

**COUNTY EXECUTIVE CERTIFICATION OF COMPLIANCE  
Prince George's County Policy for Tax Increment Financing**

**Brandywine Crossing Development District**

October 25, 2010

Prince George's County Council Resolution CR-98-2010 (the "Resolution") requires that:

A. A proposed tax increment financing project meet each of the following criteria (the "Criteria"):

- 1) Be consistent with the County's General Plan and Sector Plans, as well as other economic and community development policies, strategies, and tools;
- 2) Generate additional significant revenue for the County;
- 3) Meet both a short-term and long-term "But-For Test", which demonstrates that the proposed project or initiative is not feasible without the County's participation and assistance;
- 4) Be subject to a "Trigger Mechanism/Look Back Provision", which, on an ongoing basis, examines a project's proposed and projected cash flows, profits, and other financial information to determine whether and when repayment of the County's investment is or may be necessary;
- 5) Where appropriate, be used to help fund the revitalization of an area or community in the County;
- 6) Provide documentation, prior to any issuance of TIF bonds, showing not less than five percent (5%) of the value of the TIF issued to the developer through either (i) LMBE equity ownership in the entity receiving TIF funds or (ii) LMBE ownership or participation equal to five percent (5%) of the TIF note issued and a Minority Business Enterprise (MBE) Plan must be submitted to include a goal of thirty percent (30%) for local business enterprise (LBE), minority business enterprise (MBE) and local minority business enterprise (LMBE); however, at no time shall the LMBE participation be less than twenty percent (20%) of the available project dollars;
- 7) Not have an adverse impact on the County's credit/bond rating;
- 8) Expand and strengthen employment opportunities with a minimum employment goal of thirty percent (30%) for County residents;
- 9) Expand the County's commercial base;
- 10) Use best efforts to afford opportunities for public and private partnerships;
- 11) Use best efforts to offer creative and unique opportunities for economic and community development projects and initiatives;

B. The developer, the County Executive and Bond Counsel certify that the provisions of the Resolution have been complied with and that the MBE Plan has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager; and

C. The County Council review the TIF proposal and certification and approve of the same by resolution.

This certificate is given to fulfill the requirement for County Executive certification.

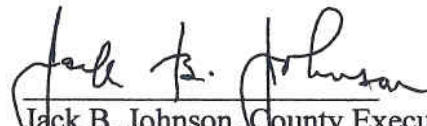
Pursuant to Resolution No CR-89-2009, the Brandywine Crossing Development District was designated and the Brandywine Crossing Development District Tax Increment Fund was established for the purpose of financing certain infrastructure to support certain retail, commercial and office facility development by FCD-Development, LLC through the issuance of tax increment financing bonds under Sections 12-201 through 12-213, inclusive of the Economic Development Article of the Annotated Code of Maryland, as amended (the "TIF").

Pursuant to Council Bill No. CB-78-2010, bonds in an aggregate principal amount of \$4,400,000, payable solely from amounts levied and deposited in the Tax Increment Fund, were authorized to finance said infrastructure.

As the basis for this certificate, I have reviewed, and relied without independent verification or judgment upon:

1. The legal opinion of Rifkin, Livingston, Levitan & Silver, LLC dated September 27, 2010 regarding compliance with Prince George's County land use plans;
2. The report of Prager, Sealy & Co. LLC, the County's financial advisor, dated September 27, 2010 (the "Financial Advisor's Report");
3. The MBE Plan dated October 25, 2010, approved by the County Compliance Officer;
4. The TIF Proposal and Developer's Certificate, dated October 25, 2010;
5. The Bond Counsel Certificate of Compliance, dated October 25, 2010.

Based upon the foregoing, I certify that the provisions of the Resolution have been complied with in connection with the TIF and the MBE Plan pertaining to the TIF has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager.

  
Jack B. Johnson, County Executive  
Prince George's County, Maryland



**BOND COUNSEL CERTIFICATION OF COMPLIANCE  
Prince George's County Policy for Tax Increment Financing  
Brandywine Crossing Development District**

October 25, 2010

Meyers, Rodbell & Rosenbaum, P.A. serves as bond counsel to Prince George's County, Maryland in connection with the proposed issuance of tax increment financing bonds to finance certain infrastructure pertaining to the Brandywine Crossing Development District (the "TIF").

Prince George's County Council Resolution CR-98-2010 (the "Resolution") states that a proposed tax increment financing project must meet each of 12 criteria (the "Criteria"); that compliance with the Resolution be certified by the developer, County Executive and Bond Counsel; and that the County Council review the TIF proposal and certification and approve of the same by resolution. This certificate is given to fulfill the requirement for Bond Counsel certification.

As the basis for this certificate, we have reviewed, and relied without independent verification or judgment upon:

1. The legal opinion of Rifkin, Livingston, Levitan & Silver, LLC dated September 27, 2010 regarding compliance with Prince George's County land use plans;
2. The report of Prager, Sealy & Co. LLC, the County's financial advisor, dated September 27, 2010 (the "Financial Advisor's Report");
3. The MBE Plan dated October 25, 2010 approved by the County MBE office;
4. The TIF Proposal and Developer's Certificate, dated October 25, 2010;
5. The County Executive Certification of Compliance, dated October 25, 2010

Based upon the foregoing, we certify that the provisions of the Resolution have been complied with in connection with the TIF and that the MBE Plan has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager.

**MEYERS, RODBELL & ROSENBAUM, P.A.**

  
Frederick Stichnoth

## **TIF PROPOSAL AND DEVELOPER'S CERTIFICATE Brandywine Crossing Development District**

October 25, 2010

FCD-Development, LLC (the "Developer") submits this TIF Proposal and Developer's Certificate for review by the County Council of Prince George's County, Maryland.

### **Background**

Pursuant to Council Resolution No CR-89-2009, the Brandywine Crossing Development District was designated and the Brandywine Crossing Development District Tax Increment Fund was established for the purpose of financing certain infrastructure described below to support certain retail, commercial and office facility development by the Developer through the issuance of tax increment financing bonds under Sections 12-201 through 12-213, inclusive of the Economic Development Article of the Annotated Code of Maryland, as amended.

Pursuant to Council Bill No. CB-78-2010, bonds in the aggregate principal amount of \$4,400,000, payable solely from amounts levied and deposited in the Tax Increment Fund, were authorized to finance said infrastructure.

Council Resolution No. CR-98-2010 requires that, prior to the sale of the bonds, the Council must review the TIF proposal and a certificate of the developer that the provisions of CR-98-2010 have been complied with and that the MBE Plan has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manger, and approve of the same by resolution. This TIF Proposal and Developer's Certificate is provided to permit fulfillment of that requirement.

### **Development**

The Brandywine Crossing project is a significant economic and community development project in the southern portion of Prince George's County. Brandywine Crossing is located on over 100 acres of land on the east side of US 301/MD 5, north and south of its intersection with Chadds Ford Drive and Timothy Branch Drive in Brandywine, MD. The project, for which Phase I construction began in 2007, has already begun to serve as an economic catalyst for the growing and expanding Brandywine trade area by providing a high-quality, first-class address to work, shop, and dine.

Phase I of Brandywine Crossing opened for business in Fall 2008 and is currently 96% leased and 94% occupied. The shopping center presently totals 478,000 square feet located in multiple buildings. Overall the tenant mix offers a variety of quality merchants including national tenants such as Costco, Target, Safeway, Marshalls, JoAnn Fabrics,



Bonefish Grill, AAA, Hallmark, Hour Eyes, Mattress Discounters, Panda Express, Subway, SunTrust, Verizon, and Wachovia. Local business enterprises (“LBEs”) include Irie Café, Mamma Roma’s Restaurant, Anytime Fitness, Shoe City, Bebe Nail Salon, Crystal Cleaner, Better Life Home Medical, and Crown Royal Barbers.

The 20± acres of property comprising Brandywine Crossing Phase II will be developed with approximately 110,000 square feet of commercial uses, including a 60,000 square foot multiplex cinema, 46,000 square feet in retail/restaurant uses, and a 2,000 square foot Safeway gas station. The cinema will be the only stadium-style seating theater in Southern Maryland. Faison, the project developer, will construct the on-site and off-site work for Brandywine Crossing Phase II. The businesses that will locate within Brandywine Crossing Phase II will construct their respective buildings. Faison anticipates contracting for approximately \$4,715,000 of work that will be eligible for LMBE participation. Brandywine Crossing Phase II is expected to break ground in the Spring of 2011 and open for business in the second half of 2012.

**Infrastructure to be financed by the TIF**

The improvements include, but are not limited to, parking facilities, road improvements, storm water management facilities, utilities, lighting and related infrastructure improvements within the Development District as may be authorized by the Tax Increment Financing Act.

**Estimated Infrastructure Costs**

Phase I Roadway Allocation	\$1,500,000
New Roadways	345,000
Parking Facilities	1,638,520
Soft Costs	666,480
Issuance Costs	<u>250,000</u>
Total	\$4,400,000

**Terms of Bonds**

Principal amount of bonds: \$4,400,000  
Interest rate: 4.25%  
Bondholder: Developer

**Principal parties and consultants**

Developer: FCD-Development, LLC  
County’s Financial Advisor: Prager, Sealy & Co., LLC  
Bond Counsel: Meyers, Rodbell & Rosenbaum, P.A.

## **Representations and covenants fulfilling CR-98-2010**

**1. Consistent with the County's General Plan and Sector Plans, as well as Other Economic and Community Development Policies, Strategies and Tools.**

The Project is consistent with Prince George's County's General Plan and Sector Plans, as well as other economic and community development policies, strategies and tools. *See* correspondence from Richard K. Reed, Esq. describing the Project's compliance with this requirement, attached as Exhibit A.

**2. Generate Additional Significant Revenue for the County.**

The Project generates additional significant revenue for the County, based on the projections provided in the TIF Application by Municipal Group LLC. *See* TIF Application, attached as Exhibit B.

**3. Meet Both a Short-Term and Long-Term "But-For Test", which Demonstrates that the Proposed Project or Initiative is not Feasible without the County's Participation and Assistance.**

The Project meets both a short-term and long-term "but-for test", which demonstrates that the proposed project or initiative is not feasible without the County's participation and assistance, based on financial information submitted by Municipal Group, LLC to the Administration, the County Council and their respective financial advisors.

**4. Be Subject to a "Trigger Mechanism/Look Back Provision", which, on an Ongoing Basis, Examines a Project's Proposed and Projected Cash Flows, Profits, and Other Financial Information to Determine Whether and When Repayment of the County's Investment Is or May be Necessary.**

The Project will be subject to a "trigger mechanism/look back provision", which, on an ongoing basis, examines the Project's proposed and projected cash flows, profits, and other financial information to determine whether and when repayment of the County's investment is or may be necessary. The Developer has agreed to the following "look back" provision:

Should the net proceeds from the cumulative sale of the outparcels contained within the Brandywine Crossing Development District exceed \$15.0 million, the developer shall pay the County within 30 days following the sale through which such threshold is exceeded and within one month following each sale thereafter an amount such that the aggregate amount thereupon paid to the County equals 50% of the difference between the actual cumulative net proceeds and \$15.0 million. The developer shall notify the County in writing within 30 days following each outparcel sale, append the settlement statement from that sale, and state the cumulative net proceeds derived from all outparcel sales through the date of notification.



**5. Where Appropriate, be Used to Help Fund the Revitalization of an Area or Community in the County.**

The Project will be used to help fund the revitalization of an area or community in the County. *See* correspondence from Richard K. Reed, Esq., attached as Exhibit A.

**6. Local Minority Business Enterprise Equity Participation and MBE Plan.**

**a. Provide Documentation, prior to any Issuance of TIF Bonds, Showing LMBE ownership or participation equal to 5% of the TIF note Issued.**

The Developer has agreed to not less than 5% LMBE equity participation through the commitment of \$225,000 (i.e. the amount equal to 5% of the original principal amount of the TIF Bonds) towards the acquisition of two or more retail pad sites at the Project by LMBE investors as a subsidy to such investors through a reduction of the sales prices of such retail pad sites which such prices were previously provided to the County. *See* MBE Plan, attached as Exhibit C. Developer acknowledges and agrees that the approval of this TIF Proposal in no way approves issuance of TIF Bonds until the County receives documentation that said pads have been or will be acquired by LMBEs through LBME ownership or other acceptable participation equal to 5% of the principal amount of the TIF note to be issued and repaid with County tax increment funds.

**b. MBE Plan to Include a Goal of 30% for Local Business Enterprises (LBE), MBE and Local Minority Business Enterprise (LMBE); With LMBE Participation of no Less than 20% of the Available Project Dollars.**

The Developer has provided a MBE Plan to the MBE Compliance Officer, that that includes a goal of 30% of available Project dollars for local business enterprise (“LBE”) participation, MBE participation and local minority business enterprises (“LMBE”) participation, but not less than 20% LMBE participation. *See* MBE Plan, attached as Exhibit C. The MBE Plan has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager.

**7. Not Have an Adverse Impact on the County’s Credit/Bond Rating.**

The Project will not have an adverse impact on the County’s credit/bond rating, based on the certification of financial advisor, Thomas Himler, Municipal Group, LLC, attached as Exhibit D.

**8. Expand and Strengthen Employment Opportunities with a Minimum Employment Goal of 30% for County Residents.**

The Project will expand and strengthen employment opportunities with a minimum employment goal of thirty percent (30%) for County residents. *See* MBE Plan, attached as Exhibit C.

**9. Expand the County's Commercial Base.**

The Project will expand the County's commercial base. Brandywine Crossing is projected to expand the County's commercial base by increasing the amount of retail space from 478,561 square feet (Phase I) to 585,501 square feet by 2012 (Phase I & II). As a result, the County's commercial property tax base is expected to increase from \$3.4 million in 2008 to \$39.9 million in 2012 with annual increases thereafter due to enhanced value and inflation. Source: Municipal Group, LLC.

**10. Use Best Efforts to Afford Opportunities for Public and Private Partnerships.**

The Project will use best efforts to afford opportunities for public and private partnerships. Brandywine Crossing provides opportunities for public and private partnerships through the collective commitments of the County and the developer to transform a vacant industrial center into a vibrant and energetic commercial retail center.

**11. Use Best Efforts to Offer Creative and Unique Opportunities for Economic and Community Development Projects and Initiatives.**

The Project will use best efforts to offer creative and unique opportunities for economic and community development projects and initiatives. Brandywine Crossing offers creative and unique opportunities for economic and community development from both the private and public sections through the transformation of a vacant industrially zoned tract of land into an economic and community hub that provides retail, office and entertainment venues.

**12. Certification of all LMBEs Shall be Required.**

The Developer will cooperate with the County Compliance Officer and its contractors to ensure that all LMBEs are certified in accordance with County policy and with the Resolution.

**13. Compliance with CR-98-2010.**

The Developer certifies that the provisions of CR-98-2010 have been complied with and that the MBE Plan has been approved by the Compliance Manager in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager.

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**Incorporation of Representations and covenants fulfilling CR-98-2010**

Upon issuance of the Bond, each of the "Representations and covenants fulfilling CR-98-2010" set forth above shall be deemed incorporated into the Development Agreement (or other contract) between the Developer and the County with respect to the project, whether or not expressly addressed by the Development Agreement (or other contract), and shall be enforceable by the County against the Developer as if set forth in full therein.

**FCD-DEVELOPMENT, LLC,**  
a North Carolina limited liability company



Name: Allen S. Jackson, Jr.

Title: Vice President

**RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC**  
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September 27, 2010

Frederick Stichnoth, Esquire  
Prince George's County Bond Counsel  
Meyers, Rodbell & Rosenbaum, P.A.  
6801 Kenilworth Avenue  
Suite 400  
Riverdale Park, Maryland 20787

Re: **Brandywine Crossing, Phase II**

Dear Mr. Stichnoth:

This firm serves on zoning counsel to FCD-Development, LLC, the developer of the Brandywine Crossing Development District. The purpose of this letter is to describe how the Brandywine Crossing, Phase II development is consistent with the County's General Plan and Sector Plans. Brandywine Crossing, Phase II is located on the east side of US 301/MD 5 at the northwest corner of Timothy Branch and Matapeake Business Drive. The relevant Plans which apply to this property are the 1993 Subregion V Approved Master Plan & Sectional Map Amendment, the 2002 General Plan, and the 2009 Subregion 5 Master Plan & Sectional Map Amendment.

*1993 Subregion V Approved Master Plan and Sectional Map Amendment*

The Brandywine Crossing, Phase II development is located in Planning Area 85A. The 1993 Master Plan designated the area as appropriate for a Neighborhood Activity Center and Community Activity Center. The Activity Centers were



intended to serve as social and economic focal points and form key elements in the overall development pattern. In 2007, the County Council for Prince George's County sitting as the District Council approved Zoning Map Amendment A-9990 which rezoned Brandywine Crossing, Phase II to the C-S-C (Commercial Shopping Center) zone by reason of mistake. In approving the rezoning by reason of mistake the District Council found that the C-S-C Zone was not inconsistent with the 1993 Subregion V Approved Master Plan and Sectional Map Amendment.

2002 General Plan

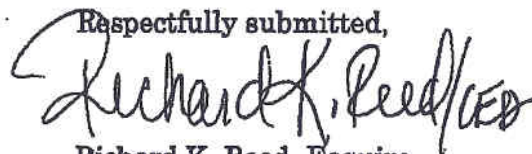
The 2002 General Plan locates Brandywine Crossing, Phase II in the Developing Tier. The vision for the Developing Tier includes distinct commercial centers, compact, higher-intensity mixed-uses in centers and corridors and community focal points in planning commercial centers. Brandywine Crossing, Phase II is also designated as a community center in a corridor with limited access. The General Plan defines community centers as areas with a concentration of activities, services and land uses that serve as focal points for the immediate neighborhoods. The General Plan also shows the subject site located within the Brandywine Community Center. A mix of residential, employment and retail uses are recommended for the Brandywine Center in the General Plan. In 2007, the District Council approved Zoning Map Amendment A-9990 which rezoned Brandywine Crossing, Phase II to C-S-C zoning by reason of mistake. In approving the rezoning by reason of mistake the District Council found that the application was not inconsistent with the 2002 General Plan. Further, this finding was made at the time of the approval of the Preliminary Plan of Subdivision (4-07112) for the property wherein the plans are required to conform to the General Plan or Area Master Plan.

2009 Subregion V Approved Master Plan and Sectional Map Amendment

The Master Plan amends the 2002 General Plan by implementing recommendations which designate Brandywine Crossing, Phase II as part of the Brandywine Community Center. The Master Plan envisions a mixed-use, transit-supportive, and transit-oriented development within the Community Center. The Master Plan acknowledges Brandywine Crossing, Phase II by designating it as a commercial component for the mix of land uses recommended within the Community Center. Recently, the Detailed Site Plan for Brandywine Crossing, Phase II (DSP-07076-01) was approved by the Planning Board, and the District Council elected not to review this matter. Thus, Brandywine Crossing, Phase II is consistent with the 2009 Subregion V Approved Master Plan and Sectional Map Amendment and considered the commercial component of the Community Center vision.

Frederick Stichnoth, Esquire  
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Your consideration of this information is appreciated. If you have any questions, do not hesitate to contact me.

Respectfully submitted,  
  
Richard K. Reed, Esquire

cc: Mr. Peter Melmed  
Alan C. Cason, Esquire (by E-mail)



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## PRAGER, SEALY & CO., LLC

INVESTMENT BANKERS

September 27, 2010

Mr. David Byrd  
Deputy Chief County Administrative Officer  
Office of the County Executive  
The Prince Georges County Government  
14741 Governor Oden Bowie Drive  
Upper Marlboro, Maryland 20772

**Re: Brandywine Crossing - Request for Issuance of Tax Increment Bonds**

Dear Mr. Byrd:

The Prince Georges County, Maryland (the "County") is in receipt of a Tax Increment Financing Application (the "Application") for Phase I of the Brandywine Crossing project (the "Project" or "Development"). The Project is being developed by FCD-Development, LLC, a Maryland limited liability company (the "Developer").

The purpose of this letter is to respond to the County Executive's request that Prager, Sealy & Co., LLC ("Prager, Sealy") conduct a review of the proposed development. As part of this undertaking, Prager, Sealy reviewed the Application dated October 13, 2009 and supplemental information provided by the Developer's financial advisor, Municipal Group, LLC ("Developer FA"). The following summarizes the major components of the information reviewed to make our determination.

### *Project Overview*

#### General

The Developer has requested the County to issue tax increment bonds in the amount of \$4.40 million to finance public infrastructure improvements associated with Phase II of the Brandywine Crossing project. The Development is located east of U.S. 301 / Route 5, north and south of its intersection with Chadds Ford Drive. The 21.9-acre site is to be developed into 118,100 commercial square feet representing a 15-screen stadium seating theater, gas station, parking spaces, and retail and restaurant space.

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## PRAGER, SEALY & CO., LLC

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<u>Product Type</u>	<u>No. Units</u>
Bow Tie Theater	60,000 square feet
Safeway Gas Station	2,000 square feet
Retail	7,500 square feet
Restaurant(s)	48,600 square feet
Parking	1,100 parking spaces

### Zoning and Permits

In November 2007, the property was rezoned from I-1 and I-3 zones to C-S-C Zone. The CSC Zone permits the development of theater, restaurants and retail. The required Detailed Site Plan has been submitted to the M-NCPPC with approval expected in July 2010. In addition, the Project previously received approval for all mass grading, fine grading, stormwater, and water and sewer; all such approvals all anticipated to be amended based on the revised Detailed Site Plan. The Developer anticipates revising and processing permits subsequent to approval of the Detailed Site Plan.

The Developer anticipates starting site-work and construction spring 2011 with full build-out summer 2012.

### Land Sales and Leasing

With the exception of the Safeway Gas Station, the Developer plans to sell finished pads to retailers. The Developer has entered into a long-term ground lease with Safeway for the gas station that matches the existing grocery store located in Phase I (20 years plus eight extensions of five years each). The gas station opened May/June 2010. In addition, the Developer has entered into a Purchase and Sale agreement with Bow Tie Cinemas to purchase 10-acres for the development of the theater. One of the restaurant pads is intended to be developed into a 9,000 square foot building; it is anticipated that the owner of the building will lease space to restaurants. The Developer has an executed lease with one restaurant chain which will be assigned to the third-party owner of this site.

### Phase I

Phase I of Brandywine Crossing began in 2007 and has been developed into 478,561 square feet of retail space. Development of Phase I required a private investment of approximately \$93 million. Tenants include both local and national businesses. National tenants within Phase I include Costco, Target, Safeway, Marshalls, Jo-Ann Fabrics, Bonefish Grill, Suntrust, and



## PRAGER, SEALY & CO., LLC

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Wachovia. Based on information provided by the Developer, Phase I has provided the following economic benefits to the County:

- Increased tax base from \$4 million to \$48 million
- Increased property tax revenues from \$38,000 to \$426,000
- Generated \$1.55 million in County permit fees, recordation taxes, transfer taxes, and other fees
- Provided \$6.5 million of public infrastructure improvements
- Anchor retailers (Target, Costco, Safeway) provided 450 jobs of which approximately 84% are from the County

The Developer has received an offer to purchase Phase I of Brandywine Crossing. The transaction is expected to close October 2010. Following sale of Phase I and repayment of the bank loan, the Developer will continue to own approximately 18.6 acres of land at Brandywine Crossing slated for industrial use.

### The Developer

The Developer is an affiliated entity of Faison & Associates, LLC. Faison & Associates is a privately-owned real estate development and investment company with properties valued at approximately \$1 billion. They are headquartered in Charlotte, North Carolina with activity throughout the Southeast, Mid-Atlantic and Northeast regions.

### Movie Theater Owner and Operator

The Developer has entered into a purchase and sale agreement with Bow Tie Cinemas for purchase of the theater site. Bow Tie Cinemas is a four-generation family-owned company. BowTie Cinemas operates 18 theaters located in New York (2), Maryland (2), Connecticut (12), Colorado (1), and Virginia (1).

### *Infrastructure Improvements*

The Developer has identified roadways, parking facilities, and soft costs (the "Public Improvements") as potential items to be financed by the Tax Increment Bonds (the "Bonds"). The Public Improvements are estimated to cost \$4.15 million in 2010 dollars, all of which are to be financed with the Bonds.

## PRAGER, SEALY & CO., LLC

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### Public Improvements

Phase I Roadway Allocation	\$1,500,000
New Roadways	345,000
Parking Facilities	1,638,520
Soft Costs	<u>666,480</u>
Subtotal – Public Infrastructure	\$4,150,000

The cost estimates were provided by the Developer based on actual costs spent to date, historical costs, as well as contractor estimates.

The Developer has estimated net private development costs of \$33,021,312 million. Please note these costs include costs to be primarily incurred by third-party developers purchasing parcels. These improvements would be funded through equity and/or private financing.

### Development Costs

Land Acquisition	\$8,432,183
Building Cost	85,000
Site Costs (New & Phase I Allocation)	6,025,090
Soft Costs	4,255,080
Financing	197,942
Contingency	<u>461,009</u>
Subtotal – Development Costs	\$19,456,312
Less – County TIF Bonds	<u>4,150,000</u>
Subtotal – Net Private Development Costs	\$15,056,312

### Vertical Construction Costs (Third-Party Developer)

Retail / Gas Station	\$1,425,000
Theater	9,000,000
Restaurants	<u>7,290,000</u>
Subtotal – Vertical Construction Costs	\$17,715,000

Total Investment	\$37,171,312
Net Private Development Investment	\$33,021,312

Please note that the cost estimates provided above do not take into consideration prevailing wage. If it is determined by the County Attorney that prevailing wage does apply, the Developer will need



## PRAGER, SEALY & CO., LLC

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to update the cost estimates, rate of return, and cashflow pro forma reflecting the impact of prevailing wage.

It is contemplated that the off-site public infrastructure improvements, such as roads and water and sewer will be maintained by the County. On-site improvements and common areas will be maintained by the Developer or Property Owners' Association.

### *Proposed Plan of Finance*

The current plan of finance contemplates the issuance of bonds by the County to finance approximately \$4.15 million of the Public Improvements and to use Developer or third-part developer funding (equity and/or private financing) to finance the private development costs.

### Public Infrastructure Costs

The Developer is asking the County to issue Bonds in January 2011. The Bonds would be held by the Developer and not transferable to another buyer until improvements are completed and certain financial covenants are achieved.

Included in the Application are Preliminary Bond Cashflows prepared by the Developer's FA, which were updated September 2010. The updated bond cashflows detail the issuance of \$4.4 million Bonds including costs of issuing the Bonds. As currently contemplated, the Bonds would be secured solely by the incremental real property taxes generated by the project (the "Pledged Revenue"). The Bonds are structured with a 30 year maturity at a 4.25% interest rate. The County's payment obligation is limited to the receipt of the incremental revenues noted above. The County's full faith and credit is not pledged to the Bonds.

### Private Development Costs

The private development costs are to be funded with Developer or third-party developers' equity and/or private financing. The Developer has indicated that one of its lenders has an interest in providing financing for the horizontal development costs contingent upon the Bonds being issued.

### Equity to Date

The Developer has expended approximately \$8 million to date for land acquisition, legal fees, entitlements, design, taxes, insurance, and leasing and land sale costs. The Developer indicates land acquisition costs of approximately \$8.4 million, of which \$5.563 million has been spent to date. The remaining land acquisition costs are related to a property exchange which has not yet been completed. Also, the property appraiser reflects an assessed value of \$3.387 million (as of

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1/1/2008) versus the \$5.563 million the Developer used in its cashflow pro forma. The Developer needs to provide additional information verifying the actual land acquisition costs. There is no mortgage on the Phase II property.

### *Analysis of Pledged Revenue*

Municipal Group, LLC provided a Projected Net Impact Report dated September 10, 2010 (the "Financial Impact Report"). The report projects the revenues and expenditures to be generated by the Project through fiscal year 2041 taking into account assessed valuation, job creation, taxable income, and cost of County services related to the Project. The Financial Impact Report concludes that Brandywine Crossing will generate \$49.990 million of additional revenue for the County.

<u>Projected Revenue</u>	
Property Taxes	\$19.958
Income Taxes	4.167
Other Local Taxes (inc. Adm. & Amuse. Tax)	24.349
Licenses and Permits	.357
Money and Property	.404
Service Charges	.685
Miscellaneous	<u>.070</u>
Total	\$49.990

After payment of the Bonds' debt service and district administration costs of \$8.92 million and service delivery expenses of \$11.273 million, Munigroup, LLC projects \$29.792 million as the net benefit to the County.

According to the report by the Developer's FA, the Project is projected to have a total assessed valuation of \$39.9 million upon build-out in 2012 with annual increases of 2.5% thereafter. The breakdown of the assessed valuation for the Project by theater, retail, and restaurants are shown below:

Theater	60,000	\$269	\$16,153,359
Retail	7,500	\$162	\$1,211,502
Restaurants	48,600	\$431	\$20,934,755
Gas Station	2,000	\$781	\$1,561,491
Total	118,100		39,861,106



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In assessing the reasonableness of the projected assessed valuations upon build-out, we reviewed the values of gas stations along Crain Highway, local restaurants, and the Regal theater in Bowie, Maryland. Based on our review, the initial assessed values used in the projections provided by the Developers FA are reasonable. However, please note that the Developer's FA assumed 2.5% annual growth. We caution that these growth rates may be somewhat aggressive in the early years given the overall economy and continued decrease in property values.

### **Alternative Financing Structures**

The American Recovery and Reinvestment Act of 2009, generally referred to as the Stimulus Act (the "Stimulus Act"), provides financing tools intended to benefit state and local governments. The Stimulus Act authorizes the issuance of Build America Bonds Recovery Zone Facility Bonds ("RZFBs"), and Recovery Zone Economic Development Bonds (RZEDBs). The RZFBs and RZEDBs must be for projects located in designated recovery zones (areas affected by significant poverty, unemployment, and home foreclosures). It is our understanding that the County has received an allocation of \$27.691 million for the Recovery Zone Economic Development Bonds and \$41.537 million for Recovery Zone Facility Bonds. These financing tools expire at the end of 2010, but there is movement to have the term extended.

We considered the use of these tools provided under the Stimulus Act and believe that under the current structure these options are not viable. First, the Bonds are to be privately held by the Developer and not publicly issued. Second, the Pledged Revenues do not currently contemplate an additional revenue source such as special assessments making it difficult, if not impossible, in today's market to issue publicly offered, non-rated tax increment bonds. Third, construction of certain improvements began prior to establishment of the recovery zones making them ineligible for financing through these programs. For the reasons stated above, we do not believe the Stimulus Act financing tools are viable for this Project under the proposed structure.

### ***Benefit to the County***

The Financial Impact Report concludes that Brandywine Crossing will realize growth in its tax revenues after payment of the Bonds debt service and service delivery expenses. The Project is estimated to generate \$49.99 million of additional revenue for the County. Taking into account the estimated debt service expense (\$8.9 million) and service delivery costs (\$11.3 million), the County is projected to receive a net benefit of \$29.792 million during the 30-year projection period.

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Approximately 529 new jobs from the theater, retail, and restaurant tenants are projected to be created. Municipal Group, LLC projected that 40% (212) of these jobs will be filled by Prince George's County residents.

### *Risks to the County*

The Bonds are non-recourse to the County and are to be held by the Developer. As a result of this non-recourse structure, the Bonds will be non-rated. More importantly, the County's full faith and credit is not pledged to payment of the Bonds. Therefore, a bondholder cannot compel the County to make payment from its general funds for payment of the Bonds' debt service. The County's obligation to repay the Bonds is limited to the Pledged Revenues, to the extent collected. Furthermore, the Bonds are to be initially issued to the Developer and held in escrow until construction is completed and financial conditions are met.

The Bonds' pledged revenues are limited to the incremental ad valorem property tax increment, which is heavily dependent upon success of the theater. Revenue collection is dependent on the Development moving forward as contemplated. Thus, the largest risks are associated with (1) progression of the underlying real estate development, (2) the Developers ability to finance and carry the project, and (3) receipt of reduced or no real property tax revenues generated by the Project over the next 30 years.

### *Compliance with CR 89-2006*

CR-89-2006 established the County's economic development policies for use of tax increment financing and other financial tools to fund economic and community development projects and initiatives in the County. We have addressed certain of the policies below:

- (1) *Consistent with the County's General Plan, Subregion V Master Plan, as well as other Economic and Community Development Policies, Strategies, and Tools*  
To be addressed by Bond Counsel in a separate letter.
- (2) *General Additional Significant Revenues for the County*  
Municipal Group, LLC has estimated that the Project will generate \$49.990 million of additional revenue through fiscal year 2041. Taking into account the projected debt service and service delivery expenditures, the County will receive a net positive benefit of \$29.792 million, or \$0.993 million annually.



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(3) *Meets Short-Term and Long-Term "But-For Test"*

One of the requirements is that the project "meet both a short-term and long-term 'But-For Test', which demonstrates that the proposed project or initiative is not feasible without the County's participation and assistance". The pro forma's provided by the Developer indicated the internal rate of return is 2.38% with the tax increment bonds and without the County's support realizes a loss of \$8.8 million. Even with the County's TIF support, the rate of return is considerably less than what is typically expected for a comparable project. A typical rate of return is 12% - 15%. The County needs to determine whether a 2.38% projected return is acceptable for this Project given the benefits projected to be received by the County.

(4) *Subject to a "Trigger Mechanism/Look Back Provision"*

This provision has not been negotiated with the County. However, the Developer indicates in its Application a willingness to establish appropriate provisions. The County may want to consider a trigger mechanism that provides for the County to receive a share of revenue earned by the Developer which exceeds a certain return threshold. In addition, the County should consider hiring a third-party (i.e. certified public accounting firm) to review the financial records of the Developer to determine the actual return.

(5) *Helps Fund the Revitalization of the Brandywine Community*

The major focus of the Project is development of a movie theater for the Brandywine community. At present, the nearest theaters are in Bowie and Charles County. The Project is a continuation of an existing phase of retail development which brought major big-box retailers to the community.

(6) *Provides for Minority Business Enterprise Equity Participation*

At present, there is no Minority Business Enterprise (MBE) equity partner. However, the Developer has negotiated an MBE plan with the County's compliance officer, Ms. Mirinda Jackson. The proposed MBE plan is intended to encourage MBE participation on the future sale of parcels. As proposed there is no upfront minority participation.

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- (7) *No Adverse Impact on the County's Credit / Bond Rating*  
Given the Bonds are non-recourse to the County and of a relatively small size, we do not believe this transaction would have an adverse impact on the County's credit bond rating.
- (8) *Expands and Strengthens Employment Opportunities*  
It is estimated that the project will generate 529 new jobs, of which 212 (40%) are expected to be County residents. The County is also requiring that the Developer enter into a MBE plan.
- (9) *Expands the County's Commercial Base*  
The Project provides an additional 111,100 square feet of commercial development. Phase I of Brandywine Crossings provided approximately 478,561 square feet of commercial development.
- (10) *Affords Opportunities for Public and Private Partnership*  
The Developers' request for County support gives the County an opportunity to participate in what appears to be a successful project and to bring to the community safe entertainment. Should the County agree to participate, the County has an opportunity to impose MBE participation requirements which may not have been implemented otherwise.
- (11) *Offers Creative and Unique Opportunities for Economic and Community Development Projects and Initiatives*  
Phase II of Brandywine Crossing is intended to bring a stadium style seating theater into an area which currently does not have movie theater entertainment. Development of Phase II will not only add restaurants and retail development, but also an entertainment aspect for residents in the community.

### *Summary*

The success of Phase II of Brandywine Crossing – Phase II is dependent upon the success the movie theater, as well as the Developers commitment and financial resources to carry the project. Real property taxes generated by the movie theater represents approximately 40% of the repayment of the Bonds. If the County decides to move forward with the proposed financing, the County



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should require the Developer to provide further information regarding the movie theater to confirm that portion of the Project is moving forward in-line with the projections.

The Bonds are to be issued to the Developer so there will be no proceeds available upfront to finance improvements. As such, the Developer will need to confirm availability of resources to complete the improvements as planned.

The projected returns for this project are considerably lower than what is typically seen for comparable projects. As discussed previously, should the statutes require prevailing wage to apply, the costs to complete the project could increase thereby further decreasing the projected returns. The County should require the Developer to provide more detailed cost estimates once the issue regarding prevailing wage is resolved.

CR 89 requirements are not fully met at this time, particularly as it relates to the trigger mechanism / look-back provision and MBE participation. However, these issues could possibly be negotiated over the coming weeks.

We hope this information is helpful. Should you have any questions or require additional information, please do not hesitate to contact either one of us.

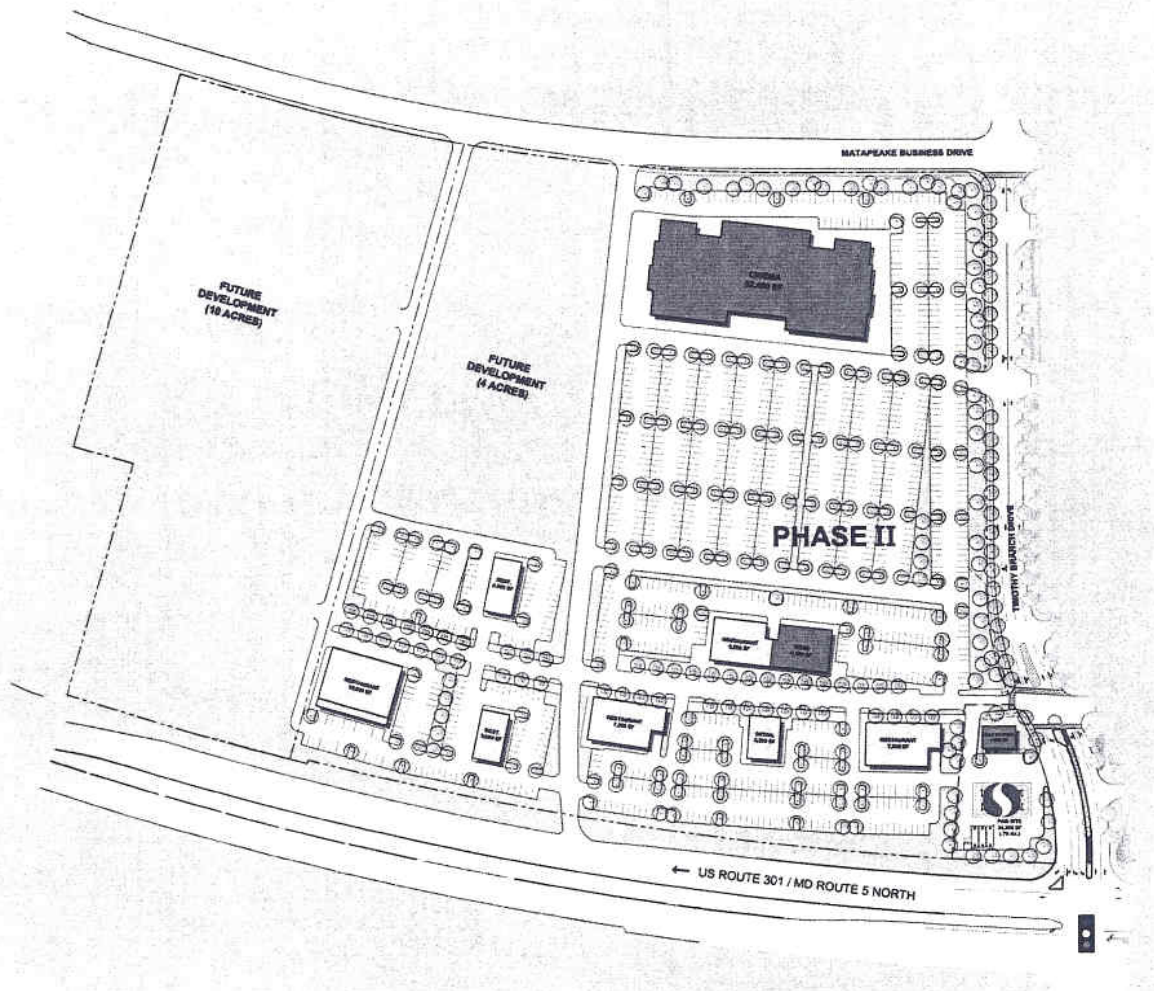
Sincerely,  
Prager, Sealy & Co. LLC

  
Douglas Sealy  
Managing Director

  
Pamela Holton Byrd  
Managing Director

cc: Iris Boswell, Assistant to the County Executive

**BRANDYWINE CROSSING PHASE II**  
**LOCAL AND MINORITY BUSINESS ENTREPRISE PLAN**  
**October 25, 2010**





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## **I. EXECUTIVE SUMMARY**

### **A. TAX INCREMENT FINANCING (TIF) OVERVIEW**

Brandywine Crossing Phase II is a \$34 million commercial development that will expand the major new retailing hub of Brandywine Crossing by adding a state-of-the-art multiplex cinema, restaurants, and new specialty shops to southern Prince George's County, MD. Faison Enterprises is the developer of Brandywine Crossing. Prince George's County (the "County") has already created a Development District for Brandywine Crossing Phase II (the "Development District"). The County is considering the introduction of legislation authorizing the issuance of bonds secured by the increase in tax revenues resulting from the new development (the "Bonds") necessary to fund a \$4.5 million TIF for the Development District which will enable the project to proceed.

### **B. BRANDYWINE CROSSING OVERVIEW**

The Brandywine Crossing project is a significant economic and community development project in the southern portion of Prince George's County. Brandywine Crossing is located on over 100 acres of land on the east side of US 301/MD 5, north and south of its intersection with Chadds Ford Drive and Timothy Branch Drive in Brandywine, MD. The project, for which Phase I construction began in 2007, has already begun to serve as an economic catalyst for the growing and expanding Brandywine trade area by providing a high-quality, first-class address to work, shop, and dine.

Phase I of Brandywine Crossing opened for business in Fall 2008 and is currently 96% leased and 94% occupied. The shopping center presently totals 478,000 square feet located in multiple buildings. Overall the tenant mix offers a variety of quality merchants including national tenants such as Costco, Target, Safeway, Marshalls, JoAnn Fabrics, Bonefish Grill, AAA, Hallmark, Hour Eyes, Mattress Discounters, Panda Express, Subway, SunTrust, Verizon, and Wachovia. Local business enterprises ("LBEs") include Irie Café, Mamma Roma's Restaurant, Anytime Fitness, Shoe City, Bebe Nail Salon, Crystal Cleaner, Better Life Home Medical, and Crown Royal Barbers.

### **C. BRANDYWINE CROSSING PHASE II - OVERVIEW**

The 20± acres of property comprising Brandywine Crossing Phase II will be developed with approximately 116,000 square feet of commercial uses, including a 60,000 square foot multiplex cinema, 54,000 square feet in retail/restaurant uses, and a 2,000 square foot Safeway gas station. The cinema will be the only



stadium-style seating theater in Southern Maryland. Faison, the project developer, will construct the on-site and off-site work for Brandywine Crossing Phase II. The businesses that will locate within Brandywine Crossing Phase II will construct their respective buildings. Faison anticipates contracting for approximately \$4,715,000 of work that will be eligible for LMBE participation. Brandywine Crossing Phase II is expected to break ground in the Spring of 2011 and open for business in the second half of 2012.

**D. PRIOR LMBE, MBE, and LBE PROJECT PARTICIPATION**

The Brandywine Crossing development has acted as a catalyst to spur additional new development and redevelopment in an area long overlooked by developers and expanding businesses. The initial construction has already provided over \$1.2 million of work for LMBE and MBE, and LBE firms.

In terms of ongoing store operational employment, Target hired over 200 full-time and part-time employees, approximately 90% of whom are Prince George's County residents. Costco hired over 150 full-time and part-time employees, approximately 80% of whom are Prince George's County residents. Safeway hired approximately 100 full-time employees of whom 80% are Prince George's County residents.

**E. PROPOSED LMBE, MBE, and LBE COMMITMENT HIGHLIGHTS**

- Commitment by Faison to provide equity investment opportunities to Prince George's County LMBEs, MBEs, and LBEs for ownership of two (2) or more retail pad sites at Brandywine Crossing Phase II
- Commitment by Faison to provide \$225,000 towards the acquisition of two (2) or more retail pad sites as a subsidy to LMBE investors through a reduction of the sales price of such pad sites
- Commitment by Faison to encourage the operating businesses at Brandywine Crossing Phase II to hire a minimum of 50% Prince George's County residents
- Commitment by Faison to use best efforts to require its contractors and sub-contractors to hire Prince George's County residents
- Commitment by Faison to use best efforts to cause 30% of hard and soft costs for the Brandywine Crossing II site development work to be directed to Prince George's County LMBEs, MBEs, and LBEs
- Commitment by Faison to use best efforts to cause a minimum of 20% of hard and soft costs for the Brandywine Crossing II site development work to be directed to LMBEs

- Commitment by Faison to proactively encourage the retailers and “end users” at Brandywine Crossing Phase II to hire Prince George’s County LMBE, MBE, and LBE contractors and sub-contractors

## II. PURPOSE

The County has a policy of promoting economic opportunity for its citizens, residents and businesses. The County accomplishes this objective by encouraging economic development projects seeking the support and assistance of the County to implement programs and mechanisms to effectuate the policy. Faison as developer of Brandywine Crossing Phase II is committed to the principle that local businesses, minority business enterprises, and local minority business enterprises should be afforded the opportunity to participate in the economic transformation created by Brandywine Crossing Phase II. To that end, Faison agrees to institute programs designed to:

- Provide ownership opportunities of two (2) or more retail pad sites at Brandywine Crossing Phase II to LMBEs;
- Commit \$225,000 towards the acquisition of two (2) or more retail pad sites as a subsidy to LMBE investors through a reduction of the sales price of such pad sites;
- Hire and promote qualified Prince George’s County residents in employment positions at the companies which will operate businesses at Brandywine Crossing Phase II;
- Achieve designated site development contracting participation by LMBEs, MBEs, and LBEs;
- Assist in the creation of independent business ventures/opportunities so that Prince George’s County residents can share in the economic activities stimulated by Brandywine Crossing Phase II; and
- Provide opportunities for LMBEs, MBEs, and LBEs to provide professional services for Brandywine Crossing Phase II.

Accordingly, Faison will:

- Provide ownership opportunities to LMBEs for two (2) or more retail pad sites at Brandywine Crossing Phase II, particularly by (a) reserving for LMBEs at least two (2) retail pad sites for two (2) years from the date of adoption of the final TIF legislation, (b) subsidizing the acquisition of such pad sites in an amount equal to \$225,000 (i.e. the amount equal to 5% of the original principal amount of the Bonds) through the reduction of the sales prices of the pad sites, as provided to



the County, (c) meeting with Prince George's County Economic Development Corporation ("EDC") representatives on a monthly basis to identify potential investors who are LMBEs, MBEs and LBEs, and (d) advertising in local newspapers within the County to solicit interest in ownership opportunities at Brandywine Crossing Phase II;

- Take the necessary steps to assure that known LMBEs, MBEs, and LBEs have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for preparation of bids/proposals, and associated delivery schedules to the extent possible so as to facilitate the participation of the LMBEs, MBEs, and LBEs. When possible, advance notice will be provided to facilitate this process.
- Maintain records showing:
  - (a) Procedures which have been adopted to comply with the policies set forth in the MBE Plan, including the establishment of a source list of LMBEs, MBEs, and LBEs;
  - (b) Awards to businesses in the various categories set forth in this agreement;
  - (c) Specific efforts undertaken to identify and award contracts and equity participation opportunities to LMBEs, MBEs, and LBEs.
- Cooperate with the County in studies and surveys of Faison's LMBE, MBE, and LBE procedures and practices that the County may from time to time conduct.

These programs will be designed to promote economic opportunities during the construction of Brandywine Crossing Phase II and during the subsequent operation of Brandywine Crossing Phase II by its retailers and "end users."

### **III. MBE EQUITY PARTICIPATION**

Faison will use its best efforts to provide ownership opportunities to LMBEs by selling two (2) or more retail pad sites at Brandywine Crossing Phase II to investors who are LMBEs and committing \$225,000 towards the acquisition of such pad sites as a subsidy to LMBE investors.

Best efforts will include, but not be limited to, the following:

- reserving at least two (2) retail pad sites for two (2) years from the date of adoption of the TIF Legislation for Brandywine Crossing Phase II for sale to investors who are LMBEs;
- subsidizing the acquisition of two (2) retail pad sites by LMBE investors in an amount equal to \$225,000 (i.e. the amount equal to 5% of the original principal amount of the Bonds) through the reduction of the sales prices of the pad sites, as provided to the County;

- soliciting potential investors who are LMBEs, MBEs and LBEs;
- meeting with EDC representatives on a monthly basis to identify potential investors who are LMBEs, MBEs and LBEs and develop strategies for their identification; and
- advertising in local newspapers within the County to solicit interest in ownership opportunities at Brandywine Crossing Phase II.

Faison acknowledges and agrees that this MBE Plan requires that the Bonds shall not be issued until the County receives documentation that said pads have been or will be acquired by LMBEs through LMBE ownership or other acceptable participation equal to 5% of the principal amount of the Bonds (i.e., \$225,000) to be issued and repaid with County tax increment funds.

#### **IV. GOALS**

##### **A. BUSINESS OPPORTUNITIES/EQUITY INVESTMENTS (CR-98)**

Overview: Faison will work with EDC, the County's MBE Compliance Manager, or any other designated County or quasi-County entities to identify minority business enterprise ownership opportunities for retail/restaurant/entertainment businesses expected to locate and operate at Brandywine Crossing Phase II.

Goals: Faison will use best efforts to sell two (2) or more retail pads sites at Brandywine Crossing Phase II to one or more LMBEs particularly by (a) reserving for LMBEs at least two (2) retail pad sites for two (2) years from the date of adoption of the final TIF legislation, (b) subsidizing the acquisition of such pad sites by LMBEs in an amount equal to \$225,000 (i.e. the amount equal to 5% of the original principal amount of the Bonds) through the reduction of the sales prices of the pad sites, as provided to the County, (c) meeting with Prince George's County Economic Development Corporation ("EDC") representatives on a monthly basis to identify potential investors who are LMBEs, and (d) advertising in local newspapers within the County to solicit interest in ownership opportunities at Brandywine Crossing Phase II.

Faison will use best efforts to encourage local, regional and national retail/restaurant/entertainment chains to bring franchise opportunities to Brandywine Crossing Phase II by outreaching directly to such chains and their brokers to promote the franchise opportunities available at Brandywine Crossing Phase II. In addition, Faison will encourage the local, regional and national chains to utilize LMBEs, MBEs, and LBEs as franchisees at Brandywine Crossing Phase II. Faison will work with EDC to identify LMBEs, MBEs, and LBEs who are interested in franchise opportunities and share those contacts with the local, regional and national chains and their brokers.



## **B. EMPLOYMENT**

Overview: Faison will provide leasing and project management services during the construction of Brandywine Crossing Phase II with its current Maryland-based employees and will not directly employ anyone subsequent to the completion of construction of Brandywine Crossing Phase II. Property management will be turned over to the Property Owners' Association.

Goals: Faison will use best efforts to encourage the commercial tenants (or owners) of Brandywine Crossing Phase II parcels to require that fifty percent (50%) but not less than twenty percent (20%) or more of all new hiring for permanent employees will be Prince George's County residents.

Faison will use best efforts to require all of its contractors and sub-contractors with contracts totaling \$100,000 or more to agree to list job openings with the Prince George's County Workforce Services Corporation on a non-exclusive basis for recruitment and placement of new hires or employees for the new jobs created by Brandywine Crossing Phase II.

## **C. CONSTRUCTION (HARD & SOFT COSTS)**

Overview: Faison is only constructing the site work components of Brandywine Crossing Phase II.

Goals: Faison will use best efforts to cause thirty percent (30%) or more of the LMBE, MBE and LBE - applicable hard and soft costs incurred in connection with the site work at Brandywine Crossing Phase II to be incurred pursuant to contracts with LMBEs, MBEs, and LBEs. Further, Faison will use best efforts to cause a minimum of twenty percent (20%) of these LMBE, MBE, and LBE - applicable hard and soft costs to be expressly directed to contracts with LMBEs.

Faison will use commercially reasonable efforts to encourage the commercial tenants (owners) of Brandywine Crossing Phase II to hire LMBE, MBE, and LBE consultants, contractors, and sub-contractors during their initial build-out at Brandywine Crossing Phase II.

#### IV. SCOPE OF PARTICIPATION

##### A. PROJECT COSTS AVAILABLE FOR LMBEs, MBEs, AND LBEs

The total investment in Brandywine Crossing Phase II totals \$34 million which includes some expenditures that have already been incurred and other investment costs (e.g., Permits & Tap Fees) which do not qualify for LMBE participation. The breakdown is as follows:

Total Phase II Investment		\$34,000,000
Less Land Acquisition Price		(\$ 8,800,000)
Less Building Construction Costs (by retailers and "end users")		(\$14,380,000)
Less Other Costs Already Incurred		(\$3,390,000) *
Less Excluded Costs:		(\$2,715,000)
Permits & Tap Fees	\$ 240,000	
Taxes & Insurance	\$ 140,000	
Leasing & Sales	\$ 330,000	
Finance Fees, Legal Costs	\$ 915,000	
Construction Interest & Fees	\$ 482,000	
Contingency	\$ 450,000 **	
Consultants	\$ 158,000	
Balance Available for LMBE, MBE, and LBE Participation		\$4,715,000
Hard Costs Available	\$3,900,000	
Soft Costs Available	\$ 815,000	

\* Please note that a portion of these expenditures have already been directed to recognized Prince George's County LMBEs, MBEs, and LBEs.

\*\* Some portion of these projects costs will be eligible for LMBE participation.



**B. AVAILABLE LMBE, MBE, AND LBE**

Prime & Sub Contractors

- General Site Work
- Excavating
- Trucking
- Storm Sewer Pipe Contractors
- Water & Sewer Pipe Contractors
- Concrete (Flat Work and Curb & Gutter)
- Electrical
- Landscaping
- Signage
- Parking Lot Striping

Services

- Security
- Surveying
- Engineering
- Architectural

Project Consultant

- Zoning Consultant
- Permit Expediting
- Property Management
- Title Work

Investors & Owners of Retail Pad Sites

## V. PROCEDURES

### A. ADMINISTRATION OF THE LMBE, MBE and LBE PROGRAM

The Brandywine Crossing Phase II LMBE, MBE, and LBE program will be administered by Faison with support from Green Partners. Faison's representatives are as follows:

Peter Melmed, Development Director  
Faison  
7920 Norfolk Avenue, Suite 800  
Bethesda, MD 20814  
[Peter.Melmed@Faison.com](mailto:Peter.Melmed@Faison.com)  
(240) 497-0539 (office)  
(301) 367-1407 (mobile)

Derrick L. Green  
Green Partners LLC  
9500 Fletcher Avenue  
Clinton, Maryland 20735  
[derrick.greensolutions@gmail.com](mailto:derrick.greensolutions@gmail.com)  
(240) 752-2211 (mobile)

The administrators' duties include:

- Preparing LMBE, MBE, and LBE plans;
- Meeting with EDC representatives on a monthly basis to identify potential investors for ownership opportunities of two (2) or more retail pad sites;
- Solicit potential investors who are LMBEs for ownership opportunities of two (2) or more retail pad sites by advertising in local newspapers in the County;
- Assisting in developing source lists;
- Providing lists of qualified LMBE, MBE, and LBE sub-contractors to the businesses that will occupy Brandywine Crossing Phase II;
- Acting as liaison between the County and the businesses that will hire employees at Brandywine Crossing Phase II to ensure that Prince George's County residents are afforded employment opportunities;
- Attending workshops sponsored by the County Compliance Manager; and
- Preparing and submitting compliance reports to the Prince George's County MBE Compliance Manager.



## **V. PROCEDURES (cont.)**

### **B. SOURCING LMBEs**

Faison will use the following best efforts to ensure that the LMBEs, MBE, and LBEs each have an equitable opportunity to compete for subcontracts.

Outreach Efforts will include:

- Working with the County Compliance Manager to source qualified contractors;
- Contacting LMBE, MBE, and LBE trade associations and professional organizations;
- Contacting the Office of Central Services/Minority Business Office;
- Advertising the project in the Gazette;
- Utilizing existing MBE databases such as WMATA, WSSC, County-wide database, MDMDOT, MBDD Directory, and other sources;
- Contacting Prince George's Chamber of Commerce, the Prince George's Black Chamber of Commerce, and Prince George's Community College;
- Utilizing existing databases and creating a web site.

### **C. SOLICITING INVESTORS**

Faison will use the following best efforts to sell two (2) or more retail pad sites at Brandywine Crossing Phase II to one or more LMBEs (including but not limited to):

- Reserving at least two (2) retail pad sites for investors who are LMBEs for two (2) years following the adoption of the final TIF legislation;
- Subsidizing the acquisition of such pad sites by LMBEs in an amount equal to \$225,000 (i.e. the amount equal to 5% of the original principal amount of the Bonds) through the reduction of the sales prices of the pad sites, as provided to the County;
- Meeting with EDC representatives on a monthly basis to identify potential investors who are LMBEs; and
- Advertising the ownership opportunities in the Gazette.

### **D. REPORTING & COMPLIANCE**

Faison will submit to the County's Compliance Manager compliance reports, commencing two (2) months after the Brandywine Crossing Phase II project breaks ground and every two months thereafter until Faison's site work at Brandywine Crossing Phase II is complete. The report will include the dollar amount of all contracts awarded by Faison to LMBEs, MBEs, and LBEs and will list the names of each such LMBE, MBE, and LBE, its address, telephone number and contact person, the amount of the contract, a description of the work, and such

other information requested by the County Compliance Manager. The report will also include the identity of all potential investors that Faison has identified for the ownership opportunities of retail pad sites at Brandywine Crossing Phase II, along with descriptions of any communication between Faison and each potential investor.

Subsequent to the completion of the site work, Faison will submit employment reports semi-annually for two years for the businesses operating in Brandywine Crossing Phase II. The reports will list the total number of employees and the number of Prince George's County residents hired by each operating business at Brandywine Crossing Phase II.

Faison will meet at least quarterly with the County's Compliance Manager subsequent to the adoption of TIF Legislation for Brandywine Crossing Phase II to ensure that all goals of this Plan are met.

#### **E. RECORD KEEPING**

Faison will establish and maintain records to prepare and submit a Report to Prince George's County Compliance Manager, which will identify and assess progress in achieving LMBE, MBE, and LBE subcontracting goals, and employment efforts. Faison will make all records pertaining to its LMBE, MBE, and LBE plan available to the County upon request.

#### **F. DEFAULTS, FINES, APPEALS**

In the event Faison fails to employ best efforts as determined by the County Compliance Manager's review of the compliance reports referenced in Section 5(c) of this plan, and such failure shall not be cured by Faison within sixty (60) days after Faison's receipt of notice from the County or the Compliance Manager, then such failure shall be deemed an "Event of Default".

Upon the occurrence of an Event of Default from the date of issuance and delivery of the bonds until one year after the completion of the site work in which Faison fails to meet the minimum requirements contained in Section 4 of this plan, Faison shall be subject to a maximum fine of up to one hundred thousand dollars (\$100,000). Such amount represents compensation for the failure to meet a goal freely approved by Faison, is material consideration for the County in issuing the Bonds, and is not construed as a penalty.

Notwithstanding the foregoing, in the event Faison disputes a determination of an Event of Default, Faison shall have the right to appeal such determination to a panel of neutral mediators. The panel shall consist of three members. The



County shall appoint one member to the panel. Faison shall appoint one member to the panel. The third member of the panel shall be jointly agreed upon by the County and Faison. No fine may be assessed against Faison until Faison has exhausted such appeal(s).

Faison agrees to pay all reasonable expenses incurred by the panel of neutral mediators, but only if Faison is found to be in Default.

## **VI. DEFINITIONS**

### **Best Efforts:**

Best Efforts in the context of this agreement means actions taken by Faison in a true and genuine attempt to achieve compliance with and to further the intent and purpose of this Plan, without any design to deceive or defraud the County or the intended beneficiaries of this Plan or to otherwise undermine the intent of the Plan.

### **Local Minority Business Enterprise (LMBE):**

A recognized LMBE is a business enterprise whose principal place of operation is located within Prince George's County, Maryland, and (A) which is at least fifty-one percent (51%) owned by one or more minority individuals, or in the case of any publicly owned corporation, at least fifty-one percent (51%) of the stock is owned by one or more minority individuals; (B) whose general management and daily business affairs and essential productive operations are controlled by one or more minority individuals; and (C) which has been certified as a LMBE. Any LMBE certified by Prince George's County, the Maryland Department of Transportation, the Washington Metropolitan Area Transit Authority, the Maryland/District of Columbia Minority Supplier Development Council (or other organizations with similar certification authority), or a recognized Federal Agency will be deemed certified for purposes of this Plan.

### **Local Business Enterprise (LBE):**

A business whose principal place of operation is located within Prince George's County, Maryland.

### **County Residents:**

Individuals who are residents of Prince George's County.

Minority Business Enterprise (MBE):

A recognized MBE is any business enterprise that meets the criteria for a Local Minority Business Enterprise (LMBE) except they are not required to be located in Prince George's County, Maryland.

Minority Individuals:

Individuals who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic origin, or gender without regard to their individual capabilities. Minority individuals are limited to members of the following groups:

- African American/Black American – A person having origin in any of the black racial groups of Africa;
- Hispanic American which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin regardless of race;
- Native American which includes persons who are American Indians, Eskimos or Aleuts, or Native Hawaiians;
- Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, India, Pakistan, Bangladesh, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the North Marianas;
- Asian Indian Americans which includes persons whose origins are from India, Pakistan, and Bangladesh;
- Women shall include all women regardless of race or ethnicity.

[SIGNATURES ON FOLLOWING PAGE]

DELIVERED in Prince George's County, Maryland, this 25th day of October, 2010.

FCD-DEVELOPMENT, LLC,  
a North Carolina limited liability company



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Name: Allen S. Jackson, Jr.  
Title: Vice President



# THE PRINCE GEORGE'S COUNTY GOVERNMENT



October 25, 2010

## MEMORANDUM

TO: Fred Stichnoth  
Bond Counsel

FROM: Mirinda Jackson   
MBE Compliance Manager

RE: Minority Business Enterprise (MBE) Plan for Brandywine Crossing- Phase II

The MBE Plan is approved in conformance with the MBE Plan Guidelines promulgated by the Compliance Manager. However, no bonds or notes will be issued until the Local Minority Business Enterprise (LMBE) 5% equity participation is satisfied pursuant to CR 98-2010.