

PROFFERED CONDITIONS FOR REZONING  
BY  
LORTON ARTS FOUNDATION, INC.  
FOR  
"LORTON WORKHOUSE"

RZ/FDP 2003-MV-033

July 14, 2004

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owner and Applicant in this rezoning proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 106-4-((1))-54, Sub-parcel "G" (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDC Zoning District is granted. In the event said application request is denied, these proffers shall be null and void. The Owner and the Applicant ("Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The proffered conditions are:

1. CONCEPTUAL DEVELOPMENT PLAN//FINAL DEVELOPMENT PLAN

(a) Substantial Conformance. Subject to the provisions of Article 16 of the Zoning Ordinance, under which minor modifications to an approved development plan are permitted and any additional requirements of these proffered conditions, the development shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), containing ten (10) sheets prepared by Greenhome & O'Mara, dated July 10, 2003 and revised

through June 28, 2004. For the purpose of these proffers, the structures and uses on the Property may be collectively referred to as “the Workhouse.”

(b) Amendment to CDP/FDP. Notwithstanding the above, it shall be understood that the Applicant has the right to request a Final Development Plan Amendment (FDPA) for elements other than CDP elements for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance. For the purpose of this Proffer, CDP elements shall include those principal and secondary uses permitted by these proffers, the maximum floor area ratio, the general layout and the general orientation of access points to public roads, parking, and open space areas.

## 2. PHASING

(a) Phasing of New Construction. The Artists Colony (N-1, N-2) may be constructed concurrent with the renovation of the artist studio space (W-04-W-011). A Non-Residential Use Permit (Non-Rup) for the first of two freestanding eating establishments shall not be issued until a Non-Rup has been issued for one of the following venues: Music Barn (W-22); Theatre (W-12); or Performing Arts Center (W-17, W-18, W-18A). A Non-Rup for the second freestanding eating establishment shall not be issued until a Non-Rup has been issued for at least two of the venues described above.

(b) Parking Requirements and Phasing of Parking. Minimum parking requirements shall be fulfilled at all times by providing the number of spaces required by the applicable provision of Article 11 of the Zoning Ordinance, as determined by DPWES. Minimum parking may be fulfilled through a combination of “hard surface” and overflow spaces in the location general identified on the CDP/FDP. It is intended that a waiver of the dustless surface

requirement will be requested for the “overflow” spaces. These spaces shall be paved if the waiver is not granted.

(c) Phasing of Infrastructure. The Applicant shall demonstrate to the satisfaction of DPWES prior to each site plan approval that supportive utility infrastructure (i.e. sanitary sewer, water, etc.) is available to service the development and uses reflected on any individual site plan. If necessary, an additional sewer pump station and/or related infrastructure shall be provided.

(d) Trails. The Laurel Hill Greenway shall be provided as outlined in Proffer 9 below. The connecting trails shall be provided at the same time as the Laurel Hill Greenway, as generally shown on the CDP/FDP.

(e) Road Improvements. Entrance improvements, road widening and associated pedestrian facilities shall be provided in accordance with Proffer 10 below.

### 3. ARCHITECTURAL REVIEW

(a) Architectural Approval for New Structures. All construction and development shall be subject to review by the Architectural Review Board to the extent required by Article 7 of the Zoning Ordinance for Historic Districts and/or the Memorandum of Agreement executed by the Advisory Council for Historic Preservation on June 28, 2001 (“MOA”), as may be applicable.

(b) Signage. Notwithstanding the locations for signs and entry features shown on the CDP/FDP, all signs shall comply with Article 12 of the Zoning Ordinance. The Applicant further reserves the right to pursue a Comprehensive Sign Plan in accordance with Section 12-205. All signs shall be further identified and reviewed as part of plans forwarded to the ARB in

accordance with Section (a) above and the sign permits shall be forwarded as required by Part 2 of Article 7, Historic Overlay Districts. To the extent signs are shown on the CDP/FDP, those signs shall be in substantial conformance with the CDP/FDP.

(c) Notification of Requirements for Architectural Review Board Approval. Separate notation shall be placed on all site plan submissions reading “all development actions for this rezoning are subject to Architectural Review Board review and approval,” or similar text.

(d) Architecture of Artists Colony (N-1, N-2). Building materials associated with this use shall be compatible to those associated with the historic structures on the Property as approved by the ARB. All facades and fenestration (the arrangement, proportioning, and design of windows and doors in a building) of the Artists Colony shall be architecturally treated with such features as, but not limited to, a brick water table, trim, shutters, and/or cornices so as to add variety to the façade, subject to ARB approval in accordance with the Historic Overlay District Provisions as required by the MOA.

(e) Screening of Service Areas. All dumpsters shall be screened using materials that are compatible to the approved architecture as approved by the ARB. All dumpsters and their screening shall be further identified and reviewed as part of plans forwarded to the ARB in accordance with Section (a) above.

(f) Sculpture Garden. Any art work displayed within the “Sculpture Garden” identified on the CDP/FDP shall be designed and located so as not to interfere with sight distance along any public road or site entrance. Displays in the Sculpture Garden shall not be illuminated and shall have no motorized parts on components. Prior to placing any sculpture or having other activities within the area labeled “Signage/Sculpture Display Area”, a plan describing pedestrian

access to that portion of the site shall be provided for review and approval by County DOT and/or DPZ.

4. DOCUMENTATION OF HISTORIC STRUCTURES TO BE DEMOLISHED

(a) Documentation of Contributing Buildings to be demolished. Prior to any demolition of a contributing building (W21A, W21, H42, H43 and W40 and possibly W-29), each structure shall be photographed with a large format camera (4"x 5" minimum negative) using black and white film. Photographic recordation shall be done to the standards of the Historic American Buildings Survey (HABS). The number and angle of views shall be coordinated with the Fairfax County Park Authority (FCPA) prior to the taking of photographs and the completed photos shall be approved by the FCPA prior to demolition of the buildings. Such photographs shall be submitted to the Virginia Room of the Fairfax County Public Library, the District of Columbia Archives, and the Virginia Department of Historic Resources (VDHR). A copy of the photos shall be kept at the Prison Museum in Buildings W-02 and W-03. The negatives shall be submitted to VDHR. The construction, occupants and significant events associated with each building to be demolished shall be documented in writing by qualified professional in consultation with Fairfax County DPZ and the Cultural Resource Management and Protection Section of the FCPA. Where applicable, such photographic and written documentation shall be done to a standard as required for determination for National Register eligibility based on the "VDHR Preliminary Information Form".

(b) Incorporation of Demolished Buildings at the Prison Museum. Depictions of the architecture, design, use, history and relationship to the overall workhouse of the contributing

buildings to be demolished shall be displayed within the Prison Museum proposed to be located within the Workhouse.

(c) Historical Identification of Contributing Buildings. Any contributing building to be demolished shall be identified on the property with an appropriate plaque, marker or similar identification. The Applicant shall consult with the Fairfax County History Commission in determining the specific site and text of such identification and the site and text shall be subject to the review and approval of the Fairfax County History Commission.

## 5. PROTECTION OF HISTORIC STRUCTURES

(a) All renovation of existing structures shall be subject to review by the ARB to the extent required by Article 7 of the Zoning Ordinance for Historic Districts and/or the MOA as may be applicable.

(b) On-site development and demolition activity in proximity to the historic structures to remain shall be done in substantial conformance with the procedures that follow:

(i) Around each historic structure or group of historic structures, an area of land not less than ten (10) feet from the structure(s) will be enclosed with chain link fencing (one (1) opening per side permitted), consisting of at least six (6)-foot steel posts driven 18 inches into the ground and placed no further than ten (10) feet apart, so as to prevent accidental damage by heavy construction equipment during on-site demolition and earth moving activities. Steel posts and fencing may be removed once such activities are completed, to provide necessary access to the structure and the land adjacent to it.

Nothing herein shall preclude activity within this area as long as such activities do not harm the building or its foundation, as described in 5(a)ii below.

(ii) For each protected building or structure, a line of foundation protection shall be delineated from the base of the foundation, with such line to be shown on all grading and/or site plans (e.g. a plan section or profile), including rough grading plans. If the building foundation is concrete, a line of protection shall be drawn at a 45-degree angle from the base of the foundation projecting downward. If the building foundation consists of rock or rubble, the Applicant's structural engineer will determine if a wider line of protection is necessary to the satisfaction of DPWES. If activities such as excavation, installation of utilities, stabilization/development activities related to the Greenway, or building restoration/modification are necessary within this area of protection, measures will be taken to insure the stability of the building foundation per current structural engineering standards and to the satisfaction of DPWES. A wider area may be required where deemed necessary by the County. Nothing herein shall preclude surface grading around the buildings to a depth of 6 to 12 inches, landscaping, or other activities that will not harm the building foundation.

(c) Archeological Investigation. Prior to the first site plan approval, the Property shall be subject to a Phase I archeological survey conducted in conformance with the MOA. If warranted by the initial Phase I survey, as determined by Fairfax County, subsequent Phase II archeological evaluation and/or Phase III archeological data recovery excavations shall occur with the scope of work of such potential Phase II and Phase III analyses and any associated recovery of artifacts being consistent with the requirements of the MOA and subject to review and approval by the Cultural Resource Management and Protection Section (the Section) of the

Fairfax County Park Authority. Prior to the design of any Phase I, II or III archaeological study, the Applicant or consultant shall consult with the Manager of the Section as to the scope and schedule of the studies.

6. PERMITTED USES/HOURS OF OPERATION

(a) Permitted Uses. As described on the CDP/FDP, the Property may be developed with the following permitted principal and secondary uses.

- Museum/Cultural Center and Similar Facilities to include Gallery and Exhibit Areas (generally, W-2 – W-11, W-16 and W-29 if retained)
- Theater (W-12), to include Music Barn (W-22) and Performing Arts Center (W-17, W-18, W-18A)
- Office uses in support of or affiliated with Workhouse functions or activities
- Residential-multifamily (N-1, N-2) (as restricted by Par. d below)
- Eating Establishments, both free standing and within structures to be renovated, to include but not be limited to the Events Center (W-01)
- Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses
- Ballfields

This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.

(b) Alternate Use of Performing Arts Center. Notwithstanding its designation as a “Theater Use” on the CDP/FDP, within the “Performing Arts Center” (W-17, W-18, W-18A),

the Applicant reserves the right to incorporate those uses permitted in the Events Center, provided, however, there shall be no eating establishment use in the Performing Arts Center. Any such alternate use of the Performing Arts Center shall be subject to compliance with all occupancy limitations on this use prescribed by (e) and (f) of these proffers and the parking requirements of these proffers.

(c) Location of Certain Uses. The Artists Colony, Freestanding Eating Establishments, Music Barn, Theater, Events Center and Performing Arts Center shall be located in the buildings so designated on the CDP/FDP. Other permitted uses may be located within varying locations, subject to conformance with these proffered conditions.

(d) Occupancy of Artists Colony. Occupancy of those residential units identified as the "Artists Colony" (N-1, N-2) shall be restricted to persons directly involved with an activity of the Workhouse, including, but not limited to, artists, producers, directors, interns, fellowship recipients, educators and apprentices.

(e) Hours of Operation. The hours of operation at the Muscum/Cultural Center, Theater, Events Center, Music Barn and Eating Establishments shall be limited to the following:

(i) Muscum/Cultural Center

- Attendance by outside visitors at the Museum/Cultural Center (W-02, W-03) and associated artist studio(s) shall be limited to the hours between 8:00 a.m. and midnight seven days per week.

(ii) Theater

- Performances at the Theater (Building W-12) shall be permitted between the hours of 8:00 a.m. and midnight seven days per week.

(iii) Performing Arts Center.

- Performances and Events at the Performing Arts Center (W-17, W-18, W-18A) shall be permitted between the hours of 8:00 a.m. and 11:00 p.m. seven days per week.

(iv) Events Center

- Scheduled Events may occur within the Events Center (Building W-01) from the hours of 7:00 a.m. to midnight Sunday through Thursday and 7:00 a.m. to 2:00 a.m. on Fridays and Saturdays.

(v) Music Barn

- Performances at the Music Barn (Building W-22) shall be permitted to be scheduled within the hours of 8:00 a.m. to 11:00 p.m. seven days per week. The hours of performances at the Music Barn may be further restricted based on the noise study in Proffer Number 8 (h).

(vi) Free-Standing Eating Establishments

- Any free-standing Eating Establishments shall be permitted to operate within the hours of 11:00 a.m. to 11:00 p.m. from Sunday through Thursday and 11:00 a.m. to 1:00 a.m. on Friday and Saturday. Other eating establishments or food sales activities shall be limited by the hours of the building in which they are located.

(vii) There shall be no “hourly” restrictions on the use and occupancy of structures and facilities by the individual artists and/or staff/employees of the Workhouse.

7. SCHEDULING OF EVENTS.

(a) Limitations for Certain Venues.

(i) Except as provided for in Paragraph (b) below, at no time shall scheduled events having a combined total projected attendance or ticket sales of more than 900 Outside Guests be concurrently scheduled at either the Music Barn (W-22), Theater (W-12), Performing Arts Center (W-17, W-18, W-18B), Events Center (W-01) and/or common/lawn areas of the Workhouse. For the purpose of these proffers, a scheduled event shall mean a performance, concert, social gathering, conference or similar function whereby attending of an amount or duration above and beyond that associated with other permitted uses is expected. For the purpose of these proffers, “Outside Guests” shall mean those persons attending scheduled events based on tickets available or permitted seating capacity and/or persons “guaranteed” for catering purposes that are not employees, vendors or contractors of the Workhouse, its assigns, or affiliated franchise facilities, or individuals otherwise engaged in technical or production elements of any such scheduled event. The term “concurrently scheduled” shall mean such scheduled events having a published starting or projected ending time within 44 minutes of one another.

(ii) Peak Hour Restrictions. Irrespective 7(a)(i) above and 7(b)(i) below, during weekday (Monday-Friday) peak hour (5:00 pm-7:00 pm) periods, the term

“concurrently scheduled” shall mean scheduled events having a published starting or ending time within 119 minutes of one another.

(iii) Monitoring. To confirm compliance with these occupancy requirements, the schedule of starting or ending times for any scheduled events and projected attendance based on tickets sold/distributed, persons “guaranteed” for catering purposes or other similar information shall be furnished to DPZ on request.

(iv) Use of Non-Paved Parking. Any time a total projected attendance of 700 Outside Guests is anticipated, staff shall be available to direct guests and visitors to designated non-paved parking areas on the site in the areas south and east of the ball field.

The restrictions above shall not preclude occupancy by any Workhouse facility staff and/or technical professionals for set up, rehearsals and similar purposes.

(b) Special Events.

(i) For the purpose of these proffers, a “Special Event” shall be an event associated with an otherwise Permitted Use that has a number of Outside Guests that exceed the occupancy limitation in 7(a) above. Such events are anticipated to involve numbers of artists, exhibitors, performers and Outside Guests beyond that associated with day to day operation of the Workhouse. A Special Event may also occur over the course of a multi-day period, which shall not exceed three (3) consecutive days.

(ii) During the first five (5) years of operation following the issuance of the first NonRUP, the Applicant reserves the right to schedule up to four (4) so-called

“Special Events” per year. The initial Special Event shall be limited to up to 600 outside guests above that otherwise allowed by Proffer 7(a).

(iii) Following the first five (5) years of operation, the number of Special Events may be increased to allow a total of eight (8) Special Events per year, subject to approval by the County upon a determination that the special events met the applicable County codes, regulations and ordinances, complied with the terms of the agreements in (d) below and that in the judgment of the County, traffic associated with the special event did not result in an unacceptable level of congestion.

(c) Sanitation for Special Events. All such Special Events shall require the provision of additional temporary bathroom facilities or similar sanitation measures as may be required by the Fairfax County Health Department. It shall be the responsibility of the Applicant to obtain any and all necessary Health Department approvals prior to all such Special Event.

(d) Off-Site Parking for Special Events.

(i) Special Events shall require the provision of off-site parking arrangements sufficient to accommodate those vehicular trips reasonably projected to occur as a result of the Special Event and any regularly scheduled or permitted uses and activities at the Workhouse. Prior to the first Special Event, the Applicant shall provide documentation and shall identify: (1) areas reserved, rented or leased for off-site parking, and (2) the nature and/or form of the associated agreement with the off-site land owner, and (3) a description of any proposed shuttle operation to/from the same (collectively, the “Parking Plan”). The amount of off-site parking shall be based, at a minimum, on the number of Outside Guests expected at the first Special Event and may reflect a greater number of

Outside Guests, based on anticipated attendance at future events. Such off-site parking arrangements shall be subject to review and approval to confirm the general sufficiency of available on and off-site parking by DPZ in consultation with Fairfax County Department of Transportation (FCDOT) based on historic operational characteristics of the Workhouse, similar local events, or other similar objective and professionally accepted methodology. Such determinations shall not unreasonably be withheld by the County.

(ii) To the extent the number of Outside Guests at future Special Events does not exceed that described in the Parking Plan, no further review of off-site parking shall be required in connection with future Special Events after the approval of the Parking Plan. In the event subsequent Special Events propose greater numbers of persons than reflected in the Parking Plan, the Parking Plan shall be revised and reviewed as generally outlined in item 7(d)(i) above. Regardless of the need for further parking review, DPZ and FCDOT shall receive thirty (30) days written notice of all scheduled Special Event.

(iii) In the event following any Special Event, the County identifies objective problems concerning the adequacy or availability of off-site parking, additional review in accordance with item 7(d)(i) above shall occur prior to the next scheduled Special Event.

8. ENVIRONMENTAL

(a) Stormwater Management.

(i) Stormwater management and associated BMP measures shall be provided in accordance with the Public Facilities Manual (PFM) as determined by DPWES, unless

requirements for the same are waived or modified under the appropriate authority given to DPWES. Any required structural detention facilities shall be located in substantial conformance with the locations of water features or areas reserved for the same on the CDP/FDP. The Applicant shall locate, design and construct any off-site stormwater facilities and other adequate outfall improvements for the Property in accordance with the requirements of DPWES.

(b) The Applicant intends to seek the necessary waivers to provide portions of the required stormwater management on the adjacent FCPA property as generally shown on the CDP/FDP. The Applicant shall coordinate the location, design, and construction of those portions of any off-site SWM/BMP facility with the FCPA prior to site plan submission for the facility, and the same shall be subject to review and approval by the FCPA in conjunction with site plan approval. Offsite SWM/BMP facilities constructed by the Applicant shall include any landscaping screening of the facility in addition to that shown on the CDP/FDP, maintenance access to the facility, location/screening of proposed outfall structures, and combined outfall as required by the FCPA and DPWES. Such features shall be identified on the appropriate site plan involving any such SWM/BMP facilities submitted to the County and the FCPA. The Applicant further agrees that any excess capacity associated with the proposed off-site facility may be utilized by the FCPA in connection with the development of its property. If for any reason, arrangements for off-site stormwater management area not available, the Applicant reserves the right to locate all of the required stormwater management on-site in substantial conformance with the CDP/FDP. Maintenance of any off-site SWM/BMP facility shall be the responsibility of the Applicant.

(c) Low Impact Development Techniques. The Applicant shall pursue incorporation of low impact development techniques subject to approval by DPWES. Such measures may include, but shall not be limited to, (i) infiltration trenches, (ii) rain gardens, (iii) rain cisterns, (iv) permeable paving in select locations. To increase public awareness of such measures, a narrative and/or pictorial description of any approved low impact development techniques shall be displayed within the Prison Museum or other alternative location suitable for public viewing.

(d) Landscaping.

(i) General. Landscaping of the parking areas, internal streets, the SWM ponds, and the periphery of the property shall be provided in substantial conformance with the landscaping concepts generally shown on the CDP/FDP, subject to changes to reflect Low Impact Development Techniques if such changes are in substantial conformance with landscaping shown on the CDP/FDP..

(ii) Landscaping of Horticulture Display Area. The requirements of Proffer 1(a) concerning substantial conformance with the CDP/FDP, shall not apply to landscaping within the area identified as "Horticulture Display Area" and/or "Area D" on the CDP/FDP. The landscaping concepts within this area are illustrative in nature only. Development within these areas, including, but not limited to, clearing and grading, site improvements, paving, new construction and landscape design elements shall be subject to review and approval of the ARB.

(iii) Location of Utilities. To the extent possible, utilities shall be placed throughout the development to avoid conflict with landscaping shown on the CDP/FDP, as determined by the Urban Forestry Division. If the amount or location of new

landscaping on the CDP/FDP is affected by the location of utilities, equivalent amounts of landscaping consisting of trees and/or plant material of a type and size consistent with that displaced shall be substituted in an alternative location on the property, subject to approval by the Urban Forestry Division.

(c) Establishment of Final Clearing Limits. Prior to the submission of the first site plan or grading plan and prior to all subsequent submissions, the Applicant's certified arborist or landscape architect shall walk the property with an Urban Forestry Division representative for the purpose of establishing the final clearing limits. Such limits shall be based on a location of development and uses that are in substantial conformance with the CDP/FDP, but are not greater than that shown in terms of the overall amount of disturbance. Once clearing limits are established, the Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the site a second time with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees and the edge of the limits of clearing and grading and these shall be adjusted accordingly. Trees not likely to survive construction due to their species and/or proximity of disturbance will also be identified at this time and the Applicant shall also be given the option of removing them as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading or within tree preservation area shall be removed using a chain saw to avoid damage to surrounding trees. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees.

(f) Tree Preservation.

(i) Plan for Preservation. The Applicant shall submit a tree preservation plan for areas protected by the final approved limits of clearing and grading as part of the first and all subsequent site plan submissions. Preservation plans shall be prepared by a professional with experience in the preparation of tree preservation plans such as a certified arborist or landscape architect for the review and approval of the Urban Forestry Division.

(ii) Content of Tree Preservation Plan. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches in diameter and greater that are within ten (10) feet that are to be protected on either side of the limits of clearing and grading as shown on the site plan. The condition analysis rating shall be prepared using methods outlined in the latest edition of The Guide for Plant Appraisal, published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as crown pruning, root pruning, mulching, fertilization and others as necessary shall be included in the plan.

(iii) Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to six foot steel post driven 18 inches into the ground and placed no further than ten feet apart shall be erected at the limits of clearing and grading as shown on the demolition and phase 1 and 2 erosion and sediment control sheets for the tree save and protection areas generally delineated on the CDP/FDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures within or adjacent to tree

save areas. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist or landscape architect. Three days prior to the commencement of any clearing, grading or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed.

(g) Lighting. All light fixtures shall be in conformance with the provisions of Part 9 of Article 14, Outdoor Lighting Standards. The maximum height of light standards used in the parking lots shall be 24 feet. The types and locations of all light fixtures shall be subject to the review and approval of the ARB. The location and type of all light fixtures shall be identified on the plans forwarded to the ARB in accordance with Proffer 3, Architectural Review, Paragraph (a).

(h) Noise Mitigation for Music Barn. Prior to the issuance of a Building Permit for the Music Barn (W-22), the Applicant shall demonstrate through a noise impact study reviewed and approved by DPWES and DPZ (herein the Noise Study) that noise impacts, at the periphery of the property, generated by the indoor and outdoor events at the Music Barn, based on the nature, type and size of events proposed, can be mitigated to the levels prescribed by the Zoning Ordinance, the Comprehensive Plan and/or the County Code through the appropriate combination of structural and operational requirements. Once the Noise Study is approved, the Applicant shall adhere to the operational and mitigation requirements of the same. Nothing herein shall preclude the Applicant from preparing a subsequent Noise Study to reflect changes to the nature, type and size of events and proposed mitigation measures from that reflected in the approved Noise Study. Any subsequent Noise Study shall also be subject to review and approval by DPWES and DPZ.

(i) Interior Noise Mitigation for Residential Uses. In order to mitigate interior noise to DNL 45dBA, each dwelling shall have the following acoustical attributes: (1) exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39; (2) doors (excluding garage doors) and windows shall have an STC rating of at least 28. If glazing (excluding garage doors) constitutes more than 20% of any facade, then such windows shall have the same STC rating as the facade; and (3) materials to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission. Any units requiring mitigation shall be identified on the site plan. Compliance with these building material standards will be demonstrated by the Applicant, to the satisfaction of DPWES, prior to the issuance of building permits for the units.

9. RECREATION

(a) Parks and Recreation Contribution. Pursuant to Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend the sum of nine hundred fifty-five dollars (\$955.00) per approved dwelling unit within the Artists Colony for onsite recreation facilities. Such recreational facilities (e.g. gazebos, croquet lawns, bocce courts, badminton courts and trails providing connections to the Greenway and to County-Wide trails) that do not require fully enclosed structures may be provided within any open space area that is proximate to the Artists Colony without the requirement of a CDPA/FDPA or a proffered condition amendment provided that such are determined to be in substantial conformance with the CDP/FDP and are subject to the approval of the ARB as required by these proffers. The balance of any funds not expended onsite, if any, or on the construction of offsite trails (excluding the Laurel Hill Greenway or landscaping, shall be provided to the FCPA for recreation facilities in the vicinity.

(b) Use of Ballfield.

(i) The ballfield identified on the CDP/FDP shall be the subject of a “sublease” or similar arrangement whereby the FCPA, or its designee is given, rights for access to and programming of the ballfield for practice and routinely scheduled games, along with proportional maintenance obligations based on the amount and nature of use by the FCPA or its designee. Other than these maintenance obligations, such rights shall be given to the FCPA at no cost.

(ii) No “tournament type” activity may be scheduled without permission from the Applicant.

(iii) To prevent conflict with Workhouse activities and special events, specific timing and days of use shall be coordinated between the Applicant and the FCPA or its designee on a semi-annual basis, or more frequently if warranted.

(iv) During Special Events, which are to be identified on a semi-annual basis, the Applicant reserves the right to limit use of the ballfield.

(v) To the extent possible, the ballfield shall remain open for play during construction activity.

(c) Laurel Hill Greenway.

(i) The Applicant shall design, permit and construct, or cause to be constructed, the Laurel Hill Greenway and trail as generally shown on the CDP/FDP. The trail shall ultimately be field located in consultation with FCPA Staff and as a result,

minor modifications from the configuration shown on the CDP/FDP may occur as needed to address topographic or other functional considerations.

(ii) The Laurel Hill Greenway improvements shall be constructed prior to June 30, 2007, provided that the County has initiated construction of the Greenway on either side of the application property. In the event the County has not initiated the Greenway on the adjacent parcels, if approved; by the FCPA, the Applicant's obligation may be deferred to coincide with the construction by others of the adjacent portion or portions of the Greenway not addressed in this proffer as obligations of the Applicant, but in no event shall the improvements be constructed later than June 30, 2015.

(iii) The Applicant shall coordinate with the FCPA on the design of the trail in the Laurel Hill Greenway prior to site plan submission for areas of the property involving the trail or prior to June 30, 2006, whichever occurs first or later if agreed by FCPA. The trail shall be typically fourteen (14) feet. As a guideline, approximately ten (10) feet of the trail width is to be surfaced with asphalt, and approximately four (4) feet of the trail width is to be surfaced with stone dust as may be modified as a more detailed plan is designed by the FCPA. The landscaping, trail width, surface materials, and location shall be shown on the Site Plan associated with Phase 3 or such earlier version as may be necessitated by the phasing requirements of these proffer conditions.. The trail is to be maintained by others.

(iv) All improvements to the site within seventy-five (75) feet of the Greenway shall be reviewed and approved by the FCPA, which approval shall not preclude the improvements shown on the CDP/FDP.

10. TRANSPORTATION

(a) Interim Lorton Road Improvements. Prior to the issuance of the first Non-RUP, the Applicant shall construct interim left and right turn lanes from Lorton Road into any site entrance that is open to traffic from Lorton Road. The design and configuration of such turn lanes shall be subject to review and approval by VDOT and DPWES. In the event only one of the two entrances to Lorton Road is proposed to be opened prior to the first Non-RUP, the selection of the entrance to be opened shall be subject to approval by the County.

(b) Lorton Road Improvement.

(i) Prior to the issuance of a Non-Residential Use Permit (Non-RUP) for more than one of any of the following uses (Theater (W-12), Music Barn (W-22), Events Center (W-01), Performing Arts Center) (W-17, W-18, W-18A), the Applicant shall construct or cause to be constructed, improvements to Lorton Road necessary to create the section along the property frontage as generally identified on the CDP/FDP. The final design and configuration of such improvements shall be subject to review and approval by VDOT and DPWES. Irrespective of the preceding, these Lorton Road Improvements shall be required prior to the issuance of a Non-RUP for any of the four uses identified above (Theater, Music Barn, Events Center, Performing Arts Center), if the number of "Outside Guests" associated with scheduled events exceeds 450 persons.

(ii) The Applicant shall further have the right to defer the construction of the Lorton Road improvements referenced in 10(b) above with the approval of the County, provided, however, that the County shall have no obligation to approve the deferral of the Lorton Road Improvements. As part of the request to defer the improvements that Applicant shall prepare a traffic impact analysis in accordance with a methodology

approved by FCDOT which demonstrates to the satisfaction of FCDOT, based on Level Of Service or other objective traffic engineering standards, that arrivals and departures are not causing unsafe stacking or turning movements to and from the site entrance(s) and from Route 123 to Lorton Road during times of peak demand. In the event this option is exercised, the Applicant may, at the option of the County, be required to provide similar traffic analysis prepared in accordance with methodology approved by FCDOT, prior to the issuance of Non Residential Use Permits associated with each additional building or use. This analysis shall reflect the additional development and uses associated with each site plan. The Applicant shall be obligated to construct the Lorton Road improvements when warranted by this subsequent traffic analysis, as reviewed and approved by FCDOT. Once the improvements are warranted, based on this analysis, no further Non-RUPs shall be issued until the road improvements are constructed and open to traffic.

(c) Site Entrance from Route 123. The entrance from Rt. 123 shall be open prior to the first Non-RUP. Prior to the opening and use of the site entrance from Route 123, the Applicant shall construct or cause to be constructed a right turn lane into the site entrance from Route 123. The final design and configuration of this improvement shall be subject to review and approval by VDOT and DPWES.

(d) Access to Non-Paved Parking. Vehicular access to the parking areas labeled as “unpaved parking” and located south and east of the ball field may be provided via a gravel driveway or similar “pervious” material to include grasscrete or similar products from paved travel ways. The location of the access is subject to approval by DPWES. The Applicant further reserves the right to install walkways to provide pedestrian access from on-site overflow areas to the Workhouse.

(c) Dedication of Right-of-Way of Lorton Road. Right-of-way, as generally shown on the CDP/FDP, shall be reserved and made available for implementation of the Lorton Road improvements, described in Proffer 10a above. Until such time as the right-of-way is needed for road improvements, that area shall be maintained in a manner consistent with all other common open space located within the development. The Applicant shall be responsible for the preparation of plats for recording to identify the portion of the subject property to become right-of-way (ROW).

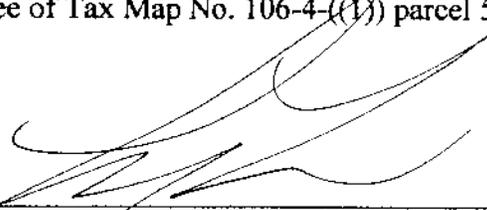
(f) Acquisition of Right-of-Way.

(i) In order to implement the Lorton Road improvements referenced above, concurrent with the first site plan review process for the approved development, the Applicant shall attempt to acquire, and then if successful, shall dedicate such off-site right-of-way and easements as are necessary to complete the Lorton Road improvements described on the CDP/FDP and referenced in Proffer 10(b) above. The Applicant shall use its good faith efforts and offer a reasonable fair market value for said right-of-way and easements. If, six (6) months subsequent to the filing of the first site plan, the Applicant is unable to bring about the dedication by others and the necessary right-of-way and easements, or to acquire by purchase the right-of-way or easements at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, then the Applicant shall request the Board of Supervisors to condemn the necessary land and/or easements.

(ii) It is understood that the Applicant's request to the Board of Supervisors for condemnation will not be considered until it is forwarded in writing to the Division of

Land Acquisition or other appropriate County official, accompanied by (1) plans, plats and profiles showing the necessary right-of-way or grading easements to be acquired, including all associated easements and details of the proposed transportation improvements to be located on said right-of-way property (2) an independent appraisal of the value of the right-of-way property to be acquired and of all damages to the residue of the affected property; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) a letter of credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by the County. It is also understood that in the event the property owner of the property to be acquired is awarded with more than the appraised value of the property and to the damages to the residue in a condemnation suit, the amount of the award in excess of the letter of credit amount shall be paid to the County by the Applicant within forty-five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within sixty (60) days of written demand.

LORTON ARTS FOUNDATION, INC.  
(Lessee of Tax Map No. 106-4-((1)) parcel 54 pt.)

By:   
Name: TINA LEONE  
Title: EXECUTIVE DIRECTOR

FAIRFAX COUNTY BOARD OF SUPERVISORS,  
a body corporate and politic  
(Title Owner/Lessor of Tax Map No. 106-4-((1)) parcel 54 pt.

By:                     AH Griffin                      
Name:                     ANTHONY H. GRIFFIN                      
Title:                     COUNTY EXECUTIVE                    

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