

**GREENSBORO PARK PLACE
PROFFER STATEMENT**

RZ 2012-PR-002

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November 19, 2012
January 15, 2013
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May 31, 2013
September 3, 2013
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Greensboro Park Property Owner LLC (the “Applicant”), as owner of the property identified on the 2013 Fairfax County Tax Map as Tax Map 29-4 ((9)) 12B and 29-3 ((15)) 12A (the “Property”), seeks to rezone the Property from the C-4 (High Intensity Office) and SC (Sign Control Overlay) Districts to the Planned Tysons Corner Urban (“PTC”) and SC Districts (the “Rezoning”).

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to approval by the Fairfax County Board of Supervisors of the Rezoning, the Applicant hereby proffers that development of the Property shall be in accordance with the following conditions (the “Proffers”), which, if the Rezoning is approved by the Board of Supervisors, shall replace and supersede any and all existing proffered conditions applicable to the Property. In the event the Rezoning is denied, these Proffers shall immediately be null and void and the previous proffered conditions shall remain in full force and effect.

GENERAL

1. Substantial Conformance. Subject to these Proffers and the provisions of Sections 6-500, 16-400 and 18-204 of the Zoning Ordinance of Fairfax County, as amended (the “Zoning Ordinance”), the Property shall be developed in substantial conformance with the Conceptual Development Plan (“CDP”) dated November 22, 2012, as revised through January 16, 2014, and prepared by VIKA, Incorporated.
2. Proffered CDP Elements. The proffered elements of the CDP are limited to the uses, grid of streets, general location of the residential and office buildings and their respective entrances, minimum and maximum building heights, overall maximum gross floor area (“GFA”), build-to lines, general quality and character of the streetscape, minimum amount and general location of the publicly-accessible open space, and other elements as may be specifically identified herein (the “Proffered Elements”). As Final Development Plan (“FDP”) approval is requested from the Planning Commission concurrently with approval of the Rezoning, other elements of the CDP may be adjusted or modified with approval of a Final Development Plan Amendment (“FDPA”) in accordance with the provisions set forth in Section 16-402 of the Fairfax County Zoning Ordinance (the “Zoning Ordinance”), and these Proffers.

3. Minor Modifications to the CDP. Minor modifications to the Proffered Elements of the CDP may be permitted pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site design, and when such modifications are determined to be in substantial conformance with the Proffered Elements and these Proffers, as determined by the Zoning Administrator. The number of residential units and square footage within each Residential Building (as defined below) may be adjusted up or down, so long as (a) the minimum number of residential units is provided; (b) the maximum number of residential units is not exceeded; (c) the proposed publicly-accessible park space is not reduced; (d) the building heights for each Residential Building are not decreased below the minimum or increased above the maximum heights identified on the CDP/FDP; and (e) the Proposed Development, as defined in Proffer 5 herein, is otherwise in substantial conformance with these Proffers and the CDP.

4. Final Development Plan Amendment. FDP approval is requested from the Planning Commission in accordance with Sect. 16-402 of the Zoning Ordinance. The following tabulations and information may be adjusted or amended with approval of a subsequent FDPA:
 - A. Architectural Elements. Design information on building materials, architectural massing and fenestration, and specific features designed to activate the streetscapes, as further described in these Proffers;

 - B. Build-to Lines. Proposed Build-to Lines, including any proposed modifications to the Build-to Lines and/or the expanded streetscape areas as identified in Proffer 13;

 - C. Conceptual Utility Plans. The Conceptual Utility Plan;

 - D. Streetscape Furnishings and Materials. The Streetscape Furnishing and Materials Plan;

 - E. Lighting. Specific streetscape lights per Proffer 19(K);

 - F. Parking Spaces. The final number and location of surface and structured parking spaces;

 - G. Stormwater Management. A detailed Stormwater Management Plan, as described in Proffer 45;

- H. Bicycle Parking. Specific locations and the number of bicycle facilities to be provided as described in Proffer 29;
 - I. Publicly-Accessible Parks and Recreational Facilities. The specific details on parks and recreational facilities, as described in Proffer 39 and 40;
 - J. Sustainable Energy Practices. The sustainable energy practices described in Proffer 17;
 - K. Sight Distance Lines. Sight distance lines shall be shown for all affected intersections;
 - L. Phasing/Interim Conditions. Phased improvements and interim conditions in accordance with these Proffers;
 - M. Residential Amenities. Facilities and amenities to be provided in each Residential Building;
 - N. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations;
 - O. Landscape Plan. The Landscape Plan, as described in Proffer 18;
 - P. Tabulation. The tabulation indicating the development status of the Property subject to the Rezoning;
 - Q. Parking. The parking tabulations; and,
 - R. Parking Structure/Loading/Service Area Treatments. Proposed parking structure/loading/service area façade treatments.
5. Development Program. The Applicant shall be permitted to develop the Property with a mix of uses and structures that may ultimately consist of the following:
- A. Two (2) existing office buildings containing a mix of commercial uses and totaling approximately 504,574 gross square feet (excluding cellar) (the “Existing Office Buildings”);
 - B. Two new residential buildings containing a mix of residential and community-serving/retail uses totaling approximately 485,000 square feet (the “Residential Buildings”);

- C. Two (2) existing parking structures associated with the Existing Office Buildings (the “Existing Parking Structures”);
- D. A new parking structure beneath the Residential Buildings (the “Residential Parking Structure”); and,
- E. The surface parking spaces shown on the CDP/FDP (the “Surface Parking Spaces”),

all as more particularly shown on the CDP/FDP and described in these Proffers (the “Proposed Development”).

PERMITTED USES AND INTENSITY

- 6. Uses. The Applicant shall develop the Property primarily with office and residential uses; however, it may also include any accessory, retail, service and/or other non-residential use permitted by-right, by Special Exception (“SE”), or by Special Permit (“SP”) in the Planned Tysons Corner Urban (“PTC”) District, including, but not limited to, public and quasi-public uses, accessory uses and accessory service uses, business service and supply service uses, commercial recreational uses, community uses, eating establishments, financial institutions, garment cleaning establishments, personal service and repair service establishments and retail sales establishments. Such uses, including eating establishments and retail sales establishments, may be provided generally within the ground floors of the Residential Buildings and/or Existing Office Buildings; however such uses may also be provided within upper floors with approval of a future FDPA. In the Applicant’s sole discretion, it may permit a food truck to operate on the Property as an accessory use, provided that any such truck is operated for a maximum of three hours per day, is located on a paved surface that does not interfere with vehicular or pedestrian circulation or parking availability, and its location is coordinated with DPZ.
- 7. Gross Floor Area. The maximum GFA permitted on the Property is approximately 990,000 square feet (excluding cellar in the Existing Office Buildings).
- 8. Residential Dwelling Units. Residential Building A shall contain a minimum of Two Hundred and Fifty-Six (256) residential dwelling units and a maximum of Two Hundred and Seventy-Six (276) residential dwelling units. Residential Building B shall contain a minimum of Two Hundred and Twenty-Seven (227) residential dwelling units and a maximum of Two Hundred and Forty-Four (244) residential dwelling units, for a total minimum of Four Hundred and Eighty-Three (483) residential dwelling units and maximum of Five Hundred and Twenty (520) residential dwelling units.

9. Adjustments to the GFA. GFA may be shifted between the two Residential Buildings provided the maximum height shown for each building is not exceeded, the minimum building height is not reduced, the overall urban form and building type as shown on the CDP are maintained and such adjustments are consistent with these Proffers. If at the time of site plan, the GFA approved for one Residential Building is less than the GFA shown on the approved CDP and FDP, the excess GFA may be utilized in the other Residential Building, provided the maximum height for each building is not exceeded, the minimum height for each building is maintained, the overall urban form and building types depicted on the CDP/FDP are maintained, and such adjustments are consistent with these Proffers.

10. Existing and Interim Structures and Uses.

A. The Existing Office Buildings and Existing Parking Structures. The Existing Office Buildings and Existing Parking Structures may remain in use until such time as the Applicant elects to redevelop them and proceeds with a Conceptual Development Plan Amendment (“CDPA”), Proffered Condition Amendment (“PCA”) and/or FDP, as applicable. Existing structures may not be modified or enlarged; however, minor structure modifications may be approved by the Zoning Administrator pursuant to the provisions of Par. 4 of Sect. 16-403 of the Zoning Ordinance. Interior modifications to all existing structures shall be permitted.

B. The Existing Surface Parking Lot. The existing surface parking lot on the Property may remain in use as parking for the tenants of the Existing Office Buildings until such time as the Applicant elects to commence construction of the Residential Buildings. For purposes of this Proffer, “commence construction” means that the Applicant has (1) executed a contract with a General Contractor; (2) issued formal notice to proceed for the full scope; and (3) the General Contractor has mobilized at the Property.

C. Commuter Parking. As an option, before it commences construction of the Residential Buildings (as defined above) and with written notification to FCDOT, the Applicant may elect to use on an interim basis any of its existing parking facilities, including the Existing Parking Structures and the existing surface parking lot, for privately-owned and operated commercial off-street parking and/or commuter parking. In the event the Applicant opts to use the existing surface parking lot for commuter parking per the above, it shall conduct an assessment of queuing at the driveway on Greensboro Drive and submit the same to FCDOT and VDOT for review. If, however, the Applicant opts not to use the surface parking lot for commuter parking, it may, in its discretion, install parking controls to prevent access to the surface parking lot by commuters.

URBAN DESIGN, LANDSCAPING AND STREETScape

11. Architecture. The Residential Buildings shall be designed of high-quality architecture and building materials that are typically used on the exterior of similar Class A Luxury residential buildings, as conceptually depicted on the CDP. Design details such as building materials, architectural massing and fenestration, and specific features designed to activate the streetscapes are provided with the concurrent FDP. However, architectural plans, elevations, illustrations, materials and heights may be adjusted or modified subsequent to CDP/ FDP approval as a result of final architectural and engineering design without requiring CDPA, FDPA, PCA or other zoning approval, provided the quality of design remains in substantial conformance with that shown on the CDP and FDP and set forth in these Proffers, as determined by the Zoning Administrator.
12. Bird-Friendly Design. At the time of site plan submission for the first Residential Building, the Applicant shall prepare and submit to OCR an initial study addressing whether bird-friendly design strategies may be employed to reduce bird injury and death due to in-flight collisions with the Residential Buildings. The strategies to be studied should make the Residential Buildings visible to birds in flight and reduce reflections that distract or confuse birds through the use of appropriate glazing treatments or architectural elements, such as using color, texture, opacity, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds. A narrative summarizing the results of that study and which strategies, if any, will be implemented shall be provided at the time of building permit issuance.
13. Build-To Lines. A Build-To Line for the Residential Buildings has been established on the CDP/FDP to create an urban, pedestrian-oriented environment. In general, the building facades of the Residential Buildings are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the Build-To Line shall be permitted, provided such modifications are in general conformance with the CDP/FDP.
14. Building Heights. Building heights shall not exceed the maximums nor be reduced below the minimums identified on the CDP/FDP, as measured from the average grade. Final building heights for the Residential Buildings shall be determined at the time of site plan approval, and may be less than the maximum heights shown on the CDP/FDP, provided that the Residential Buildings retain a compatible urban form to that shown on the CDP/FDP and that the average roofline of the Residential Buildings are not less than minimum heights shown in the CDP/FDP tabulations. Maximum building heights for the Residential Buildings shall include penthouses and all rooftop structures. For the Existing Office Buildings, structures that are excluded from the maximum height regulations as set forth in Sect. 2-506 of the Zoning Ordinance shall not exceed thirty

(30) feet above the roof levels of the top floors. All building penthouses and rooftop structures shall be integrated into the architecture of the buildings.

15. Rooftop Telecommunications Equipment and Mechanical Units. Telecommunications equipment, mechanical units and all appurtenant facilities may be placed on the rooftop of one or both of either the Existing Office Buildings and/or Residential Buildings. Any such new facilities on the Residential Buildings must comply with the applicable requirements of the Zoning Ordinance and be screened and/or set back sufficiently from the perimeter of the roof and penthouse such that they are generally not visible from the surrounding streets at street level when viewed at a reasonable distance from the property line of the Property. Screening measures may, without limitation, (i) include screening with architectural features and/or landscaping compatible with the building façade architecture, (ii) include the facilities as part of the architecture of the buildings, (iii) utilize compatible colors, and/or (iv) employ telecommunication screening material and flush-mounted antennas. Telecommunications equipment on the rooftops of the Residential Buildings also may be architecturally integrated onto the façades of the building where necessary to ensure on-street and/or open space coverage. Rooftop amenities such as amenity terraces or facilities and landscaping may also screen rooftop telecommunications equipment and mechanical units on the Residential Buildings.
16. Green Building. In order to promote energy conservation and green building techniques, the Applicant shall select one of the following programs to be implemented and will inform the Environment and Development Review Branch of DPZ which program the Applicant has chosen as part of the site plan submission for the first Residential Building.
 - A. National Green Building Standard (“NGBS”). If the Applicant selects the NGBS, then the Applicant shall seek certification of each unit in the Residential Buildings in accordance with the 2012 NGBS rating system using the Energy Star Qualified Homes path for energy performance, as demonstrated through documentation submitted to DPWES and DPZ from a home energy rater certified through the National Association of Home Builders Research Center that demonstrates each unit in the Residential Buildings has attained Bronze level certification prior to the issuance of the RUP for each such unit.
 - B. EarthCraft. If the Applicant selects EarthCraft, then the Applicant shall provide documentation to DPWES and DPZ that the Residential Buildings have been awarded certification in accordance with the EarthCraft House Program prior to the issuance of the first RUP for each Residential Building.
 - C. Leadership in Energy and Environmental Design (“LEED”).

- i. If the Applicant selects LEED, then the Applicant shall include a U.S. Green Building Council (“USGBC”) LEED-accredited professional, who is a professional engineer or licensed architect, as a member of its design team. The LEED-accredited professional shall work with the design team to incorporate design elements under the current version, at the time of such owner's registration, of the LEED New Construction (“LEED-NC”) rating system into the Residential Buildings. At the time of site plan submission, the Applicant shall provide documentation to the Environmental Review Branch demonstrating compliance with the commitment to engage such a professional. The Applicant will include, as part of the site plan submission and building permit plan submission for each Residential Building, a list of specific credits within the most current version, at the time of such owner's registration, of the LEED-NC rating system that the Applicant anticipates attaining for such Residential Building. The LEED-accredited professional will provide certification statements at both the time of site plan review and the time of building permit plan review, confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification for each Residential Building. In addition, prior to site plan approval, the Applicant will designate the Chief of the Environmental Review Branch as a team member in the USGBC's LEED online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork. Prior to building permit plan approval for each Residential Building, the Applicant will submit documentation to the Environmental Review Branch demonstrating that the subject Residential Building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED Silver certification under the LEED-NC program. Prior to release of the bond for the subject Residential Building, the Applicant shall provide documentation to the Environmental Review Branch demonstrating the status of attainment of LEED certification or a higher level certification from the USGBC for the subject Residential Building. If the Applicant is unable to provide the preliminary review of the design-related credit documentation prior to building permit plan approval, but it does anticipate receiving the documentation prior to the attainment of LEED certification, the Applicant may, prior to the issuance of the building permit, post an escrow identical to the one described in Proffer 16(C)(ii)

below. This escrow will be released upon the submission of documentation to the Environmental Review Branch from the USGBC demonstrating that the Residential Building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, shall be sufficient to attain LEED Silver certification.

- ii. Alternative Green Building Escrow. As an alternative to the actions outlined in Proffer 16(C)(i) above, or if the USGBC's review of design-related credits indicates that the subject Residential Building is not anticipated to attain a sufficient number of design-related credits to support attainment of LEED Silver certification, the Applicant shall post, for that Residential Building, a "Green Building Escrow" in the form of cash or a letter of credit in the amount of \$2.00 per gross square foot of GFA for that Residential Building. This Green Building Escrow will be in addition to, and separate from, other bond or escrow requirements and shall be released upon demonstration of attainment of LEED certification, or a higher level of certification, by the USGBC under the current version of the LEED-NC or other rating system at the time of such owner's registration. The provision to the Environmental Review Branch of documentation from the USGBC that the subject Residential Building has attained such LEED certification will be sufficient to satisfy this commitment. The Green Building Escrow shall be released in accordance with the following: 1) if the Applicant provides to the Environmental Review Branch, within three years of the issuance of the first RUP for the subject Residential Building, documentation demonstrating that LEED certification for that Residential Building has been attained, the entirety of the Green Building Escrow shall be released to the Applicant, 2) if the Applicant provides to the Environmental Review Branch, within three years of the issuance of the first RUP for the subject Residential Building, documentation demonstrating that LEED certification for that Residential Building has not been attained but that the subject Residential Building has been determined by the USGBC to fall within three points of attainment of LEED certification, 50% of the Green Building Escrow shall be released to the Applicant; the other 50% shall be released to Fairfax County and will be posted to a fund within the County budget supporting the implementation of County environmental initiatives, and 3) if the Applicant fails to provide to the Environmental Review Branch, within three years of the issuance of the first RUP for the subject Residential Building, documentation demonstrating the attainment of LEED

certification or demonstrating that the subject Residential Building has fallen short of LEED certification by three points or less, the entirety of the Green Building Escrow for that Residential Building shall be released to Fairfax County and will be posted to a fund within the County budget supporting the implementation of County environmental initiatives. If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of Environmental Review Branch, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during this extended time frame.

17. Sustainable Energy Practices. To further promote efficient, renewable and sustainable energy practices, prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall provide:
 - A. A minimum of one (1) electric vehicle recharging station that serves two (2) parking spaces for electric cars in the Residential Parking Structure, and space and infrastructure to accommodate additional electric vehicle-ready parking spaces in the Residential Parking Structure; and,
 - B. A minimum of one (1) electric vehicle recharging station that serves two (2) parking spaces for electric cars in each of the Existing Parking Structures. For purposes of this proffer, "electric vehicle-ready" means the provision of space, conduit banks, conduits and access points allowing for the easy installation of vehicle charging stations in the future, and does not include the installation of transformers, switches, wiring or charging stations.
18. Landscape Plan. The CDP/FDP includes a conceptual Landscape Plan for the Property. As part of the first site plan submission for the Proposed Development, the Applicant shall submit to the Urban Forest Management Division of the Department of Public Works and Environmental Services ("UFMD") for review and approval a more detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and landscaping materials shown on the FDP and any FDPAs. The detailed landscape plan shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets. These details shall include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction and methods of ensuring the viability of plantings and structures. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering and

design considerations, provided that in the event of a conflict with the future utility locations identified on the Conceptual Utility Plan described in Proffer 4, the Applicant shall first attempt to relocate the new utilities before adjusting the landscaping.

19. Streetscape. The Applicant shall install streetscapes throughout the Property as conceptually illustrated on the CDP/FDP.

A. International Drive.

i. Retaining Wall Project.

- a. Prior to issuance of the first initial RUP for the first Residential Building or such later date as may be determined by the Zoning Administrator, the Applicant shall construct the frontage improvements along International Drive, as shown on the CDP/FDP. As part of such improvements, the Applicant shall diligently pursue removal of the retaining wall located along the Property's frontage on International Drive, and shall construct the same in accordance with the design recommendations provided in the approved Geotechnical Analysis, described below ("Retaining Wall Project").
- b. Prior to approval of the site plan for the Retaining Wall Project, the Applicant shall submit to DPWES (and DPWES may, in turn, seek input from the Fairfax County Geotechnical Review Board) for review and approval a geotechnical analysis that evaluates the structural stability of the existing Parking Structures (the "Geotechnical Analysis").

ii. Pedestrian Connections. Prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall:

- a. Improve the existing pedestrian connection from the corner of the intersection of International Drive and Greensboro Drive to the upper parking lot associated with the Existing Office Building located at 8180 Greensboro Drive ("Pedestrian Connection 1"), as more particularly shown on the CDP/FDP; and
- b. Construct a new connection from International Drive to the Existing Office Building located at 8180 Greensboro Drive ("Pedestrian Connection 2"), as more particularly shown on the CDP/FDP.

- B. Greensboro Drive. Prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall construct the frontage improvements along Greensboro Drive, as shown on the CDP/FDP (“Greensboro Drive Frontage Improvements”). As part of such improvements, the Applicant shall:
- i. Relocate and reinstall all or a part of the existing traffic signal at the intersection of Greensboro Drive and Pinnacle Drive, as shown on the CDP/FDP (“Traffic Signal Pole Relocation”). Any modifications to this signal shall include those pedestrian enhancements as may be required by VDOT; and,
 - ii. Relocate and/or place underground, as applicable, the east switch cabinet located along the Property’s frontage on Greensboro Drive and adjacent to the retaining wall (the “East Switch Relocation”); however, if the Applicant discovers based on more detailed analysis following approval of this Rezoning, that there are utilities and/or fiber optics in the public right-of-way that need to be relocated in order to complete the East Switch Relocation, the Applicant shall request the applicable utility and/or fiber optic provider to relocate such utilities and/or fiber optics at the provider’s cost. If the applicable utility and/or fiber optic provider refuses to relocate the impacted utilities and/or fiber optics at its cost, or the Applicant discovers that there are utilities and/or fiber optics within the Property boundaries that need to be relocated in order to complete the East Switch Relocation, its obligation to complete the East Switch Relocation shall be null and void. Instead, the Applicant shall be permitted to leave the switch cabinet in its existing location and shall work with FCDOT, VDOT, DPZ and OCR to find a mutually-agreeable alternative alignment for the pedestrian sidewalk in that location. Notwithstanding the above, the west and north switch cabinets labeled on the CDP/FDP as “West Switch Cabinet” and “North Switch Cabinet” respectively, may remain in their existing locations.
- C. Streetscape Elements. Streetscape elements shall generally include a landscape amenity panel located immediately behind the face of curb, a pedestrian sidewalk adjacent to the landscape amenity panel and a building zone between the pedestrian sidewalk and the face of the building designed to allow access to the building and/or additional landscaping, outdoor display, outdoor dining, and similar uses adjacent to the Residential Buildings, provided that outdoor display and outdoor dining areas are located within the building zone and shall not

encroach upon the pedestrian sidewalk areas. Streetscape elements may be adjusted at the time of site plan approval to accommodate final architectural designs, parallel street parking (as shown on the CDP/FDP), sight distance concerns and utilities, as well as to facilitate elements such as outdoor seating for a cafe, entry doors and facilities/structures in the Proposed Development, provided the quality of the streetscape is consistent with that shown on the CDP/FDP. Tree planting sites are set forth conceptually on the CDP/FDP and may be adjusted at the time of site plan approval, subject to UFMD and DPZ approval, in consultation with OCR.

- D. Streetscape Activation. So as to accommodate the Public Facility described in Proffer 43 herein as well as any potential retail uses designed to activate the streetscape, Residential Building B shall generally be constructed with its ground floor having a minimum ceiling height of 18 feet.
- E. Alternative Planting Width Details. Street tree species and planting sites are depicted on the CDP/FDP but may be revised at the time of site plan approval. Where minimum planting widths of eight (8) feet cannot be provided, alternative measures either as identified in the “Tysons Urban Design Guidelines” (endorsed by the Board on January 25, 2012) (the “Tysons Urban Design Guidelines”) or as approved by the UFMD, shall be used to satisfy the following specifications for all planting sites:
- 1) A minimum of four (4) feet open surface width and 16 square feet of open surface area for Category III and Category IV trees (as defined in Table 12.17 of the PFM), with the tree located in the center of such open area.
 - 2) A minimum rooting area of eight (8) feet wide (may be achieved with techniques to provide un-compacted soil below hardscape areas within the Pedestrian Realm) (as defined in these Proffers), with no barrier to root growth within four (4) feet of the base of the tree. Where minimum planting widths of eight (8) feet cannot be provided, structural cell technology or other measures acceptable to the UFMD shall be provided.
 - 3) Soil volume for Category III and Category IV trees (as defined in Table 12.17 of the PFM) shall be seven hundred (700) cubic feet per tree for single trees, but may be reduced to a minimum of four hundred (400) cubic feet where paving above root zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. For two (2) trees planted in a contiguous planting area, a total soil volume

of at least 600 cubic feet per tree shall be provided. For three (3) or more trees planted in a contiguous area, the soil volume shall equal at least five hundred (500) cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Minimum soil volumes of seven hundred (700) cubic feet will be achieved in areas of lower pedestrian volume and where pavement is not required over tree rooting zones.

- 4) Soil specifications in planting sites shall be provided in the planting notes to be included in all site plans filed subsequent to the approval of this Rezoning.
- 5) Tree zones shall be installed with a fully automatic drip irrigation system.
- 6) Tree grates shall only be required if necessary to maintain certain sidewalk dimensions.

F. Non-Invasive Plant Materials. Invasive species, as defined in the PFM, shall not be used within the streetscape and landscaped open space areas.

G. Utility Locations. The Applicant has prepared and submitted with the CDP/FDP a Conceptual Utility Plan that identifies the locations of known utilities and proposes future utilities, including but not limited to water, sanitary sewer, storm sewer, electricity, gas and cable television lines. To the extent feasible and in accordance with the Transportation Design Standards for the Tysons Corner Urban Center (the "Transportation Design Standards"), the Applicant has placed such utilities in locations that minimize conflicts with the landscaped open space areas and streetscape elements. If, however, it is determined during site plan review that street tree locations conflict with utility locations, the Applicant shall first make efforts to reconcile the conflict by adjusting the locations of the future utilities. If VDOT, FCDOT or the applicable utility company does not approve such new locations or if the Applicant determines that it is not cost-effective to relocate them, the Applicant may adjust the type of plantings or remove and replace such tree(s) at an alternative location coordinated with the UFMD and without the need for a PCA, CDPA and/or FDPA. Maintenance access points to SWM Facilities and utility vaults beneath the streetscape shall be located outside the clear pedestrian walkway zone of the streetscape, where feasible. If the utility vaults must be located in the walkway zone, they shall be designed as a lift out panel with the same paving materials as the walkway (subject to the Americans with Disabilities Act ("ADA") requirements), be flush with the walkway, and meet ADA accessibility requirements.

- H. Fire Marshal. The Applicant has coordinated the layout depicted on the CDP/FDP with the Fire Marshal. If, however, it is determined during site plan review that street tree locations conflict with subsequent comments from the Fire Marshal, the Applicant shall first make efforts to gain the Fire Marshal's approval of such trees by making minor adjustments to their locations or by removing their lower branches. If the Fire Marshal does not approve such adjustments or other streetscape elements, the Applicant shall be permitted to relocate or delete those conflicting trees and/or make other streetscape adjustments in consultation with UFMD and DPZ and without the need for a PCA/CDPA and/or FDPA.
- I. Sight Distance. If it is determined during site plan review that street tree locations conflict with the sight distance requirements set forth in the Transportation Design Standards, the Applicant shall first make efforts to gain VDOT's and/or FCDOT's approval of such trees by making minor adjustments to their locations or by removing their lower branches. If VDOT and/or FCDOT do not approve such adjustments, the Applicant shall be permitted to relocate or delete those conflicting trees in consultation with UFMD and DPZ and without the need for a PCA/CDPA and/or FDPA.
- J. Streetscape Furnishings and Materials. High-quality and unified streetscape materials shall be provided within the public realm in substantial conformance with the CDP/FDP and may include, but shall not be limited to, decorative concrete, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles, and other hardscape elements. The "Streetscape Furnishing and Materials Plan" provided with the CDP/FDP includes general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces. Although minor variations may occur, materials, furnishings, and lighting along public streets shall generally be compatible with any streetscape design approved by the Tysons Partnership.
- K. Lighting. All new streetscape lighting shall be energy efficient. On-site, outdoor and parking garage lighting shall be in conformance with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance, as may be amended. New street lights may either be selected from those listed in the Tysons Urban Design Guidelines, or as approved by DPWES, DPZ and OCR and the same or similar street lights shall be used consistently throughout the Proposed Development. All parking lot and Residential Building-mounted security lighting shall utilize full cut-off fixtures. Recessed lighting for the Residential Buildings shall be

directionally shielded to mitigate the impact on the adjacent residences. Information regarding the lighting of the pedestrian realm, including photometrics for non-standard lighting, shall be provided with the site plan.

- L. Construction Lighting. During construction, the Applicant shall attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies.
- M. Signage and Way-finding. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance, with a Comprehensive Sign Plan (“CSP”) or as part of a larger CSP for the Tysons area. If the Applicant elects to join a larger CSP for the Tysons area, way-finding signage and elements shall be considered to be in substantial conformance with this CDP/FDP. The placement of traffic control signage on public streets shall be coordinated with, and subject to, VDOT review and approval. Way-finding signage and elements shall be coordinated with the Tysons Partnership to facilitate a consistent way-finding and signage system throughout the applicable planning district, but shall not be subject to approval by the Tysons Partnership. Way-finding signage shall include bicycle way-finding and provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public amenities.
- N. Maintenance of the Pedestrian Realm. The “Pedestrian Realm” shall be defined as all areas between the face of curb and the building façade, including the landscape amenity panel and pedestrian sidewalk, both of which will be dedicated to the County as further described in Proffer 19(P) below, and the building zone, which shall remain privately-owned (the landscape amenity panel, pedestrian sidewalk and building zone, collectively the “Pedestrian Realm”). The Applicant shall maintain all elements in the Pedestrian Realm in good repair and in compliance with the ADA, and replace, in kind, as needed, all Pedestrian Realm elements located within or abutting public street right-of-way.
- O. Maintenance Agreement. The Applicant shall enter into an appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other applicable public entity) to permit it to maintain the publicly-owned landscape amenity panel and pedestrian sidewalk, as described in Proffer 19(N) above. The Applicant shall not be required to repair or restore any elements of the Pedestrian Realm within publicly-owned areas that are damaged by public employees, contractors, or permittees that are not acting under its direct

authority. The Applicant may enter into an alternative maintenance arrangement, such as pursuant to a Business Improvement District, without needing a PCA. Maintenance commitments within the Pedestrian Realm shall include but are not limited to:

- i. All plantings including trees, shrubs, perennials, and annuals;
- ii. All associated irrigation elements;
- iii. All hard surfaces, including but not limited to paving and retaining walls;
- iv. All streetscape furnishings including benches and bike racks;
- v. All lighting poles, brackets and fixtures;
- vi. All special drainage features, such as Low Impact Development facilities;
- vii. Snow removal;
- viii. Trash recycling and litter removal;
- ix. Leaf removal;
- x. Any sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes that are not VDOT standard devices; and
- xi. All urban park amenities in the development including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, recreation courts and features, and art.

P. Right-of-Way Dedication. The landscape amenity panel and pedestrian sidewalk as described in Proffer 19(N) herein and shown on the CDP/FDP shall be dedicated in fee simple to the County (or equivalent government body or agency) concurrent with dedication of the adjacent roadways as specified in Proffer 23, subject to the following:

- i. If, at the time of site plan, it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel and/or pedestrian sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape

amenity panel and/or pedestrian sidewalk within the right-of-way, the Applicant shall provide dedication measuring 18 inches behind the face of curb and shall reserve for potential future dedication the landscape amenity panel and pedestrian sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel and/or pedestrian sidewalk areas until such time as such areas are dedicated. This reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County.

- ii. Should it be determined following final street acceptance inspection that the landscape amenity panel and/or pedestrian sidewalk areas continue to be unacceptable to VDOT and/or Fairfax County for inclusion in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and/or pedestrian sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, as applicable, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County.
- iii. If, at the time of site plan it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT and/or Fairfax County, the Applicant shall provide dedication measuring 18 inches behind the face of curb at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and/or pedestrian sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel and/or pedestrian sidewalk areas until such time as such areas are dedicated. The reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County.
- iv. Should it be determined following final street acceptance inspection that the landscape amenity panel and/or pedestrian sidewalk areas are not acceptable to VDOT and/or Fairfax County to be included in the right-of-way, the reservation of potential future dedication of the landscape

amenity panel and/or pedestrian sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, as applicable, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County.

- v. All right-of-way dedications shall be subject to advanced density credit as specified in Proffer 51 herein.

TRANSPORTATION

- 20. Grid of Streets. Subject to FCDOT approval and, where necessary, VDOT approval, the Applicant shall construct the following road improvements prior to issuance of the first initial RUP for the first Residential Building (for purposes of this Proffer, “construct” shall mean completed and open for public use but not necessarily accepted by VDOT for maintenance purposes):
 - A. Results Road (Public Collector Street). The Applicant shall construct Results Road from Greensboro Drive to Summit Street, including all streetscape elements located on the Property, as shown on the CDP/FDP.
 - B. Summit Street (Public Local Street). The Applicant shall construct Summit Street, including all streetscape elements located on the Property, as shown on the CDP/FDP.
 - C. Park Place (Private Service Street). The Applicant shall construct Park Place, from Results Road to Summit Street, including all streetscape elements located on the Property, as shown on the CDP/FDP.
- 21. Extension of Results Road by Others. Results Road may be extended by others in one of the following ways:
 - A. Option A. At such time as the property identified on the 2013 Fairfax County Tax Map 29-3 ((15)) 11A2 and located at 8250 Greensboro Drive (currently, the Tysons Sport & Health building) becomes the subject of a zoning application and is redeveloped, the Applicant shall provide the rights-of-way and ancillary and reasonable easements necessary to complete its construction as generally shown on the CDP/FDP, provided (i) FCDOT has demanded the same; (ii) access to/from the then-existing uses on the Property are maintained at all times; and (iii)

such improvements are coordinated with the Applicant prior to approval of the site plan that includes such improvements by others (“Option A”).

- B. Option B. At such time as the property identified on the 2013 Fairfax County Tax Map as 29-3 ((15)) 11B3 and located at 1676 International Drive (currently, the Tysons Center II building) becomes the subject of a zoning application and is redeveloped, the Applicant shall provide all rights-of-way and ancillary and reasonable easements necessary to complete its construction as shown on the CDP/FDP, provided (i) FCDOT has demanded the same; (ii) access to/from the then-existing uses on the Property are maintained at all times; and (iii) such improvements are coordinated with the Applicant prior to approval of the site plan that includes such improvements by others (“Option B”).
- C. Option C. At such time as both properties to the north (identified on the 2013 Fairfax County Tax Map as 29-3 ((15)) 11A2 and 11B3, the Tysons Sport and Health and the Tysons Center II buildings, respectively; hereinafter, the “Adjacent Properties”) become the subject of zoning applications and are redeveloped, the Applicant shall provide all rights-of-way and ancillary and reasonable easements necessary to complete its construction as shown on the CDP/FDP, provided (i) FCDOT has demanded the same; (ii) access to/from the then-existing uses on the Property are maintained at all times; and (iii) such improvements are coordinated with the Applicant prior to approval of the site plan that includes such improvements by others (“Option C”).
- D. Option D. If the Existing Office Buildings, which are anticipated to remain in their existing conditions with the Proposed Development, are redeveloped pursuant to a future zoning application and neither Option A nor Option B nor Option C has been constructed by others, the Applicant shall extend Results Road, as shown on the CDP/FDP (“Option D”). In such event, the Applicant’s obligations with regard to Proffer 21(B) and (C) herein, are deemed null and void and of no further force or effect.

22. Contributions for the Extension of Results Road and Summit Street

- A. Contribution for the Extension of Results Road. Prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall escrow \$665,000.00 (Six Hundred and Sixty-Five Thousand Dollars) with the County for the extension of Results Road by others. However, in the event the Applicant constructs Option D as described in Proffer 21(D) above, it shall be permitted to use the funds escrowed pursuant to this Proffer 22 for that improvement.

- B. Contribution for the Extension of Summit Street. Prior to issuance of the first initial RUP for the second Residential Building, the Applicant shall escrow \$58,000.00 (Fifty-Eight Thousand Dollars) with the County for the extension of Summit Street by others from the northern curb line of Results Road to the Property line.
23. VDOT Acceptance and Dedication. With the exception of Park Place, which shall be constructed as a private street, all streets within the limits of the Property will be designed and constructed as public streets in accordance with the *Transportation Design Standards for the Tysons Corner Urban Center* dated September 13, 2011, as may be amended, and the following:
- A. Results Road. Results Road shall be constructed to public street standards but will be privately maintained until any of Options A, B or C (as defined in Proffer 21(A), (B) and (C), above) has been constructed by others; or, the Applicant has constructed Option D (as defined in Proffer 21(D) above); or, Results Road has been extended to International Drive, and VDOT has accepted it into the State system for maintenance. At such time as the foregoing conditions are met and unless the following has previously occurred, the Applicant shall, without the need for a PCA, CDPA or FDPA,
- i. Remove the eleven (11) head-in surface parking spaces along the north side of the existing 8200 Greensboro Drive Existing Office Building;
 - ii. Convert the twenty-three (23) surface parking spaces on top of the Existing Parking Structure to landscaping; and,
 - iii. Dedicate and convey upon demand by Fairfax County the necessary right-of-way and/or ancillary easements necessary so that the owners of the Adjacent Properties can complete Results Road and pursue acceptance by VDOT of Results Road together with all related improvements, to be maintained by VDOT.
- B. Summit Street. Summit Street shall be constructed to public street standards but remain private until (i) construction of the Proposed Development has been completed; (ii) the Adjacent Properties redevelop and include a roadway that could be connected to Summit Street; and (iii) the Board of Supervisors approves a petition to add Summit Street to the secondary system of state highways. At such time as the foregoing conditions are met and without the need for a PCA, CDPA or FDPA, the Applicant shall:

- i. Construct the nine (9) parallel surface parking spaces along Summit Street; and,
 - ii. Dedicate and convey upon demand by Fairfax County the necessary right-of-way and/or ancillary easements necessary so that the owners of the Adjacent Properties can complete Summit Street, which may include construction and/or modification to Summit Street as necessary to meet VDOT standards, and pursue acceptance by VDOT of Summit Street, together with all related improvements, to be maintained by VDOT.
24. Tysons Grid Fund Contributions. At the time of issuance of the first RUP for each new Residential Building, a contribution shall be made to the Tysons Grid Fund in the amount of \$1,000 per residential unit in accordance with the Board of Supervisors' policy adopted on January 8, 2013. In addition, the Applicant shall contribute \$6.44 for each new square foot of retail uses in the Residential Buildings; it shall provide 25% of that contribution prior to site plan approval for the Residential Buildings, and the remaining 75% prior to issuance of a building permit for the first new retail use. Credits shall be allowed against such contributions for the costs of the qualifying off-site intersection improvements. These contributions shall not apply to the Public Facility described in Proffer 43 below, or to the Existing Office Buildings. These payments may be made earlier than required pursuant to this Paragraph.
25. Tysons-wide Transportation Contributions for Table 7 Improvements. The Applicant shall contribute to the Tysons Area-Wide Fund the sum of \$1,000 for each new residential unit constructed in the Proposed Development and \$5.63 per square foot for all new retail uses in the Residential Buildings in accordance with the Board of Supervisor's policy adopted on January 8, 2013. The contribution associated with each building shall be paid in a lump sum, based on the actual gross floor area of non-residential space and/or the actual number of residential units in the building, with payment to occur prior to the issuance of the first RUP or Non-RUP for each building. These contributions shall not apply to the Public Facility described in Proffer 43 below, or to the Existing Office Buildings. These payments may be made earlier than required pursuant to this paragraph.
26. Bus Shelter. If requested and approved by WMATA and/or FCDOT at the time of site plan and prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall relocate the existing bus stop and construct a new bus shelter (but not a bus pull out) at the new location generally depicted on the CDP/FDP (the "Bus Shelter"), at a cost of no more than One and One-Fifteenth percent (1.15%) of the cost of an average bus shelter based on the County's Unit Pricing Schedule in effect at the time the Bus Shelter is installed.

27. Congestion Management Plan. The Applicant shall engage a qualified professional to prepare and submit in connection with the VDOT permit for construction of the Proposed Development on the Property, a construction congestion management plan for use during construction of the two Residential Buildings, as appropriate, so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways adjoining the Property (the "Congestion Management Plan"). The Congestion Management Plan shall identify anticipated construction entrances, construction staging areas and construction vehicle routes. The Applicant shall coordinate its construction activities, including construction material deliveries, lane closures, and/or other related activities with FCDOT and VDOT, and procedures for such coordination shall be included in the Congestion Management Plan.
28. Notification Letter. At the time of filing the first site plan for the Residential Buildings, the Applicant shall send a notification letter to the Director of FCDOT. The purpose of this letter is to facilitate coordination with DPWES to ensure site plans are consistent with the Transportation Design Standards for Tysons Corner.

BICYCLES

29. Bicycle Parking. Bicycle racks, bike lockers, and/or bike storage areas shall be generally provided as shown on the CDP/FDP, with the specific amounts and locations determined at site plan. Bicycle racks shall be inverted U-style racks or other design approved by FCDOT. The total number of bike parking/storage spaces provided will be generally consistent with the Fairfax County Policy and Guidelines for Bicycle Parking for the Residential Buildings, and shall be generally located as reflected on the CDP/FDP. Signage shall be posted on the exterior side of the Residential Buildings near the entrances to the bike parking/storage space to indicate their presence.
30. Bicycle Lanes. Concurrent with construction of the streetscape improvements identified in Proffer 19(A) and (B) and if approved by VDOT, the Applicant shall provide pavement and striping for on-road bicycle lanes along the Property's frontage on Greensboro Drive, as shown on the CDP/FDP. Such lanes shall typically be four (4) to six (6) feet in width as shown on the CDP/FDP with the final dimension determined at the time of site plan approval.

PARKING

31. Parking. Upon completion of the Residential Buildings, parking for the Proposed Development shall be provided as shown on the CDP/FDP and in accordance with Section 6-509 and Article 11 of the Zoning Ordinance, as qualified by the following:

- A. The exact number of parking spaces for the Existing Office Buildings and the Residential Buildings shall be determined at the time of site plan approval in accordance with the parking requirements for the PTC district, based on the final number and type of residential units provided, including any new or proposed uses in the Existing Office Buildings. However, in no event shall the Applicant be permitted to establish more than One Hundred (100) surface parking spaces on the Property to serve the Existing Office Buildings and Residential Buildings, exclusive of the nine (9) surface parking spaces along Summit Street (which will ultimately be a public street), five (5) surface parking spaces along Park Place (which serve the pocket parks described in Proffer 39 herein), and thirty-four (34) parking spaces located along the future extension of Results Road to International Drive, as shown on the CDP/FDP (the “Results Road Spaces”).
 - B. Upon (a) the extension of Results Road to International Drive (in accordance with Options B, C or D as described in Proffer 21 herein, and shown on the CDP/FDP); or (b) July 1, 2025, whichever is first, the Applicant shall remove the Results Road Spaces and, after submission and receipt of approval from UFMD of a landscaping plan showing the same, convert them to landscaping in accordance with the CDP/FDP.
 - C. As described in Proffer 36(D) below, the Applicant shall annually submit to FCDOT a parking summary that demonstrates compliance with the parking commitments described herein and shown on the CDP/FDP.
 - D. The Applicant may adjust the allocation of parking spaces between the Existing Office Buildings and the Residential Buildings as shown on the CDP/FDP with an FDPA, and without the need for a PCA or CDPA, provided that the overall parking rates for the Proposed Development meet the rates provided in Section 6-509 and Article 11 of the Zoning Ordinance as required under this Proffer 31.
 - E. Following approval of this Rezoning, the Applicant shall manage its future leases for the Existing Office Buildings in a manner that permits it to achieve, on a cumulative basis, the parking requirements set forth in this Proffer.
32. Unbundled Parking for Residential Uses. All for-sale residential units shall be offered exclusive of parking (i.e. at a separate cost). All leases for residential units shall be offered exclusive of parking (i.e. at a separate cost).
33. Parking for Non-Residential Uses. The Applicant may, but shall not be required to, charge for parking on the Property on a per-space basis, at rates that the Applicant determines to be market-competitive, and valet parking shall be permitted.

TRANSPORTATION DEMAND MANAGEMENT

34. Tysons Transportation Management Association. The Applicant shall contribute towards the establishment of a future transportation management association (the "TMA"), which may be established for the Tysons Corner Urban Center and to which all other Tysons property owners will be required to contribute.
- A. The Applicant shall make a one-time contribution for the establishment of this future TMA based on a participation rate of \$0.05 per gross square foot of new residential uses to be constructed on the Property, which sum shall be payable to the Tysons Partnership Transportation Council.
 - B. Fifty percent (50%) of the total contribution to the TMA shall be paid upon site plan approval of the first new Residential Building to be constructed on the Property. The remaining fifty percent (50%) of the total contribution shall be paid prior to issuance of the first initial RUP for the first Residential Building. In any event the full contribution shall be paid no later than ten (10) years from the date of this Rezoning approval.
 - C. If subsequent to the approval of this Rezoning, FCDOT approves the TMA as the administrator of TDM programs for the Tysons Corner Urban Center, then the Applicant may, in its sole discretion, join or otherwise become associated with such entity and transfer some functions of this TDM Program to the TMA.
 - D. If the TMA has not been established within three (3) years after the approval of this Rezoning, this Proffer shall be null and void with no further effect on the Property. Further, any funds contributed by the Applicant to the TMA shall then be returned.
35. Transportation Demand Management Plan for the Residential Buildings. The proffered elements of the TDM Program as set forth below are more fully described in the *Greensboro Park Place TDM Plan* prepared by Wells + Associates, Inc. dated October 22, 2012, as may be amended (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.

- A. Definitions. For purposes of this Proffer, “Stabilization” shall be deemed to occur one-year following issuance of the final initial RUP for the second new Residential Building to be constructed on the Property. “Pre-stabilization” shall be deemed to occur any time prior to Stabilization.
- B. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents of the Property (i.e., not including trips from existing office and new retail uses), during weekday peak hours associated with the adjacent streets as more fully described in the TDM Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of residential vehicle trips that would be expected to be generated by the uses developed on the Property as determined by the application of the Institute of Traffic Engineers, 8th Edition, Trip Generation rates and/or equations (the “ITE Trip Generation”), and the number of trips determined by the product of such equation shall be referred to herein as the “Maximum Trips After Reduction.” For purposes of this calculation, the maximum number of dwelling units proposed to be constructed in each new Residential Building on the Property, as determined at the time of site plan approval for each new building, shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

<u>Development Levels</u>	<u>Percentage Vehicle Trip Reduction</u>
Up to 65 million GSF	35%
65 million GSF	40%
84 million GSF	45%
90 million GSF	48%
96 million GSF	50%
105 million GSF	53%
113 million GSF	55%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the TPM shall, in consultation and coordination with the County, provide a summary of the then existing development levels in Tysons Corner (based on RUPs and Non-RUPS issued) in order to determine the appropriate vehicle trip reduction goal.

If through an amendment to the Comprehensive Plan, the Board of Supervisors should

subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.

C. TDM Program Components. The TDM Program shall include, but not necessarily be limited to, the following components, each of which is more fully described in the TDM Plan:

- i. TDM Program Management;
- ii. TDM Program Branding;
- iii. Transportation Program Web Site;
- iv. Promotion of Real Time Transit Information;
- v. Site Specific Transportation Access Guide;
- vi. Bicycle Accommodations; and,
- vii. Vehicle Parking Management.

D. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein and as coordinated with FCDOT can be made without requiring a PCA.

- i. TDM Program Manager. The Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for Greensboro Park Place. The TPM shall be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit (core and shell) for the first new Residential Building on the Property. The TPM duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT and the District Supervisor in writing within 10 days of the appointment of the TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment.
- ii. TDM Annual Report and Budget. If not already effectuated for the then-current calendar year, the TPM shall prepare and submit to FCDOT an Annual Report and Budget no later than 180 days after issuance of the first

building permit (core and shell) for the first new Residential Building on the Property. If an Annual Report has already been submitted for the then-current calendar year, the TPM shall revise the Annual Report with the following year's submission to incorporate any new construction on the Property. The Annual Report shall include, at a minimum:

- a) Details as to the start-up components of the TDM plan that will be put into action effective with the first new residential building on the Property;
- b) The budget needed to implement the TDM plan (the "TDM Budget") for the coming calendar year;
- c) A summary of the then-existing development levels in the Tysons Corner Urban Center;
- d) A determination of the applicable Maximum Trips After Reduction for the Property;
- e) Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan;
- f) Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Property; and,
- g) Submission of an annual report to FCDOT by February 1st of each year beginning with the first calendar year following the submission of the first Annual Report and Budget.

The Annual Report shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report shall be deemed accepted and the TDM plan shall be implemented. If FCDOT responds with comments on the Annual Report, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter but in any event, no later than thirty (30) days after the meeting, the TPM shall submit such revisions to the Annual Report and/or Budget as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the approved TDM Budget. Thereafter the TPM, in conjunction with each Annual Report summarizing the results of the TDM Program to be

submitted no later than February 1st (the “Annual Report”), shall update the TDM plan and Budget for each succeeding calendar year, modify or enhance program elements and establish a budget to cover the costs of implementation of the TDM plan for such year. The expected annual amounts of the TDM Budget are further described in the TDM Plan.

- iii. TDM Account. The Applicant, through the TPM, shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the “TDM Account”) within 30 days after approval of the Annual Report and Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes. The TDM Account shall be funded by the Applicant, through the TPM. The TDM Account shall not be eliminated as a line item in any governing budget associated with the Property and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs, as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in a given year. In no event shall the baseline TDM Budget exceed \$63,500 (this amount shall be adjusted annually from the date of Rezoning approval for the Subject Property (the “Base Year”)) and shall be adjusted on each anniversary thereafter of the Base Year as permitted by VA. Code Ann. Section 15.2-2303.3. The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

- iv. TDM Remedy Fund. At the same time the TPM creates and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the “TDM Remedy Fund”) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time, and prior to the issuance of the first initial RUP for each Residential Building at a rate of \$0.30 per gross square foot of new residential uses on the Property. Funding shall be provided by the building owners prior to the issuance of the first initial RUP for each new Residential Building. This amount shall be adjusted annually from the date of Rezoning approval of the Property (the “Base

Year”) and shall be adjusted on each anniversary thereafter of the Base Year as permitted by VA. Code Ann. Section 15.2-2303.3. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.

- v. TDM Incentive Fund. The “TDM Incentive Fund” is an account into which the Applicant, through the TPM, shall deposit contributions to fund a multi-modal incentive program for initial purchasers/lessees within Greensboro Park Place. Such contributions shall be made one time, and prior to the issuance of the first initial RUP for each Residential Building at a rate of \$0.02 per gross square foot of new residential uses on the Property.
- vi. TDM Penalty Fund. The “TDM Penalty Fund” is an account into which the Applicant shall, through the TPM, deposit penalty payments as may be required to be paid pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management associated with the Property. To secure the Applicant’s obligations to make payments into the TDM Penalty Fund, the Applicant shall provide the County with a letter of credit or a cash escrow as further described below.

Prior to the issuance of the first RUP for each new Residential Building on the Property, the Applicant shall:

- a) Establish the TDM Penalty Fund, if not previously established by the TPM, and/or
- b) Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the Applicant's obligations to make payments into the TDM Penalty Fund (the “Letter(s) of Credit or Cash Escrow(s)”). The Letter(s) of Credit or Cash Escrow(s) shall be issued in an amount equal to \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new residential building on the Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figures in the preceding sentence shall be adjusted annually from the first day of the calendar month following the

date on which the first RUP for the first new Residential Building on the Property has been issued as permitted by VA. Code Ann. Section 15.2-2303.3. using the date of rezoning approval as the base year. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the Applicant (or the TPM) into the TDM Penalty Fund as provided below.

- vii. Monitoring. The TPM shall verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of residential uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts shall be provided to FCDOT as part of the Annual Reporting process. Person Surveys and Vehicular Traffic Counts shall be conducted for the Property beginning one year following issuance of the final initial RUP for the first new Residential Building to be constructed on the Property. Thereafter, Person Surveys shall be conducted every three years and Vehicular Traffic Counts shall be collected annually until the results of three (3) consecutive annual traffic counts conducted upon Stabilization show that the applicable trip reduction goals for the Property have been met. At such time and notwithstanding Paragraph F below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the above, FCDOT may suspend such Person Surveys and/or Vehicular Traffic Counts if conditions warrant.

E. Remedies and Penalties.

- i. Pre-Stabilization. If the Maximum Trips After Reduction for the Property is exceeded as evidenced by the Vehicular Traffic Counts outlined above, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report.
 - a) Such remedial measures shall be funded by the Remedy Fund, as may be necessary, and based on the expenditure program that follows:

Maximum Trips Exceeded Expenditure

Up to 1%	No Remedy needed
1.1% to 3%	1% of Remedy Fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

- b) If the results of the traffic counts conducted during Pre-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table below, then a portion of the Remedy Fund as outlined in the same table below shall be released back to the Applicant through the TPM. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

Up to 65,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	30%
5% - 10%	50%
10.1% - 15%	65%
15.1% - 18%	80%
18.1% - 20 %	90%
>20%	100%

65-84,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	50%
5% - 10%	65%
10.1% - 13%	80%
13.1% - 15%	90%
>15%	100%

84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	65%
5% - 8%	80%
8.1% - 10%	90%
>10%	100%

90-96,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	80%
5% - 8%	90%
>8%	100%

96-113,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	90%
>5%	100%

113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
>0%	100%

- c) There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TPM for final distribution to the Applicant once three consecutive annual Traffic Counts conducted upon Stabilization show that the trip reduction goals have been

met.

ii. Upon Stabilization

- a) If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.
- b) If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing development levels in the Tysons Corner Urban Center as described in this Proffer 34) are still exceeded after three consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

Exceeded Trip Goals	Penalty
Less than 1%	No Penalty Due
1% to 3%	5% of Penalty Due
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

If the results of the traffic counts conducted upon Stabilization show that the trip reduction goals have been met for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy and/or Penalty Funds shall be released back to the Applicant through the TPM.

- c) The Applicant through the TPM shall make the payments required by this Proffer into the TDM Penalty Fund and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the Applicant fails to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have

the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).

- d) The maximum amount of penalties associated with the Property, and the maximum amount the Applicant shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of the above Proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) shall be released to the Applicant once three (3) consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.
- F. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Trip Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- G. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the TPM may request that FCDOT review the vehicle trip reduction goals established for the Property and set a revised lower goal for the Property consistent with the results of such Person Surveys and Vehicular Traffic Counts provided for by this Proffer. In the event a revised lower goal is established for the Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- H. Continuing Implementation. The Applicant and/or its assigns through the TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- I. Notice to Owners/Tenants. All residential owners and/or tenants of the Property

shall be advised of the TDM Program set forth in this Proffer. For owners, the then-current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.

- J. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicant shall be subject to a penalty of \$100 per day not to exceed \$36,500 for any one incident. Such penalty shall be payable to Fairfax County to be used for transit, transportation, or congestion management improvements within the vicinity of the Property.
- K. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicant shall incorporate and maintain a system that provides pertinent traffic and transit information that allows residents to make informed travel decisions. This information shall be provided at initial occupancy of each Residential Building. The delivery of this information shall be made convenient for residents, such as via computer, cell phone, monitors, or similar technology. The Applicant shall work with FCDOT and/or the Tysons Partnership to identify sources and facilitate electronic transmittal of data. Furthermore, the Applicant shall participate in efforts to implement any future dynamic traffic management program for the Tysons area.

36. Transportation Demand Management Plan for the Existing Office Buildings. The Applicant shall encourage the employees of the Existing Office Buildings to utilize transit, carpools, walking, biking and other non-SOV modes of transportation to travel to and from the Property through voluntary participation in the TDM Plan, as supplemented by this Proffer (the "Office TDM Program"). The goal of the Office TDM Program is to reduce by Twenty Percent (20%) the number of vehicle trips that would be expected from office employees working on the Property through promotion and use of non-SOV modes of transportation. Notwithstanding the below, the existing office uses shall not be subject to monitoring nor will remedies or penalties be assessed against the Existing Office Buildings.

- A. Components of the Office TDM Program. The Office TDM Program shall include, at a minimum, the components listed below, provided that such

components may be subsequently amended from time to time by mutual agreement between the Applicant and FCDOT.

- i. Office Transportation Program Manager. A transportation program manager for the Existing Office Buildings shall be appointed by the Office Building owner(s) ("Office TPM") within Ninety (90) days of the appointment of the TPM for the Residential Buildings. The Office TPM shall coordinate with the TPM for Residential Buildings at least once per year. The Office TPM duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT and the District Supervisor in writing within 10 days of the initial appointment of the Office TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment.
- ii. Employee/Tenant Meetings. Within Thirty (30) days of its appointment and at least annually each year thereafter, the Office TPM shall meet with representatives of the tenants of the Existing Office Buildings to review the available transit options, adequacy of bus schedules (including hours of service), changes in transit service and other relevant transit-related topics. The Office TPM shall invite Fairfax County and/or WMATA representatives to these meetings to speak to the group(s) about these and related subjects. After the first three such meetings, the frequency of the same may be reduced to one meeting every three (3) years. Based on these meetings, the Office TPM shall work with Fairfax County and/or WMATA to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to such tenants and their employees.
- iii. Transit Incentives. Utilizing the Office TDM Incentive Fund (described in Proffer 36(B) below), the TPM shall provide financial incentives to office employees to utilize transit. These incentives may include programs such as contests with fare card rewards, mall gift certificates and similar programs (for example, an award could be offered to the transit riding employee of the month/year or the tenant with the highest percentage of employees utilizing non-SOV transport to commute to and from the Property).
- iv. Regional TDM Incentive Programs. The Office TPM shall make information available to the office employees about programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by

organizations in the Washington, D.C. Metropolitan Area. Such information shall be provided in all leasing packages.

- v. Ridesharing. The Office TPM shall assist office employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.
 - vi. Bike Accommodations. The Office TPM shall assist office employees in locating the bicycle accommodations in the Existing Parking Structures and across the Proposed Development (bike storage, lockers and showers), as well as promoting their availability to employees who bicycle to work.
 - vii. Onsite Amenities. The Office TPM shall promote the availability of on-site personal services so that employees who arrive on-site without an automobile can run errands.
- B. Office TDM Budget. At the time the first TDM Budget is approved and funded per Proffer 35(D)(ii) above, the Applicant shall establish an Office TDM Budget for use exclusively by the Applicant for the office employees (the "Office TDM Budget"). The Applicant shall contribute Three Thousand, Five Hundred Dollars (\$3,500.00) per year to the Office TDM Budget for the provision of transit incentives, such as gift certificate awards, fare card contests and/or give-aways, transit fairs specific to the office employees and for similar inducements or incentive activities. Should any tenant of the Existing Office Buildings elect to financially contribute to the Office TDM Program, such contributions shall be utilized in addition to the Applicant's annual contributions (that is, the Applicant's annual contributions shall not be reduced or offset in any way).
- C. Office TDM Program Participation Outreach. The Office TPM shall endeavor in good faith to encourage participation by the office tenants in the Office TDM Program, including the encouragement of a financial participation by such tenants through the direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the Office TPM and Property management in furtherance of this objective may include dissemination of information to, and solicitation of participation from, the tenants' on-site management and executives or officers at their headquarters offices, at appropriate intervals.
- D. Supplement to the Annual Report. The TPM shall submit, with its Annual Report, as described in Proffer 35(D)(ii) above, a parking summary that demonstrates compliance with the parking commitments described in Proffer 31 above and shown on the CDP/FDP.

AFFORDABLE/WORKFORCE HOUSING

37. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Zoning Ordinance, the Applicant shall provide Affordable Dwelling Units (“ADUs”), pursuant to such provisions unless modified by the ADU Advisory Board.
38. Workforce Dwelling Units. In addition to any required ADUs, the Applicant shall provide Workforce Dwelling Units (WDUs) on the Property in accordance with the Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010 (“WDU Policy”). The total number of ADUs, if any, and WDUs provided shall equal twenty percent (20%) of the total residential units constructed on the Property. If ADUs are provided on the Property, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.
 - A. WDU Specifications. The WDUs generated by each Residential Building shall be provided within such Building, however, the Applicant reserves the right to consolidate the WDUs into Residential Building A, and thereby increase the number of WDUs in Residential Building A beyond twenty percent (20%) with a corresponding decrease in the number of WDUs in Residential Building B. To the extent the Residential Buildings are phased and are constructed separately, a minimum of twenty percent (20%) of the total residential dwelling units in the first Residential Building shall be ADUs or WDUs. The WDUs in each building shall have a bedroom mix similar to that provided in the market rate units in such building. Additionally, in the event that parking spaces are guaranteed to be made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU on the Property.
 - B. Agreements. Notwithstanding the foregoing, should the Board’s policies related to WDUs in Tysons Corner be amended, the Applicant reserves the right, at its sole discretion, to opt in to the new policies without the need for a PCA and, if the Applicant so opts into any such new policies, the provisions of this Proffer which relate to the new policies of the Board which Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and the County and may occur after the approval of this

Rezoning. Neither the Board nor any other County agency shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications shall be recorded in the Fairfax County land records.

PARK AND RECREATIONAL FACILITIES

39. Publicly-Accessible Parks. The Applicant shall provide publicly-accessible, at-grade, open space areas in general conformance with the concepts, locations and minimum acreages depicted on the CDP/FDP and as further described in these Proffers, provided that such areas and the elements described below may be adjusted at the time of site plan to allow for final engineering and design considerations. While public access easements shall be granted for these areas, the Applicant shall retain them in private ownership and reserves the right to reasonably restrict access for limited times and special events, security maintenance and repairs and/or safety purposes. The Proposed Development includes the following five distinct urban park spaces:

- A. Pocket Park I. Prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall provide an approximately 0.6-acre publicly-accessible pocket park behind the Residential Buildings consisting of one large and several small lawn panels, as shown conceptually on the CDP/FDP (“Pocket Park 1”). The large panel is envisioned as an area for unscheduled recreation; the small lawn panels will provide amenities such as additional seating, game tables, a bocce court and/or climbable art for tots. Bocce equipment for the bocce court in Park I, or in any of the other park spaces detailed below, shall be made available upon request at a readily-identifiable and easily-accessible location on the Property, to be coordinated with the Park Authority.
- B. Pocket Park II. Prior to issuance of the first initial RUP for the Residential Building identified on the CDP/FDP as Residential Building B, the Applicant shall provide an approximately 0.09-acre publicly-accessible urban plaza located on the opposite corner from Pocket Park I and adjacent to the proposed Public Facility described in Proffer 43 herein, as shown conceptually on the CDP/FDP (“Pocket Park II”). This space is envisioned to be used for a variety of purposes, including but not limited to outdoor programming associated with the recreational facility and use by patrons of the ground-floor retail use.

- C. Pocket Park III. Prior to issuance of the first initial RUP for the first Residential Building, the Applicant shall provide an approximately 0.24-acre publicly-accessible pocket park along Greensboro Drive at Summit Street, as shown conceptually on the CDP/FDP (“Pocket Park III”). This pocket park is designed with a circle motif to carry the character of the street wall along Greensboro Drive into the site. It is envisioned to have a rain garden, wall seating and general open space for casual use.
- D. Pocket Park IV. Prior to issuance of the first initial RUP for the second Residential Building, the Applicant shall enhance the existing 0.39-acre publicly-accessible pocket park in between the existing 8200 Greensboro Drive Office Building and Pocket Park I, as shown on the CDP/FDP (“Pocket Park IV”).
- E. Pocket Park V. Prior to issuance of the first initial RUP for the second Residential Building, the Applicant shall enhance the existing 0.37-acre publically-accessible pocket park in between and around the Existing Office Buildings, as shown on the CDP/FDP (“Pocket Park V”), which is currently used as passive recreation space by the office employees, with amenities such as game tables, seating, planters, and/or way-finding. The enhancement of Pocket Park V shall be consistent with the concepts and characteristics of the other publicly-accessible park spaces described in this Proffer 39.

- 40. Private Amenities and Recreational Facilities for Residents. The Applicant shall provide on-site recreational facilities for the future residents of the Property, as shown on the CDP/FDP. Recreational facilities such as rooftop amenities and pool facilities may be separately designated for the residents of the individual Residential Buildings; or, more common facilities such as a business or fitness center may be shared between the two. These facilities may but shall not be required to be shared between the residents of two Residential Buildings. Pursuant to Section 6-110 of the Zoning Ordinance, the Applicant shall expend a minimum of \$1,700.00 per market-rate and workforce residential unit on such recreational facilities. Prior to final bond release for the Residential Buildings, the balance of any funds not expended on-site, as determined by DPWES, shall be contributed to the FCPA for the provision of recreational facilities serving Tysons Corner.
- 41. Athletic Field Contribution. In satisfaction of the Comprehensive Plan’s expectations for the provision of athletic fields to support the Proposed Development (which generates the

need for approximately eleven percent (11%) of a full-size field), the Applicant shall contribute funds to the Fairfax County Board of Supervisors in accordance with one of the following options, which it may select in its discretion: (a) contribute Nine Hundred and Eleven Thousand Dollars (\$911,000.00) by December 31, 2015 to be utilized for construction of an athletic field at West*Gate Elementary School (“Option 1”); or (b) contribute One Million, One Hundred and Seventy-Eight Thousand Dollars (\$1,178,000.00) to the Fairfax County Board of Supervisors prior to issuance of the first RUP for the first Residential Building for the future construction of an athletic field that will serve the residents of Tysons Corner (“Option 2”). If the Applicant elects Option 1, its contribution of \$911,000.00 shall be fixed in that amount and shall not be subject to escalation pursuant to Proffer 50 below; if, however, the Applicant elects Option 2, its contribution of \$1,178,000.00 shall be subject to escalation as described further in Proffer 50.

NOISE ATTENUATION

42. Noise Attenuation. The Applicant shall reduce the interior DNL to no more 45 dBA for the Residential Buildings. At the time of building plan application for the full shell building permit for each Residential Building, the Applicant shall submit to the Chief of the Environment and Development Review Branch of DPZ (the “E&D Chief”), for approval, and to DPWES, for information only, an acoustical study prepared by a qualified acoustical consultant (the “Indoor Noise Study”) addressing indoor noise levels, including proposed noise attenuation measures and proposed materials to ensure compliance with the interior DNL limit of 45 dBA. The Applicant shall not obtain full-shell building permits until the E&D Chief has approved the applicable Indoor Noise Study, provided that a failure by the E&D Chief to review and respond to the Applicant within 60 days of receipt of the Indoor Noise Study shall be deemed approval of such study. Prior to the issuance of the first RUP for the Residential Buildings, the Applicant shall demonstrate through testing of noise levels that interior noise does not exceed 45 dBA. The Applicant shall notify potential tenants or purchasers of individual residential units with balconies, either in their leases or sale contracts, that exterior noise levels may exceed 65dBA.

PUBLIC FACILITIES

43. Public Facility. The Applicant shall provide a 3,000 square-foot, warm/dark shell space within the ground floor of Residential Building B as generally shown on the CDP/FDP (the “Public Facility Space”). For purposes of this Proffer, “warm/dark shell” space shall mean a structure with a structural steel or concrete frame and masonry and storefront windows or glass curtain wall skin. While the “warm/dark shell” space shall

be temporarily heated, it shall not include interior walls, ceilings, electrical systems, plumbing or finishes. The Public Facility Space shall be constructed concurrently with the Residential Buildings and shall be accessible through a separate entrance on Greensboro Drive.

- A. Public Facility Escrow. Prior to issuance of the first building permit for Residential Building B, the Applicant shall post an escrow in the form of cash or a letter of credit in the amount Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00) for the County's fit-out of the Public Facility Space (the "Public Facility Escrow"), which shall be released to the Fairfax County Board of Supervisors upon demand when the County demonstrates that the funds will be used for the fit-out of the Public Facility Space on the Property. In the alternative, if, pursuant to Proffer 43(C) below, the County opts not to use the Public Facility Space, then the Public Facility Escrow shall be released to the Board of Supervisors upon demand when the County demonstrates that the funds will be used for another public facility in Tysons.
- B. Use. Fairfax County and/or its assigns shall use the Public Facility Space for community and/or recreational programming, or for any other public use permitted by-right in the PTC district, except (a) a conference center or retreat house; (b) a congregate living, group residential or shelter facility; or, (c) a treatment or counseling facility. However, if the County elects to use the Public Facility Space for any public use other than community and/or recreational programming, then the Applicant shall be notified of the same and provided with an opportunity to comment before any such alternative use is established.
- C. Opt Out. Notwithstanding the foregoing, the County may opt not to use the Public Facility Space. In that event and upon notice to the Applicant, the Public Facility Space shall revert back to the Applicant and may be used for retail, service, accessory or any other use permitted by-right in the PTC district, except residential use, without requiring approval of a PCA, CDPA or FDPA, provided such use is in substantial conformance with the CDP/FDP and these Proffers.
- D. Time. The Applicant shall promptly notify the Fairfax County Facilities Management Department, Real Estate Branch ("FMD") that it has submitted a site plan for the Proposed Development, six (6) months after which the FMD shall either (i) opt in to using the Public Facility Space pursuant to Proffer 43(B) herein or (ii) opt out of using the Public Facility Space pursuant to Proffer 43(C) herein, by notifying the Applicant in writing. If FMD opts in to using the Public Facility Space pursuant to Proffer 43(B), then

- i. The County shall be provided with the opportunity to review the building plans to determine compliance with this Proffer 43, and to comment upon (a) the proposed location of the plumbing (the hook-up to which shall be provided by the Applicant as part of its construction of the warm/dark shell, but the plumbing and the restroom(s) for the Public Facility Space shall be provided by the County within the Public Facility Space and as part of its fit-out thereof, unless otherwise agreed to by all parties), and (b) the proposed location of the entrance to the Public Facility Space from Greensboro Drive; and,
 - ii. The County shall fit-out the warm/dark shell space and open it to the public within two (2) years of the Applicant's delivery to FMD of the Public Facility Space.
- E. Lease. Prior to issuance of the first initial RUP for Residential Building B, the Applicant as Landlord ("Landlord") and Fairfax County as tenant ("Tenant") shall enter into a Lease Agreement for the lease of the Public Facility Space (the "Lease") at a rate of One Dollar (\$1.00) per month and in a form approved by the County Attorney. The initial term of the Lease shall be for thirty (30) years, with the Tenant having two options to renew thereafter, each for a term of ten (10) years (the "Renewals"). The Renewals shall be automatic unless the Tenant notifies the Landlord in writing at least six (6) months prior to the start of the new term that it is opting not to renew the Lease. The Lease shall include all commercially-reasonable and industry-standard terms, including but not limited to, the following:
 - i. The Tenant shall be required to properly maintain the Public Facility Space and any affiliated spaces, but shall not be required to contribute to Common Area Maintenance ("CAM"), Homeowners Association ("HOA") or Condominium Owners Association ("COA") fees;
 - ii. The Tenant shall be responsible for utilities to and in the Public Facility Space and shall directly contract with the utility companies for the same unless not separately metered, in which case, Tenant shall reimburse Landlord on a monthly basis;
 - iii. The Tenant may not assign nor sublet the Public Facility Space without the prior written approval of the Landlord, provided that if the Tenant elects to program the Public Facility Space through the Fairfax County Park Authority or a sub-agency thereof, which it may but shall not be

required to do, such delegation shall constitute neither an assignment nor a sublease; and,

- iv. Prior to the expiration or termination of this Lease, Tenant shall remove from the Public Facility Space all furniture, trade fixtures, equipment, wiring and cabling (unless Landlord directs Tenant otherwise), and all other personal property installed by Tenant or its assignees or subtenants. Tenant shall repair any damage resulting from such removal and shall restore the Public Facility Space to good order and condition, normal wear and tear excepted.

F. Termination. The Lease shall be terminable by the Tenant at any time during the term, in its sole discretion, with six (6) months written notice to the Landlord, at which time the Public Facility Space shall revert back to the Landlord and may be used as described in Proffer 43(C), above.

F. Subordination and Non-Disturbance. In connection with execution of the Lease, Landlord shall use commercially-reasonable efforts to cause any mortgagee holding a deed of trust for Residential Building B to execute a Subordination and Non-Disturbance Agreement (“SNDA”) subordinating the Lease for the Public Facility Space to the loan. There shall be no requirement to subordinate the Lease to any loans on the Property other than for Residential Building B.

- 44. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$9,378 per expected student generated by each Residential Building (based on an assumed rate of 0.11 students per multifamily high-rise unit) to the Fairfax County School Board to be utilized for capital construction and capacity enhancements to schools in the Tysons Corner area that serve the development. The contributions shall be made on or before the issuance of the first RUP for each Residential Building, and shall be based on the actual number of residential units in each building. In the event fewer residential units are built than estimated at the time of payment, the overpayment amount shall be returned to the Applicant. If prior to site plan approval for a Residential Building, the County should increase the accepted ratio of students per subject multifamily unit or the amount of the contribution per student, the amount of the contribution shall be increased for that Residential Building to reflect the current ratio and/or contribution. This contribution is not subject to the escalation provisions of Proffer 50. If the County should decrease the ratio or contribution amount, the amount of the contribution shall be decreased to reflect the current ratio and/or contribution.

STORMWATER MANAGEMENT

45. Stormwater Management. The Applicant shall provide the following:

- A. Stormwater Management Measures. Stormwater Management (“SWM”) measures for the Property shall be designed to protect receiving waters downstream of Tysons by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, strive to retain on-site and/or reuse the first one inch of rainfall. Proposed SWM and Best Management Practice (“BMP”) facilities shall follow a tiered approach as identified by DPWES, which may include infiltration facilities (where applicable), rainwater harvesting/detention vaults, runoff reducing facilities and other innovative BMPs.
- B. LID Techniques. The Applicant shall make use of certain Low Impact Development (“LID”) techniques that will aid in runoff volume reduction and promote reuse throughout the Property. As a part of the LID techniques proposed, the Applicant shall provide intensive and/or extensive green roofs. Other LID techniques may include, but shall not be limited to, tree box filters, pervious hardscapes/streetscapes, and stormwater reuse for landscape irrigation and air conditioning unit makeup water. Additionally, the SWM facilities shall be designed to accommodate not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes as contemplated within current LEED requirements, depending on the existing impervious condition. The above-noted SWM Facilities shall be designed (where applicable) to meet the applicable requirements or stormwater management-related credits of the most current version of the USGBC’s applicable LEED rating system for each Residential Building or phase of the development based upon the LEED boundary identified with each such building or phase.
- C. Tree Replacement. As shown on the CDP/FDP, the Applicant is requesting a modification of PFM Section 12-0505.6B to allow for trees located above any proposed percolation trench or bio-retention area to count toward the 10-year tree canopy requirement. In the event that any of the said trees may need to be removed for maintenance or repair of those facilities, the Applicant agrees to replace removed trees as determined by the UFMD to sustain the 10-year canopy.
- D. Calculations at FDPA and Site Plan. If there is an FDPA submission and also at the time of site plan submission, the Applicant shall provide calculations showing the proposed volume reductions and illustrating conformance with the proposed

volume reductions shown on the approved FDP. The specific SWM facilities shall be determined at the time of site plan, as may be approved by DPWES.

While it is anticipated that compliance with the goal of retaining and/or reusing the first one inch of rainfall will be confirmed at site plan by utilizing the proposed retention credits identified by Fairfax County as part of their stormwater spreadsheet, the Applicant reserves the right to utilize any combination of LIDs (existing and future) measures to meet this goal, subject to the review and approval of DPWES; and the goal may be met on an individual building basis or based upon the total area of the Property. Similarly, if all other County suggested stormwater alternatives have been attempted, the Applicant reserves the right to over detain the runoff from a one-inch rainfall to a release rate that mimics that of a good forested condition.

It is understood that seasonal variations in reuse water demand will create fluctuations in the draw down period, and as such, the stormwater system will be designed to the extent practicable to not exceed 10 days of storage. If storage time exceeds 10 days, the Applicant shall have the right to discharge excess volumes off site at release rates approved by the Director of DPWES that will mimic release rates from a good forested condition for a significant majority of rainfall events and/or excess volume should be directed to other facilities using a "treatment train" approach, if possible, as approved by the Director of DPWES.

- E. The Existing Office Buildings. At the time of site plan submission, the Applicant shall provide calculations showing the proposed volume reductions for the portion of the Property improved with the Existing Office Buildings, and shall work cooperatively with DPWES and DPZ to document the reduction to the overall runoff for the Property.

TREE PRESERVATION

- 46. Tree Preservation. A tree preservation plan and narrative shall be submitted as part of the first site plan submission for the Proposed Development ("Tree Preservation Plan"). The Tree Preservation Plan shall (i) be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the UFMD; (ii) include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees that are located within 25 feet outside of the limits of clearing (LOC) and 10 feet inside of the LOC, and have trunks 12 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture), whether on-site or off-site or

living or dead; (iii) provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP and those additional areas in which trees can be preserved as a result of final engineering; (iv) include all items specified in PFM 12-0507 and 12-0509; and (v) include specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as crown pruning, root pruning, mulching and fertilization.

- A. Tree Preservation Walk-Through. The services of a certified arborist or Registered Consulting Arborist shall be retained and the limits of clearing and grading shall be marked with a continuous line of flagging prior to a pre-construction walk-through meeting. During the tree preservation pre-construction walk-through meeting, the certified arborist or landscape architect shall walk the limits of clearing and grading with a UFMD representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation without adversely impacting the buildings and related improvements and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

- B. Limits of Clearing and Grading. Construction shall conform with the limits of clearing and grading as shown on the CDP, subject to allowances provided in these Proffers and for the installation of utilities and/or public improvements (i.e. roads, streetscapes, entrances, sidewalks, degraded soil and slope conditions), as determined necessary by the Director of DPWES. If it is determined necessary to install utilities in areas beyond the limits of clearing and grading as shown on the CDP, they shall be located in the least disruptive manner necessary as determined by the UFMD. A replanting plan shall be developed and implemented, subject to approval by the UFMD, for any areas beyond the limits of clearing and grading that must be disturbed for such utilities, roads or similar uses, if any such areas are identified at the time of site plan.

- C. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and

placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees, shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" Proffer below. Tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD.

- D. Root Pruning. Root pruning, as needed to comply with the tree preservation requirements applicable, shall be performed. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the site plan submission. The details for these treatments shall be reviewed and approved by the UFMD, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but are not limited to, the following:
- i. Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches;
 - ii. Root pruning shall take place prior to any clearing and grading, or demolition of structures;
 - iii. Root pruning shall be conducted under the supervision of a certified arborist; and,
 - iv. A UFMD representative shall be informed when all root pruning and tree protection fence installation is completed.

- E. Tree Appraisal. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or

greater located within twenty-five (25) feet of the outer limits of disturbance that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first site plan submission for the Proposed Development. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of site plan approval, the Applicant shall post a cash bond, a letter of credit payable to the County of Fairfax or a surety bond from a financial institution licensed to do business in Virginia (the "Tree Bonds"), to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit, cash deposit or surety bond shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the Proposed Development, if any Bonded Trees die, are removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be a minimum three (3) inch caliper in size, and equivalent species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon bond release for the Proposed Development, any amount of monies remaining in the Tree Bonds shall be returned/released to the Applicant.

- F. Site Monitoring. The Applicant or its agent shall be present during any clearing or tree/vegetation removal within the tree preservation area to monitor the process and ensure that the activities are conducted in accordance with these Proffers. The services of a certified arborist or Registered Consulting Arborist shall be retained to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with these Proffers and the UFMD approvals. The monitoring schedule shall be described in the Tree Preservation Plan, and reviewed and approved by the UFMD.
47. Planting Fund Contribution. To promote enhancement of the Fairfax County Tree Canopy through growth of trees on private and public land, the Applicant shall make a one-time, total contribution payable at the time of the first site plan approval in the amount of \$.002 (two tenths of a cent) per square foot of new GFA to the Fairfax County Tree Preservation and Planting Fund ("TPPF"). This donation to the TPPF shall supply

tree saplings, volunteer support, and information to landowners with which they can enhance tree canopy on their property. Additionally, this donation shall enable educational activities in Fairfax County Public Schools, should they choose to participate.

MISCELLANEOUS

48. Umbrella Owners' Association or Equivalent. Prior to issuance of the first RUP for the first Residential Building, the Applicant shall cause the recordation of an umbrella owners association ("UOA") for the Property, or the equivalent in the form of one or more reciprocal easement and/or joint maintenance and/or joint development agreements, and/or other governance documents as necessary (collectively referred to as "UOA or equivalent"), to provide for various proffer and maintenance obligations, including but not limited to, implementation of the TDM program, maintenance of the private streets and Pedestrian Realm and publicly-accessible park areas.
49. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording residential condominium documents for any portion of the Property located within the Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.
50. Escalation in Contribution Amounts. Except for the Public School Contribution discussed in Proffer 44 herein and Option 1 for the Athletic Field Contribution described in Proffer 41 herein, all monetary contributions specified in these Proffers shall be adjusted on a yearly basis from the base month of January 2014 and change effective each January 1 thereafter, as permitted by Section 15.2-2303.3 of the Code of Virginia, as amended.
51. Density Credit. All intensity/density attributable to land areas dedicated and/or conveyed at no cost to the Board or any other public entity pursuant to these Proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the parcel of land from which it came.

52. Tyson's Partnership. The Applicant and its respective successors and assigns, shall become members of the Tysons Partnership or its residential equivalent.
53. Condemnation. To the extent off-site right-of-way and/or easements are required to construct any of the improvements described in these Proffers, and the Applicant has not been able to acquire such right-of-way or easements after documented, reasonable efforts to do so, the obligation of the Applicant to construct such improvements for which right-of-way is not available shall be contingent upon the Board acquiring such right-of-way and/or easements through its powers of eminent domain after being requested to do so by the Applicant, in writing. In the event the County elects not to use its power of condemnation to acquire those off-site rights-of-way and/or easements necessary for construction of any of the improvements described in these Proffers, then the Applicant shall escrow the costs of those improvements with the County for future implementation by FCDOT, VDOT and/or others. The Applicant shall not be prevented from obtaining any land use approval (including, without limitation, PCA, CDPA, FDP, FDPA, site plan, subdivision, grading permit, building permit, or RUP permits) for the Proposed Development nor from commencing construction of the Proposed Development, during the pendency of any eminent domain proceedings initiated pursuant to this Proffer, nor any deferral of the County's exercise of eminent domain pursuant to this Proffer, provided that all other prerequisites for obtaining such approvals and commencing such construction provided in these Proffers have been met.
54. Delay. Notwithstanding anything in these Proffers to the contrary, upon demonstration that, despite diligent efforts or due to factors beyond an Applicant's control, proffered improvements such as, but not limited to, the Retaining Wall Project, the required transportation improvements or the publicly-accessible park areas, have been delayed beyond the timeframes specified herein, the Zoning Administrator may agree to a later date for completion of such improvements.

If, while attempting to remove the retaining wall described in Proffer 19(A)(i) herein, the Applicant determines that it is unable to complete the Retaining Wall Project as planned, it shall immediately:

- A. Request DPWES or its designee to inspect the Retaining Wall Project and confirm that completion of the Retaining Wall Project may unacceptably compromise the structural integrity of the Existing Office Buildings or Existing Parking Structures;
- B. Request the Zoning Administrator grant additional time in which to complete the Retaining Wall Project; and,

- C. Submit to DPWES, DPZ and OCR for review and approval a plan for addressing the issues identified and a schedule for completing the Retaining Wall Project.
 - D. So long as the Zoning Administrator authorizes a delay and DPWES, DPZ and OCR approve a plan and schedule, completion of the Retaining Wall Project shall not be a precondition to issuance of RUPs for the Residential Buildings provided the plan is completed in accordance with the new schedule described above.
55. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property may be the subject of a CDPA, FDP, FDPA, PCA, SE and/or SP without joinder and/or consent of the owners of the other portion(s) of the Property, provided that such CDPA, FDP, FDPA, PCA, SE or SP does not materially adversely affect the other portion(s) of the Property.
56. Binding Effect. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. If any portion of the Property is sold or otherwise transferred, the associated Proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferor.
57. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

APPLICANT:

Greensboro Park Property Owner LLC

By: _____
Name: Jeffrey L. Kovach
Title: Managing Director