. Substantial Completion and Close-out of the Herndon Components of the Project have been achieved.

R-6. The parties desire to provide this Certificate in accordance with the requirements of the Comprehensive Agreement.

CERTIFICATE:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Herndon and Comstock provide, execute and deliver this Certificate to and for the benefit of the Property and Comstock and its successors and assigns in and as to the following:

1. This Certificate of Termination and Release is executed and delivered by Herndon pursuant to Section 5.8(b) of the Comprehensive Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Comprehensive Agreement. The foregoing recitals are incorporated herein by this reference.

2. Herndon and Comstock certify and confirm the following:

(a) Substantial Completion and Close-out of the Herndon Components of the Project have been achieved.

(b) The Memorandum of Comprehensive Agreement is hereby released of record for all intents and purposes and is of no further force and effect.

[(c) The Parking Easement is hereby terminated and extinguished and of no further force and effect.]

(d) The Right of Re-entry contained in the Property Deed is hereby terminated and of no further force and effect and Herndon shall have no rights thereunder.

(e) Comstock is free to transfer all or any portion of the Property, the remainder of the Project or any interest therein without any encumbrance in respect of the Comprehensive Agreement.

3. This Certificate of Termination and Release shall constitute a conclusive and incontestable determination of the above enumerated items.

4. Comstock's other obligations to Herndon under the Comprehensive Agreement which survive the recordation of this Certificate and which are not otherwise set forth in a separate recorded instrument shall not run with the land.

IN WITNESS WHEREOF, Herndon and Comstock have caused this Certificate of Termination and Release to be signed by their authorized representatives as of the date set forth above.

[Signatures on following pages]

HERNDON:

TOWN OF HERNDON, VIRGINIA

In its proprietary capacity only and not in its governmental capacity

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that _____, as _____ for **TOWN OF HERNDON, VIRGINIA**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same on behalf of the Town in its proprietary capacity.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____

Notary Registration No.: _____

COMSTOCK:

COMSTOCK HERNDON VENTURE, LC

a Virginia limited liability company

By: Comstock Management Services, LC, its Manager

By: _____

Christopher Clemente, Manager

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that Christopher Clemente, as Manager of Comstock Management Services, LC, the Manager of **COMSTOCK HERNDON VENTURE, LC**, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction on behalf of **COMSTOCK HERNDON VENTURE, LC**.

GIVEN under my hand and seal on _____, 20__.

Notary Public

My commission expires: _____

Notary Registration No.: _____

Exhibit A to Certificate of Termination and Release

Description of Property

Exhibit H
VBAF Requirements

TOWN OF HERNDON, VIRGINIA

RESOLUTION

MARCH 14, 2017

Resolution- to authorize the Mayor to sign the Site Remediation Grant Performance Agreement between The Virginia Economic Development Partnership and the Town to receive Virginia Brownfields Restoration and Economic Redevelopment Assistance Grant Funds.

WHEREAS, the Town Council authorized the submission of an application for allocation of up to \$300,000 through the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund by Resolution on September 27, 2016 to remediate and restore contaminated town-owned property located at 731 Station Street, 724 Center Street, 726 Center Street, 750 Center Street, 770 Elden Street and 782 Elden Street; and

WHEREAS, the Virginia Economic Development Partnership, in consultation with the Virginia Department of Environmental Quality and based upon applicable priorities awarded a Site Remediation Grant in the amount of \$109,000 to the town for the project for the above sites on December 20, 2016; and

WHEREAS, the town must commit 100 percent local matching funds of \$109,000; and

WHEREAS, the Virginia Economic Development Partnership and the town desire to enter into an agreement setting forth their understanding and agreement as to the payout of the Grant, the use of the Grant proceeds, the obligations of the parties; and

NOW THEREFORE BE IT RESOLVED by the Town Council for the Town of Herndon, Virginia, that:

- The Town Council approves a Site Remediation Grant Performance Agreement dated March 14, 2017 between The Virginia Economic Development Partnership as Grantor and the Town of Herndon, Virginia as Grantee. The agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.
- The Mayor is authorized to sign and deliver this agreement and any other instrument to evidence or support the agreement.

- This resolution shall be effective on and after the date of its adoption.

This is certified to be a true and accurate copy of Resolution 17-G-36 adopted at a legally convened meeting of the Town Council of the Town of Herndon on March 14, 2017.

Viki L. Wellershaus
Viki L. Wellershaus, Town Clerk



Attached for reference is the Virginia Brownfields Restoration & Economic Redevelopment Assistance Fund Program Site Remediation Grant & Performance Agreement.

**VIRGINIA BROWNFIELDS RESTORATION AND ECONOMIC
REDEVELOPMENT ASSISTANCE FUND PROGRAM**

SITE REMEDIATION GRANT

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 14th day of March, 2017, by and between the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY ("VEDP")**, a political subdivision of the Commonwealth of Virginia (the "Commonwealth") and the **TOWN OF HERNDON, VIRGINIA** (the "Grantee"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund (the "VBAF") was established pursuant to § 10.1-1237 of the Code of Virginia of 1950, as amended (the "Virginia Code"), to promote the restoration and redevelopment of brownfield sites in the Commonwealth and to address environmental problems or obstacles to reuse so that such sites can be effectively marketed to new economic development prospects;

WHEREAS, the VBAF is administered by the Virginia Resources Authority ("VRA"), and VEDP directs the distribution of grants from the VBAF;

WHEREAS, VEDP, in consultation with the Virginia Department of Environmental Quality ("DEQ"), has established guidelines for the awarding of Site Remediation Grant from the VBAF;

WHEREAS, the Grantee submitted an application requesting a Site Remediation Grant to assist with the costs of contaminated soil remediation and disposal, asbestos abatement and disposal, and related activities (the "Project") at seven parcels of land and three buildings owned by the Grantee, located in downtown Herndon, bounded by Station, Center, and Elden Streets and the W & OD Trail (the "Site")

WHEREAS, VEDP, in consultation with DEQ and based upon the VBAF priorities, has awarded a Site Remediation Grant in the amount of \$109,000 (the "Grant") to the Grantee for the Project;

WHEREAS, VEDP and the Grantee desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant proceeds, the obligations of the Grantee, and the repayment by the Grantee of all or part of the Grant under certain circumstances; and

WHEREAS, the restoration and redevelopment of brownfield sites and addressing environmental problems or obstacles to reuse of such sites constitutes a valid public purpose for the expenditure of public funds and is the animating purpose in making the Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions

For the purposes of this Agreement, the following terms shall have the following definitions:

“Grant Report” means a written detailed report reasonably satisfactory to VEDP and DEQ indicating that the Project is complete, the Grant proceeds have been expended, and the Local Match has been made. The Grant Report will include such other information set forth in Section 4(b).

“Interim Report” means a written detailed report reasonably satisfactory to VEDP and DEQ of the Grantee’s progress on the Project.

“Investment” means expenditures by or on behalf of the Grantee associated with the Project, including the Grant proceeds and the Local Match, set forth on Exhibit A.

“Local Match” means the required one-to-one match by the Grantee of the amount of the Grant from public and/or private sources in either cash or documented reasonable and necessary costs associated with the Project.

“Performance Date” means December 1, 2018, which is the date by which the Grantee expects to have completed the Project. If VEDP, in consultation with DEQ, deems that good faith and reasonable efforts have been made and are being made by the Grantee to complete the Project, the Performance Date may be extended by up to 15 months and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

Section 2. Disbursement of Grant; Use of Grant Proceeds.

(a) *Disbursement:* The Grant will be paid to the Grantee in one payment of \$109,000. Promptly upon the execution and delivery of this Agreement by the Grantee, VEDP will forward to VRA a copy of this Agreement, together with a direction to disburse \$109,000 to the Grantee.

(b) *Use of Grant Proceeds:* The Grantee will expend the proceeds of the Grant only as permitted by § 10.1-1237 of the Virginia Code and as part of the Investment outlined on Exhibit A.

Section 3. Investment; Supplemental Grant.

(a) *Investment:* The Grantee is expected to make the Investment and to complete the Project on or before the Performance Date. As the Project is undertaken, adjustments to the Investment may be needed. Except for *de minimis* adjustments (adjustments impacting, in the aggregate, less than 10% of the Grant proceeds), adjustments to the Investment require the prior written approval of VEDP and must be reflected on a revised Exhibit A provided to VEDP.

(b) *Local Match:* Evidence provided by the Grantee to VEDP demonstrates that the Grantee will make or will be committed to make the Local Match on or before the Performance Date.

(c) *Supplemental Grant:* If the Investment proves insufficient to allow the Grantee to complete the Project or other associated work identified through the results of the Project, a supplement grant in an amount of up to 20% of the Site Remediation Grant may be awarded if that additional amount, plus other identified funds, will be sufficient to allow completion and if monies are available from the VBAF. If such a supplemental Site Remediation Grant is awarded, the Grantee must provide an additional Local Match.

Section 4. Reporting.

(a) *Interim Reports:* The Grantee will provide two Interim Reports to VEDP. The first Interim Report is due no later than December 1, 2017. The second Interim Report is due no later than June 1, 2018.

The Grantee will provide a report on the progress of the Project at such other times as VEDP and DEQ may reasonably require.

(b) *Grant Report:* The Grantee will provide a Grant Report to VEDP no later than December 1, 2018.

The Grant Report must include:

- (i) a brief summary of the outcome of the Project;
- (ii) whether or not the Site may be effectively marketed to new economic development prospects;
- (iii) any adjustments made to the Investment;
- (iv) evidence that the Site has been or will be enrolled in the Virginia Voluntary Remediation Program ("VRP"); and
- (v) a statement that data collected reflects certification by the Virginia Environmental Laboratory Accreditation Program ("VELAP").

(c) *Status Report:* After the Performance Date, the Grantee must provide a written detailed report reasonably satisfactory to VEDP and DEQ providing an update on the Site including whether the Site was successfully marketed to a new economic development prospect and the Project generated any additional private investment and job creation at such time as VEDP and DEQ may reasonably require.

(d) *Costs of Reporting:* The cost of reporting will be borne by the Grantee.

Section 5. Repayment Obligations.

(a) *If Investment is Less than Expected:* If the Grant Report indicates that the Grantee was able to complete the Project for less than the expected Investment, such that the amount of the Grant proceeds exceeds the Local Match or the Grantee will not need all of the Grant proceeds previously disbursed to the Grantee, the Grantee must repay to VEDP an amount equal to the excess amount or the amount of the Grant proceeds no longer required.

(b) *If Grant Proceeds are Misspent:* If the Grant Report indicates, or any evidence gathered by VEDP reveals, that any Grant proceeds have been expended on anything other than the expected Investment, the Grantee must repay to VEDP the amount so misspent.

(c) *Failure to Complete by Performance Date:* If it is determined that the Grantee is unable to complete the Project and expend the Grant proceeds by the Performance Date and the Performance Date is not extended, the Grantee must repay to VEDP the unspent proceeds of the Grant as of the Performance Date.

(d) *Repayments to Fund:* VEDP will provide written notification to the Grantee if any repayment is due from the Grantee to VEDP under this Agreement. Within 60 days of receiving such notification, the Grantee will make the repayment to VEDP, subject to appropriation. Any repayment received by VEDP will be promptly transferred by VEDP to the VRA for redeposit to the Fund.

Section 6. Notices.

Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next

business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Grantee, to:

Town of Herndon, Virginia
PO Box 427
Herndon, Virginia 20172
Email: town.manager@herndon-va.gov
Attention: Town Manager

with a copy to:

Town of Herndon, Virginia
PO Box 427
Herndon, VA 20172
Email: lesa.yeatts@herndon-va.gov
Attention: Lesa Yeatts, Town Attorney

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: dgundersen@yesvirginia.org
Attention: Chief Operating Officer

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 7. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the Grant, and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court. In the event this Agreement is subject to litigation, each party shall be responsible for its own attorney's fees.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY

By [Signature]
Name: Daniel C. Gundersen
Title: Chief Operating Officer
Date: 4/19, 2017

TOWN OF HERNDON, VIRGINIA

By [Signature]
Name: Lisa C. Merkel
Title: Mayor
Date: March 14, 2017



APPROVED AS TO FORM

By [Signature]
Name: Lesa J. Yeatts
Title: Town Attorney, Town of Herndon
Date: March 14, 2017

SEEN AND ACKNOWLEDGED:

VIRGINIA RESOURCES AUTHORITY

By [Signature]
Name: Stephanie Hamlet
Title: Exec Director
Date: 4-20, 2017

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

By [Signature]
Name: James J. Golfer
Title: Director of Operations
Date: April 14, 2017

Exhibit A: Investment

Exhibit I
Form of Documents

Condominium
DECLARATION
FOR
HERNDON DOWNTOWN CONDOMINIUM

ARTICLE 1

CREATION; DEFINED TERMS

Section 1.1. Creation of the Condominium. Pursuant to the provisions of Chapter 4.2 of Title 55 of the Code of Virginia ("**Condominium Act**"), **COMSTOCK HERNDON VENTURE, LC**, a Virginia limited liability company ("**Declarant**"), hereby creates a condominium comprised of the land described as Submitted Land in Exhibit A, located within the Town of Herndon, Fairfax County, Virginia ("**Land**"), together with all improvements thereto and all easements, rights and appurtenances thereunto appertaining ("**Property**").

Section 1.2. Defined Terms. Except as otherwise defined herein or in Section 1.3 of the Bylaws comprising Exhibit B, all terms used in the condominium instruments shall have the meanings specified in section 55-79.41 of the Condominium Act. All exhibits referred to in the condominium instruments are exhibits to this Declaration.

Section 1.3. Name of Condominium. The name of the condominium is "**HERNDON DOWNTOWN CONDOMINIUM**" ("**Condominium**").

ARTICLE 2

BUILDINGS ON THE LAND; UNIT BOUNDARIES

Section 2.1. Location and Dimensions of Building. The location and dimensions of the buildings on the Land are depicted on the "**Plats**" labeled as Exhibit D attached hereto and incorporated herein by reference.

Section 2.2. Units. The location of units within the building on the Land and their dimensions are shown on the "**Plans**" labeled as Exhibit E attached hereto and incorporated herein by reference. The Common Element Interest Table attached as Exhibit C is a list of all units, their identifying numbers, location (all as shown more fully on the Plats and Plans) and the Common Element Interest appurtenant to each unit determined on the basis of par value. The "par value" of each unit is the number of points assigned by the Declarant based upon the approximate relative size of the unit and the type of unit. The basis for allocation of par value is set forth in the Notes to Common Element Interest Table attached as Exhibit C. "**Residential Unit**" means a Unit which is designated for residential use and which may include one or more dwelling units. "**Commercial Unit**" means a Unit which is designated for commercial and/or retail use. "**Parking Unit**" means the Public Shared Parking spaces located in the structured parking garage as shown on the Plans. "**Arts Unit**" means [**Unit 1-100**] as shown on the Plats and Plans, which unit is to be conveyed to the Town of Herndon, initially for operation of an arts center, subject to and in accordance with the terms of a Comprehensive Agreement with the

Declarant regarding development and operation of the Condominium and adjacent property. At such time as the Arts Unit is no longer owned by the Town, or the Town operates the Arts Unit as a commercial and/or retail use, the Arts Unit shall become a Commercial Unit for all purposes hereunder. As used herein the term “unit” shall refer to a Residential Unit, a Commercial Unit, the Parking Unit and the Arts Unit unless specifically stated otherwise.

Section 2.3. Unit Boundaries. The boundaries of each unit except for the Parking Unit are as follows:

(a) Horizontal (upper and lower) Boundaries: The upper and lower boundaries of the unit are the following boundaries extended to their intersection with the vertical (perimetric) boundaries:

(1) Upper Boundary: The horizontal plane of the lowermost surface of the concrete slab, joists or trusses (as the case may be) of the ceiling except where there is a dropped ceiling in which locations the upper boundary is the horizontal plane which includes the top side of the acoustic tiles or wallboard comprising the dropped ceiling.

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab or wood subflooring (as the case may be).

In units consisting of more than one level, if any, the upper and lower boundaries refer to the uppermost and lowermost such boundaries with respect to each level; the concrete slab dividing the levels is part of the unit.

(b) Vertical Boundaries. The vertical boundaries of the unit are the vertical planes which include the interior face of the concrete exterior building wall or the face of the stud (as the case may be) of the walls bounding the unit extended to intersections with each other and with the upper and lower boundaries. With respect to walls abutting common element corridors or adjacent units, the unit boundary shall be the vertical plane which includes the unit side face of the stud of such wall, extended to intersections with the other unit boundary walls and the upper and lower boundaries.

(c) Utility System. The unit includes the heating and air-conditioning apparatus serving only that unit (whether or not located within the unit boundaries). Any portion of a utility system or other apparatus serving more than one unit (e.g., pipes, conduits, ducts) which is located partially within and partially outside the unit (including without limitation any fire protection sprinkler system) is part of the common elements. Any portion of a utility system serving only one unit which is located outside the unit is a limited common element appurtenant to that unit.

The boundaries of the Parking Unit are as follows:

(a) Horizontal (upper and lower) Boundaries: The upper boundary of the Parking Unit is the horizontal plane created by the lowermost surface of the concrete slab of the ceiling and the lower boundary of the Parking Unit is the horizontal plane created by the top surface of the undecorated concrete slab of the floor, both extended to their intersection with the vertical (perimetric) boundaries.

(b) Vertical Boundaries: The vertical boundaries of the Parking Unit are the vertical planes in the locations shown on the Plans. With respect to boundaries abutting a common element wall, the unit boundary shall be the vertical plane on the unit side face of the wall, extended to intersections with the other unit boundaries and the upper and lower

boundaries. The Parking Unit consists of non-contiguous portions, all of which together constitute a single unit.

Section 2.4. Maintenance Responsibilities. Notwithstanding the ownership of the various portions of the common elements and the units by virtue of the foregoing boundary description, the provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the unit owner and the Association.

Section 2.5. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions therefor in Sections 5.7 of the Bylaws and in sections 55-79.69 and 55-79.70 of the Condominium Act. The provisions of this Section 2.5 shall not be construed to require an amendment to this Declaration for the installation of demising partitions within any unit for the purpose of creating separate leasable spaces.

ARTICLE 3

COMMON ELEMENTS

Section 3.1. Common Elements. The common elements of the Condominium consist of all portions of the Condominium other than the units, including without limitation roofs, building exteriors, landscaping, parking garage, plaza areas, travelways, private streets, pathways, walkways and the area designated on the Plats as the "Arts Walk".

Section 3.2. Limited Common Elements. (a) The locations of the common elements to which each unit has direct access are shown on the Plats and Plans. Pursuant to section 55-79.50E of the Condominium Act, any such common element designated as such (including without limitation doors, windows and any other apparatus designed to serve a single unit, but located outside the boundaries thereof) is a limited common element appurtenant to that unit.

(b) Parking and Storage Spaces. A portion of the common elements is marked on the Plans as "Common Elements which may be assigned as Limited Common Elements." This portion of the common elements includes all of the (i) common element parking spaces located within the structured parking deck from the top surface of the concrete slab parking surface to the underside of the concrete ceiling slab above, or if no concrete ceiling slab exists, to a point twenty feet above the concrete parking surface; and (ii) storage areas in common element storage rooms. Pursuant to paragraph (6) of subsection 55-79.54A of the Condominium Act, the Declarant reserves the exclusive right to assign these parking spaces and storage areas as limited common elements for the exclusive use of certain unit owners to whose units these parking spaces and storage areas shall become appurtenant. The Declarant may assign such a common element as a limited common element parking space or storage cubicle pursuant to the provisions of section 55-79.57 of the Condominium Act by causing an appropriate amendment to this Declaration or to the Plans to be signed and recorded. If, prior to settlement on a unit, a person acquires the right to the assignment of a limited common element, the Declarant shall evidence the right to such an assignment in the deed to the unit to which such limited common element shall appertain. If a unit owner acquires the right to the exclusive use of such a limited common element subsequent to settlement on the unit, the Declarant may but need not evidence the unit owner's right to such an assignment in a separate written agreement with the unit owner.

(c) The Declarant reserves the right to assign portions of the common elements as limited common elements for the exclusive use of (i) Residential Units or

Commercial Units, individually or as a group, or to the Arts Unit, as the case may be; or (ii) the owners or occupants of one or more buildings within the Condominium. Such portions of the common elements include recreational facilities and amenities serving fewer than all of the units and plaza areas and sidewalks adjacent to Commercial Units to be used in connection with the operation of the businesses within such Commercial Units.

Section 3.3. Reserved Common Elements. The Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in designated common elements to the Association or to any unit owners and to establish a reasonable charge to such unit owners for the use and maintenance thereof. The common elements or portions thereof so designated shall be referred to as Reserved Common Elements. Such designation by the Board shall not be construed as a sale or disposition of the common elements.

Section 3.4. Rental Operation within Residential Units and Commercial Units. The Declarant shall have the right to operate any Residential Unit or Commercial Unit as a rental property in accordance with the applicable zoning. The Declarant may establish and maintain all offices, signs and other accoutrements normally used in the operation of such rental properties in the sole discretion of the Declarant. The Declarant may, in the sole discretion of the Declarant, lease all or any portion of any Residential Unit or Commercial Unit so long as the Declarant pays the expenses attributable to such rental operation. Such operations shall be for the benefit of the Declarant and neither the Association nor any unit owner (other than the Declarant) shall have any right or interest in the profits or losses thereof.

Section 3.5. Alteration of Common Elements by the Declarant. The Declarant reserves the right to modify, alter, remove or improve defective, obsolete or non-functional portions of the common elements, including without limitation any equipment, fixtures and appurtenances, when in the Declarant's judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period.

ARTICLE 4

EASEMENTS

In addition to the easements created by sections 55-79.60 and 55-79.65 of the Condominium Act, the following easements are hereby granted and the following rights are hereby reserved.

Section 4.1. Easement to Facilitate Sales/Leasing. All units shall be subject to an easement in favor of the Declarant pursuant to section 55-79.66 of the Condominium Act. The Declarant reserves the right to use any units owned or leased by the Declarant as models, management offices, sales offices, leasing offices or customer service offices for the Condominium and/or other projects. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to restrict the use of certain common element parking spaces for sales purposes and to use such spaces for sales purposes. Further, the Declarant shall have the right to erect temporary offices on certain common element parking spaces for models, sales, management, customer service, construction and similar purposes. This easement shall continue until the Declarant has conveyed to unit owners other than the Declarant all the units in the Condominium which the Declarant has the right to create and the warranty period has expired.

Section 4.2. Easement for Access and Support.

(a) Access. The Declarant reserves in favor of the Declarant, the managing agent and any other person authorized by the Board of Directors the right of access to any common element or unit as provided in section 55-79.79 of the Condominium Act and Section 5.9 of the Bylaws. In case of emergency, such entry shall be immediate whether or not the unit owner is present at the time. Further, until the expiration of the warranty period, such entry shall be permitted to inspect or perform warranty-related work (for the benefit of the unit being entered, other units or the common elements) whether or not the unit owner or the Association consents or is present at the time.

(b) Support. Each unit and common element shall have an easement for lateral and subjacent support from every other unit and common element.

Section 4.3. Declarant's Right to Grant Easements.

(a) Construction; Utilities. The Declarant shall have the right to grant and reserve easements and rights-of-way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sanitary sewer, drainage, storm water management, gas, electricity, telephone, television reception, communications, Internet and other utilities. The foregoing easements and rights-of-way may be granted to third parties or reserved for the benefit of any portion of the Property or any portion of the land described on Exhibit A which is not, at the time of such grant or reservation part of the Property. This right shall continue until the Declarant has conveyed all units in the Condominium and the warranty period has expired. In furtherance of the foregoing reserved rights, the Declarant hereby creates and establishes an easement over and through the common elements of the Condominium for the benefit of the owners of all units for the purpose of access to such units, the performance of construction work within such units, and installation of utilities necessary to serve the units, subject to any applicable Rules and Regulations regarding construction activities and installation of utilities within the Property.

(b) Access. The Declarant reserves the right to grant or reserve easements and rights-of-way through, over and across the Property to afford vehicular and pedestrian access through, over and across the common elements from and to any public street or road adjoining the Property and any portion of the real estate described in Exhibit A which is not, at the time of such grant or reservation, part of the Property. This right shall continue until the Declarant has conveyed all units in the Condominium.

Section 4.4. Easement for Use of Common Facilities.

(a) Grant of Easement and Reservation of Right. Each unit owner is hereby granted a non-exclusive easement for access to and use of the amenities, grounds, and facilities constituting a portion of the common elements (other than any limited common elements or Reserved Common Elements) of the Condominium ("Common Facilities").

(b) Extent of Easement. The easement created hereby shall be subject to the following:

(1) the right of the Declarant prior to the termination of the Declarant Control Period to grant and reserve easements and rights-of-way through, under, over and across the Common Facilities, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, television reception and other utilities; and

(2) the right of the Association to adopt rules and regulations governing the use of the Common Facilities and to grant easements through the common elements as permitted by the Condominium Act.

(c) Delegation of Use. Any person having the right to use the Common Facilities may delegate such right to the members of such person's household, tenants who reside on the Land and to such other persons as may be permitted by the Association.

(d) Rights to Use. Each person having the right to use the Common Facilities and each person to whom such right has been delegated shall comply with the rules and regulations regarding such use, as such rules and regulations may be established and amended from time to time by the Board of Directors. Such rights to use may be suspended upon failure of a unit owner to pay condominium assessments and/or upon failure to comply with such rules and regulations.

ARTICLE 5

AMENDMENT TO CONDOMINIUM INSTRUMENTS; REQUIRED CONSENT

This Declaration may be amended as provided in the Condominium Act, as amended from time to time. No amendment of the Declaration may be made without the prior written approval of the required percentage of Mortgagees where such approval is provided for in Section 8.5 of the Bylaws or where such approval is required elsewhere in the condominium instruments or by the Condominium Act. No amendment shall be made to any condominium instrument without the prior written consent of the Declarant for so long as the Declarant owns a unit. No amendment to the condominium instruments shall diminish or impair the rights of the Declarant under the condominium instruments without the prior written consent of the Declarant. No amendment to the condominium instruments shall diminish or impair the rights of the owners of Commercial Units under the condominium instruments unless such amendment is approved by unit owners owning Commercial Units to which more than sixty-seven percent of the aggregate Common Element Interests appertain. The Association shall not, without the prior written consent of all unit owners of Commercial Units and the unit owner of the Arts Unit adopt any amendment to any condominium instrument or any rules or regulations pertaining to the Condominium, which shall in any manner further prohibit, restrict or unreasonably interfere with the use and operation of any Commercial Unit or the Arts Unit for the uses permitted under any zoning proffers or entitlements or other applicable regulations for the Town of Herndon or Fairfax County, Virginia, as applicable. No amendment to the condominium instruments, including any rules and regulations promulgated by the Association, shall diminish or impair the rights of the Town under the condominium instruments or further prohibit, restrict or unreasonably interfere with the use and operation of any unit owned by the Town without the prior written consent of the Town.

ARTICLE 6

DEVELOPMENT OPTIONS

Section 6.1. Contraction of the Condominium. The Declarant hereby reserves an option until the tenth anniversary of the recordation of this Declaration to contract the Condominium from time to time in compliance with subsection 55-79.54D and section 55-79.64 of the Condominium Act without the consent of any unit owner or Mortgagee. The option to contract may be terminated prior to such anniversary only by the Declarant recording an instrument relinquishing such option. The Declarant reserves the right to withdraw any or all

portions of the withdrawable land at any time, at different times, in any order, without limitation; provided, however, that the withdrawable land shall not exceed the area described on Exhibit A. There are no other limitations on the option to contract.

Section 6.2. Expansion of the Condominium.

(a) Reservation. The Declarant hereby reserves an option until the tenth anniversary of the recordation of this Declaration to expand the Condominium from time to time in compliance with subsection 55-79.54C and Section 55-79.63 of the Condominium Act without the consent of any unit owner or Mortgagee. The option to expand may be terminated prior to such anniversary only upon the recordation by the Declarant of an instrument relinquishing such option. The Declarant reserves the right to add any or all portions of the additional land at any time, at different times, in any order, without limitation; provided, however, that the additional land shall not exceed the area described on Exhibit A. There are no other limitations on the option to expand except as set forth in this Article.

(b) Assurances. The Declarant makes no assurances as to location of improvements on the additional land. At such time as the Condominium is expanded, the maximum number of units on the additional land will not exceed [____]. The maximum number of units on any portion of the additional land added to the Condominium shall not exceed [____] units per acre. Moreover, the maximum number of units in the Condominium as a whole shall never exceed [____] units per acre. The maximum percentage of the aggregate land and floor area of all units that may be created on the additional land that may be occupied by units not restricted exclusively to residential use, if such additional land is added to the Condominium, is [____] percent. Any improvements constructed on the additional land will be compatible in quality, materials and style with the improvements on the Land. No assurances are made by the Declarant as to the size or type of Residential Units that may be created in the future on the additional land. The Declarant reserves the right to designate common elements therein which may be subsequently assigned as limited common elements. The Declarant makes no assurances as to type, size or maximum number of such common elements or limited common elements, except that the number of limited common elements on the additional land shall not exceed 10,000. The allocation of Common Element Interests in the additional land shall be computed as required by subsection 55-79.56B of the Condominium Act on the basis of par value. If the Declarant does not add, or adds and then subsequently withdraws, any portion of the additional land, the Declarant shall nevertheless have the right to construct all or any portion of any building on the additional land and operate the same without restriction.

Section 6.3. Convertible Space. The Declarant may designate as convertible space all or any portion of the buildings on the additional land when added to the Condominium. The conversion of such convertible space shall be made pursuant to section 55-79.62 of the Condominium Act.

ARTICLE 7

RIGHT TO LEASE OR SELL UNITS

The Declarant shall own in fee simple each condominium unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant retains the right to enter into leases with any persons for the occupancy of any of the units owned by the Declarant.

Exhibit A
to the Declaration

DESCRIPTION OF SUBMITTED LAND, ADDITIONAL LAND
AND WITHDRAWABLE LAND

BYLAWS
OF
HERNDON DOWNTOWN CONDOMINIUM

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BYLAWS
OF
HERNDON DOWNTOWN CONDOMINIUM

ARTICLE I.

General Provisions

A. Name. These Bylaws provide for the governance of the Condominium by the Unit Owners Association pursuant to the requirements of Article 3 of the Condominium Act. The name of the Unit Owners Association is **“Herndon Downtown Condominium Unit Owners Association.”**

B. Office. The office of the Condominium, the Unit Owners Association and the Board of Directors shall be located at the Property or at such other place as may be designated from time to time by the Board of Directors.

C. Definitions. Terms used without definition have the meanings specified for such terms in the Declaration to which these Bylaws are attached as Exhibit B, or if not defined in the Declaration, the meanings specified for such terms in section 55-79.41 of the Condominium Act. The following terms have the following meanings in the condominium instruments:

1. “Arts Unit” means Unit 1-100 as shown on the Plats and Plans. The Arts Unit will be conveyed to the Town initially for operation of an arts center, subject to and in accordance with to the terms of a Comprehensive Agreement with the Declarant regarding development and operation of the Condominium and adjacent property.

2. “Arts Walk” means a portion of the common elements designed and designated for pedestrian use only and planned to include art exhibits, historic references, and retail and outdoor seating.

3. “Board of Directors” or “Board” means the executive organ established pursuant to Article 3.

4. “Commercial Unit” means a Unit which is designated for commercial and/or retail use.

5. “Common Element Interest” means the number assigned to each unit by Exhibit C to the Declaration which establishes each unit’s undivided interest in the common elements, common expenses and surplus and votes in the Unit Owners Association.

6. “Declarant Control Period” means the period prior to the earliest of (i) the date on which units to which seventy-five percent or more of the aggregate Common Element Interests appertain have been conveyed to unit owners other than the Declarant; (ii) five years after the date of the first conveyance of a condominium unit to a unit owner other than the Declarant (the maximum time period permitted by section 55-79.74A of the Condominium Act);

or (iii) the date specified by the Declarant in a notice to the Unit Owners Association that the Declarant Control Period is to terminate on that date.

7. "Limited Common Expenses" means expenses separately assessed against one or more but less than all of the condominium units generally in accordance with the use of the services, as permitted by section 55-79.83 of the Condominium Act and Section 5.1 of these Bylaws, including expenses relating to only one type of unit. Except where the context requires otherwise, common expenses shall include Limited Common Expenses.

8. "Majority Vote" means a simple majority (more than fifty percent) of the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any specified percentage vote means that percentage vote with respect to the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any specified percentage approval or vote of the Mortgagees means approval or a vote by the Mortgagees of condominium units to which such percentage of the total number of votes appertain.

9. "Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("Mortgage") encumbering a condominium unit in the Condominium which has notified the Unit Owners Association of its status and has requested all rights under the condominium instruments. For the purposes of Article 8, when any right is to be given to a Mortgagee, the Board of Directors shall also give such right to any public or private secondary mortgage market entity participating in purchasing or guarantying Mortgages if the Board has notice of such participation.

10. "Officer" means any person holding office pursuant to Article 4, but contrary to section 55-79.41 of the Condominium Act, shall not mean members of the Board of Directors unless such directors are also Officers pursuant to Article 4.

11. "Parking Garage Expenses" means the expenses incurred by the Association to operate and maintain the parking garage located on the common elements, including without limitation general maintenance, repair and replacement of the structure, including all equipment and associated facilities, striping, lighting, insurance, parking control or security systems and utility services.

12. "Public Parking Spaces" means the [341] parking spaces within the structured parking garage and constituting the Parking Unit. The Public Parking Spaces are intended to be available for parking by the unit owners, the residents and tenants of the units, their employees, guests and invitees and the general public.

13. "Reserved Common Element" means a common element in which the Board of Directors has granted a revocable license for exclusive use by less than all of the unit owners.

14. "Residential Unit" means a Unit which is designated for residential use and which may include one or more dwelling units.

15. "Town" means the Town of Herndon, Virginia. All references to approval by the Town shall mean approval by the appropriate agency of the Town, as determined by the Office of the Town Attorney at that time.

16. "Unit Owners Association" or "Association" means the unincorporated, non-profit association of all the unit owners owning condominium units in the Condominium.

ARTICLE II.

Unit Owners Association

A. Composition. The Unit Owners Association consists of all of the unit owners. For all purposes the Association acts merely as an agent for the unit owners as a group. The Association has the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Association by the Condominium Act and the Declaration. Except as to those matters which the Condominium Act specifically requires to be decided by the vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors or managing agent as more particularly set forth in Article 3.

B. Annual Meetings. The annual meetings of the Unit Owners Association shall be held on weekdays (other than legal holidays) at least forty-five days before the beginning of each fiscal year. The first meeting of the Association shall be held within one year after there is a unit owner other than the Declarant.

C. Place of Meetings. Meetings of the Unit Owners Association shall be held at the principal office of the Association or at such other suitable place convenient to the unit owners as may be designated by the Board of Directors.

D. Special Meetings.

1. The President shall call a special meeting of the Unit Owners Association: (i) if so directed by resolution of the Board of Directors; (ii) after the termination of the Declarant Control Period, (iii) upon a petition signed and presented to the Secretary by unit owners of units to which not less than twenty-five percent of the total Common Element Interest appertains; or (iv) during the Declarant Control Period, upon request of the Declarant. The signatures on a petition requesting a special meeting shall be valid for a period of one hundred-eighty days after the date of the first such signature. Such resolution, petition or request must (1) specify the time and place at which meeting is to be held, (2) either specify a date on which the meeting is to be, or else specify that the Secretary shall designate the date of the meeting, (3) specify the purposes for which the meeting is to be held, and (4) be delivered to the Secretary. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2. Not later than the termination of the Declarant Control Period, a special meeting of the Association shall be held at which two of the three directors appointed by the Declarant shall resign and their replacements elected by the unit owners, all in accordance with Section 3.3 of these Bylaws.

E. Notice of Meetings. The Secretary shall notify each unit owner of each annual or regularly scheduled meeting of the unit owners at least twenty-one but not more than thirty days, and of each special meeting of the unit owners at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The giving of a notice of meeting in the manner provided in this section and Section 11.1 constitutes service of notice.

F. Quorum and Adjournment of Meetings. Except as otherwise provided in these Bylaws, the presence in person or by proxy of unit owners owning units to which twenty percent or more of the total Common Element Interest appertains constitutes a quorum at all meetings of the Unit Owners Association. If at any meeting of the Association a quorum is not present, unit owners of a majority of the Common Element Interests who are present at such meeting in person or by proxy may: (i) recess the meeting to such date, time and place as such unit owners may agree not more than two weeks after the time the original meeting was called; or (ii) adjourn the meeting to a time not less than two weeks after the time the original meeting was called, whereupon the Secretary shall make reasonable efforts to notify unit owners of such date, time and place.

G. Order of Business. The order of business at all meetings of the Unit Owners Association shall be as follows: (a) roll call (proof of quorum); (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of Board of Directors; (f) reports of committees; (g) appointment of inspectors of election (when so required); (h) election of directors (when so required); (i) unfinished business; and (j) new business; provided, however, that balloting for election of directors may commence at any time.

H. Conduct of Meetings. The President shall preside over all meetings of the Unit Owners Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order, Newly Revised, shall govern the conduct of all meetings of the Association when not in conflict with the Condominium Act or the condominium instruments. Tellers, appointed by the President or other Officer presiding over the meeting, shall supervise the tallying of all votes, and the names and addresses of the tellers shall be recorded in the minutes of the meeting.

I. Voting.

1. Voting at all meetings of the Unit Owners Association shall be on a percentage basis and the percentage of the vote to which each unit owner is entitled shall be the Common Element Interest assigned to such unit owner's unit in the Declaration. Where the ownership of a unit is in more than one person, the person entitled to cast the vote of such unit shall be the person named in a certificate signed by all of the owners of such unit and filed with the Secretary (if such a certificate is on file) or, in the absence of such named person from the meeting, the person entitled to cast the vote of such unit shall be the person owning such unit who is present. If more than one person owning such unit is present, then such vote shall be cast only in accordance with their unanimous agreement pursuant to section 55-79.77(c) of the Condominium Act. If a unit owner is not a natural person, the vote for such unit may be cast by any natural person having authority to sign deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with one or more other persons, a unit owner; provided, however, that such natural person is named in a certificate signed by an authorized officer of such person; and, provided, further, that any vote cast by a natural person on behalf of such unit owner shall be deemed valid unless successfully challenged prior to adjournment of the meeting at which such vote was cast. Such certificate shall be valid until revoked by a subsequent certificate similarly signed and filed. Subject to the requirements of the Condominium Act, wherever the approval or disapproval of a unit owner is required by the Condominium Act or the condominium instruments, such approval or disapproval shall be made

only by the person who would be entitled to cast the vote of such unit at any meeting of the Unit Owners Association. There shall be no cumulative voting.

2. Except where a greater number is required by the Condominium Act or the condominium instruments, a Majority Vote is required to adopt decisions at any meeting of the Association; provided, however, that directors are elected by a plurality. If the Declarant owns or holds title to a unit, the Declarant shall have the right at any meeting of the Association to cast the vote appurtenant to such unit.

3. No unit owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment by such unit owner of any financial obligation to the Association is delinquent more than sixty days, and the amount necessary to bring the account current has not been paid at the time of such meeting or election.

J. Proxies

. A vote may be cast in person or by proxy. A proxy may be instructed (directing the proxy how to vote) or uninstructed (leaving how to vote to the proxy's discretion). Proxies shall include a brief explanation of the affect of leaving the proxy uninstructed to the extent required by section 55-79.77D. Proxies may be granted by any unit owner in favor of only: (i) another unit owner, an Officer, the Declarant or such unit owner's Mortgagee, or (ii) additionally in the case of a non-occupant unit owner, the unit owner's lessee, attorney or rental agent or (iii) with respect to instructed proxies only, the managing agent. No person other than the managing agent or an Officer shall cast votes as proxy for more than five units not owned by such person; provided, however, that no Officer shall cast votes as an uninstructed proxy for more than ten units not owned by such person and provided, further, that a Mortgagee or an attorney or a rental agent for a non-resident unit owner may cast votes as proxy for as many units as such person represents. Proxies shall be signed by the unit owner, shall be witnessed, shall contain the full name and address of the witness, shall be dated, shall be signed by a person having authority at the time of the execution thereof to sign deeds on behalf of that person, shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting held within thirty days and shall be filed with the Secretary. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such unit. Except with respect to proxies in favor of a lessee or Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred and eighty days after the date the proxy is signed.

ARTICLE III.

Board of Directors

A. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are not required by the Condominium Act or the condominium instruments to be exercised and done by the Association. The Board of Directors shall delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Board on such matters (as the Board deems appropriate) relating to the duties of the managing agent (as defined in Section 3.2) if any, which may arise between meetings of the

Board. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall on behalf of the Association:

1. Prepare and adopt an annual budget, in which there shall be expressed the assessments of each unit owner for the common expenses and, to the extent feasible, the Limited Common Expenses.

2. Make assessments against unit owners to defray the costs and expenses of the Condominium, establish the means and methods of collecting such assessments from the unit owners and establish the period of the installment payment of the annual assessment for common expenses.

3. Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Condominium in a manner consistent with other first class mixed-use developments in the Herndon area; provided, however, that after the Declarant Control Period (1) any significant reduction therein, or (2) contracting therefor at rates twenty percent or more below the reasonable costs (as budgeted for an average of the prior three years) shall first require a Majority Vote of the unit owners or prior written approval by owners of units to which more than fifty percent of the total number of votes in the Association appertain.

4. Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the common elements and provide services for the Property and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

5. Collect the assessments against the unit owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Property.

6. Adopt and amend any rules and regulations in accordance with Section 5.8(b); provided, however, that such rules and regulations shall not be in conflict with the Condominium Act or the condominium instruments.

7. Open bank accounts on behalf of the Association and designate the signatories thereon.

8. Make, or contract for the making of, repairs, additions and improvements to or alterations and restoration of the Property, in accordance with these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

9. Enforce by legal means the provisions of the Declaration, these Bylaws and the rules and regulations, act on behalf of the unit owners with respect to all matters arising out of any eminent domain proceeding, and notify the unit owners of any litigation against the Association involving a claim in excess of ten percent of the amount of the annual budget.

10. Obtain and carry insurance against casualties and liabilities, as provided in Article 6, pay the premiums therefor and adjust and settle any claims thereunder.

11. Pay the cost of all authorized services rendered to the Association and not billed to unit owners of individual units or otherwise provided for in Sections 5.1 and 5.2.

12. In accordance with section 55-79.74:1 of the Condominium Act, keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the expenses of maintenance and repair of the common elements and any other expenses incurred. Such books and vouchers accrediting the entries therein shall be available for examination by the unit owners, their attorneys, accountants, Mortgagees and authorized agents during general business hours on business days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the unit owners. All books and records shall be kept in accordance with generally accepted accounting principles, and shall be reviewed or audited at least once every three years by an independent accountant retained by the Board of Directors. The cost of such review shall be a common expense.

13. Notify a Mortgagee of any default hereunder by the unit owner of the unit subject to such Mortgage, if such default continues for more than sixty days.

14. Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the common elements; provided, however, that (except during the Declarant Control Period) either a Majority Vote obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws or the written approval of unit owners of units to which more than fifty percent of the votes in the Association appertain, shall be required to borrow any sum in excess of twenty percent of the total annual assessment for common expenses for that fiscal year. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subsection (n) is not repaid by the Association, a unit owner who pays to the creditor a percentage of the total amount due equal to such unit owner's Common Element Interest in the Condominium shall be entitled to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such unit owner's condominium unit, and the Association shall not be entitled to assess the unit for payment of the remaining amount due such creditor.

15. Acquire, hold and dispose of condominium units and mortgage the same without the prior approval of the Association if such expenditures and hypothecations are included in the budget adopted by the Association.

16. In its sole discretion, from time to time, designate certain common elements as Reserved Common Elements and impose such restrictions and conditions on the use thereof as the Board of Directors deems appropriate.

17. Grant and accept easements through or over the common elements in accordance with section 55-79.80B of the Condominium Act.

18. Upon receipt of such payment as may be established by the Board of Directors in compliance with section 55-79.97 of the Condominium Act, furnish the statement required by section 55-79.97 of the Condominium Act within ten days after the receipt of a written request therefor from any unit owner in the form required by the Condominium Act.

19. Do such other things and acts not inconsistent with the Condominium Act or the condominium instruments which the Board of Directors may be authorized to do by a resolution of the unit owners.

B. Managing Agent. The Board of Directors shall employ for the Condominium a "managing agent" at a compensation to be established by the Board. The managing agent may be an affiliate of the Declarant.

1. Requirements. The managing agent shall be a bona fide business enterprise which manages mixed-use properties common interest communities and a licensed Common Interest Community Manager to the extent required by Virginia Code Section 54.1-2346. Such firm or its principals shall have a minimum of two years experience in real estate management and shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The managing agent must be able to advise the Board of Directors regarding the administrative operation of the Condominium and shall employ personnel knowledgeable in the areas of condominium insurance, accounting, contract negotiation, labor relations and condominium regulation.

2. Duties. The managing agent shall perform such duties and services as the Board of Directors shall direct. The Board of Directors may delegate to the managing agent all of the powers granted to the Board of Directors by these Bylaws other than the powers set forth in Subsections (b), (f), (g), (n), (o) (p), and (q) of Section 3.1. The managing agent shall perform the obligations, duties and services relating to the management of the Property, the rights of Mortgagees and the maintenance of reserve funds in compliance with the provisions of these Bylaws and applicable Virginia law, including, without limitation, the Virginia Condominium Act.

3. Standards. The Board of Directors shall impose appropriate standards of performance upon the managing agent. Unless the managing agent is instructed otherwise by the Board of Directors:

a. the accrual method of accounting shall be employed and expenses required by these Bylaws to be charged to more than one but less than all of the unit owners shall be accounted for and reported separately;

b. two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;

c. cash accounts of the Unit Owners Association shall not be commingled with any other entity's accounts;

d. no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

e. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed in advance to the Board of Directors; and

f. a quarterly financial report shall be prepared for the Association containing:

(1) an "income statement" reflecting all income and expense activity for the preceding period on an accrual basis;

(2) an "account activity statement" reflecting all receipt and disbursement activity for the preceding period on a cash basis;

(3) an "account status report" reflecting the status of all accounts in an "actual" versus "projected" (budget) format;

(4) a "balance sheet" reflecting the financial condition of the Association on an unaudited basis;

(5) a "budget report" reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and

(6) a "delinquency report" listing all unit owners who are delinquent in paying condominium assessments and describing the status of any actions to collect such assessments.

4. Limitations. During the Declarant Control Period, the Board of Directors may employ a managing agent for an initial term not to exceed two years. Any contract with the managing agent must provide that it may be terminated, without payment of a termination fee, upon ninety days written notice and with cause on no more than thirty days written notice.

C. Number and Term of Office.

1. Designated Members. The initial Board of Directors shall consist of three persons, two of whom shall be designated by the Declarant, and may be removed and replaced by the Declarant during the Declarant Control Period, and one of whom shall be designated by the Town and may be removed and replaced by the Town during the Declarant Control Period. The term of each designee shall be fixed by the Declarant.

2. Elected Members. Not later than the termination of the Declarant Control Period, the Board may be increased to five members, and a special meeting of the Association shall be held at which one of the three directors appointed by the Declarant shall resign and three new directors are elected by the unit owners, including the Declarant if the Declarant owns any units. If the Board is not increased to five members, then one of the directors appointed by the Declarant shall resign, and two new directors shall be elected by the unit owners, including the Declarant if the Declarant owns any units. At all times at least one of the elected directors shall be (or represent) the unit owners of the Commercial Units and one of the elected directors shall be (or represent) the unit owners of the Parking Unit or the Arts Unit. The elected directors shall assume office for terms of one year, two years or three years, in the order of the highest number of votes received and in order to establish staggered terms. No later than the first annual meeting of the Unit Owners Association occurring at least one year after the foregoing special meeting to elect directors, any remaining directors appointed by the Declarant shall resign, and their replacements elected by the owners such that the Board of Directors shall be composed of three or five directors, all of whom shall be unit owners, agents (officer, partner, etc.) employees or representatives of a unit owner, Mortgagees (or designees of Mortgagees) or designees of the Declarant. The elected directors shall serve for a term of three years. Thereafter, all subsequent elected directors shall serve for a term of three years unless elected to fill a vacancy, in which case such director shall serve as provided in Section 3.6. Except for resignation or removal, the directors shall hold office until their respective successors shall have been elected by the Association. For so long as the Declarant owns a unit, the Declarant may appoint and replace from time to time a representative who shall be entitled to notice of all meetings of the Board of Directors and to attend and speak (but not vote) at all Board meetings, in all respects as if such delegate were a member of the Board.

D. Election of Directors.

1. Elections Committee. At least sixty-five days prior to the special meeting required by Section 3.3 and each annual meeting of the Unit Owners Association thereafter, the Board of Directors may appoint an Elections Committee consisting of a member of the Board whose term is not then expiring and at least one other unit owner. The Elections Committee shall develop election procedures and administer such procedures as are approved by the Board providing for election of directors by ballot of the unit owners at annual meetings and, where appropriate, special meetings.

2. Nominations. Persons qualified to be directors may be nominated for election either by a nominating petition submitted to the chairman of the Elections Committee at least thirty-five days before the meeting at which the election is to be held signed by persons owning fee simple interests in and representing at least one unit and either signed by the nominee or accompanied by a document signed by the nominee indicating the willingness to serve as a director; provided, however, that additional nominations may be made from the floor at the meeting at which the election is held for each vacancy on the Board of Directors for which no more than one person has been nominated by petition. The nominee must either be present and consent to the nomination or have indicated in writing the willingness to serve. This subsection (b) does not apply to persons appointed to the Board by the Declarant.

3. Qualifications. No person shall be eligible for election as a member of the Board of Directors unless such person is (alone or together with one or more other persons) a unit owner, an agent (officer, partner, etc.), or an employee or representative of a unit owner, or a Mortgagee (or a designee of a Mortgagee) or a designee of the Declarant. No person affiliated with a unit owner nor any unit owner shall be elected as a director or continue to serve as a director if such person is more than sixty days delinquent in meeting financial obligations to the Association or a lien has been filed against such person's unit.

E. Removal or Resignation of Directors. Except with respect to directors designated by the Declarant, at any regular or special meeting of the Unit Owners Association duly called, any one or more of the directors may be removed with or without cause by a Majority Vote of the unit owners (as defined in Section 1.3(e)) and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the unit owners shall be given at least seven days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A director may resign at any time (i) in person at a meeting of the Board or the Association or (ii) by giving written notice to an Officer. Resignation of a director is effective when delivered unless the notice specifies an effective date which is not more than thirty days after the date of the notice. Except for directors who are designees of the Declarant, a director shall be deemed to have resigned automatically and without notice upon the occurrence of any of the following: (a) disposition of the unit which made such person eligible to be a director as provided for officers in section 55-79.78A of the Condominium Act, (b) if such director is not in attendance at (i) three consecutive regular meetings of the Board or (ii) two consecutive annual meetings, in either case, if the minutes reflect the Board's removal of such director for such absence, or (c) such director no longer meets the eligibility requirements set forth in Section 3.4(c) above. A successor director shall own or represent the same type of unit as the director who is being replaced.

F. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the unit owners shall be filled by a vote of a majority of the remaining directors at a special meeting of the Board held for such purpose promptly after the occurrence of any such vacancy, even though the directors present at such meeting may

constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall be a director until a successor shall be elected by the unit owners at the next annual meeting of the Unit Owners Association. Directors elected to fill a vacancy shall serve the remainder of the term of office of the director being replaced. During the Declarant Control Period, the Declarant shall designate the successor to any director previously designated by the Declarant who resigns or is removed (except for those directors resigning in accordance with Section 3.3). A successor director shall own or represent the same type of unit as the director whose vacancy is being filled.

G. Meetings of Directors.

1. Organization Meeting. The first meeting of the Board of Directors following the annual meeting of the Unit Owners Association shall be held within thirty days thereafter at such time and place as shall be determined by a majority of the directors at the annual meeting.

2. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least quarterly during each fiscal year.

3. Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each director, given personally or by mail, facsimile, electronic transmission or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two directors.

4. Executive Session. All meetings of the Board of Directors shall be open to unit owners as observers, except that the President or presiding officer may call the Board into executive session on sensitive matters such as personnel, litigation strategy or hearings for violations of the condominium instruments, as provided in section 55-79.75B of the Condominium Act. Any final action taken by the Board in executive session shall be recorded in the minutes.

5. Notice. Notice of meetings of the Board of Directors shall be given to each director, personally or by mail, facsimile, electronic transmission or telephone, at least three business days prior to the day named for such meeting. No notice of the organizational meeting shall be necessary if such meeting is held immediately following the annual meeting.

6. Waiver of Notice. Any director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director, in person or by telephone communication, at any meeting of the Board of Directors shall constitute a waiver of notice by such director of the time, place and purpose of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

7. Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn or recess the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which

might have been transacted at the meeting originally called may be transacted without further notice. A director who participates in a meeting by means of telephone or video communication shall be deemed present at the meeting for all purposes.

8. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order, Newly Revised, shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Condominium Act or the condominium instruments.

9. Voting. All Directors may vote on all matters before the Board of Directors; provided, however, that (A) if the matter before the Board of Directors concerns solely that portion of the Condominium containing the Residential Units or the occupants of the Residential Units, the Board of Directors will defer to a majority of the directors elected from among the unit owners of Residential Units; (B) if the matter before the Board of Directors concerns solely that portion of the Condominium containing the Commercial Units or the occupants of the Commercial Units, the Board of Directors will defer to a majority of the directors elected from among the unit owners of Commercial Units; (C) for so long as the Parking Unit or the Arts Unit is owned by the Town or another local governmental entity, if the matter before the Board of Directors concerns solely that portion of the Condominium containing the Parking Unit, the Arts Unit or the occupants of either, the Board of Directors will defer to the director elected from among the unit owners of the Parking Unit or the Arts Unit; and (D) the determination of whether the Board should defer on a matter shall be determined by the Board of Directors as a whole. For purposes of this subsection, if the Arts Unit is not owned by the Town or another local governmental entity, the Arts Unit shall be considered a Commercial Unit.

H. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

I. Compensation. No director shall receive any compensation from the Condominium for acting as such.

J. Board of Directors as Agent. The Board of Directors shall have the power to act as agent for the unit owners of all of the units and for each of them, to manage, control and deal with the interests of such unit owners in the common elements of the Condominium to permit the Board of Directors to fulfill all of its powers, rights, functions and duties. The Board of Directors shall have the power to act as agent for each unit owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to: (i) adjust and settle all claims arising under insurance policies purchased by the Board of Directors, (ii) execute and deliver releases upon the payment of claims and (iii) act on their behalf in any condemnation proceeding or action of eminent domain pursuant to section 55-79.44 of the Condominium Act; provided, however, that the consent of a Mortgagee shall be required if such Mortgagee notifies the Board of Directors pursuant to Section 11.1 within thirty days after receipt of notice of the damage pursuant to Section 6.2(c) or notice of the taking in condemnation or by eminent domain pursuant to Section 8.2. The powers set forth in this section are in addition to any rights granted by section 55-79.80B of the

Condominium Act. The Board of Directors may grant and accept easements and licenses pursuant to section 55-79.80B of the Condominium Act.

K. Liability of the Board of Directors, Officers, Unit Owners and Unit Owners Association.

1. The Officers and directors shall not be liable to the Unit Owners Association or any unit owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the Officers and directors from and against all contractual liability to others arising out of contracts made by the Officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or knowingly contrary to the provisions of the Condominium Act or the condominium instruments, except to the extent that such liability is satisfied by directors and officers liability insurance then maintained by the Association. Officers and directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any unit owner arising out of any contract made by the Officers or Board of Directors, or out of the indemnification of the Officers or directors, or for damages as a result of injuries arising in connection with the common elements solely by virtue of ownership of a Common Element Interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by such unit owner's Common Element Interest. Every agreement made by the Officers, the Board of Directors or the managing agent on behalf of the Association shall, if obtainable, provide that the Officers, the directors or the managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as unit owners), and that each unit owner's liability thereunder shall be limited to the total liability thereunder multiplied by such unit owner's Common Element Interest. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was an Officer or director of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Condominium.

2. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a common expense, or for injury or damage to person or property caused by the elements or by any unit owner, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the common elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any unit owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.

L. Common or Interested Directors. Each director shall exercise such director's powers and duties in good faith and with a view to the interests of the Condominium. No contract or other transaction between the Association and any of its directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the directors of the Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because any such director is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or

transaction, or because such director's vote is counted for such purpose, if any of the conditions specified in any of the following subsections exist:

1. The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

2. The fact of the common directorate or interest is disclosed or known to at least a majority of the unit owners, and the unit owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

3. The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote at the meeting to authorize any contract or transaction with like force and effect as if such director of the Association were not an officer or director of such other corporation, firm or association or not so interested.

M. Covenants Committee.

1. Purpose. The Board of Directors shall establish a Covenants Committee consisting of three members. One member each shall be appointed by the unit owners of Residential Units, the unit owners of the Commercial Units and either the unit owner of the Parking Unit or the Arts Unit (as they may decide between them). Each member shall serve for a term of one year, in order to assure that the Condominium shall always be maintained in a manner: (1) providing for visual harmony and soundness of repair; (2) avoiding activities deleterious to the aesthetic or property values of the Condominium; (3) furthering the comfort of the unit owners, their guests and tenants; (4) promoting the general welfare and safety of the Condominium community; and (5) facilitating the residential, commercial, and other uses of the units.

2. Powers. The Covenants Committee shall regulate the external design, appearance, use and maintenance of the units and the common elements. The Covenants Committee shall have the power to impose reasonable application fees as well as the costs of reports, analyses, or consultations required in connection with improvements or changes proposed by a unit owner. The Covenants Committee shall have the power to impose reasonable charges (pursuant to Section 9.1(g)) upon, and issue a cease and desist request to, a unit owner, a member of such unit owner's company or such unit owner's guests, invitees, or tenants, agents or employees whose actions are inconsistent with the provisions of the Condominium Act, the condominium instruments, the rules and regulations or resolutions of the Board of Directors (upon petition of any unit owner or upon its own motion). The Covenants Committee shall from time to time, as required, provide interpretations of the condominium instruments, rules and regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by a unit owner or the Board of Directors. Any action, ruling or decision of the Covenants Committee may be appealed to the Board of Directors by any party deemed by the Board to have standing as an aggrieved party and the Board may modify or reverse any such action, ruling or decision. Notwithstanding any other provision in this Article 3, for so long as the Declarant owns any unit, any alterations to the units or common elements which require Covenants Committee approval shall also be subject to approval by the Declarant, which may be

withheld in the Declarant's sole discretion; provided, however, that this provision shall not apply to the Parking Unit and, for so long as the Arts Unit is owned by the Town, the Arts Unit. Further, the Covenants Committee established by the Board shall not have the power to review initial construction on the Property, if such construction is reviewed by the Declarant. The Covenants Committee shall not have the authority to adopt changes if inconsistent with applicable Town approvals.

3. Voting. All members may vote on all matters before the Committee; provided, however, that (i) if the matter concerns solely that portion of the Condominium containing the Residential Units or the occupants of the Residential Units, the Committee will defer to the member appointed by the unit owners of the Residential Units; (ii) if the matter concerns solely that portion of the Condominium containing the Commercial Units or the occupants of the Commercial Units, the Committee will defer to the member appointed by the unit owners of the Commercial Units; (iii) for so long as the Parking Unit or the Arts Unit is owned by the Town or another local governmental entity, if the matter concerns solely that portion of the Condominium containing the Parking Unit, the Arts Unit or the occupants of either, the Committee will defer to the member appointed by the unit owners of the Parking Unit or the Arts Unit; and (iv) the determination of whether the Committee should defer on a matter shall be determined by the Board of Directors as a whole.

4. Authority. The Covenants Committee shall have such additional duties, powers and authority as the Board of Directors may from time to time provide by resolution. The Board of Directors may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case-by-case basis. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the rules and regulations or by resolution of the Board of Directors. The Covenants Committee shall act on all matters properly before it within forty-five days; failure to do so within the stipulated time shall constitute an automatic referral of such matters to the Board of Directors for consideration.

5. Non-Residential Uses. The Covenants Committee shall not exercise its powers and authority to interfere with the reasonable conduct of business in the Commercial Units and the Arts Unit. Reasonable modifications, alterations and changes of use by unit owners of Commercial Units and the Arts Unit which are needed for the proper conduct of business shall be permitted. Further, reasonable modifications to signage and to the Commercial Units, the Parking Unit and the Arts Unit and to common elements adjacent thereto shall be permitted to allow remodeling and reconfiguration of such units, provided that subject to Declarant approval required under subparagraph (b) above, such modifications are of a quality and style consistent with other first-class commercial condominium projects in the Herndon, Virginia area.

N. Arts Committee

. The Board of Directors shall establish an Arts Committee consisting of three members appointed by the Board, each to serve for a term of three years, in order to provide for and protect the intents and purposes of the Arts Walk. At least one member of the Arts Committee shall be a representative of the Town as the owner of the Arts Unit. The Arts Committee shall have the power to: (i) make recommendations to the Board of Directors as to the selection and installation of art exhibits, displays and other amenities and facilities within the Arts Walk; (ii) make recommendations to the Board of Directors regarding the use, operation and maintenance of the Art Walk, including all amenities and facilities; (iii) make budget proposals to the Board to provide for inclusion of funds in the Association budget dedicated to the Arts Walk. The Arts

Committee shall have no authority to enter into contracts or other commitments on behalf of the Association without the prior approval of the Board of Directors.

ARTICLE IV.

Officers

A. Designation and Duties

. The principal Officers of the Unit Owners Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and such other Officers as in its judgment may be necessary. The President and Vice President shall be members of the Board of Directors. Any other Officers may, but need not be directors. Each Officer shall perform such duties as are normally associated with such office in parliamentary organizations, except to the extent (if any) inconsistent with the Condominium Act or the condominium instruments, and shall perform such other duties as may be assigned to such office by resolution of the Board of Directors. If any Officer is unable for any reason to perform the duties of the office, the President (or the Board of Directors if the President fails to do so) may appoint another qualified person to act in such Officer's stead on an interim basis.

B. Election of Officers

. The Officers of the Unit Owners Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. Any Officer may hold more than one position; provided, however, that the offices of President and Secretary shall be held by two different individuals and that the President shall not simultaneously serve as the Treasurer. Except for death, resignation or removal, the Officers shall hold office until their respective successors shall have been elected by the Board.

C. Removal or Resignation of Officers

. Upon the affirmative vote of a majority of all members of the Board of Directors any Officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. An Officer may resign as provided for a director in Section 3.5.

D. President

. The President shall: be the chief executive officer of the Unit Owners Association; preside at all meetings of the Association and of the Board of Directors; have general and active direction of the business of the Association subject to the control of the Board; see that all orders and resolutions of the Board are carried into effect; and appoint committees from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association.

E. Vice President

. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other director to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors or by the President.

F. Secretary

. The Secretary shall: keep the minutes of all meetings of the Unit Owners Association and of the Board of Directors; have charge of such books and papers as the Board may direct; give or cause to be given all notices required to be given by the Association; maintain a register setting forth the place to which all notices to unit owners and Mortgagees hereunder shall be delivered; and, in general, perform all the duties incident to the office of Secretary.

G. Treasurer

. The Treasurer shall (together with the managing agent): be responsible for Unit Owners Association funds and securities; keep full and accurate financial records and books of account showing all receipts and disbursements; prepare all required financial data; deposit all monies and other valuable effects in the name of the Board of Directors, the Association or the managing agent, in such depositories as may from time to time be designated by the Board; cause the books and records of the Association to be reviewed in accordance with Section 3.1(l) and, in general, perform all the duties incident to the office of treasurer.

H. Execution of Documents

. Unless otherwise provided by a resolution of the Board of Directors: (i) all agreements, contracts, deeds, leases, checks and other instruments of the Unit Owners Association for expenditures or obligations in excess of Five Thousand Dollars, and all checks drawn upon reserve accounts, shall be executed by any two persons designated by the Board of Directors; and (ii) all such instruments for expenditures or obligations of two percent of the total annual assessment for common expenses for that fiscal year or less, except from reserve accounts, may be executed by any one person designated by the Board of Directors. Any Officer of the Association may be designated by Board resolution to sign any certification pursuant to section 55-79.71D or section 55-79.72:1C of the Condominium Act and to sign Certificates for Resale on behalf of the Association. Any Officer may also be designated by Board resolution to sign any amendment to subdivide a unit or relocate boundaries between units on behalf of the Association or at the request of a unit owner, pursuant to section 55-79.69 or 55-79.70 of the Condominium Act.

I. Compensation of Officers

. No Officer who is also a director shall receive any compensation from the Unit Owners Association for acting as such Officer.

ARTICLE V.

Operation of the Property

A. Determination of Common Expenses and Assessments Against Unit Owners.

1. Fiscal Year. The fiscal year of the Unit Owners Association shall be the calendar year unless otherwise determined by the Board of Directors.

2. Preparation and Approval of Budget.

a. At least forty-five days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the common elements and those parts of the units as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be common expenses by the Condominium Act, the condominium instruments or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the unit owners of all related services. The budget shall also reflect the separate assessment of any Limited Common Expenses.

b. Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. Before the beginning of each fiscal year, the Board of Directors shall send to each unit owner a copy of the budget in a reasonably itemized form which sets forth the amount of the common expenses and the special assessment payable by each unit owner. Such budget shall constitute the basis for determining each unit owner's assessment for the common expenses of the Condominium.

c. The Association budget shall also reflect the separate assessment of Parking Garage Expenses which shall be assessed against the Residential Units, Commercial Units, the Parking Unit and the Arts Unit based on the number of parking spaces allocated for the use of such units pursuant to Section 5.11 of these Bylaws.

3. Assessment and Payment of Common Expenses.

a. Subject to the provisions of Section 9.1(a), the total amount of the estimated funds required from assessments for the operation of the Property set forth in the budget adopted by the Board of Directors shall be assessed against each unit owner in proportion to such unit owner's respective Common Element Interest, except for Limited Common Expenses, which shall be assessed against each unit owner benefited in proportion to the relative Common Element Interest of such units inter se, or in accordance with use of the services, as appropriate. The assessment for common expenses, including Limited Common Expenses, shall be a lien against each unit owner's unit as provided in Section 9.2. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven months in such fiscal year, each unit owner shall be obligated to pay to the Board of Directors or the managing agent (as determined by the Board), one-twelfth of such assessment. Within ninety days after the end of each fiscal year, the Board of Directors shall supply to all unit owners, and to each Mortgagee requesting the same, an itemized accounting of the common expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board of Directors, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the unit owners, be credited according to each unit owner's Common

Element Interest to the assessments due from unit owners under the next fiscal year's budget, until exhausted, or distributed to the unit owners. Unless the Board of Directors directs otherwise, any net shortage shall be assessed promptly against the unit owners in accordance with their Common Element Interests and shall be payable either (1) in full within thirty days after delivery of notice of such further assessment; or (2) in such equal periodic installments as the Board of Directors may determine.

b. Any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved. Any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services. Any common expenses benefiting less than all of the condominium units (such as only Residential Units, Commercial Units or the Arts Unit, as applicable), or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in proportion to their respective Common Element Interests. The cost of insurance obtained pursuant to Article 6 shall be allocated as follows: the premium calculation shall be furnished to the Board of Directors separating out from any charges which are otherwise properly chargeable to all unit owners as a common expense: (i) the amount charged for the commercial risk, which shall be paid as a Limited Common Expense by the owners of the Commercial Units and the Arts Unit; (ii) the amount charged for the residential risk, which shall be paid as a Limited Common Expense by the owners of the residential units; and (iii) the amount charged for other special risks, which shall be paid as a Limited Common Expense by the unit owners creating such risks. The premium charged for the operation of the parking garage shall be a Parking Garage Expense.

4. Reserves. The Board of Directors shall build up and maintain reasonable reserves for working capital, operations (including losses due to insurance deductibles), contingencies and replacements. Reserves for items serving only Residential Units, Commercial Units, the Parking Unit or the Arts Unit, as applicable, shall be maintained for and funded solely (as a Limited Common Expense) by the units served by such items. The replacement reserve for the parking garage shall be a Parking Garage Expense. Such reserves shall be maintained and funded separately from reserves for items serving all units. If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to the unit owners. If the reserves are inadequate for any reason, including non-payment of any unit owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the unit owners according to their respective Common Element Interests, and which may be payable in a lump sum or in installments as the Board may determine.

5. Initial Budget and Initial Capital Payment.

(i) Upon taking office, the first Board of Directors elected or designated pursuant to these Bylaws shall determine the budget, as defined in this section, for the period commencing thirty days after such election and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied and become a lien against the unit owners during such period as provided in Section 5.1(c).

(ii) The Declarant, as the agent of the Board of Directors, will collect from each initial purchaser at the time of settlement an "initial capital payment" in the amount of twice the estimated periodic installment of the annual assessment for common expenses for such purchaser's unit. The Declarant will deliver the funds so collected to the Board of Directors to

provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, funding reserve accounts and for such other purposes as the Board of Directors may determine.

6. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a unit owner's obligation to pay the allocable share of the common expenses as provided in these Bylaws whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each unit owner shall continue to pay assessments at the rate established for the previous fiscal year until notified of the new assessment amount which is due more than ten days after such new annual or adjusted budget is adopted.

7. Accounts. All sums collected by the Board of Directors with respect to assessments against the unit owners or from any other source may be commingled into a single fund. In addition, the Association may use a common disbursement account for payment of expenses.

B. Payment of Common Expenses. Each unit owner shall pay the common expenses, including Limited Common Expenses, assessed by the Board of Directors pursuant to the provisions of Section 5.1. No unit owner may be exempted from liability for the assessment for common expenses by reason of waiver of the use or enjoyment of any of the common elements or by abandonment of the unit. No unit owner shall be liable for the payment of any part of the common expenses assessed against that unit subsequent to the date of recordation of a conveyance by such unit owner in fee of such unit. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a unit shall be jointly and severally liable with the selling unit owner for all unpaid assessments against the latter for the unit's proportionate share of the common expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling unit owner amounts paid by the purchaser therefor; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling unit owner within five business days following a written request therefor to the Board of Directors or managing agent and such purchaser shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each Mortgagee who comes into possession of a condominium unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the condominium unit free of any claims for unpaid assessments or charges against such unit which accrue prior to the time such Mortgagee or purchaser comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all condominium units including the mortgaged condominium unit.

C. Collection of Assessments. The Board of Directors, or the managing agent at the request of the Board, shall take prompt action to collect any assessments for common expenses due from any unit owner which remain unpaid for more than thirty days after the due date. If a unit owner is delinquent for more than thirty days, the Board of Directors shall file a memorandum of lien in compliance with section 55-79.84 of the Condominium Act prior to the ninetieth day, unless the Board decides by a two-thirds vote not to do so; provided, however, that no memorandum of lien shall be filed against a unit for so long as the unit is owned by the Town.

Any assessment, or installment thereof, not paid within ten days after due shall accrue a late charge in the amount which is the greater of (i) One Hundred Dollars or (ii) one percent of the amount due for such unit, or such other amount as may be established from time to time by the Board of Directors.

D. Statement of Common Expenses. The Board of Directors shall promptly provide any unit owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for common expenses due from such unit owner. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

E. Maintenance, Repair, Replacement and Other Common Expenses.

1. By the Unit Owners Association.

a. The Unit Owners Association shall be responsible for the maintenance, repair and replacement of all of the common elements (including the limited common elements) as defined in the condominium instruments, whether located inside or outside of the units, except that the common elements located within the parking garage shall be maintained in accordance with subsection (2), the cost of which shall be charged to all unit owners as a common expense; provided, however, that the Board of Directors may elect not to do so if in the opinion of a majority of the Board of Directors such maintenance, repair or replacement was necessitated by the act, neglect or carelessness for which a unit owner is responsible pursuant to Section 9.1(a); and provided, further, that each unit owner shall perform normal maintenance on the limited common elements appurtenant to such unit owner's unit and any portion of the remaining common elements which the Board of Directors, pursuant to the rules and regulations, has given such unit owner permission to utilize, including without limitation the items enumerated in subsection (b).

b. The Unit Owners Association shall be responsible for the maintenance, repair and replacement of all of the common elements (including the limited common elements) as defined in the condominium instruments, located within the parking garage, the cost of which shall be a Parking Garage Expense. In consultation with the unit owner of the Parking Unit, the Unit Owners Association shall be responsible for the maintenance, repair and replacement of the Parking Unit, the cost of which shall be a Parking Garage Expense.

2. By the Unit Owner.

a. Each unit owner (other than the unit owner of the Parking Unit) shall keep the unit and its equipment, appliances, facilities and appurtenances in good order, condition and repair and in a clean and sanitary condition. Each unit owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other unit owners. Each unit owner shall promptly report to the Board of Directors or the managing agent any defect or need for repairs for which the Association is responsible.

b. The unit owner of any unit to which a limited common element is appurtenant shall perform the normal maintenance for such limited common element, including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by such unit owner's negligence, misuse or neglect. Additional maintenance obligations of the unit owners and the Association are set forth in the Maintenance Responsibilities Chart attached hereto as Exhibit A.

3. Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment. The method of approving payment vouchers for all repairs and replacements to the common elements shall be determined by the Board of Directors.

F. Additions, Alterations or Improvements by the Board of Directors. Except during the Declarant Control Period, whenever in the judgment of the Board of Directors the common elements shall require additions, alterations or improvements costing in excess of twenty percent of the total annual assessment for common expenses for that fiscal year during any period of twelve consecutive months, the making of such additions, alterations or improvements requires a Majority Vote, and the Board of Directors shall assess all unit owners benefited for the cost thereof as a common expense (or Limited Common Expense, as appropriate). Any additions, alterations or improvements costing less than twenty percent of the total annual assessment for common expenses for that fiscal year during any period of twelve consecutive months may be made by the Board of Directors without approval of the unit owners and the cost thereof shall constitute a common expense or Limited Common Expense, depending on the nature of the additions, alterations or improvements. Notwithstanding the foregoing, if, in the opinion of not less than eighty percent of the directors, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the unit owners requesting the same, such requesting unit owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Board of Directors.

G. Additions, Alterations or Improvements by the Unit Owners. i) Generally. After expiration of the Declarant Control Period, the Board of Directors or the Covenants Committee, as appropriate, shall be obligated to answer any written request by a unit owner for approval of a proposed structural addition, alteration or improvement in such unit owner's unit within forty-five days after such request. If the Board of Directors or Covenants Committee, as appropriate, fails to do so within the stipulated time, the unit owner shall deliver a second notice of request for approval, and failure of the Board of Directors or Covenants Committee, as appropriate, to answer the second written request within twenty days after receipt thereof, shall constitute a consent to the proposed structural addition, alteration or improvement. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any unit requires execution by the Unit Owners Association, and provided consent has been obtained, then the application shall be executed on behalf of the Association by an authorized Officer only, without however incurring any liability on the part of the Board of Directors, the Association or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom. Subject to the approval of any Mortgagee of the affected units, the Board of Directors and any unit owner whose boundaries are being changed thereby, any unit may be subdivided or may be altered so as to relocate the boundaries between such unit and any adjoining units. The Secretary shall record any necessary amendment to the Declaration to effect such action as provided in sections 55-79.69 or 55-79.70 of the Condominium Act. The provisions of this section shall not apply to units owned by the Declarant until deeds of conveyance of such units shall have been recorded; provided, however, that the Declarant's construction or alterations shall be architecturally

compatible with existing units. The Declarant shall have the right to make such alterations or subdivisions without the consent of the Board of Directors, and an authorized Officer shall execute any such application required. The Declarant shall also have the right to make improvements to the common elements to complete development of the Property without approval from the Board of Directors or the Covenants Committee.

1. Residential Units. A unit owner of a Residential Unit may (i) make any structural addition, alteration or improvement in or to the unit without the prior written consent of the Board of Directors or the Covenants Committee, other than an addition, alteration or improvement that impairs the structural integrity or lessens the support of any portion of the Condominium or impairs or impacts any portion of the mechanical systems that serve portions of the Condominium other than the unit or (ii) make any reasonable modification to the common elements adjacent thereto to allow remodeling and reconfiguration of the interior of the unit. No unit owner of a Residential Unit shall paint or alter any common element on the exterior of the building, including the doors and windows, without the prior written consent of the Board of Directors or the Covenants Committee, as appropriate. The unit owner of a Residential Unit shall apply to the Covenants Committee for consent to any alteration, addition, or improvement that is not permitted in this Section 5.7(b) or elsewhere in the condominium instruments.

2. Non-Residential Units. A unit owner of a Commercial Unit, the Parking Unit or the Arts Unit may (i) make any addition, alteration or improvement in or to the unit other than an addition, alteration or improvement that impairs the structural integrity or lessens the support of any portion of the Condominium or impairs or impacts any portion of the mechanical systems that serve portions of the Condominium other than the unit, (ii) make any reasonable modification to the common elements adjacent thereto (including without limitation exterior doors and windows) to allow remodeling and reconfiguration of the interior of the unit, (iii) maintain, repair, restore or install any reasonable window displays and other reasonable interior displays that are visible from the exterior of the Common Elements. The unit owner of a Commercial Unit, the Parking Unit or the Arts Unit shall apply to the Covenants Committee for consent to any alteration, addition, or improvement that is not permitted in this Section 5.7(c) or elsewhere in the condominium instruments.

H. Restrictions on Use of Units and Common Elements; Rules and Regulations.

1. Restrictions. Each unit and the common elements shall be occupied and used as follows:

a. Permitted Uses. Except for the areas of the Condominium designated for a management office or commercial or recreational use and except as provided in the Declaration, no Residential Unit shall be used for other than housing and the related common purposes for which the Property was designed and in accordance with the applicable zoning. The Commercial Units and Arts Unit may be used for any purposes permitted by the applicable zoning subject to the restrictions set forth in the condominium instruments. The Parking Unit shall be used for vehicular parking purposes only. Nothing in these Bylaws shall be construed to prohibit the Declarant from using any unit owned by the Declarant for promotional, marketing or display purposes or from using any appropriate portion of the common elements for settlement of sales of condominium units and for customer service purposes. Further, the Declarant specifically reserves the right to operate a rental, brokerage and management office at any time, to the extent permitted by law.

b. Insurance. Nothing shall be done or kept in any unit which will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Board of Directors. No unit owner shall permit anything to be done or kept in the

unit or in the common elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the common elements.

c. Compliance with Laws. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the unit owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a common expense.

d. Use of Common Elements. No unit owner shall obstruct any of the common elements nor shall any unit owner place or cause or permit anything to be placed on or in any of the common elements (except those areas designated for such storage by the condominium instruments or the Board of Directors) without the approval of the Board. The common elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are reasonably incident to the use and occupancy of the units, and shall not be used to store any of the unit owner's or tenant's supplies, inventory or any other items. Nothing shall be altered or constructed in, nor any previously constructed improvement removed from, the common elements except with the prior written consent of the Board of Directors or the Covenants Committee, as appropriate (subject, however, to the applicable provisions of the Fair Housing Amendments Act of 1988 regarding modifications by handicapped residents, and subject to the applicable provisions of the Americans with Disabilities Act) and if such items affect the Commercial Units, with the prior written consent of the owners of the affected Commercial Units.

e. Leasing. No unit owner shall lease a unit other than on a written form of lease: (i) requiring the lessee to comply with the condominium instruments and rules and regulations and (ii) providing that failure to comply constitutes a default under the lease. Upon request by the Board of Directors, any unit owner leasing such unit owner's unit shall provide to the Board a copy of such unit owner's current form of lease. The restrictions set forth in this paragraph shall not apply to the Association or the Declarant.

f. Noise/Vibrations/Odors. No Person shall cause any unreasonably loud noise (except for security devices) and/or vibrations or odors to emanate from any unit which could reasonably disturb or interfere with the rights of other owners, anywhere on the Property, nor shall any Person permit or engage in any activity, practice or behavior resulting in significant and unjustified annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Property.

g. Fluids and Materials. All fluids and materials (including medical wastes) used in the normal course of the unit owner's or tenant's business shall be stored within the limits of such unit and disposed of in accordance with (i) all applicable laws, orders, statutes, codes, rules and regulations; (ii) commercially reasonable standards for the unit owner's or tenant's industry; and (iii) any rules and regulations promulgated by the unit owner's association. Under no circumstances shall any fluid or other materials be generated, stored or placed upon the common elements by any unit owner, except within areas as may be designated by the Association. Unit owners shall cause disposal of all infectious waste such as sharps, needles, bloody gauze, etc. listed as a Controlled Regulated Medical Waste under the applicable Virginia Department of Environmental Quality Regulations VA 672-40-01:1, and such waste must be disposed of in a manner as outlined in such regulations and in accordance with any rules, regulations or policies established from time to time by the Association. As used herein, the

term "Infectious Waste" shall have the meaning set forth in the applicable Virginia Department of Waste Management Infectious Waste Management Regulations, or in any subsequent amendments or revisions thereto. Any and all activity involving the handling, generation, packaging, labeling, record-keeping, storage, treatment, transportation or disposal of Infectious Waste in compliance with all applicable Federal, state and local ordinances, law and regulations, including, but not limited to, the Virginia Infectious Waste Management Regulations as the same may be amended from time to time.

h. Signs. Except for such signs as may be posted by the Association or Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from or about any unit or common element (including limited common element signs) without the prior written approval of the Board of Directors or the Covenants Committee, as appropriate.

i. Key System. Each unit owner (except the Town for so long as the Town owns a unit shall be responsible for ensuring that the locks on exterior and interior unit doors shall be keyed under the master key system installed by the Declarant in order to permit access by the Association for use only if entry to such unit is necessitated by the fact or threat of fire, flood, or any other condition which may adversely affect the common elements or other units.

j. Prohibited Uses. No portion of the Property shall be used, in whole or in part, temporarily or permanently, for any of the following purposes (each, a "Prohibited Use"): (a) any operation of a billiard parlor, arcade or the like, except that billiard tables are allowed within permitted restaurants; (b) any flea market or the like (except that arts or craft shows are permitted within the Arts Walk); (c) any so-called "off-track betting" operation; (d) any night club (e) any adult entertainment establishment including those featuring sexually explicit or oriented acts; (f) any sale, leasing or display of pornographic or other sexually explicit or oriented materials or entertainment (except that artistic renderings included in Arts Walk programming shall be permitted); (g) any store specializing in the sale of drug paraphernalia; (h) any smoking establishment, including a vaping studio (except that hookah bars shall be permitted); (i) any secondhand or used merchandise or thrift store (similar to Goodwill or Salvation Army), except that an antique store or similar upscale store (including a consignment store) shall be permitted; (j) any homeless shelter, (k) any mental health clinic or facility providing mental health services, (l) any drug treatment or rehabilitation services provider or needle exchange center, (m) any unemployment agency, (n) any juvenile rehabilitation center, (o) any nail salon or massage parlor (except as part of a day spa), (p) any check cashing store or (q) any other similar use not consistent with the operation of the remainder of the Condominium as a first class, multi-use retail and residential town center.

k. Arts Unit. Notwithstanding any other provision herein to the contrary, for so long as the Arts Unit is owned by the Town, the Arts Unit shall be continuously operated as an arts and education center or other commercial or retail uses expressly permitted herein and consistent with the remainder of the Condominium as a first class, multi-use, residential and retail town center.

2. Changes to Rules and Regulations. Each unit and the common elements shall be occupied and used in compliance with the rules and regulations which may be promulgated and changed by the Board of Directors. Copies of the rules and regulations shall be furnished by the Board of Directors to each unit owner. Notice of changes to the rules and regulations shall be sent prior to the time when the same shall become effective and copies thereof shall be furnished to each unit owner upon request. The rules and regulations shall not unreasonably interfere with the reasonable conduct of business.

I. Right of Access. By acceptance of the deed of conveyance, each unit owner thereby grants a right of access to the unit, as provided by section 55-79.79A of the Condominium Act and Section 4.2(a) of the Declaration, to the Board of Directors or the managing agent, or any other person authorized by the Board or the managing agent, or any group of the foregoing, for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including without limitation making inspections, correcting any condition originating in the unit or in a common element to which access is obtained through the unit and threatening another unit or the common elements, performing installations, alterations or repairs to the mechanical, life safety, utility systems (including water, sewer or electrical systems) or the common elements in the unit or elsewhere in the Property or to correct any condition which violates any Mortgage; provided, however, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the unit owner. In case of an emergency, such right of entry shall be immediate, whether or not the unit owner is present.

J. Utility Charges; User Fees. The cost of utilities serving the Condominium not individually metered or submetered to specific units shall be common expenses allocated pursuant to Section 5.1. The cost of utilities serving one or more units and individually submetered shall be a Limited Common Expense payable by the units served based on actual consumption of such services in accordance with section 55-79.83C of the Condominium Act. Pursuant to section 55-79.83B of the Condominium Act, the Board of Directors may impose reasonable user fees, whether or not designated as Limited Common Expenses, for the use of Reserved Common Elements or personal property of the Unit Owners Association or services provided by or arranged for through the Association. The Board of Directors may also assess expenses using other methodologies to the extent permitted by section 55-79.83 of the Condominium Act.

K. Parking. ii) The Property is served by a structured parking garage and surface parking along internal streets. Each of the common element parking spaces located on the Property, including those located within the parking garage and so designated on the Plats and Plans, shall be subject to assignment as limited common elements appurtenant to certain designated units pursuant to the reservation set forth in Article 3 of the Declaration. In accordance with the Declaration, those parking spaces located within the Parking Unit shall be Public Parking Spaces subject to the Town's "Public Shared Parking" program.

1. Any unit owner, resident or tenant of a Residential Unit having the right to use a limited common element parking space or Reserved Common Element parking space must use such space before using any unassigned parking space or a Public Parking Space. The unit owner of the Parking Unit in consultation with the Board of Directors shall promulgate reasonable rules and regulations governing the use of the parking spaces within the parking garage by the public and the unit owners, their guests, invitees, employees, agents and visitors in accordance with the Shared Public Parking Program and in a manner that ensures the availability of sufficient parking spaces to support the residential, commercial, retail and arts uses intended to be implemented on the Property in accordance with the applicable zoning ordinance regulations governing parking for such uses and the covenants regarding the use of the Parking Unit set forth in the condominium instruments. If the unit owner of the Parking Unit and the Board of Directors do not agree, the unit owner of the Parking Unit shall govern decisions regarding the Parking Unit and the Board of Directors shall govern decisions regarding all other parking spaces in the Parking Garage.

2. The Declarant or the Association shall have the right to install, operate, maintain, modify, enhance and replace parking controls or security systems for all or a portion of the parking spaces within the garage, the cost of which shall be a Parking Garage Expense and assessed against the units in accordance with Section 5.1(b)(3). Notwithstanding the foregoing, the Public Parking Spaces shall not be subject to the pay system for parking without the express written approval of the unit owner of the Parking Unit, except as provided in Article 14. Except as provided in Article 14, all costs of installing and operating the pay parking system shall be a common expense. Any revenue generated from the pay system for parking (other than from the Parking Unit) shall be applied first toward Parking Garage Expenses and any excess funds shall be applied in a manner determined by the Board for the benefit of the Property. Notwithstanding the foregoing, nothing herein shall prohibit the unit owner of a Residential Unit or Commercial Unit from charging individual residents, tenants and invitees usual and customary fees for use of the parking spaces appurtenant to the unit (including Reserved Common Element parking spaces), which fees may be levied outside of the pay system, and from providing any validation or reimbursement therefor.

3. During the time that units are being sold by the Declarant, no more than 25 parking spaces may be restricted to the Declarant's use for sales purposes. No trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property unless expressly permitted by the rules and regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. The parking garage, including the common element parking spaces, shall be used only for vehicular parking. All vehicles shall be parked wholly within parking space lines. Other than as provided above, nothing may be stored, erected, attached to or otherwise placed in the parking garage without the prior written consent of the unit owner of the Parking Unit, the Board of Directors or the Covenants Committee, as appropriate. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept within the parking garage. Except in areas designated by the Board of Directors or the unit owner of the Parking Unit, as applicable, vehicle repairs other than: (i) emergency maintenance, (ii) ordinary light maintenance (excluding fluid changes and other operations which might soil the parking garage) and (iii) normal cleaning (in areas designated by the Board, if any) are not permitted in the parking garage.

4. Upon request by the unit owner of a Commercial Unit, the unit owner of the Parking Unit shall identify certain of the Public Parking Spaces convenient to the Commercial Unit for short term parking to facilitate the operation of the Commercial Unit. Any cost of the necessary signage shall be paid by the requesting unit owner. The Unit Owners Association is authorized to enforce all parking restrictions imposed by these Bylaws and the unit owner of the Parking Unit.

L. Storage; Disclaimer of Bailee Liability

. The storage cubicles are common elements and may be assigned to units as Reserved Common Elements by appropriate resolution of the Board of Directors (unless such cubicles have been assigned as limited common elements). The Board of Directors, the Unit Owners Association, any unit owner and the Declarant shall not be considered a bailee, however, of any personal property stored on the common elements (including property located in storage cubicles and vehicles parked on the Condominium), whether or not exclusive possession of the particular area is given to a unit owner for storage or parking purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

ARTICLE VI.

Insurance

A. Authority to Purchase; Notice.

1. Except as otherwise provided in Section 6.5, all insurance policies relating to the Property shall be purchased by the Board of Directors on behalf of the Association and the cost thereof shall be allocated as provided in Section 5.1(c)(1). The Board of Directors, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article 6 or for any loss or damage resulting from such failure: (i) if such failure is due to the unavailability of such coverages from reputable insurance companies; (ii) if such coverages are so available only at demonstrably unreasonable cost; or (iii) if the Unit Owners Association's insurance professionals advise that the coverages noted by paragraph (2) of Section 6.2(b) are not necessary. The Board of Directors shall promptly furnish to each unit owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association, in compliance with section 55-79.81B of the Condominium Act.

2. Each such policy shall provide that:

a. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent or the unit owners, and their respective guests, invitees, tenants, agents and employees and, in the case of the unit owners, the members of their companies;

b. Such policy shall not be canceled, invalidated or suspended due to the conduct of any unit owner (including the members of such unit owner's company and such unit owner's guests, invitees, tenants, agents and employees) or of any member, officer or employee of the Board of Directors or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have so cured such defect within sixty days after such demand; and

c. Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the Board of Directors, the managing agent and all Mortgagees.

d. The Association is the "First Named Insured" under the policy.

3. The Declarant, so long as Declarant shall own any unit, shall be protected by all such policies as a unit owner. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article 6 shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for (or waive any rights with respect to) warranty claims pursuant to Section 55-79.79.

4. All policies of insurance shall be written by reputable companies licensed or qualified to do business in the Commonwealth of Virginia.

5. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense; provided, however, that the Association may, pursuant to Section 9.1(a), assess any deductible amount necessitated by the act, neglect or carelessness for which a unit owner is responsible against such unit owner.

B. Physical Damage Insurance.

1. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of commercial property insurance with vandalism, malicious mischief, sprinkler leakage (if applicable), debris removal and water damage endorsements, insuring all common elements and improvements to the common areas (including without limitation, the building structure, exterior and roof, but not including furniture, fixtures, equipment, wallcoverings, improvements and additions, furnishings or other personal property supplied or installed by unit owners), together with all boilers, pressure vessels, air conditioning and heating equipment and other service machinery contained therein and constituting common elements, and covering the interests of the Unit Owners Association, the Board of Directors and all unit owners (subject, however, to the loss payment and adjustment provisions in favor of the insurance trustee), in an amount equal to one hundred percent of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Board of Directors shall also obtain and maintain such coverage on all real and personal property owned by the Association.

2. Such policy shall also provide:

a. a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so;

b. the following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or unit owner or their agents when such act or neglect is not within the control of the insured, or the unit owners collectively; nor by any failure of the insured, or the unit owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the unit owners collectively, have no control); (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction"; (v) "condominium replacement cost"; and (vi) "agreed amount" or elimination of coinsurance clause;

c. that any "no other insurance" clause expressly exclude individual unit owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual unit owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual unit owners or their Mortgagees, unless otherwise required by law; and

d. such deductibles and self-insured retentions as to loss as the Board of Directors in its sole discretion deems prudent and economical.

3. A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an estimate from an insurance company, or such other source as the Board may determine, of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without

deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this section. The Board of Directors shall promptly notify all Mortgagees of any event giving rise to a claim under such policy arising from damage to the common elements in excess of one percent of the then current replacement cost of the Property. The Board of Directors shall promptly notify the Mortgagee of a unit of any event giving rise to a claim under such policy arising from damage to such unit.

C. Liability Insurance. The Board of Directors shall obtain and maintain commercial general liability insurance (including libel, slander, false arrest and invasion of privacy coverage) in such limits as the Board may from time to time determine, including as additional insureds each director, the managing agent, and each unit owner against any liability to the public or to the unit owners (and their guests, invitees, tenants, agents and employees) arising out of, or incident to the ownership or use of the common elements. Such insurance shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a unit owner because of negligent acts of the Association or of another unit owner. The Board of Directors may also obtain advertising injury and employment practices liability insurance. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained so that the total of the primary and excess limits are in an amount not less than four million dollars per occurrence.

D. Other Insurance. The Board of Directors shall obtain and maintain:

1. adequate fidelity coverage to protect against dishonest acts on the part of Officers, directors, trustees and employees of the Unit Owners Association and all others who handle, or are responsible for handling, funds of the Association, including the managing agent and employees of such managing agent. Such fidelity bonds or insurance shall comply with the requirements of the Condominium Act and: (i) name the Association as an obligee; (ii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; (iii) provide that the managing agent (including its employees) is an insured under the policy; and (iv) provide that such bond may not be cancelled or substantially modified without ten days prior written notice to the Association and the Insurance Trustee. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of: (a) \$1 million, or (b) the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. Notwithstanding the foregoing, the minimum coverage amount shall be \$10,000.

2. if required by any governmental or quasi-governmental agency, flood insurance in accordance with the then applicable regulations of such agency;

3. workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

4. directors and officers liability insurance in an amount not less than one million dollars; and

5. such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority Vote.

E. Separate Insurance. Each unit owner shall obtain insurance for such unit owner's benefit, at such unit owner's expense, covering the unit and such unit owner's personal property and personal liability, as well as any improvements made to the unit by such unit owner (under coverage normally called "improvements and betterments coverage"); and for such other risks as are normally insured; provided, however, that no unit owner shall be entitled to exercise this right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all unit owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a unit owner. Such personal insurance shall also include coverage for "loss assessment" that may be levied by the Association against the unit owner (including loss assessment for Association insurance deductibles and retentions). The Association shall not be responsible for any claim for loss of business, income, clients or reputations or other loss from a permitted business use because of any damage or claim (insured or otherwise) to the Common Elements or arising from actions of the Association, the Board of Directors, committee members or the managing agent. Each unit owner shall obtain commercial general liability insurance in a minimum amount of one million dollars per occurrence, subject to a two million dollar general aggregate, and, upon request, shall provide a new certificate of insurance to the Board of Directors two weeks prior to the expiration date of such insurance. No unit owner shall obtain separate insurance policies on the Condominium except as provided in this section.

F. Insurance Trustee.

1. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Unit Owners Association, the unit owners, their Mortgagees and their Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board as "insurance trustee" to be applied pursuant to the terms of Article 7.

2. The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws, for the benefit of the insureds and their beneficiaries.

ARTICLE VII.

Repair and Reconstruction After Fire or Other Casualty

A. When Repair and Reconstruction are Required. Except as otherwise provided in Section 7.4, if all or any part of any building is damaged or destroyed as a result of fire or other casualty, the Board of Directors or the managing agent shall arrange for and supervise the prompt repair and restoration thereof (including without limitation (i) any damaged units, (ii) the floor coverings, fixtures and appliances initially installed in the Residential Units by the Declarant, (iii) the interior finishes installed in the Commercial Units and the Arts Unit and (iv) replacements thereof installed by the unit owners up to the value of those initially installed by the Declarant or the unit owner of the Commercial Units and the Arts Unit, if any, but not including

any other furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the unit owners in the units unless covered by insurance obtained by the Unit Owners Association). Notwithstanding the foregoing, each unit owner shall have the right to supervise the reconstruction of the unit. Reconstruction and repair of the Parking Unit shall be coordinated by the Association in connection with reconstruction and repair of the parking garage.

B. Procedure for Reconstruction and Repair.

1. Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (not including any floor coverings, furniture, furnishings, fixtures or equipment installed by the unit owner in the unit unless covered by insurance obtained by the Unit Owners Association) to a condition as good as existed before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee determines to be necessary.

2. Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a common expense and a special assessment for such amount shall be levied.

3. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

C. Disbursements of Construction Funds.

1. Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the insurance trustee from collections of assessments against unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. If the estimated cost of reconstruction and repair is less than fifty percent of the total annual assessment for common expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.

b. If the estimated cost of reconstruction and repair is fifty percent or more of the total annual assessment for common expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or other engineering or building contracting professional qualified to practice in Virginia and employed by the insurance trustee to supervise such work, payment to be made from time to time as the work progresses. The architect or other professional shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the

services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect or other professional for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

2. Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all unit owners in proportion to their Common Element Interests and shall be distributed in accordance with the priority of interests at law or in equity in each unit.

3. Common Elements. When the damage is to both common elements and units, the insurance proceeds shall be applied first to the cost of repairing those portions of the common elements which enclose and service the units, then to the cost of repairing the other common elements and thereafter to the cost of repairing the units.

4. Certificate. The insurance trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the unit owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee promptly after request.

D. When Reconstruction Is Not Required

. Unless the Condominium is terminated, if the Board of Directors elects not to repair insubstantial damage to the common elements, the Board of Directors shall use the insurance proceeds to remove all remains of the damaged improvements and restore the site to an acceptable condition compatible with the remainder of the Condominium and distribute the balance of any insurance proceeds received on account of such damage to all unit owners in proportion to their respective Common Element Interests. If the Condominium is terminated pursuant to section 55-79.72:1 of the Condominium Act, the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the insurance trustee among all unit owners in proportion to their respective Common Element Interests, after first paying out of the share of each unit owner, to the extent sufficient therefor, the amount of any unpaid liens on the unit in the order of priority of such liens.

ARTICLE VIII.

Mortgages

A. Notice to Board of Directors

. A unit owner who mortgages the unit shall notify the Board of Directors of the name and address of the Mortgagee and, upon request, shall file a conformed copy of the note and Mortgage with the Board.

B. Notice of Default, Casualty or Condemnation

. The Board of Directors when giving notice to any unit owner of a default in paying an assessment for common expenses (which remains uncured for sixty days) or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such unit. The Board of Directors shall also promptly notify each Mortgagee of any casualty when required by Section 6.2(c), of all actions taken under Article 7 and of any taking in condemnation or by eminent domain pursuant to section 55-79.44 of the Condominium Act and actions of the Unit Owners Association with respect thereto.

C. Notice of Amendment of Condominium Instruments

. The Board of Directors shall give notice to all Mortgagees at least ten days prior to the date on which the unit owners, in accordance with the provisions of these Bylaws, materially amend the condominium instruments. Any addition or amendment to the condominium documents shall not be considered material if it is for the purpose of correcting technical errors, for clarification or if such addition or amendment does not alter the priority of the lien of the deed of trust, or impair or materially affect the unit as collateral or the right of the Mortgagee to foreclose on the unit as collateral.

D. Notice of Change in Managing Agent

. Prior to changing the managing agent, the Board of Directors shall give thirty days notice to all Mortgagees requesting such notice.

E. Other Rights of Mortgagees

. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Unit Owners Association. All such Mortgagees shall have the right to examine the condominium instruments, rules and regulations and books and records of the Condominium.

ARTICLE IX.

Compliance and Default

A. Relief. Each unit owner shall be governed by, and shall comply with, all of the terms of the Condominium Act, condominium instruments and rules and regulations, as any of the same may be amended from time to time. In addition to the remedies provided in section 55-79.53 of the Condominium Act, a default by a unit owner shall entitle the Unit Owners Association, acting through its Board of Directors or through the managing agent, to the following relief.

1. Additional Liability. Each unit owner shall be liable to the Association or to any affected unit owner for the expense of all maintenance, repair or replacement rendered necessary by such unit owner's act, neglect or carelessness or the act, neglect or carelessness of any member of such unit owner's company or such unit owner's guests, invitees, tenants, agents or employees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any unit or its

appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation management agent fees and legal fees, incurred as a result of a failure to comply with the Condominium Act, the condominium instruments and the rules and regulations by any unit owner (or any member of such unit owner's company or such unit owner's guests, invitees, tenants, agents or employees) may be assessed against such unit owner's unit.

2. Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

3. No Waiver of Rights. The failure of the Unit Owners Association, the Board of Directors or of a unit owner to enforce any right, provision, covenant or condition which may be granted by the condominium instruments or the Condominium Act shall not constitute a waiver of the right of the Association, the Board or the unit owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any unit owner pursuant to any term, provision, covenant or condition of the condominium instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the condominium instruments or the Condominium Act or at law or in equity.

4. Interest. In the event of a default by any unit owner in paying any sum assessed against the condominium unit other than for common expenses which continues for a period in excess of fifteen days, shall accrue interest from the due date at a rate not to exceed the lower of the maximum permissible interest rate which may be charged by a mortgagee under a mortgage at such time or eighteen percent per annum may be imposed in the discretion of the Board of Directors on the principal amount unpaid from the date due until paid.

5. Abating and Enjoining Violations by Unit Owners. The violation of any of the rules and regulations adopted by the Board of Directors, the breach of any provision of the condominium instruments or the Condominium Act shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: (i) to enter the unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; (ii) to use self-help to remove or cure any violation of the condominium instruments or the rules and regulations on the common elements (including without limitation the towing of vehicles) or in any unit; or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted; and provided, further, that before the Board of Directors exercises any self-help remedy, except in an emergency, the Board shall provide the unit owner with an additional ten days' notice and thirty days to cure the violation or breach.

6. Legal Proceedings. Failure to comply with any of the terms of the condominium instruments and the rules and regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction or voluntary arbitration as provided in Article 12, all of which relief may be sought by the Association, the Board of Directors, the managing agent or, if appropriate, by any aggrieved unit owner and shall not constitute an election of remedies; provided, however, that no

action seeking money damages or exercise of a lien for payment of any sums may be sought against the Town. The sole remedy for the Town's failure to pay any sum is set forth in Article 14.

7. Charges. In accordance with section 55-79.80:2 of the Condominium Act, the Board of Directors and the Covenants Committee may levy reasonable charges against unit owners other than the Town for violations of the Condominium Act, the condominium instruments or the rules and regulations by the unit owner, the members of such unit owner's household or company, or such unit owner's guests, invitees, tenants, agents or employees. No charge may be levied for a single violation in an amount more than the maximum amount permitted by section 55-79.80:2B of the Condominium Act. Each day a violation continues, after notice is given to the unit owner, is a separate violation. If a unit owner requests in writing a hearing before the charge is imposed, the imposition of the charge shall be suspended until the hearing is held. The Board of Directors shall send notice of the hearing date to the affected unit owner at least fourteen days prior to the hearing or within such other time period pursuant to section 55-79.80:2B of the Condominium Act, and failure of the unit owner to attend the hearing shall constitute a waiver of such unit owner's right to a hearing. Charges are special assessments and shall be collectible as such.

8. Other Remedies. In accordance with section 55-79.80:2 of the Condominium Act, the Board of Directors may suspend or revoke a unit owner's privileges for a reasonable period not to exceed the duration of the default or violation if payment of the assessment on the unit is delinquent more than thirty days or for any other violation of the condominium instruments or the rules and regulations.

B. Lien for Assessments.

1. Lien. The total annual assessment of each unit owner for common expenses or any special assessment, or any other sum duly levied (including without limitation charges, interest, late charges, etc.), made pursuant to these Bylaws, is hereby declared to be a lien levied against the condominium unit of such unit owner as provided in section 55-79.84 of the Condominium Act, which lien shall, with respect to annual assessments, be effective on the date that such annual assessment is due, and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than seven days after delivery to the unit owner of notice of such special assessment or levy. The Board of Directors or the managing agent may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien. Notwithstanding the foregoing provisions of this subsection (a), no memorandum of lien shall be filed against any unit owned by the Town; provided, however, that the remedies available to the Association set forth in Article 14 for failure by the Town to pay assessments shall remain intact and shall not be limited by the absence of a recorded memorandum of lien.

2. Acceleration. In any case where an assessment against a unit owner is payable in installments, upon a default by such unit owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting unit owner and such unit owner's Mortgagee by the Board of Directors or the managing agent. If the assessment is not payable in installments, upon a default by such unit owner in the timely payment of any assessment, such unit owner, if so determined by the Board of Directors, shall be required to pay the subsequent year's annual assessment as much as one year in advance.

3. Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of the Commonwealth of Virginia, by power of sale (pursuant to Section 55-79.84 of the Condominium Act and Section 9.3) or action in the name of the Board of Directors, or the managing agent, acting on behalf of the Unit Owners Association. During the pendency of such suit the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the Commonwealth of Virginia.

4. Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

C. Subordination and Mortgage Protection

. Notwithstanding any other provisions to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of a Mortgagee if the Mortgage was made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such unit pursuant to foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the unit at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE X.

Amendments to Bylaws

A. Amendments

. These Bylaws may not be modified or amended except as provided in section 55-79.71 of the Condominium Act; provided, however, that until the expiration of the Declarant Control Period, Sections 2.4, 2.9, 3.3, 3.4, 3.5, 3.6 and 10.1 may not be amended without the prior written consent of the Declarant. All amendments to the Bylaws shall be prepared and recorded by the Secretary.

B. Approval of Mortgagees

. These Bylaws contain provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are to be construed as covenants for the protection of such Mortgagees on which they may rely in making loans secured by Mortgages. Accordingly, no amendment or modification of these Bylaws impairing or affecting such rights, priorities, remedies or interests of a Mortgagee shall be adopted without the prior written consent of such Mortgagee.

C. Approval of Town and Unit Owners of Parking Unit and Arts Unit

. These Bylaws contain provisions concerning various rights, remedies and obligations of the Town. No amendment or modification of these Bylaws impairing or materially adversely affecting such rights, remedies or obligations of the Town shall be adopted without the prior written consent of the Town. The Association shall not, without the prior written consent of the Town as the unit owner of the Parking Unit or the Arts Unit, adopt any amendment to any condominium instrument or any rules or regulations which shall in any manner prohibit, restrict or unreasonably interfere with the use and operation of either unit for the uses permitted under the zoning entitlements or other applicable regulations of the Town of Herndon or Fairfax County, Virginia, as applicable.

ARTICLE XI.

Miscellaneous

A. Notices. All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid (pursuant to section 55-79.75 of the Condominium Act), or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (i) if to a unit owner, at the address which the unit owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of such unit owner's unit, or (ii) if to the Unit Owners Association, the Board of Directors or to the managing agent, at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the unit owners pursuant to this section. If a unit is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder. In addition, except for notice of a default or lien, notice may be given by electronic means in accordance with Section 11.5 and section 55-79.71:1 of the Condominium Act.

B. Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision.

C. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

D. Construction. These condominium instruments are intended to comply with all of the applicable provisions of the Condominium Act and shall be so interpreted and applied. The failure to comply strictly with the time periods required by the condominium instruments, unless also required by the Condominium Act, shall not invalidate any action of the Board of Directors or the Unit Owners Association.

E. Use of New Technology. Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by law now or in the future: (1) any notice required to be sent or received; (2) any signature, vote, consent or approval required to be obtained; or (3) any payment required to be made, under the condominium instruments may be accomplished using the most advanced technology available

at that time if such use is a generally accepted business practice. The use of technology in implementing the provisions of the condominium instruments dealing with notices, payments, signatures, votes, consents or approvals shall be governed by this Section.

1. Electronic Means. To the extent permitted by law, the Unit Owners Association and its unit owners and occupants may perform any obligation or exercise any right by use of any technological means providing sufficient security, reliability, identification and verifiability. Acceptable technological means shall include without limitation electronic communication over the internet, the community or other network, whether by direct connection, intranet, telecopier or e-mail.

2. Signature Requirements. Any requirement for a signature under the condominium instruments may be satisfied by a digital signature meeting the requirements of applicable law.

3. Electronic Funds Transfer. Payment of all sums to and from the Association and the unit owners and occupants may be made by electronic transfer of funds creating a record evidencing the transaction for the period such record would be required to be available in non-electronic form.

4. Voting Rights. Voting and approval of any matter under the condominium instruments may be accomplished by electronic means provided that a record is created as evidence thereof and maintained as long as such record would be required to be maintained in non-electronic form.

5. Non-technology Alternatives. If any unit owner, occupant or third party does not have the capability or desire to conduct business using electronic or other technological means, the Association shall make reasonable accommodation, at its expense, for such person to conduct business with the Association without use of such electronic or other means until such means has become generally (if not universally) accepted in similar communities in the area.

ARTICLE XII.

Dispute Resolution

The purpose of the Declaration is to establish a harmonious community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to the condominium instruments, or a breach thereof, or any other dispute between (1) the Declarant and (2) the Unit Owners Association or any unit owner shall be resolved as set forth in this Article.

A. Direct Communication. The parties to the disagreement shall set forth their respective positions in the dispute in correspondence. Each party shall respond within seven days after receipt of a letter from the other until agreement is reached.

1. Agree to Arbitrate. With respect to disputes involving any unit, if both parties agree to submit the dispute to arbitration, the matter may be resolved as set forth in this Article. If (i) the dispute involves the Town, as a unit owner, (ii) the parties do not agree to arbitrate or (iii) the outcome of the arbitration leads to court action, any and all such actions must be brought in the Circuit Court for Fairfax County, Virginia.

2. Method. Any dispute may be settled by non-binding arbitration administered by the McCammon Group or Endispute. Either party may request appointment of one or more neutral arbitrators. If the parties cannot agree on a single arbitrator, then each party shall appoint one arbitrator and the two appointed arbitrators shall select the third arbitrator. Each arbitrator shall be properly credentialed with expert knowledge and practical experience regarding the subject in dispute. The initiating Person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The initiating Person shall be responsible for all initial filing requirements and the payment of any fees according to the rules of the applicable regional office of the American Arbitration Association. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty days after the conclusion of the presentations of the parties and receipt of requested materials and documents.

3. Costs. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any reasonable attorneys' fees, arbitrator's fees and reasonable out-of-pocket expenses. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$1,501.00.)

4. Binding Nature; Applicable Law. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. Unless otherwise provided in this Article, the terms of Sections 8.01-577 and 8.01-581.01 et seq. of the Code of Virginia (1950), as amended, shall apply to the proceedings under this subsection.

B. Location

. The alternative dispute resolution proceeding shall be held in Fairfax County, Virginia unless otherwise mutually agreed by the parties.

C. Sole Remedy; Waiver of Judicial Rights

. The provisions of this Article shall not reduce or delay the Association's rights to levy a late charge, collect interest or file and pursue a lien as provided in Articles 5 and 9 with respect to any Assessment or other charges due from a unit owner hereunder. If a dispute involves the Declarant or the Association, no person shall file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the real estate owned either by the Declarant or the Association.

D. Disputes Requiring Emergency Relief

. If a dispute requires immediate, emergency relief such as would be available through judicial injunctive relief, then either party to the dispute may seek such relief as a temporary resolution pending the opportunity to conduct other procedures under this Article.

ARTICLE XIII.

Commercial Units

The unit owner of each Commercial Unit and any successor in title thereto and any tenant or subtenant of the unit owner of a Commercial Unit shall have the unencumbered right to operate its unit for retail/commercial purposes in a commercially reasonable manner, subject only to the restrictions as may be imposed under the zoning entitlements or any applicable regulations of the Town of Herndon or Fairfax County, Virginia, as applicable. The Association shall not, without the prior written consent of all unit owners of the Commercial Units, adopt any amendment to any condominium instrument or any rules or regulations pertaining to the Condominium which shall in any manner prohibit, restrict or unreasonably interfere with the use and operation of any Commercial Unit for the uses permitted under the zoning entitlements or other applicable regulations of the Town of Herndon or Fairfax County, Virginia, as applicable. The foregoing consent requirement includes without limitation the imposition or modification of signage restrictions, any restriction related to hours of operation or any limitation regarding items to be offered for sale within any Commercial Unit.

ARTICLE XIV.

Town of Herndon Appropriation Clause and

Limitation of Liability

A. Sole Source of Funds. The Arts Unit initially will be owned by the Town and operated as an arts center for the exhibition, performance and encouragement of the arts. The Parking Unit containing Public Parking Spaces initially will be owned by the Town and provided as free public parking. Local governments of the Commonwealth of Virginia cannot obligate themselves to expend funds or expend funds unless appropriated by their governing body for the then current fiscal year, nor obligate themselves to future indebtedness except under limited, specific circumstances. Therefore, notwithstanding any provision set forth in the condominium instruments, the sole sources of funds that would be payable as condominium assessments if the units owned by the Town were owned by a private entity shall be (1) funds appropriated by the Town each year for that purpose or (2) if the Town fails to make such appropriation, funds raised by the Association charging for parking in the parking spaces owned by the Town. The Town's officers shall exercise reasonable good faith efforts to obtain the necessary funds via the appropriations process required by Virginia Code Section 15.2-2506 on an annual basis and shall notify the Association promptly upon any denial of a request for such appropriations.

B. Failure to Pay. If the Town fails to appropriate and pay adequate funds or otherwise to make monetary payments that would be payable as condominium assessments if the units owned by the Town were owned by a private entity, the Association shall have the right to include within a pay system the Public Parking Spaces and to utilize the revenue derived therefrom to obtain such payments.' The Association may operate the foregoing pay system only until such time as the revenue generated from such system is sufficient to cover: (i) the Town payments and (ii) the costs to the Association for collection of such revenue, including without limitation the costs and expenses incurred by the Association to implement the pay

parking system. Thereafter, any revenue generated from the pay parking system in the current fiscal year shall be paid to the Town. The Association may accrue the amount of any shortfall if the revenue generated from the pay parking system is insufficient to satisfy the payment amounts in the current fiscal year and collect them by means of the pay parking system in succeeding fiscal years.

C. Suspension of Rights. In addition to the foregoing rights of the Association to implement a pay system for parking, during the period of time that sufficient funds are not appropriated and paid by the Town, the Association shall have the right to remove representatives of the Town from the Board and any committees and to suspend privileges of the unit owner of the Arts Unit pursuant to Section 9.1(h) of these Bylaws; provided, however, that the Association may not interfere with access to or use of the Public Parking Spaces..

D. Sovereign Immunity. The Association and each unit owner acknowledge that the Town is a jurisdiction of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences on or about the Property, the Town is: (1) constitutionally immune (or partially immune) from suit, judgment or liability, (2) insured, or (3) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No provision, covenant or agreement contained in the condominium instruments shall be deemed in any manner to be a waiver of the sovereign immunity of the Town from tort or other liability except as permitted by Virginia law.

E. No Indebtedness. Any other provision of the condominium instruments to the contrary notwithstanding, the condominium instruments shall not constitute a debt of the Town within the meaning of any limitation on indebtedness of the Town under the Constitution or laws of the Commonwealth of Virginia.

F. Consent to Amendment of Article. Notwithstanding any other provision of these Bylaws, for as long as the Town owns any unit neither this Article 14 nor any provision relating to payments by the Town or any remedies if an amount payable by the Town as a unit owner is not paid may be amended without the prior written consent of the Town.

ARTICLE XV.

Right of First Refusal – Parking Unit

The Unit Owners Association shall have a right of first refusal to purchase the Parking Unit prior to Town's sale of the Parking Unit or any portion thereof to any person or entity. The Town shall give the Association written notice (the "Notice") of any proposed sale of all or any portion of the Parking Unit. The Notice shall further contain the name and address of the proposed purchaser, the portion of the Parking Unit to be sold, the terms and conditions of such purchase and sale along with a copy of the written proposal to purchase. The Association shall have forty-five days after receipt of the Notice to notify the Town in writing (the "Response") whether the Association will purchase the Parking Unit pursuant to the terms and conditions contained in the Notice. If the Association notifies the Town that it will purchase the Parking Unit, the Town and the Association shall immediately enter into a Purchase Agreement for the Parking Unit on the terms and conditions contained in the Notice. If the Association does not

wish to purchase the Parking Unit, or if the Association does not provide the Response within forty-five days after receipt of the Notice, the Town may proceed with the sale of the Parking Unit to the purchaser named in the Notice on the terms and conditions contained in the Notice. The Town may not modify or amend the terms of sale contained in the Notice or sell the Parking Unit to any other individual or entity without first re-offering the Parking Unit to the Association pursuant to this paragraph. This Right of First Refusal shall not be used to interfere with the Town's ability to sell the Parking Unit for the best price and the Association shall deal with the Town in good faith when electing to exercise or not exercise its right of first refusal to buy the Parking Unit.

At the request of the Town, the Secretary shall prepare, execute and deliver to the Town a certificate setting forth whether the provisions of this Article have been complied with and whether the right of first refusal is pending, has been exercised or has expired. The information in the certificate shall be conclusive upon the Association in favor of all persons who rely on the certificate in good faith. This Article shall not apply with respect to any sale or conveyance of the Parking Unit by the Town to (i) any related or controlled entity (an entity of which the Town owns more than 50%); (ii) a Mortgagee foreclosing on a Mortgage on the Parking Unit or taking a deed in lieu of such foreclosure; or (iii) another local governmental entity of the Commonwealth of Virginia; provided, however, that each succeeding unit owner shall be bound by, and the Parking Unit subject to, the provisions of this Article.

IN WITNESS WHEREOF, in accordance with section 55-79.48 and section 55-79.74F of the Condominium Act, the Declarant has caused these Bylaws to be signed by an authorized official on _____, 20____, on behalf of the unit owners association.

COMSTOCK HERNDON VENTURE, LC,
a Virginia limited liability company

By: Comstock Management Services, LC,
its Manager

By: _____ [SEAL]
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA)
) SS:
_____ OF _____)

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, _____ of Comstock Management Services LC, Manager of Comstock Herndon Venture, LC, personally well known to me or proven to be the person who signed these Bylaws, acknowledged the same before me in the aforesaid jurisdiction on behalf of the company.

GIVEN under my hand and notarial seal on _____, 20__.

_____[SEAL]
Notary Public

My commission expires: _____

My notary registration No.: _____

HERNDON DOWNTOWN CONDOMINIUM				
Exhibit A to the Bylaws				
Maintenance Responsibilities				
I	II	III	IV	V
ITEMS	COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITY WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENT
Plumbing & related systems & components thereof.	All maintenance, repair & replacement of portions of plumbing serving more than one unit. Water damage to common elements or units other than the one which is the primary source of the problem through negligence of the occupants of such unit.	If any, same as in Column II.	Only to the extent that a malfunction originates outside the unit in which the malfunction occurs or may occur.	All portions within a unit including fixtures & appliances attached thereto. Water damage to a unit, when the primary source of such problem is through the negligence of the occupants of that unit.
Electrical & related systems & components thereof excluding equipment, appliances, fixtures & lights serving only one unit.	All, in all regards.	All, in all regards.	--	All, in all regards, for items serving only one unit.
Heating, ventilating & cooling systems & components thereof.	All, in all regards, serving more than one unit, as a common expense.	If any, same as in Column II.	--	All, in all regards, serving only one unit.
Parking Garage/Parking Spaces/Parking Unit.	All in all regards.	All in all regards.	All in all regards.	--
Refuse collection system.	All, in all regards.	--	--	--
Grounds, including all paved areas, plazas, fountain, the Arts Walk and other improvements thereon lying outside the main walls of the buildings and all underground utility systems.	All, in all regards.	--	--	--

HERNDON DOWNTOWN CONDOMINIUM
Maintenance Responsibilities

I	II	III	IV	V
ITEMS	COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	LIMITED COMMON ELEMENTS UNDER ASSOCIATION RESPONSIBILITY	UNIT COMPONENTS UNDER ASSOCIATION RESPONSIBILITY	CERTAIN OTHER COMPONENTS UNDER UNIT OWNER'S RESPONSIBILITY WITHOUT RESPECT TO OWNERSHIP OF THE COMPONENT
Buildings, exterior roof, exterior vertical walls, foundation.	All, in all regards.	--	--	--
Windows.	All which do not serve a unit, in all regards.	All, in all regards except routine cleaning.	--	Routine interior cleaning.
Doors, main entry to units.	All, in all regards.	All surfaces exposed to outside including door panel, buck, trim & sill for Residential Units.	--	Interior of door panel interior trim. Hardware set including lock and door chime assembly and hinges/closure for Residential Units. All doors in all regards serving Commercial Units or Arts Unit.
Exterior building signage	All which do not serve a unit, in all regards	--	--	All in all regards as to signage serving Commercial Units or the Arts Unit.
Monument sign – main entry	All in all regards	--	--	--

NOTESMAINTENANCE RESPONSIBILITIES:

This chart and the titles and headings used herein are not intended to describe or encompass all maintenance functions nor to delineate all respective responsibilities between the unit owners, severally, and the Association. The placement of responsibility under any specific column does not always accurately reflect the precise character and nature of ownership. The appropriate sections of the Declaration determine ownership. In many cases maintenance responsibility is allocated to the Unit Owners Association to ensure central maintenance responsibility, uniformity and quality of repair, and to protect community health and safety. Where such maintenance is required due to the negligent or wrongful act or omission of a unit owner (or such unit owner's household, tenants, employees, agents, visitors, or guests or pets), the Association will perform the necessary maintenance at the sole expense of the unit owner.

Column I: Items. Items appearing in this column are illustrative and not exhaustive.

Column II: Common Elements Under Association Responsibility. Responsibility for determining and providing for the maintenance, repair and replacement requirements of the common elements and determining the costs thereof shall be primarily the responsibility of the Board of Directors and such designees to which it may delegate certain such responsibilities.

Column III: Limited Common Elements Under Association Responsibility. Responsibility for determining the maintenance, repair and replacement requirements of the limited common elements shall be a shared responsibility between the Board of Directors and the unit owner of a unit to which a specific limited common element is exclusively appurtenant; provided, however, that the Board shall have the final responsibility for determining the need for and accomplishing such maintenance, repair and replacement activities.

Column IV: Unit Components Under Association Responsibility. The items in this column are legally and by definition a part of a unit but are attached or directly connected to or associated with the common elements and common expense items in such a way that a clear distinction between unit owner and Association responsibility cannot be made. Moreover, such items frequently involve matters of concern relative to the general health, safety and welfare of all of the occupants of the building. Thus, certain costs which appear to benefit a single unit owner but which affect other unit owners are declared a common expense or limited common expense, especially when the correct functioning of an activity or element is integral to or supportive of the legally defined common elements and common expenses. The Association will maintain the Parking Unit and the cost will be a Parking Garage Expense.

Column V: Certain Other Components Under Unit Owner's Responsibility Without Respect to Ownership of the Component. The items in this column are not intended to be exclusive and all-encompassing and do not affect responsibilities expressly provided for otherwise.

COMMON ELEMENT INTEREST TABLE

Exhibit D
to the Declaration

PLAT SHOWING SUBMITTED LAND,
EXISTING IMPROVEMENTS AND EASEMENTS

Exhibit E
to the Declaration

UNIT PLANS

Exhibit J

Form of Comstock Parent Guaranty

COMPLETION GUARANTY

THIS COMPLETION GUARANTY (“Guaranty”) is made and entered into as of the ____ day of _____, 2018, by **COMSTOCK PARTNERS, LC**, a Virginia limited liability company (“Guarantor”), in favor of **THE TOWN OF HERNDON, VIRGINIA** (“Herndon”).

RECITALS

R-1. Herndon and Comstock Herndon Venture, LC, a Virginia limited liability company (“Comstock”) entered into that certain Comprehensive Agreement dated _____, 2017 for the Herndon Downtown Redevelopment Project (as amended, the “Comprehensive Agreement”).

R-2. Among other things, the Comprehensive Agreement provides for the conveyance to Comstock of certain property owned by Herndon in the Town of Herndon, Virginia, in exchange for the development thereon by Comstock of a multi-level retail and residential complex with an arts center to be owned and operated by Herndon, the design and construction of a parking garage, the establishment of a condominium regime upon the project, and conveyance by Comstock to Herndon of a completed arts center condominium unit and parking spaces condominium unit in the parking garage (as further defined in the Comprehensive Agreement, the “Herndon Components”).

R-3. In accordance with the Comprehensive Agreement, Guarantor is obligated to execute and deliver this Guaranty in favor of Herndon upon the conveyance of the Property.

R-4. This Guaranty is a material inducement for Herndon to enter into the Comprehensive Agreement and to convey the Property to Comstock in accordance therewith.

R-5. Guarantor will receive direct and indirect tangible and intangible benefits from the conveyance of the Property to Comstock.

AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, Guarantor hereby covenants and agrees for the benefit of Herndon as follows:

1. Unless otherwise defined herein, capitalized terms used in this Guaranty shall have the same meaning as defined in the Comprehensive Agreement. “Guaranteed Obligations” means all of the obligations, covenants, representations, warranties and agreements of Comstock contained in the Comprehensive Agreement, including without limitation, to design, construct and convey (as applicable) to Herndon the Herndon Components.

2. Guarantor hereby absolutely guarantees to Herndon the Guaranteed Obligations.

3. If, for any reason, Comstock shall fail to fully and faithfully pay, perform, or observe any of the Guaranteed Obligations as and when such payment, performance or obligation is due, then, in any such event Guarantor shall promptly pay, perform or discharge such Guaranteed Obligation, or cause such Guaranteed Obligation to be paid, performed or discharged.

4. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Herndon and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, and (c) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability.

5. Guarantor's liability as guarantor shall not be impaired or affected by any amendments to the Comprehensive Agreement which may be made from time to time, with or without the knowledge or consent of Guarantor.

6. The liability of Guarantor and the rights of Herndon under this Guaranty will not be impaired or affected in any manner by, and Guarantor hereby consents in advance to and waives any requirement of notice for, any (1) release (including adjudication or discharge in bankruptcy) or settlement with Comstock; (2) delay in enforcement of this Guaranty; or (3) delay, omission, waiver, or forbearance in exercising any right or power with respect to this Guaranty.

7. This is an absolute, present and continuing guaranty of payment, performance and completion and not of collection.

8. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Herndon under the remainder of this Guaranty shall continue in full force and effect.

9. **WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), HERNDON AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, AND THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, IF JURISDICTION IS AVAILABLE IN THAT COURT; AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY.**

10. **GUARANTOR AND HERNDON (BY ACCEPTANCE HEREOF) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS GUARANTY OR RELATING THERETO AND AGREE THAT ANY SUCH**

ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

11. Any and all notices, requests, approvals, consents and other communications required or otherwise contemplated to be made under this Guaranty shall be in writing and shall be provided by one or more of the following means and shall be deemed to have been duly given (a) if delivered personally, when received, (b) if transmitted by electronic mail, on the day of transmission, provided a copy is also sent pursuant to subparagraph (c) or (c) if by national courier service, on the next business day following the date of deposit with such courier service, or such earlier delivery date as may be confirmed in writing to the sender by such recipient. All such notices, requests, approvals, consents and other communications shall be addressed as follows:

Guarantor: Comstock Partners
1886 Metro Center Drive, 4th Floor
Reston, VA 20190
Attention: Christopher Clemente
Email: cclemente@comstockpartnerslc.com

with copies to: Comstock Partners
1886 Metro Center Drive, 4th Floor
Reston, VA 20190
Attention: General Counsel
Email: plondon@comstockpartnerslc.com

and: Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
Attn: Ellen Farrell Sharpe, Esq.
Email: ellen.sharpe@ofplaw.com

To Herndon: 777 Lynn Street
Herndon, Virginia 20170
Attention: Town Manager
Email: town.manager@herndon-va.gov

with copies to: 777 Lynn Street
Herndon, Virginia 20170
Attention: Town Attorney
Email: lesa.yeatts@herndon-va.gov

and: Reed Smith, LLP
7900 Tysons One Place, Suite 500
McLean, Virginia 22102-5979
Attention: Thomas R. Folk, Esquire
Email: tfolk@reedsmith.com

By giving to the other parties at least 15 days written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Guaranty to change their respective addresses.

12. This Guaranty shall be binding upon the successors and assigns of Guarantor.

13. This Guaranty shall be construed and interpreted in accordance with and shall be governed by, the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws, except to the extent preempted by United States federal law.

14. The terms of this Guaranty may be waived, modified or amended only by an instrument in writing duly executed by Guarantor and Herndon.

15. Time is of the essence hereof with respect to Guarantor's performance hereunder.

16. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor's obligations hereunder are limited as follows: (a) for claims made hereunder before the earlier of (x) the Arts Unit Closing, or (y) satisfaction of Comstock's obligations under Section 5.8(2) and Article 8 of the Comprehensive Agreement (the "Guaranty Reduction Event"), Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate, and (b) for claims made hereunder after the occurrence of the Guaranty Reduction Event, and during the period of two years thereafter, One Million and No/100 Dollars (\$1,000,000.00) in the aggregate. Thereafter, no subsequent claims may be made,

17. Herndon agrees that none of the Guarantor's members, in their capacity as members of Guarantor (nor any of their managers, partners, officers or employees), shall have any liability (contractually or otherwise) in respect of the liabilities and obligations arising under this Guaranty.

18. This Guaranty shall automatically terminate and be null and void after satisfaction by Comstock of all Guaranteed Obligations or its excuse from satisfaction of all such Guaranteed Obligations under the terms of the Comprehensive Agreement.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

GUARANTOR:

COMSTOCK PARTNERS, LC,
a Virginia limited liability company

By: _____ (SEAL)
Christopher Clemente, Manager

Exhibit K
Form of Arts Unit Deed

This instrument was prepared by and
when recorded return to:
Ellen Farrell Sharpe, Esq., Bar No. 41429
Odin, Feldman & Pittleman, PC
1775 Wiehle Avenue, Suite 400
Reston, VA 20190

Parcel ID No. _____

SPECIAL WARRANTY DEED

THIS DEED is made on _____, 2017, by and between **COMSTOCK
HERNDON VENTURE, LC**, a Virginia limited liability company ("Grantor"), and **THE
TOWN OF HERNDON, VIRGINIA** ("Grantee").

W I T N E S S E T H:

THAT FOR and in consideration of the premises and the sum of TEN DOLLARS (\$10.00) cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, with SPECIAL WARRANTY OF TITLE, Condominium Unit _____ and Parking Unit _____ in _____ Condominium (the "Condominium") created by the recordation of condominium instruments including a declaration dated _____, 20__ and recorded on _____, 20__ among the land records of Fairfax County, Virginia in Deed Book _____ at Page _____, being in the Town of Herndon, Virginia, together with all improvements thereon and appurtenant rights thereunto belonging (the "Property").

TO HAVE AND TO HOLD the Property to the Grantee, its successors and assigns forever, subject to the covenants, conditions, and restrictions contained in the condominium instruments.

The Property is further conveyed subject to all covenants, easements, conditions, restrictions and agreements contained in deeds forming the chain of title to the Property or any portion thereof.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be signed by its authorized representatives as of the date set forth above.

[Signature on following page]

COMSTOCK:

COMSTOCK HERNDON VENTURE, LC
a Virginia limited liability company

By: Comstock Management Services, LC, its Manager

By: _____
Christopher Clemente, Manager

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, do hereby certify that Christopher Clemente, as Manager for Comstock Management Services, LC, as the manager for COMSTOCK HERNDON VENTURE, LC, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid on behalf of the limited liability company.

GIVEN under my hand and seal on _____, 2017.

Notary Public

My commission expires: _____
Notary Registration No.: _____

Exhibit L

Construction Managers and Day-to-Day Decisions

The initial Construction Managers:

Herndon: Dana Singer, Town Director of Public Works

Comstock: Scott Miller

The Day-to-Day Decisions include:

- design team and contractor feedback for ongoing RFI, shop drawing review process for Herndon Components.
- construction coordination between Comstock and Herndon, including tracking the scheduled meetings and notifying proper personnel of Herndon concerning any scheduled meetings.
- Changes Requiring Approval and Herndon Changes not anticipated to exceed \$25,000.
- Changes Requiring Approval and Herndon Changes that do not affect the approved permit.

Note: The Construction Managers may, at their discretion, elevate a Day-to-Day Decision to a Major Decision based on complexity, financial impacts or other uncertainties. If this provision is exercised, notice that the decision has been elevated shall be given within the decision time stipulated in the Comprehensive Agreement. The above items are for the purposes of confirming the authority of the Construction Manager maker to grant a certain approval as may be required under the Comprehensive Agreement and do not create any additional approval requirements, as applicable.

Exhibit M

Major Decisions and Decision Maker

The initial Decision Makers:

Herndon: Bill Ashton, Town Manager

Comstock: Larry Bergner

The Major Decisions regarding the Herndon Components include:

- Changes Requiring Approval and Herndon Changes anticipated to exceed \$25,000 but not to exceed \$250,000.
- Changes Requiring Approval and Herndon Changes which may affect the approved permit.
- changes to the Project Schedule.

Note: The Decision Makers may, at their discretion, elevate a Major Decision in accordance with Section 21.6(c) based on complexity, financial impacts or other uncertainties. If this provision is exercised, notice that the decision has been elevated shall be given within the decision time stipulated in the Comprehensive Agreement. The above items are for the purposes of confirming the authority of the Decision Maker to grant a certain approval as may be required under the Comprehensive Agreement and do not create any additional approval requirements, as applicable.

Exhibit N
DVP Easement Near Ice House

Dominion Virginia Power (“DVP”) proposes to provide, as part of the Town’s planned Elden Street utility undergrounding project, underground electric service to the Ice House property (i.e., 762 Eldon Street) from the existing transformer behind the Herndon Commerce Center building in an easement to be granted by the Town in the location depicted on the plat attached hereto as Schedule 1. The Town shall have absolute right to grant DVP an easement in the location shown on Schedule 1, whether before or after entry into the Comprehensive Agreement. The proposed easement, with the agreement of DVP, the Town and Comstock, could be routed somewhat differently from the location shown on Schedule 1, should it be found to interfere unreasonably with elements of the proposed Comstock development. Alternatively, it may be possible to provide secondary electrical service to the Ice House from a transformer installed to serve the development by Comstock on the Property. To pursue this alternative, a similar easement approved by Comstock would need to be granted to DVP for the route from the transformer to the Ice House. The terms and conditions of any easement that is the subject of this Exhibit N would not require prior approval by Comstock so long as the same are consistent with those approved by DVP and the Town based upon their typical practices.

Schedule 1
Plat of DVP Easement

