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**HERNDON TOWN COUNCIL**  
**Tuesday**  
**September 22, 2015**

The Town Council met in public session on Tuesday, September 22, 2015, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were:

Mayor Lisa C. Merkel, Vice Mayor Jennifer Baker and Councilmembers: David A. Kirby; Steven Lee Mitchell; Jasbinder Singh and Sheila A. Olem. Councilmember Grace Han Wolf was absent.

Others present during the meeting: Arthur Anselene, Town Manager; Lesa Yeatts, Town Attorney; Maggie DeBoard, Chief of Police; Robert Boxer, Director of Public Works; Anne Curtis, Chief Communications Officer; Elizabeth Gilleran, Director of Community Development; Cindy Roeder, Director of Parks and Recreation; Mary Tuohy, Director of Finance; Justin Williams, Police Sergeant; Mark Holland, Zoning Administrator; Dana Heiberg, Senior Planner; Dennis Holste, Economic Development Manager; Amanda Morrow Kertz, Deputy Town Clerk; Lisa Webster, Administrative Assistant.

The meeting was called to order at 7:00 p.m. with all members present, with the exception of Councilmember Wolf, who was absent, and with Mayor Merkel presiding. Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

**1. MOMENT OF SILENCE**

Mayor Merkel asked that everyone keep the family of Robert E. 'Bob' Simon ~ the Founder of Reston ~ and the Reston community, in their thoughts and prayers. Mr. Simon passed away yesterday at the age of 101. She stated that Mr. Simon had remained active and involved in the community. She had the pleasure to personally work with him on several projects that brought the Reston and Herndon communities together, and she would greatly miss his friendship and his guidance. She had recently been working with Mr. Simon on a school and faith community convocation, which would bring faith groups in the



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Herndon-Reston community together to partner with the schools in the Herndon High and South Lakes High School pyramids. She asked everyone to join her for a moment of silence to remember Mr. Simon.

**2. ANNOUNCEMENTS**

Mayor Merkel announced that Councilmember Wolf was out of town and would not be present for tonight's meeting.

Mayor Merkel announced for those present for the public hearing on Ordinance 15-O-28, the applicant has requested that the public hearing be continued until October 13. Since the public hearing was properly advertised, she would open the public hearing for citizen comments, and then the Council would consider action to continue the public hearing to October 13.

**3. APPROVAL OF MINUTES**

(Note: Later in the meeting, action was taken to reconsider the vote on the approval of minutes.)

On the motion of Councilmember Olem, seconded by Vice Mayor Baker, the minutes of the September 8, 2015 public hearing and the September 15, 2015 work session, were approved by a 5-1 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Singh voting "No." Councilmember Wolf was absent.

**4. PRESENTATIONS**

**Proclamation, to recognize 'Customer Service Week,' October 5 – October 9, 2015.**

The following proclamation recognizing 'Customer Service Week' was read into the record by Councilmember Olem. The proclamation was presented to members of the town's Customer Service Committee that were present and Bob Ashdown, representing the organization LINK.

There were brief comments from Council.

Ronald Tillman, Community Center Manager and Co-Chair of the Customer Service Committee, provided comments on the proclamation. As part of Customer Service Week, the town would be hosting a food drive with LINK. Donation boxes would be located at all town facilities.

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
Customer Service Week  
October 5 – October 9, 2015**

The Town of Herndon's Customer Service Initiative ~ "Count ON Us" ~ raises the bar for customer service town-wide and encourages employees to go above and beyond in their service delivery to citizens. "Count ON Us" was designed to equip town employees with the skills and tools necessary to provide exceptional customer service and to reward employees that provide exemplary service. During **Customer Service Week**, we reaffirm the town's commitment to these customer service standards and to providing the best service to our citizens.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the week of October 5 through October 9, 2015, as **Customer Service Week** in the Town of Herndon; recognize all employees, especially those dedicated employees who serve on the Customer Service Committee; and express our support and pride for our exceptional town staff.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express our appreciation to town staff for their dedication to the principles, goals and objectives as outlined in the "Count ON Us" Customer Service Initiative.

**Resolution 15-G-63, to express appreciation to Kevin J. East, Herndon Planning Commission.**

Mayor Merkel stated that the town was scheduled to honor Kevin East this evening, who served on the Herndon Planning Commission for over eight years. Mr. East was not feeling well this evening and had asked Melissa Jonas ~ current Planning Commission Chair ~ to read a statement on his behalf. She stated that Mr. East was watching the meeting on Herndon Community Television (HCTV), wished him that best, and hoped that he would feel better soon.

Vice Mayor Baker read the resolution expressing appreciation to Kevin East into the record.

There were comments from Council congratulating Mr. East on his service to the town.

On the motion of Vice Mayor Baker, seconded by Mayor Merkel, Resolution 15-G-63 was approved by a 6-0 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

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The following individuals came forward to provide comments on the presentation:

- Supervisor John Foust, Dranesville District, Fairfax County Board of Supervisors, on behalf of the residents of the Dranesville District and Fairfax County;
- Melissa Jonas, Chair, Town of Herndon Planning Commission, provided comments and read a Certificate of Appreciation into the record that was presented to Kevin East on behalf of the Herndon Planning Commission; and
- Chair Jonas also provided comments on behalf of Mr. East, and accepted the resolution on his behalf.

**Resolution 15-G-63, to express appreciation to Kevin J. East, Chair and Member of the Herndon Planning Commission.**

**WHEREAS,** appointed to the Heritage Preservation Review Board in November 2000 and to the Architectural Review Board in November 2001, Mr. East served as a dedicated member of both bodies, including serving as chair and vice chair of the Heritage Preservation Review Board and chair of the Architectural Review Board, until his appointment to the Herndon Planning Commission; and

**WHEREAS,** Mr. East was first appointed to the Herndon Planning Commission in August 2007, and was reappointed to consecutive terms through July 2015, serving as chair of that body from January 2011 through July 2015; and

**WHEREAS,** as a member and chair of the Herndon Planning Commission, Mr. East brought with him extensive professional knowledge of community planning; and was a pragmatic, conscientious, skillful and capable leader; dedicated to protecting and preserving the town's sense of community, while shaping change to create a productive, attractive and vibrant future; leading with insight and vision; and seeking in-depth answers to questions regarding physical, economic and social impacts; and

**WHEREAS,** whether considering an application for a small residential development or a long-range transformative town-wide plan, Mr. East displayed a strident commitment to public input and sound planning principles; consistently administering fair, equitable and considerate recommendations in all matters before the Commission, working to ensure a sustainable future for the community; and

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**WHEREAS,** demonstrating dynamic leadership on critical matters before the Commission, such as ~ the Herndon Metrorail Station Area Plan; Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core; composition of the Planned Development Transit-Oriented Core regulatory language and rezoning of the Core; development of the Herndon Downtown Pattern Book and associated regulatory language; as well as the first rezonings under the Downtown Plan ~ Mr. East never avoided difficult decisions or complicated issues, and always sought input from all participants and examined various perspectives; and

**WHEREAS,** during his tenure on the Planning Commission Mr. East took particular interest in the yearly review of the town's Capital Improvement Program and participated in the review of various projects including ~ the Countywide Bicycle Transportation Plan; Herndon Fire Station redevelopment; zoning of the Shamin Hotel; and the Madison Street subdivision; along with numerous special exceptions, zoning text amendments, and other plans and proposals ~ molding a vision that was both realistic and inspiring; and

**WHEREAS,** Mr. East selflessly gave his time, knowledge and expertise to serve the town and its citizens, and his detailed review of all matters before him, his extensive knowledge, leadership, eloquence and sense of humor, will be greatly missed by the Town Council, Planning Commission and staff.

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and the Town Council of the Town of Herndon, Virginia, on behalf of a grateful community, hereby express deep appreciation to **Kevin J. East** for the dedicated service he so willingly provided to the citizens of our town; look forward to his continued involvement in our community; and wish him a long, happy and fulfilling life.

**5. COMMENTS FROM THE TOWN MANAGER**

There were no comments from the Town Manager.

**6. COMMENTS FROM THE TOWN COUNCIL**

**ORDER OF AGENDA/APPROVAL OF MINUTES**

Councilmember Kirby: Stated that he was not present at the September 8, 2015 public hearing and he would like to change his vote to 'abstain' from the action on that set of minutes.

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Following Councilmember Kirby's comments, Lesa Yeatts, Town Attorney, recommended that the Council consider a motion to reconsider the vote on the minutes that were previously approved earlier in the meeting. If the Council approves the motion to reconsider the vote on the minutes, Councilmember Kirby could change his vote.

There was brief discussion amongst Council and staff regarding the vote to reconsider the minutes.

**Vote to (Approved)  
Reconsider  
Approval of Minutes**

Councilmember Kirby moved to reconsider the vote on the minutes from the September 8, 2015 public hearing and the September 15, 2015 work session. This motion was seconded by Councilmember Olem.

Following Council's discussion on the motion, Ms. Yeatts opined that the Council would need to hold separate votes on the September 8, 2015 public hearing and the September 15, 2015 work session minutes.

The question was called on the motion to reconsider the vote on the minutes, which was approved by a 6-0 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**Vote on (Approved)  
September 8, 2015  
Public Hearing**

On the motion of Councilmember Olem, seconded by Vice Mayor Baker, the minutes from the September 8, 2015 public hearing were approved by a 4-1 vote. The vote was: Councilmembers Mitchell, Olem, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Singh voting "No" and Councilmember Kirby voting "Abstain." Councilmember Wolf was absent.

**Vote on (Approved)  
September 15, 2015  
Work Session**

On the motion of Councilmember Olem, seconded by Councilmember Kirby, the minutes from the September 15, 2015 work session were approved by a 5-1 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Singh voting "No." Councilmember Wolf was absent.

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**COMMENTS FROM THE TOWN COUNCIL CONTINUED**

Councilmember Olem: Stated that the Council for the Arts of Herndon would be holding its 30<sup>th</sup> Anniversary Pearl Event on Saturday, October 3, at 7:00 p.m. 'Save the Date' cards for the event were on the table outside the Council Chambers and RSVPs would be required.

Councilmember Olem offered her condolences and sympathies to the family, friends and neighbors of Bob Simon. She was fortunate to have met him, and stated that we would all be lucky to live a long, healthy life, like Mr. Simon.

Vice Mayor Baker: Stated that Friday, September 25 would be the last 'JamBrew' on the Town Green. On Saturday, September 26, OctoBrewFest would be going on all day also on the Town Green. She encouraged everyone to attend these two events hosted by the Herndon Hospitality Association.

Vice Mayor Baker stated that also on Saturday, September 26, the Pride of Herndon Band would be hosting the 19<sup>th</sup> Annual Virginia Showcase of Bands marching competition at Herndon High School. She stated that the Herndon High School band plays later at night and invited everyone to watch the other bands during the day as well.

Mayor Merkel: Stated that she and several Councilmembers had participated in the ribbon cutting for Aslin Beer Company in the Sunset Business Park on Saturday, September 19. She was excited for Herndon's first nano-brewery, which would also be a tourist attraction.

Mayor Merkel stated that she had recently come across a new Facebook group, "Straight Outta Herndon," which was a viral community. Kevin Cook, who grew up in Herndon, started the group and was making tee-shirts with the slogan on them. She encouraged everyone to check out the group on Facebook or Twitter.

**7. COMMENTS FROM THE AUDIENCE**

There were no comments from the audience.

**8. PUBLIC HEARINGS**

**Ordinance 15-O-28, to amend Chapter 78 (ZONING), Section 78-303.2 (Additional development standards for planned development districts), to permit an increase in allowable square footage for major tenant wall signs in the Planned Development – Worldgate (PD-W) zoning district, ZOTA #15-02.**

(Note: This public hearing was continued from September 8, 2015 public hearing at the request of the applicant.)



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Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Mayor Merkel stated that as she mentioned earlier, the applicant had requested that the public hearing on this item be further continued until October 13. She stated with the Council's concurrence, staff would forgo the presentation of the staff report this evening. Because this item was properly advertised, she would open the public hearing to receive comments from the audience. Following the public hearing, Council may consider action to continue the public hearing to October 13.

Following the public hearing (there were no comments from the applicant or audience), there were comments from Council.

On the motion of Councilmember Olem, seconded by Vice Mayor Baker, Ordinance 15-O-28 was continued to October 13 by a 6-0 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**Ordinance 15-O-29, to consider a change of zoning classification, of property at 770 Elden Street, 782-786 Elden Street and 724 Center Street, from Central Commercial (CC) to Planned Development Traditional Downtown (PD-TD); Ashwell LLC; applicant and contract purchaser Town of Herndon, ZMA #15-101.**

(Note: This public hearing was continued from September 8, 2015 at the request of staff.)

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Mayor Merkel stated that prior to tonight's meeting, the Council received comments from individuals interested in this item, which were entered into the record. She stated that the town is both the applicant and contract purchaser of this property and recognized Elizabeth Gilleran, Director of Community Development, for the staff report.

Ms. Gilleran presented the staff report and a PowerPoint, which are on file in the Town Clerk's office. She stated that during the last public hearing on this item, staff had reviewed the staff report and PowerPoint in detail. For that reason, she would review the new material related to this item that was presented at the Council's work session on September 15, along with her memo to the Town Manager, dated and distributed on Friday, September 18. The following proffers were revised according to the Council's discussion, as follows:

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- **Proffer #1, Height:** The proposed proffer amendment would include changes related to multi-family and residential uses; heights; and number of stories.
- **Proffer #4, Parking:** The proposed revisions would clarify parking requirements and developer commitments related to parking and the Public Shared Parking Program. The proffers were amended to accommodate a hotel use.
- **Proffer #5, Architecture:** The proposed changes would clarify language and restrictions related to storefront architecture; stairwells; English basements; and window visibility. The Downtown Pattern book was referenced and emphasized throughout this proffer.

Ms. Gilleran emphasized that the proposed proffers would be similar to modifications permitted in ZMA #14-101, previously approved by the Town Council, since the town's intent was to develop the two sites as a single entity. However, the proposed proffers would be slightly more restrictive than those approved with ZMA #14-101. Staff recommends approval of the proposed ordinance with the proffers, as presented.

There was discussion amongst Council and staff regarding the proffer amendments; the Downtown Master Plan; and downtown development in general ~ including permitted uses, open space requirements, and building heights.

Responding to Mayor Merkel's request, Ms. Gilleran explained the concept of 'bridging' open space, which would allow upper stories of a building to bridge over an open space. She reviewed Proffer #3 under 'Development Proffers,' which referenced bridging.

There was brief discussion amongst Council and staff regarding ZMA #14-101 and its similarities and differences to the proposed ordinance.

Responding to Councilmember Singh, Ms. Gilleran stated that the Council could not act this evening to revise ZMA #14-101.

Responding to Councilmember Mitchell, Ms. Gilleran stated that she would have to review ZMA #14-101 to determine the permitted uses for Block E.

Responding to Mayor Merkel, Ms. Gilleran stated that the proposed changes to the proffers would fit into the town's long-term vision for the downtown.

The public hearing was held and the following individual provided testimony:

- Barbara Glakas, 935 Barton Oaks Place, Herndon.

Following the public hearing, Councilmember Olem moved approval of Ordinance 15-O-29, as written. This motion was seconded by Vice Mayor Baker.

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There were comments from Council on the motion to approve Ordinance 15-O-29.

The question was called on the motion, which was approved by a 5-1 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Singh voting "No." Councilmember Wolf was absent.

**Ordinance 15-O-29, Zoning Map Amendment ZMA #15-101. To Change the Zoning Classification of the Property Identified as Fairfax County Tax Map Reference Numbers 0162-02-0026, 0162-02-0027A (now or formerly two parcels), and 0162-02-0029 in the Town of Herndon, Virginia from CC central commercial zoning district to PD-TD planned development traditional downtown zoning district. The property includes approximately 1.6727 acres (72,865 square feet) located at 770 Elden Street, 782-786 Elden Street and 724 Center street in Herndon, Virginia. The property is also identified as part of Block D in the Downtown Master Plan of the Town of Herndon 2030 Comprehensive Plan.**

In adopting this Ordinance, the Town Council has considered the factors set out in 15.2-2284, Code of Virginia (1950) as amended.

**BE IT ORDAINED** by the Town Council of the Town of Herndon that:

- A. The zoning classification of the property described below, lying in the Town of Herndon, Fairfax County, Virginia, is changed from Central Commercial (CC) to Planned Development Traditional Downtown (PD-TD).

The property is shown on an ALTA/ACSM Land Title Survey dated June 24, 2015 and revised August 4, 2015 by Tri-Tek Engineering with the seal of a licensed Commonwealth of Virginia Land Surveyor. The property is described in the land records of Fairfax County recorded December 31, 1998 at Deed Book 10730 page 0321, also identified as number 98-259778. The metes and bounds of each parcel of the property are included as an attachment to this ordinance and the metes and bounds are also described on a larger format survey document not included with the staff report. Total land area of the property according to the Land Title Survey includes approximately 1.6727 acres (72,865 square feet) in three parcels as follows:

0162-02-0026 –33,010 square feet

0162-02-0027A – 18,088 square feet

0162-02-0029 - 21,767 square feet

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Total surveyed area of the three parcels is at a very slight variance with the Fairfax County land records; it also varies slightly from the Town Council ordinance of May 26, 2015 approving the sale. The variations are less than 120 square feet.

- B. This rezoning shall be governed by the Town of Herndon Zoning Ordinance, Proffers for ZMA #15-101 dated August 28, 2015, Revised September 18, 2015 (incorporated by reference) and the Generalized Development Plan. Further, this rezoning is consistent with the 2030 Comprehensive Plan of the Town of Herndon including the Downtown Master Plan adopted February 22, 2011 and the Downtown Pattern Book—A Guide for Downtown Development adopted January 29, 2013. The Town Council acknowledges the flexibility inherent in this form-based plan and pattern book, including options for placement of a parking structure.
- C. The Town Council approves the following modifications to the zoning regulations, as allowed under Section 78-303.1(g)(4):

A modification to Section 78.201.3 (7) Submittal requirements, specifically of Sec. 78-201.3 (6), Sec. 78-201.3(7) and Sec. 78-201.3(10) to permit a Generalized Development Plan of a more conceptual nature and absent a seal by an engineer, architect, landscape architect or surveyor and not consisting of blue or black line copies; a Generalized Development Plan that does not contain the elements listed within the Zoning Ordinance; relief from the submission of traffic impact study and a development schedule at this time.

A modification to Section 78-303.2(e) Height and to Section 78-701 Definitions, to permit the height of buildings to exceed the 50 foot height limitation by 4 feet, and to allow an English basement, not counted as a story, to have two thirds of its height above grade when the Zoning Ordinance permits no more than one-half of the height to be above grade.

A modification to Sec. 78-511(1) Downtown streetscape, to permit planting beds along the Center Street streetscape to be used for stormwater management and water quality requirements to the extent that the planters are recognized by the Commonwealth of Virginia for stormwater management and best management practice use.

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A modification of Sec. 78-500.4 Loading space standards, concerning the number of spaces and their physical configuration and alternative materials.

A modification of the regulatory plans regarding location of open space to permit flexibility in the configuration and location of the public open space, while ensuring that some of the open space remains contiguous with the Elden Street streetscape.

- D. As to the modifications set out in item C. above, the Town Council finds that such modifications will afford equal or greater assurances of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance and the goals of the statement of intent of the PD-TD Planned Development Traditional Downtown zoning district.
- E. The official zoning map of the Town of Herndon, Virginia is amended to show this change in zoning classification and shall be annotated to indicate the property described in paragraph A. above as PD-TD - Planned Development Traditional Downtown.
- F. This ordinance shall be effective on and after its adoption.

**(NOTE: Attached for reference are the proffers dated “August 28, 2015, revised September 18, 2015”; the Generalized Development Plan; and the metes and bounds descriptions.)**

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(public hearing)**

**PROFFER STATEMENT  
ZMA #15-101**

**August 28, 2015  
Revised September 18, 2015**

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 78-202.1(e) of the Town of Herndon Zoning Ordinance (2006, as amended) (Zoning Ordinance), the undersigned, for themselves and their successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually as the "Applicants"), hereby proffer that the development of the parcels that are the subject of this application and which are shown on the Fairfax County Tax Parcel Reference Numbers 0162-02-0026, 0162-02-0027A (now or formerly 2 parcels), and 0162-02-0029, (collectively, the "Property") shall be in substantial conformity with the conditions set forth in this submittal, and only if, Rezoning application ZMA #15-101 (this "Rezoning") is granted.

**GENERAL**

1. **Generalized Development Plan:** The Property shall be developed in substantial conformance with the Ashwell Property Generalized Development Plan ("GDP") dated July 15, 2015 and the adopted Town of Herndon Downtown Master Plan and the Herndon Downtown Pattern Book, a Guide for Downtown Development. It is understood by the Applicants that all other applicable regulations and policies governing land development within the Town of Herndon (Town) shall apply to the Property and its development unless specifically modified by the language of the approved Ordinance governing ZMA #15-101.
2. **Proffered GDP Elements:** The proffered elements of the GDP are limited to the general location of the points of access, general location and mix of uses, minimum and maximum building heights and general location of public space.
3. **Minor Modifications:** Minor modification of the GDP may be permitted without the need for a Proffer Amendment when necessitated by sound engineering or final site design or engineering, provided that the development is in substantial conformance with the GDP, these Proffers and the Herndon Downtown Pattern Book, a Guide for Downtown Development. Substantial conformity shall be determined per Section 78-202.1(e)d.4, Zoning Ordinance.
4. **Transferring of the Property:** Future purchasers of the Property shall be advised of these Proffers and related obligations in the contract of sale and shall provide evidence of intent to abide by these proffers through the inclusion of a conceptual plan of development, and descriptive summary of development addressing all elements of these Proffers to the Town's Department of Community Development prior to site plan

Attachment  
15-0-29

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submission. The Town may request additional information, which the Zoning Administrator determines to be necessary to ensure compliance with the standards and guidelines of the adopted Downtown Plan, the Zoning Ordinance, the adopted Town of Herndon 2030 Comprehensive Plan, as amended, the Herndon Downtown Pattern Book, a Guide for Downtown Development and other additional standards and information determined by the Town to be appropriate and necessary using customary land use standards. Nothing in these proffers or the approval of ZMA #15-101 shall be construed as limiting the Applicants' ability to obtain additional benefits or obligations through contract negotiations unrelated to the ZMA process.

**PROPOSED DEVELOPMENT**

**1. Height:** Structures incorporating residential and hotel uses shall not exceed 4 stories above grade. Structures with upper floors dedicated to commercial and office uses shall not exceed 3 stories above grade. Multi-family structures, including but not limited to stacked townhouses, along the Center Street frontage of Parcel 16-2-((2))-29, and the abutting portion of Parcel 27A for a distance of 82 feet south of the shared property line, shall not exceed 3 stories. Building facades restricted to 3 stories along the Center Street frontage shall not exceed 41 feet in height as measured from the finished grade of the abutting public sidewalk to the roof membrane, exclusive of parapet on flat-roofed buildings, or to the eaves of pitched roof buildings. The 3 story restriction shall extend to a depth of 20 feet from the front façade facing Center Street, at which point a multi-family structure may extend up to 4 stories and 54 feet, dependent upon the granting of modification #2 and excluding those standard structures and parapets allowed by ordinance to exceed the height limit. With the exception of the Center Street frontage of parcel 16-2((2))-29 and that portion of parcel 27A, described above, and modifications granted, if they are granted, as part of the approval of ZMA #15-101, the maximum height of all structures shall conform to the zoning regulations governing the Planned Development – Traditional Downtown District.

Building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the roof, exclusive of parapet, on flat-roofed buildings or to the eaves of pitched roof buildings.

**2. Uses.**

**Parcel 16-2-((2))-29:** Uses on parcel 29 shall consist of one or more of the following: structured parking, multi-family residential, with or without stacked townhouses, and uses accessory to the multi-family uses.

**Parcel 16-2-((2))-26:** The Elden Street façade of buildings shall provide mixed use development per the Pattern Book Building Frontage Regulatory Plan. Uses on parcel 26 shall consist of two or more of the following: structured parking; multi-family residential and uses accessory to multi-family uses; professional and commercial offices;

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for profit and non-profit arts facilities including art galleries, studios, classroom space for performance arts, music and visual arts; performance space; retail and/or restaurant uses. Structures located along Elden Street shall incorporate mixed-use, with ground floor storefront façade architecture. A hotel use is permitted with or without the above-described uses. If present, a hotel use shall provide ground floor semi-public or public uses such as lobbies and restaurants along the Elden Street ground floor frontage, and the appearance shall be that of a storefront(s). Arts related uses and restaurant uses may include the temporary leasing of such space for special events, meetings and receptions.

**Parcel 16-2-((2))-27A:** Uses on parcel 27A shall consist of two or more of the following: structured parking; multi-family residential and uses accessory to multi-family uses; professional and commercial offices; for profit and non-profit arts facilities including art galleries, studios, classroom space for performance arts, music and visual arts; performance space; retail and/or restaurant uses. Structures located along Elden Street shall incorporate mixed-use, with ground floor storefront façade architecture. A hotel use is permitted with or without the above-described uses. If present, a hotel use shall provide ground floor semi-public or public uses such as lobbies and restaurants along the Elden Street ground floor frontage, and the appearance shall be that of a storefront(s). Arts related uses and restaurant uses may include the temporary leasing of such space for special events, meetings and receptions.

**Prohibited Uses:** The following uses shall not be permitted on the Property (parcels 26, 27A and 29): nail salon, tattoo parlor, pawn shop, or adult-oriented retail, any use that necessitates security measures such as but not limited to bars, grills, chains, security blinds or other visible barriers.

**3. Public Accessible Open Space:** On Parcel 26 and/or Parcel 27A public accessible open space shall be provided. The open space shall be accessible to the public through dedication to the Town or through a public access easement. The space shall abut the Elden Street right-of-way and provide connectivity to pedestrian appropriate locations, such as but not limited to public parking and abutting pedestrian access ways on Parcel 27A, Parcel 29 or other abutting parcels. Nothing in this proffer shall be interpreted to require connectivity onto abutting properties not under the control of the Applicants. The open space shall be designed to incorporate soft as well as hardscape [as defined by the American Society of Landscape Architects]. The Applicants shall secure the services of a registered landscape architect to design the open space area. At least 30 percent of facades abutting the edges of this open space shall consist of storefront architecture. The open space shall be designed to encourage pedestrian use through design attention to the ratio of the width of open space to height of abutting structures, and use of pedestrian lighting. Architectural lighting of structures and landscaping shall be incorporated.

Attachment  
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A minimum of 11,000 square feet of publicly accessible open space shall be incorporated into the development of the Property, including but not necessarily limited to the open space described in the paragraph above, but excluding the standard required 12 foot wide streetscape along Elden Street and Center Street. Any additional open space included in calculations to fulfill the minimum requirement for publicly accessible open space may or may not be contiguous with the open space described in the above paragraph. Any additional public accessible open space shall be located and designed in a manner to invite public active or passive use of the space.

Bridging of public accessible open space is permitted. Clearance from finished grade to bottom of the structure above shall not be less than 15 feet and lighting shall be provided. The façade of the bridge shall be set back from the Elden Street right-of-way to provide an open area leading from the public sidewalk designed to provide a sense of public invitation. No more than 30% of the public open space may be bridged.

**4. Parking:** The Applicants shall provide parking for all uses on site per Table 78-500.3(a)(1) MINIMUM OFF-STREET PARKING STANDARDS IN THE PD-TD, CC AND PD-D ZONING DISTRICTS. The number of parking spaces shall be calculated per those sections of the ordinance at the time of site plan submission. The Applicant may, as permitted by Sec. 78-500.3(h) PUBLIC PARKING OPTIONS, elect to participate in the public shared parking program for up to .5 parking spaces per residential unit. Transfer shall occur at the time of occupancy permit approval for the square footage to be parked. Applicants shall pay the standard maintenance obligations of purchasers of Public Shared Parking for parking spaces transferred to the Public Shared Parking program. Parking spaces required and built for non-residential uses shall be built and paid for by the Applicant and shall be made available and signed as to allow their use by the public and not reserved for specific uses or for a specific development. If a hotel use is incorporated into the proposed development it shall be parked in accordance with Table 78-500.3(a) (1) at 3.3 parking spaces per 1,000 square feet. A maximum of 10 parking spaces shall be signed and reserved for hotel check-in/out. In addition to the spaces reserved for check-in/out, a maximum of 0.9 parking spaces per hotel guest room may be reserved for use by the hotel and not made available to the general public between the hours of 5:30 p.m. and 11:30 p.m.

If the Property is developed in conjunction with neighboring parcels 20C and 20F and related parcels, the Property (parcels 26, 27A and/or 29) may be the site of some or all of the parking structure and public shared parking required per ZMA #14-101.

Dependent upon the granting of Modification #4, the Property shall be served by at least 1 loading space. At least one loading space shall be located to serve on-site residential as well as nonresidential uses, unless the Zoning Administrator determines, at the time of site plan review, that a safe, effective and attractive delivery and moving option has been provided to serve the residential units on site, in which case the designated loading space(s) may be reserved for non-residential and hotel uses. Loading areas for residential or non-residential uses shall be located within the Development and not on

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the public right-of-way, although the Applicants recognize that deliveries may occur within legal on-street parking spaces.

**5. Architecture:** The architecture of the structures shall be as described in the Herndon Downtown Pattern Book, a Guide to Downtown Development. The Town of Herndon Heritage Preservation Review Board (HPRB) shall use the Downtown Pattern Book. Structures shall not have stairwells open to the exterior with the exception of stairwells less than one story in height for entering or exiting the structure. The ground floor of any structure fronting Elden Street shall be comprised of storefront architecture. Storefront architecture shall comprise a minimum of 90 percent of the Elden Street frontage. Storefronts shall wrap the façade of the Center Street/Elden Street corner frontage and extend along the Center Street frontage for a distance of not less than 75 feet. English basement conditions will not be employed along the Elden Street frontage. Security apparatus such as but not limited to bars, grills, chains, security blinds or other barriers shall not be permitted within storefronts or other ground floor windows and doors in any location visible from the exterior of the building. Per the Pattern Book, windows will have high visibility transmittance values (37% or greater) and low daylight reflectance (15% or less). Colored, visibly tinted, or mirrored glazing shall not be used. Blinds or other features that block visual interaction between the street and the interior will not be used within storefront windows. Translucent solar shades may be employed.

Appropriate surface materials for all habitable structures, and for the exposed facades of parking structures and accessory structures shall consist of: brick, stone, fiber cement siding in clapboard or shingle as deemed appropriate for the style of architecture, cellular PVC trim, or cast stone. Additional materials exhibiting a natural and historical appearance, of equal or greater durability may be used as allowed by the HPRB, if they are allowed. Panelized brick and stone veneers exhibiting a hand laid appearance may be appropriate, if approved by the HPRB. The HPRB shall determine the appropriateness of materials based upon the scale, style and use of the structure as well as the Pattern Book and Guidelines. The style of architecture shall reflect the heritage district's period of significance with added emphasis on the styles and massing of the early 20<sup>th</sup> Century (1900 – 1940).

**6. Streetscape:** The Applicants proffer to build the public streetscape along Center Street and Elden Street abutting the Development and private or public streetscapes, lanes or alleys internal to the Development. No vehicle use areas such as travel lanes, surface parking, porte-cocheres or other facilities shall be located between the building façade and the streetscape. The appearance, width, and other physical characteristics of these streetscapes shall be as follows:

**Center Street:** Applicants shall build a public streetscape 12 feet in depth extending from back of curb. A public access easement to the Town is proffered over any portion of the Property that is incorporated into the public streetscape. The materials of the public streetscape shall match the adopted materials of the Town of

Herndon Streetscape Guidelines or Town approved alternatives based on customary standards. To achieve an enhanced buffer between the Development and the adjacent

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single family detached residential district, canopy trees within the streetscape along the frontage of Parcel 29 and extending 80 feet south of Parcel 29, shall have a minimum caliper of 4 inches at time of planting and shall be planted 25 feet on center and compatible with street light placement, sight distance and other applicable factors. The species and specifications of all streetscape plantings shall be as approved, if it is approved, by the Town of Herndon Zoning Administrator using recognized standards. Additional proffered standards are provided below for specific segments of the Center Street streetscape.

Abutting the 12 foot streetscape, and located between the streetscape and the front façade of the adjoining building on Parcel 29 and extending 80 feet south of Parcel 29, shall be a strip of land, the minimum width of which shall be 5 feet, to provide for foundation plantings and entrance steps and related features.

Per Modification #3 of this application, if approved, the planting beds designed within the public streetscape may be designed and used to meet the Development's stormwater management and quality requirements. If the streetscape planters are used for this purpose, the Applicants shall provide an alternative design, with technical information required by Town of Herndon regulations and policies, for review by the Zoning Administrator who will determine if the facility meets all stormwater control and quality requirements and to ensure that the alternative plan is both aesthetically and technically appropriate (based on recognized standards) for Herndon's Downtown and as an element of the public streetscape. If the planting beds are used for stormwater purposes, the Applicants proffer to maintain functional capability of the bed to meet the Town's water control and quality requirements. The Applicants understand that a stormwater maintenance agreement will be required for the long-term care of the facility and any other facilities within the Development. Furthermore, the design of the facility will incorporate any necessary technical features to address road salts and snow piles and will be designed to provide both an attractive display of vegetation and trees, to be reviewed and approved, if it is approved, by the Town of Herndon Zoning Administrator.

The applicant shall provide 2 litter receptacles, 2 recycling receptacles and 2 benches along this portion of Center Street. The style of these amenities will match the adopted Town of Herndon Streetscape Guidelines and the manufacturer and construction will be dependent upon approval, if it is approved, by the Zoning Administrator using recognized standards.

Center Street Storefront: Along that portion of Center Street abutting storefront architecture, the streetscape shall meet the language below governing the design, layout, appearance, responsibilities and elements of the Elden Street streetscape requirements. The number of amenities along this portion of Center Street shall be 2 litter receptacles,

2 recycling receptacles, one bench and 3 commercial grade planting containers. The containers shall be for the purpose of providing seasonal landscape color and shall be maintained by the Applicants.

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**Elden Street:** The Applicants shall build a public streetscape 12 feet in depth extending from back of curb along Elden Street. A public access easement shall be provided to the Town over any portion of the Property that is incorporated into the public streetscape. The streetscape elements shall meet the Herndon Streetscape Guidelines. Canopy trees, suitable for limbing up, as determined by the Zoning Administrator using recognized standards, shall be provided as to the street trees. In addition to the street trees, grates and pavers, within the streetscape amenity zone the Applicants shall provide benches (minimum 1), 2 litter receptacles and 2 recycling receptacles. The style of these amenities will match the adopted Town of Herndon Streetscape Guidelines and the manufacturer and construction will be dependent upon approval, if it is approved, by the Zoning Administrator using recognized standards. The Applicants shall provide additional commercial grade planting containers, a minimum of 3, to be located within this streetscape area. The containers shall be for the purpose of providing seasonal landscape color and shall be maintained by the Applicants.

**7. Streetlights and On-Site Lighting:** At the time of site plan submission, the Applicants shall provide the necessary photometric plans and meet Town adopted lighting standards. The Applicants shall provide and install the Town approved standard Downtown Streetscape pole and fixture along Elden Street, Center Street and any internal roads to be dedicated to the Town of Herndon. Alternative styles may be used within the development on private property if approved by the Zoning Administrator using recognized standards as a component of the site plan. Any alternative styles shall be subject to review and approval, if they are approved, by the HPRB.

**8. Overhead Utilities:** The Applicants shall remove any overhead poles and wires located within the Property and place underground any existing wires that must remain. In addition to any existing wires to be placed underground, all new utility lines shall be placed underground. Should the Town adopt an alternative utility layout plan prior to submittal of the first site plan associated with this zoning map amendment, the Applicant shall relocate the utilities in accordance with the adopted alternative utility layout plan if the alternative plan is determined by the Zoning Administrator to be a viable alternative for the Development.

**9. Telecommunications Equipment:** Telecommunications equipment may be placed on the proposed residential and non-residential buildings' rooftops. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and federal law and be screened or setback sufficiently from the perimeter of the roof and penthouse such that the facilities are not visible from the streets, forming the boundary of the Property, at street level. Other screening measures may be used such as including

the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas. Telecommunications equipment may also be architecturally integrated onto the facades of the buildings where necessary to ensure on-street or open space coverage. Final

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decisions concerning the appropriateness of screening measures shall be by the Zoning Administrator, using recognized standards.

**10. Noise Attenuation:** The Applicants shall install sound reducing windows and construct sound insulated exterior walls on residential facades located on Parcel 26 and Parcel 27A fronting Elden Street. The windows and walls shall meet the following standards: exterior walls not less than 45 Ldn and windows not less than 33STC.

**11. Notification of Exterior Noise Levels and Downtown Activity:** The Applicants shall notify potential tenants or purchasers of individual residential units and commercial uses, either in the lease or sales contract, that the area surrounding the Development, particularly the Town Green and Town Hall Square, serves as an outdoor entertainment venue, with amplified sound and significant attendance under controlled conditions and hours.

**12. Bicycle Parking:** The Applicants shall provide bicycle racks, and bike storage areas throughout the Property both in exterior locations such as the public right-of-way alleys and courts as well as within the parking garages or other structures. The specific locations shall be determined at the time of site plan approval. Bicycle racks shall meet the Town's adopted Streetscape Guidelines. Bicycle racks within structures shall allow attachment of the bicycle at two places. The Applicants shall provide bicycle parking at the rates required by the Town of Herndon Zoning Ordinance at the time of site plan submission.

**13. Recreation:** The Applicants shall include a weight and fitness room for use by residents of any residential units located within the Development. Should residential units on the Property be under the control of a single entity (e.g. corporation, condominium association) shared with residential units on the abutting property to the north and east (those properties controlled by ZMA #14-101) the weight and fitness room and other residential amenities such as but not limited to a swimming pool, theater, entertainment room, and roof-top amenities may be shared among the consolidated development.

**14. Monetary Recreation Contribution:** Due to the increase in demand that the additional residential units will place on Town recreational services, the Applicants proffer \$1,800 per residential unit to be paid to the Town of Herndon at the time of issuance of a certificate of occupancy of the unit or units.

**15. Vehicle Access and Connectivity:** The primary egress and ingress for vehicles shall be from Center Street. Should the Property develop in conjunction with the adjacent property (ZMA #14-101) the Center Street vehicle access shall be located along

Center Street but may be located on the property of ZMA #14-101 or the Property of ZMA #15-101 or both. Vehicle connection to Station Street, as required by ZMA #14-101, will be provided per that previous approval.

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**Internal Public or Private Streetscapes, Lanes and Alleys:** Internal vehicle drives, exclusive of drive aisles within structured parking facilities and surface parking lots, shall incorporate shared use principles or designated pedestrian facilities providing safe, convenient and attractive walkways. The pavement materials, lighting and other features will reflect the general style of the Development and such features and general layout of the pedestrian and vehicle access shall be reviewed and approved, if they are approved, by the Zoning Administrator using recognized standards. Shared use surfaces are acceptable, provided they meet engineering and ADA requirements:

No vehicle access areas shall be counted within the calculations of publicly accessible open space, except for the following: decorative pedestrian areas engineered to withstand vehicle traffic and located within larger open space areas when vehicle access is limited to between the hours of midnight and five a.m. Periodic use of open space for food trucks and other vendors shall be permitted if approved by the Town Manager of the Town of Herndon. Such activity must be located on a paved surface.

Any vehicle access from Elden Street will be limited to right-in and right-out only access onto and from the Elden Street right-of-way. The access lane(s) and any adjacent vehicle related surfaces shall not be asphalt but shall be a decorative brick or paver surface. Individual lane widths shall not exceed 10 feet unless there is only one lane in which circumstance the lane width shall not exceed 12 feet. The intersection of the vehicle access and Elden Street shall meet all engineering and sight distance requirements.

**16. Traffic Impact Study:** With the first submission of the site plan the applicant shall submit a traffic impact study meeting the standards set forth in the Town of Herndon zoning ordinance and based upon a scoping meeting with the town staff. The purpose of this traffic impact study will be for future planning purpose.

**17. Screening:** Dumpsters, recycling and grease containers shall be located within buildings or screened from view through masonry walls and decorative metal gates. Garbage totes shall be used whenever practicable and shall be stored within a building or structure except when awaiting pick-up. Decorative masonry walls and other decorative and durable screening options shall shield the view of loading and service areas from public streets to the greatest degree possible as determined by the Zoning Administrator.

Town of Herndon/Applicant

Dated: 9/17/15

By:   
Arthur A. Anselene, Town Manager



**September 22, 2015  
(public hearing)**

METES AND BOUNDS DESCRIPTION  
"PARCEL 26"  
PROPERTIES OF  
ASHWELL, L.C.  
(D.B. 10730; PG. 318)  
TOWN OF HERNDON, VIRGINIA  
(PARID: 16-2-02-0026)

Beginning at an iron pipe on the northerly right-of-way of Elden Street – Route #228 (variable width), said pipe being the southeasterly most corner to Ashwell, L.C. "Parcel 27A" (D.B. 10730, PG. 318)

Thence departing Elden Street, running with the easterly lines of Ashwell, L.C. "Parcel 27A" the following courses; 1) N 2°01'45" E – 54.75 feet to a point, 2) N 88°13'30" W – 2.00 feet to a point, 3) N 2°55'00" E – 70.00 feet to a point, 4) S 88°13'30" E – 23.00 feet to a point and 5) N 2°55'00" E – 79.23 feet to a point in the south line of Ashwell, L.C. "Parcel 29" (D.B. 10730, PG. 318), said point being the northeasterly most corner to Ashwell, L.C. "Parcel 27A".

Thence departing Ashwell, L.C. "Parcel 27A", running with a portion of the south line of Ashwell, L.C. "Parcel 29"; S 88°36'48" E – 107.03 feet to a point being the southeasterly most corner to Ashwell, L.C. "Parcel 29" and being a westerly corner to Parcel 20A-1, Paul Brothers, Inc. Property (D.B. 23515, PG. 1379).

Thence departing Ashwell, L.C. "Parcel 29", running with a south westerly line of Parcel 20A-1; S 88°23'10" E – 56.03 feet to an iron pipe being another westerly corner to Parcel 20A-1 and the northeasterly most corner to the property herein described.

Thence running with a westerly line of Parcel 20A-1 and continuing with the west line of Alice Martin Family, LLC (D.B. 20038, PG. 1366); S 10°23'40" W – 203.29 feet to a point on the northerly right-of-way of Elden Street.

Thence running with the northerly right-of-way of Elden Street; N 89°37'43" W – 156.85 feet to the point of beginning containing 33,010 Square Feet or 0.7578 Acres of land.



**September 22, 2015  
(public hearing)**

METES AND BOUNDS DESCRIPTION  
"PARCEL 27A"  
PROPERTIES OF  
ASHWELL, L.C.  
(D.B. 10730, PG. 318)  
TOWN OF HERNDON, VIRGINIA  
(PARID: 16-2-02-0027A)

Beginning at an iron pipe on the northerly right-of-way of Elden Street – Route #228 (variable width), said pipe being the southwesterly most corner to Ashwell, L.C. "Parcel 26" (D.B. 10730, PG. 318).

Thence departing Ashwell, L.C. "Parcel 26", running with the northerly right-of-way of Elden Street; N 88°13'00" W – 63.72 feet to a point of curvature on the transition between the northerly right-of-way of Elden Street and the easterly right-of-way of Center Street – Route #2503 (variable width).

Thence running with the transition between Elden Street and Center Street; along the arc of a curve to the right as follows; R = 17.00' / A = 26.69' / CB = N 43°08'54" W / CHD = 24.03' to a point on the easterly right-of-way of Center Street.

Thence running with the easterly right-of-way of Center Street; N 1°58'01" E – 186.22 feet to an iron pipe, said pipe being the northwesterly most corner to the property herein described and lying N 88°36'48" W – 2.65 feet from the southwesterly most corner to Ashwell, L.C. "Parcel 29" (D.B. 10730, PG. 318).

Thence running with a portion of Center Street and continuing with a portion of the south line of Ashwell, L.C. "Parcel 29"; S 88°36'48" E – 104.29 feet to a point being the northwesterly most corner to Ashwell, L.C. "Parcel 26".

Thence departing Ashwell, L.C. "Parcel 29", running with the westerly lines of Ashwell, L.C. "Parcel 26" the following courses; 1) S 2°55'00" W – 79.23 feet to a point, 2) N 88°13'30" W – 23.00 feet to a point, 3) S 2°55'00" W – 70.00 feet to a point, 4) S 88°13'30" E – 2.00 feet to a point and 5) S 2°01'45" W – 54.75 feet to the point of beginning containing 18,088 Square Feet or 0.4152 Acres of land.

September 22, 2015  
(public hearing)

METES AND BOUNDS DESCRIPTION  
"PARCEL 29"  
PROPERTIES OF  
ASHWELL, L.C.  
(D.B. 10730, PG. 318)  
TOWN OF HERNDON, VIRGINIA  
(PARID: 16-2-02-0029)

Beginning at a point on easterly right-of-way of Center Street – Route #2503 (variable width), said point being the southwesterly most corner to Parcel 20B, Paul Brothers Inc. Property (D.B. 9489, PG. 1498).

Thence departing Center Street, running with the southerly line of Parcel 20B; S 88°38'18" E – 208.67 feet to a point in a westerly line of Parcel 20A-1, Paul Brothers Inc. Property (D.B. 23515, PG. 1379), said point being the southeasterly most corner to Parcel 20B.

Thence departing Parcel 20B, running with a portion of a westerly line of Parcel 20A-1; S 01°39'50" W – 104.36 feet to a point, said point being a northerly corner to Ashwell, L.C. "Parcel 26" (D.B. 10730, PG. 318)

Thence departing Parcel 20A-1, running with the northerly line of Ashwell, L.C. "Parcel 26" and continuing with a portion of the northerly line of Ashwell, L.C. "Parcel 27A"; N 88°36'48" W – 208.67 feet to a point on the easterly right-of-way of Center Street, said point lying S 88°36'48" E – 2.65 feet an iron pipe marking the northwesterly most corner to "Parcel 27A" Ashwell, L.C

Thence departing Ashwell, L.C. "Parcel 27A" running with the easterly right-of-way of Center Street; N 1°39'51" E – 104.27 feet to the point of beginning containing 21,767 Square Feet or 0.4997 Acres of land.

**September 22, 2015  
(public hearing)**

**Ordinance 15-O-31, to grant a second amendment and a ten year lease extension to New Cingular Wireless PCS, LLC for space on the Herndon Alabama Drive Water Tower.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, September 4, 2015 and Friday, September 11, 2015 issues.

Robert Boxer, Director of Public Works, presented the staff report, which is on file in the Town Clerk's office. He stated that the original lease agreement was from December 2000 and the first amendment to the deed of lease occurred in July 2006. The proposed amendment would extend the lease for an additional 10 years, beginning June 1, 2016 and ending May 31, 2016. The annual rent is currently \$41,123.88 and the lease would include an annual three percent annual escalation clause.

Mayor Merkel stated that the town received one bid from New Cingular Wireless PCS, LLC, which was entered into the record, and asked Mr. Boxer if the town had received additional bids.

Responding to Mayor Merkel's request, Mr. Boxer stated that the town had not received additional bids.

Hearing no further bids, Mayor Merkel closed the bidding process.

Following the public hearing (there were no comments from the applicant or audience), Councilmember Olem moved approval of Ordinance 10-O-31 (note: Councilmember Olem inadvertently moved approval of Ordinance 10-O-31, which was corrected to 15-O-31 prior to the vote). This motion was seconded by Vice Mayor Baker.

There were brief comments from Council.

Following comments from Lesa Yeatts, Town Attorney, Councilmember Olem clarified her motion and stated her intent was to move approval of Ordinance 15-O-31.

The question was called on the motion, which was approved by a 6-0 roll call vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**September 22, 2015  
(public hearing)**

**Ordinance 15-O-31, Granting a second amendment and a ten year lease extension to New Cingular Wireless PCS, LLC for space on the Herndon Alabama Drive Water Tower.**

**BE IT ORDAINED** by the Town Council of the Town of Herndon, Virginia, that:

1. The Town Council approves this Second Amendment to Deed of Lease now undated. This instrument amends the original deed of lease dated December 6, 2000 amended by instrument dated July 23, 2006 (the original lease).
2. This instrument extends the term of the original lease for an additional ten year term commencing on June 1, 2016 and expiring on May 31, 2026.
3. The annual rent effective June 1, 2016 will be \$41,123.88 with a 3 percent annual rent increase commencing on June 1, 2017 and at the beginning of each subsequent year.
4. The instrument also updates the addresses for applicable notices.
5. In all other respects the original lease remains in effect.
6. The Mayor is authorized to sign and deliver the Second Amendment to Deed of Lease and any ancillary instruments necessary to evidence or effectuate this instrument, provided they are consistent with this ordinance and on such form approved by the Town Attorney.
7. This ordinance shall be in effect on and after the date of its adoption.

**(NOTE: Attached for reference is the Second Amendment to the Deed of Lease b/n the Town of Herndon and New Cingular Wireless PCS, LLC.)**

**September 22, 2015  
(public hearing)**

Town Site ID: Herndon Alabama Drive Water Tower  
 Tenant Site ID: PW1191/Herndon Water Tank  
 Fixed Asset No. 10067722  
 Market: DC/MD  
 Address: 624 Alabama Drive, Herndon, VA 20170

**SECOND AMENDMENT TO DEED OF LEASE**

THIS SECOND AMENDMENT TO DEED OF LEASE ("Second Amendment"), dated as of the latter of the signature dates below (the "Effective Date"), is by and between Town of Herndon, a municipal corporation, having a mailing address of P.O. Box 427, Herndon, VA 20172-0427 (hereinafter referred to as "Town"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 (hereinafter referred to as "Lessee").

WHEREAS, Town and Lessee (or its respective predecessor-in-interest) entered into a Deed of Lease dated December 6, 2000 ("Deed of Lease"), as amended by that certain First Amendment to Deed of Lease dated July 23, 2006 ("First Amendment"), whereby Town leased to Lessee certain Premises, therein described, that are a portion of the Property located at 624 Alabama Drive, Herndon, VA 20170 (hereinafter, the Deed of Lease and the First Amendment are collectively referred to as the "Lease"); and

WHEREAS, the term of the Lease will expire on May 31, 2016 and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Town and Lessee desire to amend the Lease to extend the term of the Lease; and

WHEREAS, Town and Lessee desire to amend the Lease to adjust the rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Town and Lessee desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Town and Lessee, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town and Lessee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** Upon the expiration of the Extension Term, as set forth in the First Amendment, the Term of the Lease shall be extended for a new term of ten (10) years ("New Term") commencing on June 1, 2016. The New Term shall be referred to as the Term ("Term").
2. **Rent.** Commencing on June 1, 2016, the monthly rent payable under the Lease shall be converted to annual payments. The first annual rent payment shall be Forty One Thousand One Hundred Twenty Three and 88/100 Dollars (\$41,123.88), payable annually in advance, and such annual rent shall continue during the Term, subject to adjustment as provided herein. This paragraph replaces paragraphs 3(a) and (b) of the Deed of Lease.
3. **Future Rent Increase.** The annual rent shall increase by Three percent (3.00%) commencing on June 1, 2017, and at the beginning of each subsequent year. This paragraph replaces paragraph 3(c) of the Deed of Lease.

**September 22, 2015  
(public hearing)**

**Town Site ID: Herndon Alabama Drive Water Tower**  
**Tenant Site ID: PW1191/Herndon Water Tank**  
**Fixed Asset No. 10067722**  
**Market: DC/MD**  
**Address: 624 Alabama Drive, Herndon, VA 20170**

4. **Notices.** Paragraph 18 of the Lease is hereby deleted and replaced with the following:

“(a) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessee:

New Cingular Wireless PCS, LLC  
 Attn: Network Real Estate Administration  
 Re: Cell Site #: PW1191; Cell Site Name: Herndon Water Tank (VA)  
 Fixed Asset No: 10067722  
 575 Morosgo Drive  
 Atlanta, GA 30324

With a required copy of the notice sent to:

New Cingular Wireless PCS, LLC  
 Attn: Legal Department  
 Re: Cell Site #: PW1191; Cell Site Name: Herndon Water Tank (VA)  
 Fixed Asset No: 10067722  
 208 S. Akard Street  
 Dallas, TX 75202-4206

As to Town:

Town of Herndon  
 Attn: Town Manager  
 P.O. Box 427  
 Herndon, VA 20172-0427

With copy to:

Department of Public Works  
 P.O. Box 427  
 Herndon, VA 20172-0427

(b) Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.”

5. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by Town within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Town, and shall not be payable by Lessee. The foregoing shall not apply to rent which is due and payable without a requirement that it be billed by Town. The provisions of this subsection shall survive the termination or expiration of the Lease.

**September 22, 2015  
(public hearing)**

Town Site ID: Herndon Alabama Drive Water Tower  
Tenant Site ID: PW1191/Herndon Water Tank  
Fixed Asset No. 10067722  
Market: DC/MD  
Address: 624 Alabama Drive, Herndon, VA 20170

6. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment.

7. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

8. **Facility Maintenance.** The Property constitutes a municipal water supply facility. Town, under its police power, must enjoy the right and power to maintain the Property. In the event of such maintenance that will interfere with Lessee's Premises, Town will give Lessee ninety (90) days' prior notice of such maintenance. During the notice period, Lessee shall remove or temporarily relocate the Premises ("**Relocation Premises**"). Rent shall abate for any period of time during which the Premises or Lessee's Equipment are unusable. Rent shall be equitably prorated (as reasonably determined by Town) for the portion of the Premises which are still unusable during the period of relocation. During the period of time Lessee is relocating its Premises and equipment to the Relocation Premises, Lessee shall have the right to place a temporary cell site on wheels ("**COW**") on Town's Property at a mutually acceptable location so that Lessee can continue to provide communications service from such location.

9. **Police Power.** Nothing in the Lease affects or may legally affect the police power of Town except as otherwise explicitly provided in the Lease.

10. **Use of Facility.** The first paragraph of section 11(d) of the Deed of Lease and therefore of the Lease is amended by the addition of the following two sentences: "Town may terminate this Lease on at least one year's notice to Lessee if Town determines to disuse the Premises or the Property as a municipal water supply facility in such a way that renders Lessee's use inconsistent with the Town's proposed use, as determined by Town. Rent shall be equitably prorated to correspond to such a termination."

[SIGNATURES APPEAR ON THE NEXT PAGE]

September 22, 2015  
(public hearing)

Town Site ID: Herndon Alabama Drive Water Tower  
Tenant Site ID: PW1191/Herndon Water Tank  
Fixed Asset No. 10067722  
Market: DC/MD  
Address: 624 Alabama Drive, Herndon, VA 20170

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be effective as of the last date written below.

"TOWN"

Town of Herndon

APPROVED AS TO FORM:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: Lisa C. Merkel

Its: Mayor

Date: \_\_\_\_\_

"LESSEE"

New Cingular Wireless PCS, LLC  
A Delaware limited liability company  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



September 22, 2015  
(public hearing)

**Ordinance 15-O-32, to authorize the Mayor to Sign a Lease Agreement between the Town of Herndon and Susan Alger for Residential Property at 195 Herndon Parkway, Herndon, Virginia; and**

**Ordinance 15-O-33, to authorize the Mayor to Sign a Lease Agreement between the Town of Herndon and Michael S. Mueller for Residential Property at 1270 Old Heights Road, Herndon, Virginia.**

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearings had been duly advertised in the Friday, September 11, 2015 issue.

Mayor Merkel stated that Mary Tuohy, Director of Finance, would present the next two staff reports concurrently, followed by a separate public hearing and action on each item.

Ms. Tuohy presented the staff reports, which are on file in the Town Clerk's office. She stated that the first lease would apply to a town-owned residence, located at 195 Herndon Parkway, at Runnymede Park. The current tenant is Susan Alger, who has rented the property since September 2002. Ms. Alger and her son Kyle serve as the informal caretakers of the facility. The proposed lease agreement would be for an additional five year term and would include an approximate 2.5 percent annual escalator clause, starting at \$840 per month on October 1, 2015. By October 1, 2020, the proposed rent would be \$930 per month. For the first year of the lease, the total revenue generated for the town would be \$10,080.

Ms. Tuohy stated that the second lease would apply to a property located at 1270 Old Heights Road, which is a two-story house constructed on the Herndon Centennial Golf Course. The tenant for this property is Mike Mueller, Golf Course Superintendent. His residence here is a condition of his employment and he pays all utilities for the property. Because his residence is a requirement of employment, the initial rent agreement for the property was below market value, but in exchange for living in the house, Mr. Mueller oversees the care of the grounds. The proposed lease agreement would be for an additional five year term and would include an approximate 2.5 percent annual escalator clause, starting on October 1, 2015 at \$900 per month. By October 1, 2020, the proposed rent would be \$995 per month. For the first year of the lease, the total revenue generated to the town would be \$10,800. Staff recommends approval of both ordinances, as presented.

Responding to Councilmember Kirby, Ms. Tuohy stated that the maintenance costs on the Runnymede Park property vary each year and that the town pays the water, sewer and recycling fees for the property, because it is part of Runnymede Park. The tenant would pay the remaining utilities, including the electricity, telephone, oil and gas.

Responding to Councilmember Mitchell, Lesa Yeatts, Town Attorney, stated language regarding renters insurance was included in the agreements.

**September 22, 2015  
(public hearing)**

**Public Hearing & Vote on  
Ordinance 15-O-32**

Following the public hearing (there were no comments from the audience), there were comments from Council.

On the motion of Councilmember Olem, seconded by Vice Mayor Baker, Ordinance, 15-O-32 was approved by a 6-0 roll call vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**Ordinance 15-O-32, Authorizing the Mayor to Sign a Lease Agreement between the Town of Herndon and Susan Alger for Residential Property at 195 Herndon Parkway, Herndon, Virginia.**

**BE IT ORDAINED** by the Council for the Town of Herndon that:

1. The Town Council approves a lease dated September 5, 2015, by which the Town of Herndon leases to Susan Alger residential property of the Town at 195 Herndon Parkway, Herndon, Virginia for five years beginning October 1, 2015 with a gradual rent escalation as follows:

October 1, 2015 through September 30, 2016	\$840 per month
October 1, 2016 through September 30, 2017	\$860 per month
October 1, 2017 through September 30, 2018	\$885 per month
October 1, 2018 through September 30, 2019	\$905 per month
October 1, 2019 through September 30, 2020	\$930 per month

2. The Mayor is authorized to sign and deliver this lease and any ancillary documents or instruments necessary or convenient to evidence or effectuate the lease.
3. This ordinance shall be effective on and after the date of its adoption.

**(NOTE: Attached for reference is the lease agreement dated September 5, 2015, b/n the Town of Herndon and Susan Alger.)**

**September 22, 2015  
(public hearing)**

**LEASE AGREEMENT**

THIS LEASE dated this 5th day of September, 2015 between the TOWN OF HERNDON, a municipal corporation ("Landlord"), and SUSAN ALGER ("Tenant").

R E C I T A L S:

Landlord is the owner of certain premises consisting of a residential dwelling and adjacent yard, bearing the address of 195 Herndon Parkway, Herndon, Virginia 20170, ("the Premises")

Landlord has advised Tenant, and Tenant understands that the Premises is located in the midst of Runnymede Park ("Park"), a Town of Herndon nature park, and that this lease contains extraordinary language to protect the health of the flora and fauna of the Park and the sanctity and peace of the Park for the benefit of the public.

Landlord and Tenant have agreed that Tenant will lease the Premises from Landlord in consideration of the rent, and under the terms and conditions specified in this lease.

NOW, THEREFORE, the parties agree as follows:

1. Term, Rent, and Security Deposit. In consideration of the payment of rent to Landlord, Landlord leases to the Tenant the Premises from the October 1, 2015 for the term to expire on September 30, 2020. Tenant shall pay Landlord a graduated rent escalation per month as follows:

October 1, 2015 through September 30, 2016	\$840 per month
October 1, 2016 through September 30, 2017	\$860 per month
October 1, 2017 through September 30, 2018	\$885 per month
October 1, 2018 through September 30, 2019	\$905 per month
October 1, 2019 through September 30, 2020	\$930 per month

**September 22, 2015  
(public hearing)**

The first installment shall become due on October 1, 2015. Tenant shall pay to Landlord monthly installments on the 1st day of each month after that date in the amount of the rent. All rental payments shall be made without notice, demand, set-off or deduction. If any installment of rent is not paid within five days of its due date, Tenant shall pay to Landlord a late fee of \$50.00 per late or non-paid installment. The unpaid amounts shall accrue interest at an annual rate of 10 percent from the date due until paid. Payment of rent, late, fees, and any other monies payable by Tenant to Landlord shall be made in by check or money order, at the address contained in paragraph 24 of this lease. If the rent has not been paid for two consecutive months, Tenant shall have relinquished rights of possession of the Premises, shall immediately leave the Premises, and shall immediately remove Tenant's possessions from the Premises; and the lease shall then terminate. A \$50.00 fee will be charged Tenant for any check which is returned from the bank for any reason. Any returned check must be redeemed with cash within 24 hours of notification.

Tenant deposited with Landlord a \$550.00 security deposit, to secure Tenant's faithful performance of this lease. No interest shall be paid on this deposit. Upon termination or expiration of this lease, Town may use this security deposit to satisfy financial outlays necessary due to Tenant's non-compliance with the lease (as determined by Landlord). Landlord shall return to Tenant any unused portion of the security deposit within thirty days after termination or expiration of this lease.

2. Assignment/Subletting. This lease shall not be assigned, and no portion of the Premises sublet without the prior written consent of the Landlord.

3. Use and Occupancy. The Premises shall be used for residential purposes for Tenant and the following members of Tenant's family: Kyle R. Alger. No other persons may occupy

**September 22, 2015  
(public hearing)**

the Premises.

4. Fixtures, Condition and Repair of Premises. Tenant accepts the Premises including the buildings and improvements thereon and any equipment on or in the leased Premises in their existing condition. Tenant shall at Tenant's own expense make necessary non-structural repairs and replacements to the Premises, including improvements and equipment. Such non-structural repairs and replacements, interior and exterior, ordinary and extraordinary, shall be made promptly when and as necessary in a quality and class at least equal to the original work. Tenant shall maintain the Premises in a clean and sanitary condition, keep the sidewalks and parking areas free of trash, snow and ice, and keep the grass cut and the yard and shrubbery maintained in a neat and orderly manner. Landlord's maintenance obligations under this lease are limited to structural repairs, repairs to the heating system, the plumbing and electrical systems (but not including fixtures), and repairs to major appliances owned by the Landlord and installed in the Premises at the commencement of this lease, only after notice of the need for such repairs not caused by the fault of Tenant.

5. Pets. Tenant may keep up to two dogs and up to two cats on the Premises subject to the following conditions.

(a) The dogs must be confined in the house or in a temporary fenced area which may be constructed adjacent to the house for containment of the dogs, with fence location and type subject to approval of the Town of Herndon Community Forrester for consistency with the Park setting and effectiveness of design and construction to contain the dogs.

(b) Tenant's dogs may be exercised in the Park on leash only. Tenant must pick up and properly dispose of droppings of her dogs.

(c) The cat or cats must be kept in the house at all times. The cat(s) shall not be

**September 22, 2015  
(public hearing)**

allowed to roam free in the Park.

6. Utilities. The Tenant shall have registered in Tenant's name and promptly pay all bills for electric gas, and other utilities (not described in the next sentence) charged to the Premises. The utilities included in the rent are water, sewer, and recycling services.

7. Quiet Enjoyment. The Landlord shall give Tenant quiet enjoyment for the term of the lease, subject to the public's right to use the surrounding park, but not the Premises.

8. Premises. The Premises are located within Runnymede Park, a nature park. Tenant shall respect and accommodate her personal activities and those of the occupants to the natural setting of this house.

9. Tenants. Tenant must participate or must have participated in a two-hour orientation to Runnymede Park with the Town of Herndon Community Forester, within two weeks of move in. This orientation will increase the Tenant's enjoyment of the setting, as well as increase her awareness of the park's natural resources and benefits to residents and visitors.

10. Nature Programs. Tenant should be aware that weekly and weekend nature programs, along with a summer nature camp and other special programs, are regularly conducted in the Park.

11. Emergency. Tenant must notify the proper authorities in case of emergency or in case of unusual or strange behaviors in the Park, where such emergencies may pose a danger to human or animal life or health or may damage the surrounding Park.

12. Landscaping. Tenant must adhere to Park policy regarding landscaping practices. Tenant shall use no chemicals in landscaping and shall not plant non-native plants on or about the Premises. Landscaping must be appropriate for a natural Park setting. Advice and

**September 22, 2015  
(public hearing)**

guidance are available from the Town of Herndon Community Forester regarding appropriateness of species, location of plantings, acceptable fertilizers, and similar subjects.

13. Recycling. Tenant must practice recycling according to Town of Herndon standards.

14. Refuse. Accumulated trash and recyclables must be stored within the garage. In accordance with regulations for single-family residential zones in the Town of Herndon, recyclables may be set out at the corner of the Premises no more than 24 hours prior to the scheduled collection day.

15. Hazardous waste. There shall be no dumping or storing of hazardous materials including automotive oil, transmission fluid, and similar substances in an insecure manner on the Premises. Tenant must adhere to Town of Herndon emergency procedures, and ordinances regarding waste disposal.

16. Hunting. There shall be no hunting or trapping on the Premises or in the adjacent Park.

17. Parking. Parking of vehicles will be limited to those owned or leased by Tenant and members of Tenant's family as listed on the lease. Should significant additional parking be required for special events, parking for the event shall be coordinated with the Town Manager.

18. Default. Time is the essence of this lease agreement. If Tenant fails to make any payments required under this lease, or to restrict occupancy of the Premises to those persons set out in this lease; or if Tenant uses the Premises for any other purposes than here stated; or if Tenant fails to maintain or occupy the Premises in the condition or under the terms here specified; or if Tenant vacates the Premises; or if Tenant violates any other term of the lease,

**September 22, 2015  
(public hearing)**

Tenant shall be in default under this lease. If Tenant defaults or in any way violates any term of this lease, Landlord may accelerate the indebtedness due under the lease. Landlord reserves the right in the event of a default by Tenant to enter the Premises and remove any and all property of the Tenant, and to repossess the Premises.

19. Expenses of Landlord. Tenant shall pay to Landlord on demand all Landlord's expenses, including attorney's fees, which Landlord incurs in collecting Tenant's past due obligations or in enforcing any provision of this lease.

20. Legal Action by Landlord. If Tenant violates any term of this lease, Landlord may take any other action than that specified which is allowable by law for the enforcement of this lease.

21. Entry by Landlord. Landlord may enter the Premises for the purpose of inspecting the same or for making any repairs that Landlord may deem necessary or desirable, on reasonable notice to Tenant.

22. Insurance and Indemnification of Landlord. Tenant shall, at Tenant's cost, procure and pay for general public liability insurance insuring the acts of Tenant, family members, and guests in or about the Premises, naming Landlord as additional insured. Tenant shall obtain fire insurance and extended coverage insuring Tenant's personal property. Tenant shall hold the Landlord, its employees, volunteers, officers, and officials, harmless and shall indemnify the Landlord, its employees, officers, and officials, for any and all liabilities, damages, claims, suits, actions, judgments, costs and expenses, including attorney's fees, resulting from any incident which occurs on the Premises, except if caused by the negligence of Landlord. Tenant will deliver to the Landlord copies of such insurance policies or certificates showing the same to be in force during the term of this lease. Landlord



**September 22, 2015  
(public hearing)**

may procure, at its expense, fire, liability and extended coverage insurance for the Premises.

23. Binding on Heirs/Assigns. This lease shall bind the successors and permitted assigns of the parties.

24. Notice. Notice to Landlord may be mailed or delivered to the Director of Finance, Town of Herndon, Virginia, P.O. Box 427, 777 Lynn Street, Herndon, Virginia 20172-0427. Any notice to Tenant shall be delivered or mailed to Tenant or adult occupant at the Premises.

25. Lease Termination. The lease may be terminated by either party by providing at least 60 days written notice to the other. This lease shall terminate on the destruction of the Premises or the damage to the Premises to such an extent as to render the residence uninhabitable (as determined by Landlord). Upon termination under this paragraph, rent shall be equitably prorated.

26. Access to Premises by Landlord Representatives. Landlord shall have the rights to exhibit the Premises to prospective purchasers or tenants, upon reasonable notice to the Tenant and to post a "For Sale" or "For lease" sign in the front yard of the Premises.

27. Surrender of Premises. At the expiration of the tenancy here created, Tenant shall surrender the Premises in the same condition as the Premises was in at the commencement of this lease, reasonable wear and tear expected, and shall surrender all keys for the Premises to Landlord.

**September 22, 2015  
(public hearing)**

TOWN OF HERNDON, VIRGINIA

by: \_\_\_\_\_  
Lisa C. Merkel, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Susan Alger (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Lesa J. Yeatts, Town Attorney

**Public Hearing & Vote on  
Ordinance 15-O-33**

Following the public hearing (there were no comments from the audience), there were comments from Council.

On the motion of Vice Mayor Baker, seconded by Councilmember Olem, Ordinance 15-O-33 was approved by a 6-0 roll call vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**Ordinance 15-O-33, Authorizing the Mayor to Sign a Lease Agreement between the Town of Herndon and Michael S. Mueller for Residential Property at 1270 Old Heights Road, Herndon, Virginia.**

**BE IT ORDAINED** by the Council for the Town of Herndon, Virginia, that:

1. The Town Council approves a lease dated September 5, 2015, by which the Town of Herndon leases to Michael S. Mueller residential property of the Town at 1270 Old Heights Road, Herndon, Virginia for five years beginning October 1, 2015 with a gradual rent escalation as follows:

**September 22, 2015  
(public hearing)**

October 1, 2015 through September 30, 2016	\$900 per month
October 1, 2016 through September 30, 2017	\$925 per month
October 1, 2017 through September 30, 2018	\$950 per month
October 1, 2018 through September 30, 2019	\$970 per month
October 1, 2019 through September 30, 2020	\$995 per month

2. The Mayor is authorized to sign and deliver this lease and any ancillary documents or instruments necessary or convenient to evidence or effectuate the lease.
3. This ordinance shall be effective on and after the date of its adoption.

**(NOTE: Attached for reference is the lease agreement dated September 5, 2015, b/n the Town of Herndon and Michael Mueller.)**

**September 22, 2015  
(public hearing)**

**LEASE AGREEMENT**

THIS LEASE dated this 5th day of September, 2015 between the TOWN OF HERNDON, a municipal corporation ("Landlord"), and Michael S. Mueller ("Tenant").

R E C I T A L S:

Landlord is the owner of certain premises bearing the address of 1270 Old Heights Road, Herndon, Virginia 20170, ("the Premises"); and Landlord and Tenant have agreed that Tenant will lease the Premises from Landlord in consideration of the rent, and under the terms and conditions specified in this lease:

NOW, THEREFORE, the parties agree as follows:

1. Term, Rent, and Security Deposit. The Landlord leases to the Tenant the Premises known as 1270 Old Heights Road, Herndon, Virginia 20170, from October 1, 2015, for the term of five years to expire on September 30, 2020. Tenant shall pay Landlord a graduated rent escalation per month as follows:

October 1, 2015 through September 30, 2016	\$900 per month
October 1, 2016 through September 30, 2017	\$925 per month
October 1, 2017 through September 30, 2018	\$950 per month
October 1, 2018 through September 30, 2019	\$970 per month
October 1, 2019 through September 30, 2020	\$995 per month

The first installment shall become due on October 1, 2015. Tenant shall pay to Landlord monthly installments on the 1st day of each month after that date in the amount of the rent. All rental payments shall be made without notice, demand, set-off or deduction. If any installment of Rent is not paid within five days of its due date, Tenant shall pay to Landlord a late fee of Fifty dollars per late or non-paid installment. The unpaid amounts shall accrue interest at an annual rate of 10 percent from the date due until paid. Payment of rent, late

**September 22, 2015  
(public hearing)**

fees, and any other monies payable by Tenant to Landlord shall be made by check or money order, at the address contained in paragraph 14 of this lease. If the rent has not been paid for two consecutive months, Tenant shall have relinquished rights of possession of the Premises, shall immediately leave the Premises, and shall immediately remove Tenant's possessions from the Premises; and the lease shall then terminate.

A \$50.00 fee will be charged for any check which is returned from the bank for any reason. Any returned check must be redeemed with cash within 24 hours of notification.

Tenant deposited with Landlord a \$550.00 security deposit, to secure Tenant's faithful performance of this lease. No interest shall be paid on this deposit. Upon termination or expiration of this lease, Town may use this security deposit to satisfy financial outlays necessary due to Tenant's non-compliance with the lease (as determined by Landlord). Landlord shall return to Tenant any unused portion of the security deposit within thirty days of termination or expiration of this lease.

2. Assignment/Subletting. This lease shall not be assigned, and no portion of the Premises sublet, without the prior written consent of the Landlord.

3. Use and Occupancy. The Premises shall be used for residential purposes for Tenant. No other persons may occupy the Premises.

4. Fixtures, Condition and Repair of Premises. Tenant accepts the Premises including the buildings and improvements thereon and any equipment on or in the leased Premises in their existing condition. Tenant shall at Tenant's own expense make necessary non-structural repairs and replacements to the Premises, including improvements and equipment. Such non-structural repairs and replacements, interior and exterior, ordinary and extraordinary, shall be made promptly when and as necessary in a quality and class at least equal to the original work. Tenant shall maintain the Premises in a clean and sanitary condition, keep the sidewalks and parking areas free of trash, snow and ice, and keep the grass cut and the yard

**September 22, 2015  
(public hearing)**

and shrubbery maintained in a neat and orderly manner. Landlord's maintenance obligations under this lease are limited to structural repairs, repairs to the heating system, the plumbing and electrical systems (but not including fixtures), and repairs to major appliances owned by the Landlord and installed in the Premises at the commencement of this lease, only after notice of the need for such repairs not caused by the fault of Tenant.

5. Pets. Tenant may keep up to two dogs and up to two cats on the Premises.

6. Utilities. The Tenant shall have registered in Tenant's name and promptly pay all bills for all utilities charged to the Premises. The utilities payable by Tenant include water, sewer, recycling services, electric, gas, telephone, and cable television.

7. Quiet Enjoyment. The Landlord shall give Tenant quiet enjoyment for the term of the lease.

8. Default. Time is the essence of this lease agreement. If Tenant fails to make any payments required under this lease, or to restrict occupancy of the Premises to those persons set out in this lease; or uses the Premises for any other purposes than here stated; or fails to maintain the Premises in the condition here specified, or vacates the Premises, or violates any other term of the lease, Tenant shall be in default under this lease. If Tenant defaults or in any way violates any term of this lease, Landlord may accelerate the indebtedness due under the lease. Landlord reserves the right in the event of a default by Tenant to enter the Premises and remove any and all property of the Tenant and to repossess the Premises.

9. Expenses of Landlord. Tenant shall pay to Landlord on demand all Landlord's expenses, including attorney's fees, which Landlord incurs in collecting Tenant's past due obligations or in enforcing any provision of this lease.

10. Legal Action by Landlord. If Tenant violates any term of this lease, Landlord may take any other action than that specified which is allowable by law for the enforcement of this lease.

**September 22, 2015  
(public hearing)**

11. Entry by Landlord. Landlord may enter the Premises for the purpose of inspecting the same or for making any repairs that Landlord may deem necessary or desirable, on reasonable notice to Tenant.

12. Insurance and Indemnification of Landlord. Tenant shall, at Tenant's cost, procure and pay for general public liability insurance insuring the acts of Tenant and guests in or about the Premises, naming Landlord as additional insured, and Tenant shall obtain fire insurance and extended coverage insuring Tenant's personal property. Tenant shall hold the Landlord, its employees, officers, and officials, harmless and shall indemnify the Landlord, its employees, officers, and officials, for any and all liabilities, damages, claims, suits, actions, judgments, costs and expenses, including attorney's fees, resulting from any incident which occurs on the Premises, except if caused by the negligence of Landlord. Tenant will deliver to the Landlord copies of such insurance policies or certificates showing the same to be in force during the term of this lease. Landlord may procure at its expense fire, liability and extended coverage insurance for the Premises.

13. Binding on Heirs/Assigns. This lease shall bind the successors and assigns of the parties.

14. Notice. Notice to Landlord may be mailed or delivered to the Director of Finance, Town of Herndon, Virginia, P.O. Box 427, 777 Lynn Street, Herndon, Virginia 20172-0427. Any notice to Tenant shall be delivered or mailed to Tenant or adult occupant at the Premises.

15. Lease Termination. The lease may be terminated by either party by providing at least 60 days written notice to the other. This lease shall terminate on the destruction of the Premises or the damage to the Premises to such an extent as to render the residence uninhabitable (as determined by Landlord). Upon termination under this paragraph, rent shall be equitably prorated. Tenant serves as Golf Course Superintendent for Landlord and Tenant is required to occupy the Premises on the Herndon Centennial Golf Course as a

**September 22, 2015  
(public hearing)**

condition of employment. This lease will be terminated sixty days after Tenant's employment as Superintendent ceases due to resignation, termination, lay-off, retirement, or death.

16. Access to Property by Landlord, Realtors, Agent and Their Duly Designated Representatives. Landlord shall have the rights to exhibit the Premises to prospective purchasers or tenants, upon reasonable notice to the Tenant and to post a "For Sale" or "For Lease" sign in the front yard of the Premises.

17. Surrender of Premises. At the expiration of the tenancy here created, Tenant shall surrender the Premises in the same condition as the Premises was in at the commencement of this lease, reasonable wear and tear expected, and shall surrender all keys for the Premises to Landlord.

TOWN OF HERNDON, VIRGINIA

by: \_\_\_\_\_  
Lisa C. Merkel, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Michael S. Mueller (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Les J. Yeatts, Town Attorney

**9. GENERAL**

**Resolution 15-G-64, to accept the State of the Town Report, Fiscal Year 2015.**

Arthur Anselene, Town Manager, provided an overview of the town's Fiscal Year (FY) 2015 Annual Report, which is on file in the Town Clerk's office. He stated that staff provided two documents to the Council and public ~ an executive summary and a more detailed



**September 22, 2015**  
**(public hearing)**

annual report. He stated that the Annual Report identified the town's goals and objectives as established in the budget; identified staff accomplishments; and showed how the town had spent its resources. He stated that FY 2015 was a year of change and reviewed the highlights and the major town accomplishments from the past fiscal year.

Councilmember Kirby moved approval of Resolution 15-G-64. This motion was seconded by Councilmember Olem.

There were comments from Council on this item.

The question was called on the motion, which was approved by a 6-0 vote. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

**Resolution 15-G-64, Acceptance of State of the Town Report, Fiscal Year 2015.**

**WHEREAS,** pursuant to Chapter 4-2(d) of the Town of Herndon Charter, the Town Manager is required to prepare for publication and to submit to the Town Council each September at a regular meeting in September a concise, comprehensive report of the financial transactions and administrative activities of the Town government during the immediately preceding fiscal year; and

**WHEREAS,** following the Town's annual audit, a Comprehensive Annual Financial Audit report of the Town is presented to the Town Council in December; and

**WHEREAS,** the Town Manager has prepared a report of the administrative activities of the Town government titled "*Town of Herndon Annual Report FY 2015*," including an Executive Summary; and

**WHEREAS,** a copy of the report is posted on the Town's Web site and is available to citizens at the Herndon Fortnightly Library and the Herndon Municipal Center.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby accepts the "*Town of Herndon Annual Report FY 2015*."

**(NOTE: A copy of the FY 2015 Town of Herndon Annual Report is on file in the Town Clerk's office in the September 22, 2015 meeting folder.)**

**September 22, 2015  
(public hearing)**

**10. CONSENT AGENDA**

**Resolution 15-G-65, to establish the Town Council meeting schedule for January 1, 2016 to December 31, 2016;**

**Resolution 15-G-66, to authorize an application to the Office of Intermodal Planning and Investments, Virginia Department of Transportation for consideration under House Bill 2 prioritization and to endorse the east Spring Street widening project for funding under House Bill 1887;**

**Resolution 15-G-67, to award contract #D-15-03, General Civil Engineering Services;**

**Resolution 15-G-68, to appoint Dennis M. Findley as the "Architect" member on the Architectural Review/Heritage Preservation Review Boards; and**

**Resolution 15-G-69, to appoint Matthew Ossolinski as the "Architectural Historian" member on the Heritage Preservation Review Board.**

On motion of Councilmember Olem, seconded by Vice Mayor Baker, the following Consent agenda items were approved by a 6-0 vote, without comment. The vote was: Councilmembers Kirby, Mitchell, Olem, Singh, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Wolf was absent.

\*\*\*\*

**Resolution 15-G-65, to establish the Town Council meeting schedule for January 1, 2016 to December 31, 2016.**

**BE IT RESOLVED** that the town council of the Town of Herndon, Virginia, hereby:

1. Incorporates the meeting schedule set out in Section 2-1 of the Herndon Town Code (2000), as amended, and establishes the meeting schedule for January 1, 2016 to December 31, 2016, modified as follows:
  - Reschedule the town council public hearing on Tuesday, March 22 **TO Tuesday, March 29**, in anticipation of the Fairfax County Public Schools spring break;
  - Reschedule the town council work session on Tuesday, August 2 **TO Wednesday, August 3**, to allow council participation in National Night Out activities;

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- Reschedule the town council public hearing on Tuesday, October 11 **TO Wednesday, October 12**, to allow council participation in the annual Virginia Municipal League conference;
  - Reschedule the town council schedule in November, to recognize the town council election on November 8<sup>th</sup>, as follows:
    - Tuesday, November 1, work session
    - **Tuesday, November 8, town council election ~ no meeting**
    - Tuesday, November 15, public hearing
    - Tuesday, November 22, work session
    - Tuesday, November 29, public hearing; and
2. Directs staff to reflect the modified meeting schedule in the 2016 annual town calendar.

\*\*\*\*

**Resolution 15-G-66, Authorizing an Application to the Office of Intermodal Planning and Investment of the Secretary of Transportation for consideration under House Bill 2 prioritization and to endorse the east Spring Street widening project for funding under House Bill 1887.**

**WHEREAS**, the east Spring Street widening project is included in the Northern Virginia Transportation Authority's *TransAction 2040 Regional Plan*, the Metropolitan Washington Council of Governments - Transportation Planning Board's *Constrained Long Range Plan* and the Virginia Department of Transportation's *Six-Year Improvement Program*; and

**WHEREAS**, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through January 13, 2015, advises the improvement of east Spring Street including the intersections at Herndon Parkway and the west side ramps of the Fairfax County Parkway; and

**WHEREAS**, the Town of Herndon FY2016-2021 Capital Improvement Program includes the East Spring Street widening project under the title of "Herndon Parkway/Spring Street Intersection to Fairfax County Parkway" with funding to date of \$505,000 in federal Regional Surface Transportation Program (RSTP) funds for fiscals years 2020 and 2021; and

**WHEREAS**, the east Spring Street widening project was programmed in 2014 for inclusion into VDOT's Six-Year Improvement Program for initial funding as UPC 105521 for the improvement of east Spring Street

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**(public hearing)**

including the intersections at Herndon Parkway and the west side ramps of the Fairfax County Parkway, with approximately 3,000 linear feet of improvements; and

**WHEREAS,** the Office of Intermodal Planning and Investment of the Secretary of Transportation supports planning for transportation improvements associated with existing designated Urban Development Areas, of which the Town of Herndon's 2030 Comprehensive Plan (adopted August 12, 2008 and amended through January 13, 2015) designates an Urban Development Area and conforms with Virginia Code §15.2-2223.1 requirements.

**NOW THEREFORE BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, authorizes the Town Manager to submit a web-based application to the Office of Intermodal Planning and Investment, Virginia Department of Transportation, for consideration under House Bill 2 prioritization and to endorse the east Spring Street widening project for an additional approximately \$6,000,000 in funding under House Bill 1887.

\*\*\*\*\*

**Resolution 15-G-67, Award of Contract #D-15-03, General Civil Engineering Services.**

**WHEREAS,** civil engineering projects are in the Capital Improvement Program (CIP); and

**WHEREAS,** general services task order consultants have been determined to be a cost effective and efficient means of completing task requirements in support of the execution of the CIP and other Town Council approved efforts; and

**WHEREAS,** RFP #D-15-03 was advertised on March 11, 2015 and clearly identified the nature of the intended services; and

**WHEREAS,** on April 9, 2015 the town received fifteen proposals from civil engineering firms; and

**WHEREAS,** an evaluation committee reviewed the proposals and selected three of the applicants to interview, and interviews took place on May 18, 19 and 20 of 2015; and

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**WHEREAS,** the selection committee selected Rummel, Klepper & Kahl, LLP as the best qualified to provide civil engineering services for town projects; and

**WHEREAS,** negotiations with Rummel, Klepper & Kahl, LLP have resulted in favorable hourly rates and unit costs for the variety of professional and non-professional disciplines and supporting tasks that will be required for the assigned work as follows:

<u>Category</u>	<u>Hourly Rate</u>
• Senior Manager	\$214.31
• Project Manager	\$179.28
• Engineer III	\$168.23
• Engineer II	\$123.38
• Engineer I	\$97.23
• Senior Transportation Planner	\$207.94
• Transportation Planner	\$125.71
• Junior Transportation Planner	\$90.67
• Utility Engineer	\$171.94
• Environmental Scientist	\$136.00
• Construction Manager	\$176.08
• Technician / CAD Designer	\$90.89
• Administrative / Clerical	\$65.55
• Surveying Project Manager	\$148.61
• Licensed Land Surveyor	\$154.87
• Survey Field Coordinator / Manager	\$102.55
• Survey Technician	\$111.15
• Survey CAD Manager	\$108.45
• Survey CAD Technician	\$87.48
• Two-Man Field Survey Crew	\$141.60
• Three-Man Field Survey Crew	\$194.75
• Senior ROW Agent	\$98.18
• ROW Technician	\$64.68
• ROW Administrative	\$50.82
• Utility Coordinator	\$115.15
• Utility Construction Manager	\$110.86

**WHEREAS,** funds to support individual Task Orders will be provided from the appropriate Capital Improvement Program and professional services accounts.

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(public hearing)**

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #D-15-03, General Civil Engineering Services, to Rummel, Klepper & Kahl, LLP at the negotiated hourly rates.

\*\*\*\*

**Resolution 15-G-68, Appointment of Member to the Architectural Review/Heritage Preservation Review Boards.**

**BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby appoints **Dennis Findley** as the “architect” member to the ARB/HPRB for a one-year term (non-resident) ending September 30, 2016, effective October 1, 2015.

\*\*\*\*

**Resolution 15-G-69, to appoint Matthew Ossolinski as the “Architectural Historian” member on the Heritage Preservation Review Board.**

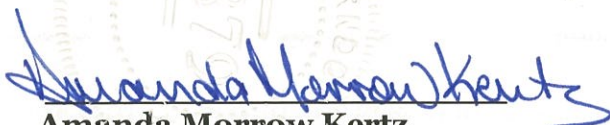
**BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby appoints **Matthew Ossolinski** as the “architectural historian” member on the Heritage Preservation Review Board to fill an unexpired term ending February 28, 2016, and a subsequent one-year term (non-resident) ending February 28, 2017, effective October 1, 2015.

\*\*\*\*

**11. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:12 p.m.

  
\_\_\_\_\_  
**Lisa C. Merkel**  
**Mayor**

  
\_\_\_\_\_  
**Amanda Morrow Kertz**  
**Deputy Town Clerk**

**Minutes approved by Town Council: October 13, 2015.**