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PROFFERS  
CITYLINE PARTNERS LLC  
RZ 2011-PR-010 and RZ 2011-PR-011**

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**DRAFT  
PROFFERS  
CITYLINE PARTNERS LLC  
RZ 2011-PR-010 and RZ 2011-PR-011**

March 411, 2013

Pursuant to Section 15.2-2303(A) of the Code of Virginia, 1950, as amended, and Section 18-204 of the Zoning Ordinance of Fairfax County 1978, as amended (hereinafter referred to as the "Zoning Ordinance"), Cityline Partners LLC, as agent for and on behalf of the owners themselves, and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), in RZ 2011-PR-010 filed on property identified as Fairfax County tax map 29-4 ((6)) 101A and 102 (Land Bay West), and RZ 2011-PR-011 filed on property identified as Fairfax County tax map 30-3 ((1)) 6A, 6B, 6C and 6D, and 30-3 ((28)) A, C1, 4B and 4C (Land Bay East), and portions of right-of-way to be acquired, vacated and/or abandoned (collectively hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors (the "Board") approves a rezoning of the Application Property from the C-3 and HC Districts to the PTC and HC Districts. Whenever herein a proffer establishes an obligation that applies to development and/or redevelopment of a particular building site, then the term Applicant shall mean the owner undertaking such development and/or redevelopment. Upon approval of the rezonings, these proffers shall replace and supersede all previous proffers and development conditions approved on the Application Property. In the event the rezonings are denied by the Board, these proffers and conditions shall immediately be null and void and the previous approved proffers and development conditions shall remain in full force and effect.

**PROFFERS APPLICABLE TO RZ 2011-PR-010 AND RZ 2011-PR-011**

GENERAL

1. Conceptual Development Plan. Subject to the provisions of Section 18-204 of the Zoning Ordinance, the Application Property shall be developed in substantial conformance with the Scotts Run Station South Conceptual Development Plan (CDP), prepared by VIKA, Inc. and SmithGroup, Inc. dated May 10, 2011 and revised through February 4, 2013, exclusive of those sheets identified as "S" sheets, and as further modified by these proffers.
2. Proffered CDP Elements. It shall be understood that the proffered elements of the CDP are limited to the uses, grid of streets, general location of the points of access, general location of the buildings, minimum and maximum building heights, general quality and character of the streetscape along the public and private streets within and abutting the Application Property and as otherwise specified in these proffers, the build-to lines, the overall maximum gross floor area (GFA) for the Application Property, the minimum amount and general location of the publicly-accessible open space, and other elements as may be specifically identified herein. The Applicant has the option to request a Final Development Plan (FDP) for elements other than the CDP elements for all or a portion of the CDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

3. Development of Land Bays. Land Bay West is comprised of two (2) Blocks referred to as Lincoln and Grant as further described on Sheet C-2B of the CDP. Land Bay East is comprised of seven (7) Blocks referred to as Garfield, Van Buren, Westgate, Johnson, Taylor, Hotel and MITRE as further described on Sheet C-2B of the CDP. Each Block consists of one or more Building Sites as shown on the CDP. Development of each Block and/or Building Site within each Block may proceed in any order, individually or combined, provided that such Block and/or Building Site is developed in accordance with the phasing as described in these proffers and as depicted on the CDP. The MITRE Block shall be excluded from the building count, when a proffer obligation is tied to a specified building in the development sequence (such as the second building to be constructed on the Application Property).
4. Minor Modifications. Minor modifications to the CDP may be permitted as determined by the Zoning Administrator, including the flexibility to modify the layout shown on the CDP for each Block and/or Building Site pursuant to Section 16-403(4) of the Zoning Ordinance provided such changes are in substantial conformance with the CDP as determined by the Zoning Administrator and do not affect the proffered elements of the CDP as specified herein. Building envelopes and the number of units, rooms, floors and square footage within and among buildings may be adjusted as set forth on the CDP and in these proffers, as long as (i) the maximum building setbacks from the property lines and build-to lines as shown on the CDP are maintained; (ii) the minimum and maximum building heights comply with those shown on the CDP; (iii) the minimum and maximum gross floor area per Building Site as shown on the CDP is maintained and (iv) the redevelopment otherwise is in substantial conformance with the CDP and the proffers. However, reductions in building height shall be permitted as a result of a reduction in the amount of parking provided and subsequent reduction in the height of a parking podium. The maximum height of parking podiums shall be as generally shown on the CDP, but shall not exceed eighty (80) feet.
5. Severability and Future PCA/CDPA/FDP/FDPA/SE/SP Applications. Pursuant to Par. 6 of Sect. 18-204 of the Zoning Ordinance, one or more of the Blocks or Building Sites, or any portion of any Block or Building Site, may be the subject of a separate Proffered Condition Amendment ("PCA"), Conceptual Development Plan Amendment ("CDPA"), Final Development Plan ("FDP"), Final Development Plan Amendment ("FDPA"), Special Exception ("SE"), Special Exception Amendment ("SEA"), Special Permit ("SP"), Special Permit Amendment ("SPA"), variance and/or other similar land use applications, without joinder and/or consent of the owners of the other portions of the Application Property, provided such application will not change or cause or require a change to the general layout, physical improvements and/or access for such other portions of the Application Property. Previously approved proffered conditions or development conditions applicable to the portion(s) of the Application Property, which are not the subject of such an application, shall otherwise remain in full force and effect as to any portion(s) of the Application Property.
6. Limitation of Proffer Obligations. Notwithstanding the approval of the rezoning applications, the property identified among the Fairfax County 2012 tax map records as 30-3 ((28)) 4C ("Parcel 4C"), and shown on the CDP as the MITRE Block (Building 4)

shall be developed in accordance with those development conditions previously approved by the Board of Supervisors (the "Board") in conjunction with SE 2010-PR-023 and incorporated into final development plan conditions associated with FDP 2011-PR-011-2 and site plan 3538-SP-003 as approved by the Department of Public Works and Environmental Services ("DPWES"). Upon approval of the rezonings, Parcel 4C shall be subject only to the obligations of proffers 1., 2., 3., 4., 5., 6. 7 and 8. herein, and development conditions associated with FDP 2011-PR-011-2.

#### PROPOSED DEVELOPMENT

7. Uses. The maximum GFA permitted on the Application Property is 6,697,060 square feet. The CDP includes two (2) land bays identified on the CDP as Land Bay East (RZ 2011-PR-011), which has a maximum GFA of 5,125,234 square feet and Land Bay West (RZ 2011-PR-010), which has a maximum GFA of 1,571,826 square feet as shown in the tabulations on the CDP. The primary uses on the Application Property shall be office, hotel and/or residential on each Building Site. Retail as identified in the development tabulations on the CDP may include any non-residential use permitted in the PTC District, exclusive of office, or other high trip generating uses, as limited by Section 6-505 "use limitations," or uses accessory to the primary use. Such retail uses may be provided at the Applicant's sole discretion within the proposed building(s) as shown on the FDP submitted for each Building Site and shall include uses that create activated first floor store fronts. First floor retail will be incorporated along Station Street to activate the streetscape. Such retail uses may include, but not be limited to, ATMs, business service and supply service establishments, quick service food stores, fast food restaurants, community uses, health clubs and similar commercial recreation uses, personal service establishments, retail sales establishments, financial institutions, and eating establishments and similar retail uses. Said uses shall not include stand alone or drive-through uses. The size, general location and type of retail uses shall be reviewed and approved on the FDP. The Applicant reserves the right to construct more retail on the Application Property than shown on the CDP without the requirement of a CDPA, or PCA, so long as (i) the square footage for office use is proportionately reduced at the time of FDP submission, (ii) the maximum GFA on the Application Property is not exceeded, (iii) the amount of retail on the Application Property does not exceed five percent (5%) of the maximum GFA, and (iv) no retail sales establishment-large as defined by the Zoning Ordinance (over 80,000 GFA) is permitted within any one building.
8. Intensity/Density Credit. With the exception of land area dedicated for improvements to Colshire Drive and 1,448 gross square feet that shall be conveyed to VDOT adjacent to Route 123, as shown on the CDP, all intensity/density attributable to land area dedicated from Land Bay East (RZ 2011-PR-011) as designated on the CDP and/or conveyed at no cost to the Board or any other public entity pursuant to these proffers, or as may be required at FDP or site plan, shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to that portion of the Application Property designated on the CDP as Land Bay East. All intensity/density attributable to land area dedicated from Land Bay West (RZ 2011-PR-010) as designated on the CDP and/or conveyed at no cost to the Board or other public entity pursuant to these proffers,

or as may be required at FDP or site plan, shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to that portion of the Application Property designated on the CDP as Land Bay West.

9. Final Development Plans. All Building Sites may be developed independently. Final Development Plans (FDPs) approved for individual Building Sites on the Application Property shall establish the minimum and maximum GFA for each building within the limits established by these proffers and the CDP. The specific GFA for each Building Site shall be established at FDP and may be further refined at site plan. If the GFA approved with the FDP is less than the maximum shown on the CDP, or if the GFA approved with the site plan is less than the maximum shown on the FDP, the excess GFA may be utilized in another Building Site(s) only within Land Bay East if such Building Site(s) is located in Land Bay East or Land Bay West if such Building Site(s) is located in Land Bay West, provided (i) the excess GFA can be accommodated within the maximum floor area and maximum height for the building utilizing the excess GFA as shown on the CDP, and subject to approval of the applicable FDP(s) for the building(s) utilizing the excess GFA and (ii) the maximum GFA on the Application Property is not exceeded. In addition, the following information shall be provided with each FDP or FDPA not filed concurrently with the rezoning applications.

- A. Tabulations. A tabulation indicating the development status of all property subject to RZ 2011-PR-010 (Land Bay West) and RZ 2011-PR-011 (Land Bay East) shall be provided with each subsequent FDP and site plan submitted for the Application Property. The tabulation shall include a listing of all existing and proposed buildings, along with the GFA and uses approved on the CDP, FDP and site plans as may be applicable. The tabulation shall be updated with each subsequent FDP and site plan approved for the Application Property and shall be broken out into GFA calculations for Land Bay West and Land Bay East. Correction of inadvertent or mathematical errors in the tabulations represented on the CDP, FDPs and site plans shall be permitted within the discretion of the Zoning Administrator without the necessity of a PCA or CDPA.
- B. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations for combined Land Bay West and Land Bay East shall be provided with each FDP and site plan submitted for the Application Property and shall be updated with each subsequent FDPA and site plan approved for the Application Property.
- C. Supplemental Transportation Information. The following information to supplement the requirements of the Zoning Ordinance: (i) a copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program; (ii) vehicular sight distance lines at all intersections adjacent to the area subject to such FDP, FDPA or site plan based on existing posted and design speeds as well as future design speeds, as recommended in the approved "Transportation Design Standards for Tysons Corner Urban Center," dated September 13, 2011 (the "Transportation Design Standards"), as amended by the Board; and (iii) a comparison of the trip generation based on ITE's 8<sup>th</sup> Edition, Trip Generation, associated with the FDP,

FDPA or site plan uses for the building site compared to those uses reflected for that building site in the Transportation Impact Analysis prepared by Wells & Associates ("TIA") dated May 23, 2011 as revised through November 30, 2012.

- D. Utilities. Proposed location of existing and proposed utilities to serve the area of the FDP, or FDPA, overlaid with the landscape plan, including the location of any utility vaults and maintenance points to stormwater management facilities.
- E. Adjustment of GFA. A summary of adjustments to GFA that may only occur within the limits of each Land Bay (specifically GFA cannot be transferred between the land areas associated with RZ 2011-PR-010 (Land Bay West) and RZ 2011-PR-011 Land Bay East).
- F. Proposed Uses. A list of proposed uses as set forth in Proffer 7 and identified on the CDP and demonstration of how such uses meet Section 6-505 "Use Limitations" of the PTC District.
- G. Architectural Elements. Architectural elements and build-to lines as provided in Proffer 18 and Proffer 20, respectively. In addition, architectural design elevations shall be presented for the building proposed to be constructed with each FDP for the purpose of illustrating the general character of building massing, scale, façade, articulation, general building envelope and fenestration treatment, materiality and material quality of the proposed FDP development. Other details of building design (such as, but not limited to, specific material or color selections, fenestration details) are subject to change within the site plan and building plans for each Building Site.
- H. Build-to Lines. Proposed Build-to Lines, including any proposed modification to the Build-to Lines and/or the expanded streetscape areas to include outdoor dining areas.
- I. Streetscape. Graphic depiction of, and any adjustments to, the activated streetscape elements, including fencing, as provided in Proffer 21 and refinement of, and adjustments to, streetscape elements.
- J. Building Heights. A tabulation of building heights.
- K. Garage/Loading/Service Area Treatments. Proposed parking garage/loading/service area façade treatments as provided in Proffer 22.
- L. Landscaping. Detailed landscape plans, with alternative planting width details, as may be necessary, as provided in Proffers 31 and 32.
- M. Streetscape Furnishings. Submission of a "Streetscape Furnishing and Materials Plan" as provided in Proffer 41.
- N. Phasing/Interim Conditions. Identification of specific, detailed, proposed phased improvements/interim conditions in accordance with those generally set forth on

the phasing-related exhibits provided on Sheets A6.01 through A6.08 of the CDP (collectively, the "Phasing Sheets").

- O. Parks and Recreation. On-site parks and active recreation facilities, and depiction of special amenity features as provided in Proffer 43.
  - P. Provisions for Bicycles. Bicycle parking, storage and bicycle lane dimensions as provided in Proffers 75 and 76.
  - Q. Parking Spaces. Refinement of the number of parking spaces as provided in Proffer 77 and a narrative and/or tabulation discussing/depicting how the parking recommendations outlined in the Comprehensive Plan are being achieved on the Application Property.
  - R. Stormwater Management. Identification of specific stormwater management facilities as provided in Proffer 94, including a tabulation indicating the combined Lay Bay East and Land Bay West required and provided volume reduction computation for each Building Site.
  - S. Bus Shelters. Details on the four (4) proposed bus shelter locations and designs associated with the McLean Metrorail Station in conjunction with the realignment of Colshire Drive will be provided. Three (3) shelters will be located on Colshire Drive and one (1) shelter will be located on Colshire Meadow Drive. If the County determines that the stop on Colshire Meadow Drive is to be used solely for layover operations, then a bus shelter may not be necessary and, with County concurrence/approval, would not be required by the Applicant.
  - T. Workforce Dwelling Units. For residential development, the expected phasing for the construction of the required workforce dwelling units.
  - U. Functional Drawings. Details with respect to sight distance and/or vegetation conflicts with building entrances and/or intersections as presented on Sheets S-6 and S-7 of the CDP. Said functional drawings shall also include proposed right-of-way lines associated with public streets.
10. Fire Marshal Evaluation. Changes from the CDP and FDPs shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA and/or FDPA, provided such modifications are made in consultation with the Fairfax County Department of Planning and Zoning (DPZ), Fairfax County Department of Transportation (FCDOT), Urban Forestry Management Division (UFMD) of DPWES and the Office of Community Revitalization (OCR) and in substantial conformance with the intent of the CDP, FDP and these proffers.
11. VDOT Evaluation. Changes from the CDP and FDPs shall be permitted in response to the review of site plans by VDOT, including adjustments to tree locations, lane use/pavement markings, signage, the streetscape and perimeter building areas as

necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA and/or FDPA, provided such modifications are made in consultation with DPZ, FCDOT, UFMD of DPWES and OCR and in substantial conformance with the intent of the CDP, FDP and these proffers.

12. Final Clearing Limits. Modifications to clearing limits shown on the CDP shall be permitted at FDP in response to final design without requiring approval of a PCA, CDPA and/or FDPA, provided such modifications are made in consultation with DPZ, FCDOT, UFMD of DPWES and OCR and in substantial conformance with the intent of the CDP, FDP, and these proffers.

#### EXISTING AND INTERIM STRUCTURES AND USES

13. Existing Structures. Existing structures and parking areas on the Application Property, as shown on the CDP, may be demolished or remain in use as an initial phase until such time as the Application Property is redeveloped in accordance with these applications, or as otherwise stated in these proffers. The structures may not be modified or enlarged, and no significant changes may be made to the site conditions except as described in Proffer 16 and as shown on the phasing sheets of the CDP, except that minor modifications and minor building additions may be approved by the Zoning Administrator pursuant to the provisions of Paragraph 4 of Section 16-403 of the Zoning Ordinance. Interior modifications to the structures shall be permitted.
14. Existing Uses. Those uses within the existing structures that are legally established at the time of approval of the rezonings but which are not uses permitted in the PTC District may remain as permitted interim uses, including any special permit and/or special exception uses, but may not be enlarged, except that the Zoning Administrator may permit minor modifications or enlargements of such uses. If any such use is discontinued for a period of two years, it shall no longer be permitted.
15. Interim Uses. Any use that is permitted in the C-3 and HC Districts, including any special permit and/or special exception uses, may also be permitted as an interim use in the existing structures subject to the use limitations in Section 6-505 and the provisions of this proffer. Parking for all interim uses shall be provided in accordance with Article 11 of the Zoning Ordinance.
16. Interim Commercial Parking. Privately owned and operated commercial off-street parking and commuter parking may be provided, at the sole discretion of the Applicant, on an interim basis in lots on the Application Property in accordance with Proffer 82 utilizing existing access locations upon notification to FCDOT without requiring approval of a PCA, CDPA, FDP and/or FDPA. Commercial off-street parking on an interim basis in either existing surface lots or areas of displaced/demolished buildings on the Application Property shall be deemed to be in general conformance with the CDP and interim improvements shall be provided, if necessary. Said parking shall be operated at rates determined by the Applicant. This parking shall be in addition to the permitted parking for the proposed uses on the Application Property.

17. Festivals, Fairs or Similar Activities. The Applicant, or its designee, shall be permitted to operate festivals, fairs or similar activities, including, without limitation, farmers' markets and food vendors, on the Application Property, either in interim surface parking lots or within publicly-accessible privately owned open space as shown on the CDP, including portions of the private streets/pedestrian ways, such as Station Street and Andrew Way ~~without the need for~~. The Applicant shall coordinate with the Zoning Administrator regarding the issuance or approval of a temporary special permit as defined by may be required under the Zoning Ordinance, which may include the establishment of an annual permit for continuing or seasonal events. In addition, the Applicant reserves the right to periodically close portions of the private street network, including Station Street and Andrew Way for said activities. Said activities shall be limited to the following conditions:
- A. A maximum of 64 events per year;
  - B. Admission or other fees may be charged;
  - C. Sponsorship by the Applicant, a civic organization, local Chamber of Commerce, charitable organization, service club, non-profit or similar entity; and
  - D. Compliance with all Health Department regulations.

#### ARCHITECTURAL DESIGN

18. Architectural Design. Buildings shall create a sense of identity and place at a human scale through the use of unifying elements such as materials, textures, color, window treatments, detailing, lighting and landscaping. Buildings shall be designed of high-quality architecture and building materials that are typically used on the exterior of Class A office, residential and hotel buildings of a similar quality as conceptually depicted on the CDP, with architectural details provided with the FDP for such buildings. No exterior insulation and finish systems (EIFS) shall be used, unless specifically approved by Fairfax County (the "County") with an FDP for an individual building site. Each FDP shall specify the building materials, architecture, and specific features designed to activate streetscapes, as further described below. Architectural plans, elevations, illustrations, materials and heights may be revised subsequent to CDP and FDP approval as a result of final architectural and engineering design, provided the quality of design remains in substantial conformance with that shown on the CDP and subsequent FDPs and as set forth in these Proffers, as determined by DPWES in consultation with DPZ or OCR without the need for administrative approval.
19. Bird-Friendly Design Strategies. At the time of site plan submission for the first new building on the Application Property, an initial study shall be prepared and submitted to OCR addressing whether bird-friendly design strategies may be employed to reduce bird injury and death due to in-flight collisions with buildings and/or building elements within the Application Property. The strategies to be studied should make the 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 each subsequent individual building permit issuance.

20. Build-to-Lines. Build-to-Lines ("BTL") have been depicted on the CDP to create an urban, pedestrian-oriented environment where buildings are located close to the adjacent street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building facades are intended to be configured where possible to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted provided they are in general conformance with the CDP and are shown on an approved FDP. Awnings, building signage and other architectural canopies attached to the building frontage that project out from the BTLs shall provide adequate clearance for pedestrian movement and shall not conflict with street tree locations. At the time of FDP submission, the Applicant shall identify for the portion of the Application Property covered by such FDP, possible locations along the street level for areas for outdoor dining adjacent to cafes and restaurants, if applicable, and shall provide appropriate building zones for such uses.
  
21. Streetscape Activation. Blocks identified on the CDP as Westgate, Van Buren, Johnson (Building Sites A, B, C, and D), Taylor (Building Sites A, B and C), Grant (Building Sites A and B) and Lincoln (Building Sites A and B) and Hotel, but not the parking structures associated with said buildings, shall generally be constructed with ground floors having a minimum floor to floor height of 16 feet to accommodate potential retail uses designed to activate the streetscape. At FDP submission for the Taylor Building Site B, further details of the elements necessary for the proposed circulator facility (such as bus shelters and trees) shall be provided to ensure that the area is functional for transit and pedestrian circulation, and complementary to proposed adjacent buildings. In addition, at FDP submission for the Hotel Block, further details of the street frontage, including drop-off area, short term curbside parking, bus bays, bus shelters, and general pedestrian access/circulation shall be provided to ensure coordinated design. Modifications to the streetscape, including width, for the Hotel Block may result in a modification of the proposed building and its location, as well as the design and location of the bus bays on Colshire Drive, at FDP. Said modification shall not require a CDPA or PCA. The Applicant shall provide a hierarchy of activated streetscapes as delineated and described conceptually on the "Pedestrian Circulation Plan" presented on Sheet L-2 of the CDP. The specific activation elements to be utilized for each Block and/or Building Site shall be graphically depicted on the FDP for each Block and/or Building Site.
  - A. Primary Pedestrian Corridors. "Primary Pedestrian Corridors" are intended to have the highest levels of pedestrian activity and interaction and typically have the widest streetscape and most animated building façades. Primary Pedestrian Corridors shall generally incorporate the following elements, which can be adjusted at the time of FDP submission for each respective Building Site:

- (i) Where the ground floors of buildings (not including the associated parking garages which are addressed below) incorporate non-residential uses, functioning entry doors into such uses shall be provided with a maximum separation of 75 feet, unless a greater separation is needed to accommodate larger tenant spaces, topographical features or as may be approved by the Zoning Administrator. A minimum of fifty percent (50%) of the area of the street front ground floor façades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials.
- (ii) Parking garages and loading/trash/service areas along the ground floor façades shall incorporate screening composed of architectural and/or landscaping treatments designed to mitigate views into the structures from street level, or the general façade detailing of the building above such areas may be continued to the ground plane.
- (iii) Loading/trash/service areas shall be screened, to the extent reasonably practicable, from public view through the use of roll down doors, recessed entryways and/or similar treatments.

B. Secondary Pedestrian Corridors. "Secondary Pedestrian Corridors" typically have significant pedestrian volumes and generally are used for pedestrian movement as opposed to pedestrian interaction. Some retail activity may occur in these corridors, but generally it will be neighborhood-serving. Residential and civic uses should generally have their entrances facing Secondary Pedestrian Corridors which generally have wide streetscapes and significant building façade animation in proximity to such entrances. Secondary Pedestrian Corridors generally shall incorporate the following elements, which can be adjusted at the time of FDP submission for each respective Building Site:

- (i) Where the ground floors of buildings (not including the associated parking garages which are addressed below) incorporate non-residential uses, functioning entry doors into such uses shall be provided with a maximum separation of 75 feet, unless a greater separation is needed to accommodate larger tenant spaces, topographical features or as may be approved by the Zoning Administrator. A minimum of thirty-five percent (35%) of the area of the street front ground floor façades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials.
- (ii) In portions of residential buildings (not including the associated parking garages which are addressed below) that do not incorporate non-residential uses on part or all of the ground floors, the building design of the primary façades shall incorporate, to the degree feasible, leasing offices, lobbies, recreational and amenity spaces on the ground floor with a minimum of thirty-five percent (35%) of the ground floor façade constructed with glazed windows and/or doors or other transparent,

translucent materials, and/or incorporate entries into individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall use design features to provide interior privacy such as having a ground floor elevation that is above the sidewalk grade or through the use of landscape buffers, where possible.

- (iii) Parking garages and loading/trash/service areas along the ground floor façades shall have screening composed of architectural and/or landscaping treatments designed to restrict views into the parking garages from street level or the general façade detailing of the building above may be continued to the ground plane.
- (iv) If access to parking garages and loading/trash/service areas are provided along secondary pedestrian corridors then loading/trash/service areas shall be screened from public view through the use of roll down doors, recessed entryways and/or similar treatment.

C. Tertiary Pedestrian Corridors. "Tertiary Pedestrian Corridors" are intended to accommodate modest pedestrian activity-making connections to less intense areas or through alleys. Tertiary Pedestrian Corridors shall incorporate the following elements, which can be adjusted at the time of FDP submission for each Building Site:

- (i) Where the ground floors of buildings (not including the associated parking garages which are addressed below) incorporate non-residential uses, a minimum of twenty percent (20%) of the area of the ground floor façades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials.
- (ii) In residential buildings (not including the associated parking garages which are addressed below) that do not incorporate non-residential uses on part or all of the ground floors, efforts shall be made to incorporate recreational and amenity spaces on the ground floor with appropriate transparency and/or incorporate entries into individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade or through the use of landscape buffers, where possible).
- (iii) Parking garages and loading/trash/service areas along the ground floor façades shall have screening composed of architectural and/or landscaping treatments designed to restrict views into the parking garages from street level, or the general façade detailing of the building above may be continued to the ground plane.
- (iv) Access to parking garages and loading/trash/service areas may be provided along tertiary pedestrian corridors and from the adjacent private

alleys. Loading/trash/service areas shall be screened from public view through the use of roll down doors, recessed entryways and/or similar treatment.

22. Parking Structure Facades. Parking structure façade design features shall be depicted on the FDPs for each Building Site and shall be designed to provide a pleasant and attractive experience along the streetscape in accordance with the following:
- A. At and above the street level, screening composed of architectural systems and/or landscaping designed to minimize views into the garage parking spaces from street level shall be applied. Where garage space is located beneath a tower element, the general façade detailing of the tower above may be continued down to the street level or to the top of the retail level storefront. In some cases, as determined by the Applicant, retail signage consistent with Article 12 or any approved Comprehensive Sign Plan and architectural expressions may be extended above the street level to provide a variety of storefront experiences, as may be permitted by the Zoning Ordinance. In other instances, as determined by the Applicant, an active layer of occupied space may screen the garage areas from street view. Areas of above-grade garage located between buildings shall also be treated architecturally and/or with landscaping. Architectural materials to treat parking structure facades may include, but are not limited to: metal framing systems with inserted panels of wire mesh, metal, glass, natural vegetation, vegetative screening systems, or other materials; precast concrete or masonry elements; and glass stair towers and elevators or other systems.
  - B. Parking garage and loading/trash/service areas along the ground floor facades shall incorporate screening composed of architectural and/or landscaping treatments designed to mitigate views into the structures from street levels or the general façade detailing of the building above such areas may be continued to the ground plane.
  - C. If access to parking garages and loading/trash/service areas are provided, then loading/trash/services areas shall be screened from public view through the use of roll down doors, recessed entryways and/or similar treatment.
23. Minimum and Maximum Building Heights. The minimum and maximum building height for each building on the Application Property shall be measured in accordance with the provisions of the Zoning Ordinance and as identified on the CDP. The final height of buildings shall be determined at the time of site plan approval for each Building Site and shall be equal to or less than the maximum height but equal to or greater than the minimum height shown on the CDP provided that the buildings retain a similar urban form to that shown on the CDP. All building penthouses and rooftop structures shall be integrated into the architecture of the buildings. The height and extent of any rooftop penthouse shall be provided on the FDP for each Building Site. For residential buildings, maximum building heights shall include penthouses and all rooftop structures. For non-residential buildings, structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Zoning Ordinance may be constructed to a height not

to exceed thirty (30) feet above the roof level of the top floor of the building. Additional height may be permitted to accommodate features associated with sustainable design and green building practices.

24. Telecommunications Equipment and Mechanical Units. Telecommunications equipment, mechanical units and all appurtenant facilities may be placed on the rooftop of any proposed building. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or setback 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 from the property line of the Application Property. Other screening measures may be used such as screening with architectural features and/or landscaping compatible with the building façade architecture, including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas. Telecommunications equipment may also be architecturally integrated onto the facades of the building where necessary to ensure on-street and/or open space coverage. Rooftop amenities such as amenity terraces, landscaping or recreation courts may also be used to screen rooftop telecommunications equipment and mechanical units. Details of such treatments shall be determined at time of FDP submission and may be further refined at site plan.

#### LIGHTING

25. Lighting. All streetscape lighting shall be energy efficient. All on-site, outdoor and parking garage lighting shall not exceed that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance, as may be amended. The same or similar street lights shall be used consistently through the Application Property and be selected from those listed in the Tysons Urban Design Guidelines, or other lights as may be approved by DPWES, DPZ and OCR. All parking lot and building mounted security lighting shall utilize full cut-off fixtures. Recessed lighting shall be directionally shielded to mitigate the impact on the adjacent residences.
26. 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.
27. Parking Structure Lighting. The Applicant shall utilize full cut-off, low intensity or recessed lighting directionally shielded to mitigate the impact on adjacent residences for any lighting along the perimeter of an above-ground garage not constructed of solid walls. Such lighting shall comply with the requirements of Article 14 of the Zoning Ordinance.

#### GREEN BUILDING PRACTICES

28. Green Building Certifications. For each office or hotel building, the Applicant shall provide documentation to the Environmental and Development Review Branch (the "EDRB") of DPZ demonstrating attainment of, at a minimum, "LEED Silver"

certification (or equivalent) by the U.S. Green Building Council's Leadership in Energy and Environmental Design – ("LEED"), or equivalent, prior to final bond release for each Building Site. For each residential building the Applicant shall provide documentation to EDRB demonstrating attainment of, at a minimum, "LEED Certified" or equivalent prior to final bond release for each Building Site. In addition:

- A. The Applicant shall include a U.S. Green Building Council (USGBC) LEED accredited professional as a member of the design team. The LEED accredited professional shall work with the team to incorporate the current version, at the time of Applicant's registration, of LEED design elements under the USGBC's LEED Core and Shell ("LEED-CS"), LEED New Construction ("LEED-NC") or other applicable LEED category rating system into the office or hotel building to attain LEED Silver certification. At time of site plan submission, the Applicant shall provide documentation to EDRB of DPZ demonstrating compliance with the commitment to engage such a professional.
- B. Office and Hotel Buildings. The Applicant will include, as part of the site plan submission and building plan submission for each office or hotel Building Site to be constructed, a list of specific credits within the most current version, at the time of Applicant's registration, of the USGBC's LEED rating system that the Applicant anticipates attaining. The LEED-accredited professional, who is also a professional engineer or licensed architect, will provide certification statements at both the time of site plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain the LEED Silver certification for the office or hotel building. In addition, prior to site plan approval, the Applicant will designate the Chief of the EDRB as a team member in the USGBC's LEED online system with respect to the building. 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 final building plan approval for each office building or hotel, documentation shall be submitted to the EDRB for each building demonstrating that the subject office or hotel Building Site has applied for at least LEED Gold pre-certification under LEED-CS or the 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 Gold certification under LEED-NC, or other applicable LEED rating system. Prior to release of the final bond for the subject office or hotel Building Site, documentation shall be provided to the EDRB for the respective building demonstrating the status of attainment of LEED Gold or a higher level of certification from the USGBC for the office or hotel building. If either the pre-certification or design phase review documentation cannot be provided prior to building plan approval, but it is anticipated that the documentation will be received prior to the attainment of LEED certification, then prior to the issuance of the building permit, an escrow as described in Proffer 28.C. below may be posted. This escrow will be released

upon the submission of documentation to the EDRB from the USGBC demonstrating that the office or hotel building is anticipated to either attain a sufficient number of credits to attain LEED Gold pre-certification or the 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 Gold certification under LEED-NC, or other applicable LEED rating system.

- C. Green Building Escrow. As an alternative to the actions outlined in Proffer 28.B. above, if the USGBC's pre-certification or design phase review indicates that the office or hotel building to be constructed is not anticipated to attain LEED Gold certification, then, a "Green Building Escrow," in the form of cash or a letter of credit as defined in the Public Facilities Manual ("PFM") from a financial institution acceptable to DPWES, shall be posted in the amount of \$2.00 per square foot of GFA for the office building and \$1.00 per square foot of GFA for the hotel. 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 certification by the USGBC under the project's registered version of the LEED rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the EDRB of documentation from the USGBC that each building has attained the proffered LEED certification shall be sufficient to satisfy this commitment. If the Applicant provides the EDRB, within three (3) years of the issuance of the first tenant Non-RUP for each building, documentation demonstrating that LEED Silver certification for such building has been attained, the entirety of the escrowed funds shall be released and returned to the Applicant who posted such Green Building Escrow.

If the EDRB receives, within three (3) years of issuance of the first tenant Non-RUP for the subject building, documentation demonstrating that LEED Silver certification for such building has not been attained, but that such building has been determined by the USGBC to fall within three (3) points of attainment of LEED Silver certification, 50% of the Green Building Escrow shall be released and returned to the Applicant who posted such Green Building Escrow, as applicable, and the other 50% shall be released to the County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If, within three (3) years of issuance of the first tenant Non-RUP for such building, documentation fails to be provided to the EDRB demonstrating the attainment of LEED Silver certification or documentation is provided demonstrating that the building has fallen short of LEED Silver certification by more than three (3) points, the entirety of the Green Building Escrow for that building shall be released to the County and will be posted to a fund within the County budget supporting the implementation of County environmental initiatives.

If documentation is provided from the USGBC demonstrating, to the satisfaction of the EDRB, that USGBC completion of the review of the LEED Silver

certification application has been delayed through no fault of the Applicant, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made during the extension.

- D. Residential Buildings. A LEED-accredited professional shall be included as a member of the design team for each residential building. The LEED-accredited professional shall work with the design team to incorporate design elements under the current version of the LEED rating system available at the time of the Applicant's registration of the residential buildings to be constructed. At the time of site plan submission, documentation shall be provided to the EDRB demonstrating compliance with the commitment to engage such a professional. In addition, prior to site plan approval for the residential building, the Chief of the EDRB shall be designated as a team member in the USGBC's LEED online system with respect to such building. This team member will have privileges to review the project status and monitor the progress of all LEED-related documents submitted to the Green Building Certification Institute 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.

As part of site plan and building plan submission for each residential building to be constructed, a list of specific credits within the current version of the LEED rating system available at the time of registration (or such other rating system as may be applicable pursuant to Proffer 28.E.), which is anticipated to be attained for such residential building shall be provided. Except as otherwise provided below as an alternative, the LEED-accredited professional, who is a professional engineer or licensed architect, will provide certification statements at the time of site plan review and building plan review, confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification for the subject residential building. Each building on the Application Property may be registered separately and certification may be pursued pursuant to this Proffer or the alternative provided below on a building-by-building basis.

Prior to the building plan approval, a "Green Building Escrow," in the form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the PFM or a surety bond from a financial institution licensed to do business in Virginia shall be posted in the amount of \$2.00 per square foot of GFA for the 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, by the USGBC under the project's registered version of the LEED rating system or other LEED rating system determined by the USGBC to be applicable to each building. The provision to the EDRB of documentation from the USGBC that each residential building has attained LEED certification shall be sufficient to satisfy this commitment. At the time LEED certification is demonstrated to the EDRB, the escrowed funds shall be released and returned to the Applicant who posted such Green Building Escrow, as applicable.

If the EDRB receives, within three (3) years of issuance of the final RUP for the subject residential building, documentation demonstrating that LEED certification for such building has not been attained but that such building has been determined by the USGBC to fall within three (3) points of attainment of LEED certification, 50% of the Green Building Escrow shall be released and returned to the Applicant who posted such Green Building Escrow, as applicable, and the other 50% shall be released to the County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If, within three (3) years of issuance of the final RUP for such building, documentation fails to be provided to the EDRB demonstrating the attainment of LEED certification or documentation is provided demonstrating that the building has fallen short of LEED certification by more than three (3) points, the entirety of the Green Building Escrow for that building shall be released to the County and will be posted to a fund within the County budget supporting the implementation of County environmental initiatives.

If documentation is provided from the USGBC demonstrating, to the satisfaction of EDRB, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made during the extension.

- E. Residential Green Building Alternative. As an alternative to the actions outlined in Proffer 28.D. above, a certification level higher than LEED certification may be pursued, in which case a LEED-accredited professional will provide certification statements at the time of site plan and building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED Silver certification.

Prior to building plan approval for the building to be constructed, documentation shall be submitted to the EDRB regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the 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 this alternative, a "Green Building Escrow" shall not be required unless the above referenced documentation that the building is anticipated to attain LEED Silver certification fails to be provided.

The Applicant may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft, Energy Star Qualified Homes for Multifamily High Rise, or National Association of Home Builders with Energy Star for energy performance path that may be implemented without an escrow. If one of the alternate residential rating systems listed herein is selected, the Applicant shall demonstrate attainment of the selected certification from a rater recognized through the selected progress prior to the issuance of the final RUP for the

Building Site. In the event certification is dependent on the post occupancy operation of the building, the Applicant shall demonstrate attainment of the selected certification prior to final bond release.

- F. All references to the USGBC shall apply to LEED equivalent certifying agencies selected by the Applicant, provided that the alternative certifying agency is acceptable to Fairfax County. All references in these proffers to a LEED rating system shall also and equally apply to such other LEED or similar rating system determined to be applicable by the USGBC or such alternative certifying entity. In the event a LEED or LEED equivalent requirement (i.e. prerequisite) precludes compliance with other applicable building code or other legal requirement, as determined by DPWES, construction of the building may, at the Applicant's option, comply with such other applicable building code or other legal requirement and in such case, shall not be required to comply with the conflicting LEED or LEED equivalent requirement.
- G. The minimum energy performance criteria may be satisfied by the residential and office buildings through meeting their respective LEED requirements, but LEED requirements may be satisfied on a building site with any mix of credits.

#### SUSTAINABLE ENERGY PRACTICES

- 29. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide the following information with each FDP submission:
  - A. Electric Vehicle Charging Infrastructure. The Applicant shall provide a minimum of one (1) recharging station that serves two (2) parking spaces for electric cars within at least one garage on each Block. The Applicant shall also provide space and infrastructure to accommodate additional electric vehicle-ready parking spaces in the office and residential parking garages within each Block. "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.
  - B. Shared Energy. For any site plan that includes more than one building, the Applicant shall provide an assessment of the potential, within the area subject to the site plan, of shared energy systems, including, but not limited to combined heat and power (CHP) (co-generation), micro-CHP, distributed energy resources and district heating and/or cooling, and if a shared energy strategy will not be pursued, provide a narrative discussion regarding the reasons for this outcome.
  - C. Energy and Water Data. To the extent there are master electric, gas and water meters for entire buildings, upon request by the County, the Applicant shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for each building.

## LANDSCAPING

30. Conceptual Landscape Plan. The CDP includes a conceptual landscape plan for the Application Property consisting of an overall plan and details regarding streetscapes, courtyards and private amenity areas generally found on Sheets L-5, L-6, L-7, L-9, L-10, L-11, L-12, L-13, L-14, L-15, L-16, L-17, L-18, L-19, L-20, L-21 and L-22. As part of each and all subsequent FDPs, further landscaping details for each Building Site shall be provided in general conformance with the actual types and the quantity, quality and species of plantings and landscape materials shown on the CDP. Such landscape plan shall include the location of all known utilities and sight distance requirements overlaid on the planting plan. Landscaping may be modified during site plan review for each Building Site to allow for final engineering and design considerations, including, but not limited to, final utility locations, LID facilities, sight distance requirements, Fire Marshal access, and other applicable requirements, provided that such modifications are in substantial conformance with the FDP.
31. Detailed Landscape Plan. As part of the site plan submission for each Building Site on the Application Property, the Applicant shall submit to UFMD of DPWES for review and approval, a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and landscaping materials shown on the approved FDP, and 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 for ensuring the viability of plantings on structures.
32. Street Trees and Alternative Planting Width Details. Street tree species and planting sites are depicted on the CDP but remain subject to such revisions as may be approved by the UFMD at the time of FDP and 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) or as approved by the UFMD, shall be used to satisfy the following specifications for all planting sites:
- A. A minimum of 4 feet open surface width and 16 square feet 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 shall be provided.
  - B. A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below hardscape areas within the pedestrian realm, with no barrier to root growth within four feet of the base of the tree shall be provided.
  - C. Soil volume for Category III and Category IV trees (as defined in Table 12.17 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet in Secondary Pedestrian Corridors where hardscape above tree rooting zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volumes. Minimum soil volumes of 700

cubic feet will be achieved in areas of lower pedestrian volume and where hardscape is not required over tree rooting zones. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous planting area, a total soil volume of at least 500 cubic feet per tree shall be provided. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area.

- D. 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 the rezoning applications.
- E. Trees zones shall be installed with a fully automatic drip irrigation system.
- F. Tree grates shall only be required if necessary to maintain a certain sidewalk dimension.

#### TREE PRESERVATION

33. Tree Preservation. The Applicant shall submit a tree preservation plan and narrative as part of the first and all subsequent site plan submissions. The tree preservation plan and narrative shall be prepared by a certified arborist, landscape architect or a registered consulting arborist, and shall be subject to the review and approval of UFMD.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with 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) located within 25 feet outside the limits of clearing and grading and 10 feet inside the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the FDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the tree preservation plan.

34. 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 on the Application Property that are shown to be saved on the tree preservation plan for a Building Site. These trees and their value shall be identified on the tree preservation plan at the time of the first submission of the site plan for a Building Site. 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 Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective site plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax 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 conducted pursuant to such site plan. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Application Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or be 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 of equivalent size, 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 release of the bond for the improvements of the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the bonds for tree preservation or replacement required by this proffer shall be released and returned to the Applicant.

35. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist, landscape architect or registered consulting arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's 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 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.
36. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the FDP approved for the Building Site, subject to allowances specified in these conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the approved FDP, they shall be located in the least disruptive manner necessary. A replanting plan shall be developed and implemented, subject to approval by the UFMD for any areas protected by the limits of clearing and grading that must be disturbed for such trails and utilities.

37. 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.

All 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 fencing, the UFMD shall be notified and given the opportunity to inspect the site to ensure that all tree protection fencing has 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.

38. Root Pruning. The Applicant shall root prune, as needed, to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the applicable site plan. 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 not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD representative shall be informed when all root pruning and tree protection fence installation is complete.

39. Demolition of Existing Structures. The demolition of all existing features and structures within areas protected by the limits of clearing and grading areas shown on an approved FDP shall be done by hand without heavy equipment and shall be conducted in a manner that does not impact individual trees and/or groups of trees that are to be preserved as reviewed and approved by the UFMD.

40. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist, or registered consulting arborist, to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the applicable tree preservation plan, and be reviewed and approved by the UFMD.

#### STREETSCAPE

41. Streetscape. Streetscaping shall be installed throughout the Application Property as generally illustrated on the CDP. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to Retail/Service uses. Outdoor display and outdoor dining areas shall be permitted within the building zone, but not within pedestrian sidewalk areas. Streetscaping elements may be adjusted at the time of FDP approval provided the quality of the streetscape is consistent with that shown on the CDP. Tree planting sites are set forth on the CDP, and are subject to revision as may be approved on the FDP or at site plan by the UFMD. The Applicant shall retain the services of a certified arborist, landscape architect or a registered consulting arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection.
- A. Invasive Species. Invasive species, as defined by the PFM, shall not be used within the streetscape and landscaped open space areas.
- B. Utilities. Utilities, including, but not limited to water, sanitary sewer and storm sewer utility lines, shall be installed within the street network in accordance with the "Transportation Design Standards" for Tysons Corner Urban Center to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP and/or subsequent FDPs as determined by DPWES. If there is no other cost effective option as determined by the Applicant in consultation with DPWES and DPZ, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP, and subsequent FDPs, as determined by the UFMD. A conceptual utility plan shall be overlaid on the landscape plan submitted with each FDP or FDPA filed subsequently to approval of the rezoning applications and shall include the location of any utility vaults and maintenance points to stormwater management facilities. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations. If at the time of site plan approval, street

trees shown on the FDP are in conflict with existing or proposed utilities and alternative locations for the street trees satisfactory to UFMD cannot be accommodated, the Applicant may delete such trees without the need for the issuance of a minor modification approved by DPZ or the approval of a PCA, CDPA or FDPA.

- C. Access to Stormwater Management Facilities. Maintenance access points to SWM Facilities (as defined in Proffer 94), and electric vaults beneath the streetscape should be located outside clear pedestrian walkway zone of the streetscape when feasible. If the access points 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 Americans with Disabilities (ADA) requirements), be flush with the walkway, and meet ADA accessibility requirements.
- D. Sight Distance. If determined at the time of site plan approval that street tree locations conflict with sight distance requirements, the Applicant shall make efforts to gain approval of said trees by making minor adjustments to their locations or by removing their lower branches. However, in the event VDOT, Fairfax County or any applicable utility company does not approve such tree locations, the Applicant shall be permitted to delete tree location(s) in consultation with UFMD and without the need for the issuance of a minor modification approved by DPZ or approval of a PCA, CDPA or FDPA.
- E. Fire Marshal. If determined at site plan approval that street tree locations conflict with Fire Marshal access comments, the Applicant shall make efforts to gain approval of said trees by making minor adjustments to their locations or by removing their lower branches. However, in the event the Fire Marshal does not approve such tree locations, the Applicant shall be permitted to relocate or delete those tree location(s) in consultation with UFMD and without the need for the issuance of a minor modification approved by DPZ or approval of a PCA, CDPA or FDPA.
- F. Streetscape Materials. Unified and high quality streetscape materials shall be provided as generally shown on the CDP, and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan shall be provided with all FDP and FDPA submissions. These plans shall include 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. Materials, furnishings, and lighting shall be compatible with the "Tysons Corner Urban Design Guidelines" endorsed by the Board on January 24, 2012 and coordinated with the Tysons Partnership, but shall not be subject to approval by the Tysons Partnership. Coincident with the construction of those Building Sites with frontage on Route 123, the Applicant shall provide such streetscape elements in accordance with the Tysons Corner Urban Design Guidelines. Such elements

may require the enhancement and/or replacement of those streetscape elements provided by others.

- G. Signage. Signage for the Application Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance. Alternatively, the Applicant may seek approval of a Comprehensive Sign Plan ("CSP") for all or a portion of the Application Property. The placement of traffic control signage on public streets shall be coordinated with, and is subject to, VDOT review and approval. Wayfinding signage and elements shall be coordinated with the Tysons Partnership so as to facilitate a consistent wayfinding and signage system throughout the Tysons East District, but shall not be subject to approval by the Tysons Partnership. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public amenities.
- H. Maintenance. The areas between the back of curb and the back of the clear pedestrian sidewalk whether located within the public right-of-way or on private land with public access easements shall be designated as the Pedestrian Realm. The Applicant, or the Administrative Group (the "AG," as defined in Proffer 85), once established, on behalf of the Applicant, shall be responsible for obtaining all required VDOT permits related to the Pedestrian Realm, for maintaining and replacing in-kind all Pedestrian Realm elements, including those located within or abutting public right-of-way. The Applicant or AG shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other public entity, as needed) to permit the Applicant or the AG to perform such maintenance within publicly-owned portions of the Pedestrian Realm. Neither the Applicant nor the AG shall be required to repair or restore any elements of the Pedestrian Realm within publicly-owned areas that are damaged by public contractors, or permittees that are not acting under the direct authority of the Applicant or the AG. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant and/or AG without the requirement for a PCA. Maintenance commitments include, but are not limited to:
- (i) All plantings including trees, shrubs, perennials, and annuals;
  - (ii) All associated irrigation elements, exclusive of the public water supply;
  - (iii) All hard surfaces;
  - (iv) All streetscape furnishings including benches, bike racks and non-standard structures;
  - (v) All lighting poles, brackets and fixtures, exclusive of Dominion Virginia Power electric service;
  - (vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes, exclusive of Dominion Virginia Power electric service;

- (vii) Snow removal;
- (viii) Leaf removal;
- (ix) Trash, recycling and litter removal;
- (x) Decorative retaining walls;
- (xi) Special drainage features, such as Low Impact Design facilities; and
- (xii) All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development the Applicant shall provide interim streetscape improvements as described herein.

- I. Ownership of the Streetscape/Pedestrian Realm. Portions of the streetscape/Pedestrian Realm shall be dedicated in fee simple to the County of Fairfax (or equivalent government body or agency), as shown on the CDP Sheet C-21, subject to the following conditions:
- (i) The County shall permit all stormwater and other facilities to be constructed and maintained as generally shown on the CDP, as may be amended by future FDPs not submitted concurrent with the CDP, subject to the Applicant accepting maintenance responsibilities for such facilities;
  - (ii) The County shall permit the Applicant to use security-related features, including, but not limited to, bollards, that are constructed within streetscape areas and shown on an approved FDP. The FDP shall include a narrative describing the importance/necessity of the features for a specific tenant;
  - (iii) The Applicant shall continue to maintain the Pedestrian Realm facilities as described in these proffers;
  - (iv) Dedication of any portions of the Pedestrian Realm intended to be publicly-owned shall occur at site plan for a Building Site; and
  - (v) Dedications shall be subject to a reservation held by the Applicant to allow future utility installation, construction access, temporary construction and grading, and other easements reasonably necessary for the convenient development, operation, maintenance, repair and/or redevelopment of the Applicant's adjacent property.
- J. Private Ownership of Streetscape/Pedestrian Realm. The Applicant shall work diligently with VDOT and the County during the FDP and site plan approval processes to ensure that the streets and the area of the landscape amenity

panel/sidewalk can be accepted by as public streets. The Applicant shall dedicate and convey in fee simple right-of-way, including the area of the landscape amenity panel/sidewalk, to the Board at time of site plan approval, with the following exceptions:

- (i) If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/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. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and 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 sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, 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. In addition, the Applicant shall provide easements within the amenity panel area for bus shelters as determined at the time of FDP or site plan.

- (ii) If at the time of site plan approval 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 from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/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. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and 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 sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, 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. In addition, the Applicant shall provide easements within the amenity panel area for bus shelters as determined at the time of FDP or site plan.

K. Interim Conditions. Due to the size of the Application Property and the time anticipated for its full build-out, phased redevelopment may result in various interim conditions associated with the Application Property as reflected on the CDP. At the time of FDP submission for a Building Site, the Applicant shall identify the specific proposed interim conditions within such FDP area and the area immediately abutting it and shall ensure such conditions provide safe and reasonable pedestrian connections and vehicular access and circulation. Phased conditions as shown on the FDP shall comply with the following general standards:

- (i) Application of a temporary screening system (which may be removable) to the façades of above ground parking garages that will be interior when later phases are complete, but that are exposed at phase lines for more than a one-year period. This screening system shall be applied to all levels above grade and shall be composed of an architecturally designed system that may reflect basic architectural lines of the permanent façades and/or vegetation or other techniques, and shall partially obscure the garage view from outside the garage until the next phase is constructed. As may be appropriate, the specific temporary screening system to be utilized for each garage shall be determined at the time of FDP submission and depicted on the FDP. Other alternate temporary garage screening and the use of banners consistent with Article 12 or any approved Comprehensive Sign Plan and/or temporary art works as a part of the screening system may be approved at the time of FDP approval;

- (ii) Grading and seeding of areas on the Application Property, where existing improvements are removed to accommodate a portion of the development shown for each Building Site, but which are not used for construction staging and/or are not scheduled to have construction commenced on them within 12 months; and
  - (iii) Provision of attractive temporary construction fencing, which may include public art, signage or way-finding elements. Signage shall comply with Article 12 of the Zoning Ordinance or alternatively with an approved Comprehensive Sign Plan.
- L. Incorporation of Design Standards. The Applicant reserves the right, in its sole discretion, to utilize and follow in part, or in whole, the "Tysons Corner Urban Design Guidelines" endorsed by the Board of January 24, 2012 in lieu of the design specifications of these proffers to the extent such specifications are covered by such guidelines.

#### PRIVATE RECREATION FACILITIES

42. Private Amenities and Recreational Facilities for Residential Uses. Pursuant to Paragraph 2 of Section 6-508 and Paragraph 2 of Section 16-404 of the Zoning Ordinance, the Applicant shall provide a minimum of \$1,700.00 per market-rate and workforce residential dwelling unit toward construction of developed on-site recreation facilities for each residential building. Prior to final bond release for each building, the balance of any funds not expended, as determined by DPWES, shall be contributed to the Fairfax County Park Authority ("FCPA") for the provision of recreation facilities serving Tysons Corner.

The specific facilities and amenities to be provided for each individual residential building, or shared between two or more residential buildings, which shall be for the use and enjoyment of the residents of those buildings, shall be determined at the time of subsequent FDP approval. Amenities to be provided may include, but are not limited to:

- A. Private exterior recreational areas or courtyards, which may be located on the top of residential buildings, upper levels of parking podiums or in at grade open areas, which may include pool facilities, informal seating areas, sport courts, landscaping, rooftop gardening areas, hardscape areas, passive recreation areas, or other private amenities and recreational facilities as determined by the Applicant.
- B. Interior fitness centers furnished with exercise equipment that may include, but are not limited to, stationary bikes, treadmills, weight machines and free weights, but not necessarily staffed.
- C. Club rooms and/or entertainment centers for resident gatherings.

The Applicant reserves the right to construct a health club or gym within one or more of the office buildings or the hotel on the Application Property. The Applicant shall have the option of allowing residents of the Application Property to use the facility at no cost.

Said facilities shall be determined at time of FDP submission for the Building Site, and may serve as private recreation amenities for residents of the Application Property if residents are not charged for use. Should this option be implemented, and residents are allowed to use the facility at no cost, the construction costs of the facilities may be counted toward the minimum recreation expenditure described herein.

#### PARKS AND OPEN SPACE

43. Publicly-Accessible Park and Open Space Areas. Provision of publicly-accessible at grade park and open space areas shall be in general conformance with the concepts, locations and minimum acreages depicted on the CDP and as further described in these proffers as may be adjusted at time of FDP and site plan approval to allow for final engineering and design considerations. While public access easements shall be granted for these areas, the Applicant shall retain private ownership and reserves the right to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes. As shown on the CDP, the Applicant shall provide the following park and open space areas:
- A. A Neighborhood Park on the Taylor Block as conceptually shown on Sheet L-10 of the CDP. The Neighborhood Park shall be constructed in two (2) phases with Taylor Building Site A and Taylor Building Site B. The Neighborhood Park may include, but not be limited to, multi-purpose courts, playgrounds and seating areas.
  - B. A naturalized park on the Taylor Block as conceptually shown on Sheet L-6 of the CDP. The naturalized park shall be constructed with Taylor Building Site A and shall include passive recreation opportunities that may include, but not be limited to, a trail, terrace and overlook.
  - C. A Gateway Park on the Van Buren Block as conceptually shown on Sheet L-9 of the CDP. The Gateway Park shall be constructed with the Van Buren Block. The Gateway Park may include, but not be limited to, playgrounds and seating areas.
  - D. A Corner Park on the Taylor Block as conceptually shown on Sheet L-10 of the CDP. The Corner Park shall be constructed with Taylor Building Site C. The Corner Park may include, but not be limited to, shaded and non-shaded seating areas, tables for dining and board games, and a focal element such as public art or a water feature.
  - E. Andrew Way Plaza on the Johnson Block as conceptually shown on Sheet L-7 of the CDP, which shall serve as the focal point of Station Street. Andrew Way shall be constructed with either Johnson Building Site C or Johnson Building Site D, whichever is constructed last. Andrew Way may include, but not be limited to, water features, café seating, benches, landscaped areas, play areas, terraced paving, and performance and event space.

44. Tabulation of Open Space. The publicly-accessible open space tabulations as set forth on the CDP shall be achieved when redevelopment of the entire Application Property is complete, in accordance with Paragraph 2 of Section 16-403 of the Zoning Ordinance.

#### PUBLIC SCHOOLS CONTRIBUTION

45. Public Schools Contribution. Prior to the issuance of the first RUP for each residential building, the amount of \$9,378.00 per student for students projected to be generated by such building shall be contributed to the Board for transfer to Fairfax County Public Schools ("FCPS") to be utilized for capital improvements and capacity enhancements at the schools that students generated by these residential buildings will attend. This contribution shall be based on student yield ratios of 0.047, 0.013 and 0.027 per unit for elementary, middle and high school, respectively. Such contribution shall be made at the time of issuance of the first RUP for each residential building.

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 building to reflect the current ratio and/or contribution. This contribution is not subject to the provisions of Proffer 101. 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.

#### TRANSPORTATION IMPROVEMENTS

46. Definition of "Construct". The term "construct" as used with respect to the road improvements referenced in these proffers shall mean such road improvement is open for use by the traveling public whether or not such improvement has been accepted by VDOT for maintenance.
47. Transportation Design Standards for Tysons Corner Urban Center. All public and private streets within the Application Property and proposed herein shall be subject to and designed in general conformance with the Transportation Design Standards for Tysons Corner Urban Center dated September 13, 2011, as may be amended, subject to the approval of any permitted waivers/modifications which may be granted.
48. Internal Grid of Streets. The Applicant shall construct a grid of streets on the Application Property in conjunction with the redevelopment of each Building Site in accordance with the Phasing Sheets and in substantial conformance with the CDP. Frontage improvements along Colshire Drive and Colshire Meadow Drive and any other public street may be constructed pursuant to VDOT public roadway improvement plans (the "Road Plans") as described more fully in Proffer 50. In such an event, all other improvements (other than the roadway frontage) shown on the CDP will be constructed in accordance with the phasing exhibits for each individual building.

The functional classification of the roadways comprising the grid of streets on and abutting the Application Property is summarized below:

Street	Classification
Dolley Madison Boulevard	Low Speed Boulevard
Anderson Road	Avenue
Colshire Drive (between Dolley Madison Boulevard and Colshire Meadow Drive)	Avenue
Colshire Drive (south of Colshire Meadow Drive and terminus)	Local Street (Public)
Old Meadow Road	Collector
Colshire Meadow Drive	Collector
South Dartford Drive (from Dolley Madison Boulevard to Colshire Meadow Drive)	Local Street (Public)
South Dartford Drive (from Colshire Meadow Drive South)	Collector
Station Street	Local Street (Private)
Grant Road	Local Street (Public)
Lincoln Street	Local Street (Public)

49. Station Street. The Applicant proposes to construct Station Street as shown on the CDP as a private street since a parking garage and utilities, which may include stormwater management facilities, are intended to be constructed beneath the street. A public access easement in a form acceptable to the County Attorney shall be granted for the vehicle travelway and streetscape zone.

50. On-Site Road Improvements. All on-site public road improvements, on-site Private Streets, and on-site Private Access Drives together with appropriate/required pavement transitions shall be constructed with the redevelopment of individual Blocks/Building Sites as discussed above and as reflected on the Phasing Sheets, subject to VDOT approval. Such improvements shall be constructed prior to issuance of the first initial RUP or Non-RUP for the individual new building to be constructed. Such on-site road improvements shall consist of the following:

A. Colshire Meadow Drive. In conjunction with the submission of the first site plan for the first of the Grant Building Site B, Taylor Building Site B, Hotel Block, Van Buren Block or Johnson Building Sites C or D, the Applicant shall submit a VDOT public roadway plan (the "Road Plan") for the ultimate improvement of Colshire Meadow Drive from Old Meadow Road to Anderson Road including the realignment of the Colshire Meadow Drive intersections with Colshire Drive and Anderson Road but excluding the bridge over Scotts Run (the timing for which is outlined in Proffer 99.C.3.) Colshire Meadow Drive shall ultimately be constructed as generally reflected on CDP sheets C-4 through C-9 consistent with the Phasing Sheets and the typical sections presented on CDP sheet C-21. The extent, final design and timing of these ultimate improvements to Colshire Meadow Drive, as generally described and referenced above, shall be provided in

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conjunction with the redevelopment of individual Building Sites/Blocks and determined at the time of site plan approval for that Building Site/Block. Each Applicant, as to its respective Building Site/Block reserves the right, in its sole discretion, to complete such ultimate improvements as a single public road improvement or in separate segments, as long as at least the frontage improvements for the respective individual Building Site have been constructed prior to the issuance of the first initial RUP or Non-RUP for that building reflected on the site plan. Notwithstanding the aforementioned timing of the construction of Colshire Meadow Drive, Colshire Meadow Drive shall be constructed in its entirety between Old Meadow Road and Anderson Road (excluding the bridge over Scotts Run) no later than thirty-six (36) months after the issuance of the first initial RUP or Non-RUP for the fourth (4<sup>th</sup>) of the Blocks or Building Sites referenced above. In such event, the Applicant may use any funds escrowed by others with the County for the improvement of Colshire Meadow Drive.

If an improvement to the section of Colshire Meadow Drive between Anderson Road and South Dartford Drive, including the intersections with Anderson Road and/or South Dartford Drive, is constructed by others prior to site plan submission for either the Garfield or Van Buren Blocks, then the Applicant shall dedicate and convey upon demand by Fairfax County such right-of-way and ancillary easements necessary to facilitate such construction by others provided: (i) interim access to/from the existing/planned buildings located on the Van Buren and Garfield Blocks is maintained at all times for only the period prior to redevelopment of those two (2) Blocks; and (ii) such improvements to either Block are minimized and coordinated with the Applicant prior to approval of the site that includes the Colshire Meadow Drive improvement. In such event, the Applicant will escrow its share of the cost of the ultimate improvements along the Garfield Block's Old Chain Bridge Road frontage. Those specific improvements, as reflected on Sheet A6.05 of the CDP along the Van Buren Block's frontage would then be constructed with the redevelopment of the Van Buren Block.

If an improvement to the section of Colshire Meadow Drive between South Dartford Drive and Colshire Drive (excluding the intersection with Colshire Drive) is constructed by others (including Fairfax County) prior to the site plan submission for either of the Johnson Building Sites C or D, then the Applicant shall dedicate and convey upon demand by Fairfax County such right-of-way and ancillary easements necessary to facilitate such construction by others provided: (i) access to/from the existing Johnson I and II (MITRE 4) buildings (as identified on CDP Sheet C-3A) is maintained at all times prior to the period of redevelopment of those sites; and (ii) such improvements are minimized and coordinated with the Applicant prior to approval of the site plan that includes the improvements to Colshire Meadow Drive as defined in this Paragraph. In such event, those specific streetscape improvements along the Johnson Building Sites C and D would then be constructed with their individual redevelopment.

~~In the event Johnson Building Site C or D is the first of the six buildings referenced above to be constructed then, and only then, would the Applicant the Applicant shall be granted in-kind credit as outlined in the Board's Guidelines for the Tysons Grid Fund for the following improvements to Colshire Meadow Drive (Proffer 64.F) and as more fully described below. In such event, the Applicant would (at his sole discretion) construct the ultimate section of Colshire Meadow Drive from the easternmost bridge approach over Scotts Run east to and including the intersection improvements to Colshire Drive and South Dartford Drive and Anderson Road, as well as the section of Station Street between Colshire Drive and South Dartford Drive and South Dartford Drive between Route 123 and Colshire Meadow Drive. In such event, the Applicant reserves the right to seek credit against the Tysons Grid Fund (as described in Proffer 64.E) for those improvements to Colshire Drive and Colshire Meadow Drive described herein. If the Applicant elects to complete such a network of streets as outlined in this paragraph then those streets shall be constructed prior to issuance of the first initial Non-RUP for the first of Johnson Building Sites C or D. In the event that Colshire Meadow Drive cannot be extended east of the South Dartford Drive intersection to Anderson Road and/or South Dartford Drive between Route 123 and Colshire Meadow Drive cannot be completed to its ultimate cross section without impacting either the then existing uses on the Van Buren Block or The Commons property (2012 Tax Map 30-3 ((26)) 5, 6 and 8), then the Applicant shall be permitted to construct interim improvements for one of both of those links and the Anderson Road intersection as determined in consultation with VDOT and FCDOT.~~

- B. Colshire Drive Realignment. Concurrent with the rezoning applications, the Applicant has submitted a request to FCDOT for the abandonment and conveyance of certain portions of existing dedicated fee simple right-of-way of Colshire Drive to support a new alignment thereof from Route 123 South to and including its intersection with Colshire Meadow Drive as shown on the CDP. Said realignment shall also require dedication of right-of-way by the Applicant as also shown on the CDP. Upon approval of the abandonment and conveyance request by the Board, which is expected to occur approximately thirty (30) days subsequent to the approval of the rezoning applications, or as soon thereafter as possible, the Order of Abandonment and Deeds of Conveyance to the Applicant, and the Deeds of Dedication from the Applicant to Fairfax County (collectively referred to as the Order and Deeds) shall be placed in escrow with Fairfax County. Colshire Drive shall continue to be owned by Fairfax County and maintained by VDOT in its current alignment pending the transfer of title which will occur upon recordation of the Order and Deeds as described below. Upon the submission of an FDP for the redevelopment of the first of the Hotel Block or Johnson Building Site C, the Order and Deeds shall be recorded among the land records of Fairfax County and Colshire Drive shall then be reconstructed as generally reflected on the CDP consistent with the Phasing Sheets, the typical sections presented on the CDP and as may be approved by VDOT. The submitted FDP shall be diligently pursued. In addition, a site plan consistent with the FDP

shall be submitted to DPWES no later than six (6) months after acceptance of the FDP by DPZ if associated with the Hotel Block or no later than twelve (12) months after acceptance of the FDP by DPZ if associated with Johnson Building Site C. The FDP submitted for either the Hotel Block or Johnson Building Site C shall not be approved until said site plan is submitted. Prior to recordation of the Order and Deeds, no actions shall be taken by either party that would adversely affect title or future recordation of the Order and Deeds, except as may be required by Law and/or Ordinance. The extent, final design and timing of these ultimate improvements to Colshire Drive as generally described and referenced above shall be completed as a single public road improvement project prior to the issuance of the first RUP or Non-RUP for either the Hotel, or Johnson Building Site C, whichever shall first occur.

In no event will the Applicant be restricted from submitting and/or gaining approval of a FDP, FDPA, CDPA and/or site plan pending VDOT and FCDOT's review and approval of the road improvement project described above. Neither shall issuance of any RUP or Non-RUP (except for the Hotel or Johnson Building Site C as described above) associated with the Application Property be limited or restricted.

- C. Grant Road. In conjunction with the development of Grant Building Site A, the Applicant shall construct Grant Road as a two-lane, public, local, street with on-street parking provided along the east side. The intersection of Route 123 and Grant Road shall be designed and constructed to ultimately permit right-in/right-out movements. Notwithstanding what is noted on Sheet C-9 of the CDP, the Applicant acknowledges that right-out movements from Grant Road onto existing Route 123 at this location may be restricted by VDOT if conditions so warrant at the time of site plan submission for Grant Building Site A. The Applicant however reserves the right to seek unlimited right-in/right-out access approval by VDOT at this location at any time.
- D. Access to Lincoln Building Site A. If the adjacent property identified as Fairfax County 2012 tax map 29-4 ((6)) 101B (the "GEICO" property) redevelops prior to the site plan submission for development of Lincoln Building Site A, the Applicant shall provide right-of-way dedication of 20.5 feet along the common property line and ancillary easements up to an additional ten (10) feet abutting such right-of-way in order to construct a consolidated entrance to both properties opposite Colshire Meadow Drive. Said dedication and/or easements shall only be provided if the adjacent property owner records a public access easement over said consolidated entrance to facilitate future access to and from Lincoln Building Site A. In such event, the Applicant shall be permitted to make such changes to the existing Lincoln Building Site A's, surface parking lot without the need for a CDPA and/or PCA, or site plan modification. Said improvements shall not be deemed implementation of the improvements shown on the CDP for Lincoln Building Site A for purposes of compliance with proffer obligations.

Notwithstanding the above, in the event the Lincoln Building Site A develops prior to the GEICO property, the Applicant shall endeavor to consolidate its entrance with GEICO to provide a single shared use entrance opposite Colshire Meadow Drive. In the event GEICO refuses and VDOT does not permit two (2) entrance/exits in proximity to one another then the Applicant shall construct either an alternative access from Old Meadow Road to serve the Lincoln Building Site A garage and/or such other interim connection to and from Old Meadow Road in order to minimize conflicts with the existing GEICO entrance/exit. Such alternative access will be evaluated with VDOT and FCDOT at the time of FDP submission for Lincoln Building Site A and may be further refined at site plan without the need for a PCA, CDPA or FDPA.

E. Other Public Street Improvements. All other public street improvements (including Old Meadow Road, Anderson Road, Chain Bridge Road) shall ultimately be constructed as reflected on CDP sheet C-4, the phasing exhibits reflected on the Phasing Sheets and the typical sections presented on CDP sheet C-21. The extent, final design and timing of these other public street improvements shall be provided in conjunction with the redevelopment of individual Blocks or Building Sites and shall be determined at the time of site plan approval for those individual Blocks or Building Sites. Each Applicant, as to its respective Block, or Building Site reserves the right, in its sole discretion, to complete such ultimate improvements as a single public road improvement or in separate segments, as long as at least the frontage improvements for the respective Block or Building Site have been constructed prior to the issuance of the first initial RUP or Non-RUP for that Block or Building Site site plan.

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F. Service Streets (Private Alleys). With the redevelopment of individual Building Sites, any private service streets and access roads as shown on the CDP and phasing exhibits shall be constructed (unless already constructed by others) and open for use by the public and a public access easement in a form acceptable to the County Attorney shall be granted prior to the first initial RUP or Non-RUP for the respective building.

51. Off-Site Transportation Improvements. The following off-site transportation improvements shall be provided by the Applicant as more fully described below:

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A. Prior to the issuance of the first initial RUP or Non-RUP for the ~~last~~first of the Van Buren or Westgate Blocks, the Applicant shall construct a second left-turn lane on Route 123 onto Anderson Road including any signal modifications (including replacement of the existing signal) to a standard as may be required by VDOT and within existing rights-of-way and subject to VDOT approval and permitting as generally shown on the CDP.

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B. ~~Prior to~~No later than thirty-six (36) months after the issuance of the first RUP or Non-RUP for the ~~third~~second building to be constructed on the Johnson Block, the Applicant shall construct a 200 foot extension of the full width southbound

dual left-turn lanes on Route 123 onto Colshire Road within existing rights-of-way and subject to VDOT approval and permitting as shown on the CDP.

- C. In the event VDOT, Fairfax County and/or others (but not the Applicant) initiates and funds the Super Street Concept for the segment of Route 123 between the Dulles Access Road and I-495, before either of the triggers outlined in Proffers 51.A. and 51.B., then the Applicant's obligation to construct the left-turn lane enhancements listed in those same proffers is deemed null and void and the proffers are of no further force and effect. In such event, the Applicant shall then contribute \$150,000.00 to the County towards the design and/or construction of the Super Street as described in Proffer 52. Such contribution to be made in two (2) equal installments of \$75,000.00 each paid at the time of issuance of the first initial RUP or Non-RUP consistent with the timing established in Proffers 51.A. and 51.B. above.

52. Route 123 Super Street Concept. The Applicant shall provide the following:

- A. No later than two years after the approval of these rezoning applications, the Applicant will complete and submit ~~in consultation with VDOT and FCDOT and for their review and approval,~~ advanced preliminary design (30% complete) plans (the "APD Plans") for the modification of Route 123 between Anderson Road and the planned median break just to the west of Old Meadow Road as a super street, as recommended ~~by~~ in the Tysons East District CTIA and as shown on Sheet C-4 of the CDP. The APD Plans will include recommendations for bicycle and pedestrian crossing facilities to be integrated with the super street concept. The Applicant shall not be required to prepare and/or submit any Interchange Modification/Justification Requests (IMR/IJR) or traffic analyses to FCDOT, VDOT and/or FHWA in conjunction with the APD Plans referenced in this Proffer.
- B. The APD Plans shall be completed by a Virginia Licensed Professional Engineer (the "Engineer"). All civil engineering associated with the APD Plans shall be based on VDOT Road and Bridge Standards, Volumes I and II and the Transportation Design Standards for Tysons Corner Urban Center unless otherwise waived or modified by VDOT.
- C. The scope of work associated with preparation of the APD Plans shall be provided to VDOT and FCDOT by the Engineer for review and comment. Upon receipt of review comments by VDOT and FCDOT or 30 days after submission of the scope of work, whichever is earlier, the Engineer shall proceed with the APD Plans.
- D. The Engineer, upon completion, shall submit six (6) sets of the draft APD Plans each to VDOT and FCDOT for review and comment. FCDOT and VDOT shall have ninety (90) days to provide written comments on the APD Plans to the Engineer. Upon expiration of ninety (90) days or receipt of comments, whichever

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is earlier, the Engineer shall convene a meeting with both agencies in order to review the comments and finalize any changes to the APD Plans.

E. No later than sixty (60) days after the meeting, the Engineer shall submit the final APD Plans to both FCDOT and VDOT. Submission of the final APD plans shall constitute completion of this Proffer.

~~B. The APD Plans will include recommendations for bicycle and pedestrian crossing facilities to be integrated with the super street concept.~~

C.F. The Applicant shall contribute a total of \$800,989.00 (equivalent to approximately \$0.126 per square foot of new GFA) to Fairfax County towards the reconstruction of that segment of Route 123 described in subparagraph 52.A. as a super street. Notwithstanding Proffer 101, these contributions only shall be adjusted at the time of payment and from the date of VDOT's approval of the APD Plans and as permitted by Section 15.2-2303.2 of the Code of Virginia as amended. Twenty-five percent (25%) of the total contribution (approximately \$200,247.00) shall be paid coincident with the approval of the second site plan for the Application Property. The remaining seventy-five percent (75%) of the total contribution shall be paid in three (3) equal installments of twenty-five percent (25%) each at the time of site plan approval for each of the subsequent three (3) new buildings.

D.G. In no event will VDOT and FCDOT review and approval of the APD Plans be a condition of FDP, FDPA, CDPA and/or site plan submission and/or approval, or a condition to issuance of any RUP or Non-RUP associated with any Block or Building Site on the Application Property with the exception of those Blocks/Building Sites with frontage along Route 123 and identified for purposes of this Proffer as Grant Building Site A, Johnson Building Sites A and B and the Westgate Block. For those Blocks/Building Sites with frontage along Route 123 (excluding the Garfield Block), such APD Plans must be approved by VDOT and FCDOT prior to the issuance of any RUP or Non-RUP for any of those four (4) Block or Building Sites identified in this Paragraph.

E.H. If at any time prior to submission of the final APD Plans, VDOT and FCDOT in consultation with the Engineer and Applicant determines that an interim/partial Super Street can be accomplished as outlined in Proffer 53, then the Applicant's obligation to complete the APD Plans is deemed null and void and this Proffer is of no further force or effect.

~~F. For purposes of this Proffer, the APD Plans will be deemed approved if no comments have been received from VDOT and FCDOT within 90 days after final submission.~~

53. ~~Interim/Partial Super Street Option. The Applicant shall complete the following subject to the conditions outlined below:~~

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- A. If at any during VDOT and In the event VDOT and FCDOT upon FCDOT's review of the APD Plan referenced in Proffer 52.A above and, in consultation with the Applicant, determines draft APD Plans, both agencies determine an interim/partial portion of the Super Street between Anderson Road and Old Meadow Road (including transitions) can be constructed without the need for FHWA review/approval of an Interchange Modification/Justification Request (IMR/IJR) associated with either the Beltway (I-495) or the Dulles Access Road, then the Applicant shall complete the following: upon written request by the County and VDOT, the Applicant shall cease preparation of the APD Plans and proceed to the preparation of Final Design Plans (the "FD Plans") as outlined in Proffer 53.A. below. In such event, the Applicant's obligation to complete the APD Plans is deemed complete and no further action with regard to the APD process is required.
54. Final design plans (the "Final Design Plans") Interim/Partial Super Street Option. In the event that the Applicant is directed by VDOT and FCDOT to proceed with development of FD Plans for a portion of the Super Street as defined in Proffers 52.H. above, then the Applicant shall complete the following subject to the conditions outlined below:
- ~~(i)~~ A. FD Plans to be reviewed and approved by VDOT and/or FCDOT for that portion of Route 123 between Anderson Road and Old Meadow Road to be constructed including appropriate transitions;
- ~~(ii)~~ B. Construction of only those roadway improvements reflected in the Final Design FD Plans that shall not exceed the total contribution referenced in Proffers 51.C and 52.C (or \$950,989.00); and;
- ~~(iii)~~ C. Modifications to the signals on Route 123 at Old Meadow Road, Colshire Drive and/or Anderson Road as needed to accommodate the interim/partial Super Street.
- ~~B-D.~~ In the event VDOT and FCDOT, in consultation with the Applicant, agree to permit the construction of an interim/partial portion of the Super Street as described herein, then the Applicant's obligations with respect to Proffers 51.A., B. and C. and 52.C. and D. above are deemed null and void and those proffers of no force or effect. Further in such event, the interim/partial Super Street shall be constructed within ~~twenty-four (24)~~ thirty-six (36) months after the issuance of the ~~last~~ first initial Non-RUP of for the second of the Grant Building Site A, Johnson Building Sites A or B, or the Westgate Block.
- ~~C-E.~~ In no event will VDOT and/or FCDOT review and approval of the Final Design FD Plans be a condition of FDP, FPA, CDPA and/or site plan submission and/or approval associated with any Block or Building Site on the Application Property with the exception of those Blocks/Building Sites with frontage along Route 123 as more specifically described in Proffer 52.DG. above.
- ~~D-F.~~ For purposes of this Proffer, the Final Design ~~preparation of~~ FD Plans will be deemed ~~approved~~ if no comments have been received from ~~completed~~ generally

consistent with the process outlined in Proffer 52.B through E above as agreed to among VDOT, FCDOT, the Engineer and FCDOT within 120 days after final submission the Applicant.

55. Supplemental Traffic Analyses. At the time of FDP or site plan submission for each new Building Site subsequent to the rezoning applications, supplemental operational traffic analyses of points of access to the Building Site shall be provided if requested by VDOT and/or FCDOT, and only if the trip generation associated with an individual Building Site within the limits of the FDP or site plan is more than 100 additional directional peak hour trips (inbound or outbound) over that anticipated as reflected on the CDP and in the Traffic Impact Study prepared by Wells & Associates dated May 23, 2011 as revised through November 30, 2012. Such supplemental operational analyses shall be limited to an assessment of those driveways and/or turn lanes serving the particular Building Site.
56. Notification Letter. At the time of filing the first site plan for each new Building Site on the Application Property, a notification letter shall be sent 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.
57. Old Meadow Road/Colshire Meadow Drive Traffic Signal. A warrant study for installation of a new traffic signal at the Old Meadow Road/Colshire Meadow Drive intersection shall be submitted within twelve (12) months after issuance of the first initial RUP or Non-RUP for the first new building to be constructed on either the Lincoln or Grant Block. In the event the signal is warranted, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT and provision for pre-emption for a future fire station on the Taft Site (2012 Tax Map: 29-4 ((6)) 96A), as further defined herein, no later than twelve (12) months following approval of the warrant.

In the event the signal is not warranted within the twelve (12) months after issuance of the first RUP or Non-RUP for the first new building constructed on either the Lincoln or Grant Block, then the Applicant shall conduct a second warrant analysis twelve (12) months after the issuance of the last RUP or Non-RUP for the fourth building to be constructed on the combined Lincoln, Grant and Taylor Blocks. In the event the signal is warranted, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT and provision for pre-emption for a future fire station on the Taft Site, no later than twelve (12) months following approval of the warrant.

If not warranted with the second analysis, then the Applicant shall complete a third warrant study within twenty-four (24) months after the issuance of the first RUP or Non-RUP for the last new building to be constructed on the Application Property. In the event the signal is then warranted, the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT and provision for pre-emption for a future fire station on the Taft Site, no later than eighteen (18) months following approval of the warrant. If not warranted with the last new building on

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the Application Property, then the Applicant's obligation to construct or fund such signal is deemed null and void and this proffer is of no further force or effect.

At any time, the Applicant may use any funds which have been escrowed with the County by others towards the signalization of this intersection if available.

58. Colshire Meadow Drive /Colshire Drive Traffic Signal. A warrant study for installation of a new traffic signal at the Colshire Meadow Drive/Colshire Drive intersection shall be submitted within twelve (12) months after issuance of the first RUP or Non-RUP for the first new building to be constructed on either the Hotel Block or Johnson Building Site C. In the event the signal is warranted, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT, no later than twelve (12) months following approval of the warrant and reflecting the realignment of the Colshire Meadow Drive/Colshire Drive intersection.

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In the event the signal is not warranted within the twelve (12) months after issuance of the first RUP or Non-RUP for the first new building constructed on either the Hotel Block or Johnson Building Site C, then the Applicant shall conduct a second warrant analysis twelve (12) months after the issuance of the last RUP or Non-RUP for the final new building to be constructed on the combined Hotel, Johnson and Taylor Blocks. In the event the signal is warranted, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT, no later than twelve (12) months following approval of the warrant.

If not warranted with the second analysis, then the Applicant shall complete a third warrant study within twenty-four (24) months after the issuance of the first RUP or Non-RUP for the last new building to be constructed on the Application Property. In the event the signal is then warranted, the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT, no later than eighteen (18) months following approval of the warrant. If not warranted with the last new building on the Application Property, then the Applicant's obligation to construct or fund such signal is deemed null and void and this proffer is of no further force or effect.

At any time, the Applicant may use any funds which have been escrowed with the County by others towards the signalization of this intersection if available.

59. Old Meadow Road/Lincoln Street Traffic Signal. Within twelve (12) months after the issuance of the final Non-RUP for the Lincoln Block, the Applicant will conduct a warrant study for a new traffic signal at the intersection of Old Meadow Road and Lincoln Street. In the event the signal is warranted, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT and provision of pre-emption for a future fire station on the Taft Site, no later than twelve (12) months after approval of the warrant.

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In the event the signal is not warranted at that time, then the Applicant shall complete a second warrant study within twenty-four (24) months after the issuance of the first RUP or Non-RUP for the last new building to be constructed on the Application Property. In

the event the signal is warranted then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT and provision of pre-emption for a future fire station on the Taft Site, no later than eighteen (18) months after approval of the warrant. If the signal is deemed not warranted by VDOT at that time, then the Applicant's obligation to this signal is deemed null and void and this proffer is of no force or effect.

At any time, the Applicant may use any funds which have been escrowed with the County by others towards the signalization of this intersection if available.

60. Colshire Meadow Drive/South Dartford Drive Traffic Signal. If not previously conducted by others, then within twelve (12) months after the issuance of the first RUP or Non-RUP for the second new building constructed on the Westgate Block, Van Buren Block A, Johnson Building Site B or Johnson Building Site D, the Applicant will conduct a warrant study for a new traffic signal at the intersection of Colshire Meadow Drive/South Dartford Drive. Said warrant study will include not only build out of the two buildings constructed at the time of submission but an additional future scenario that includes all four (4) buildings. If the signal is warranted with the two (2) constructed buildings, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT, no later than twelve (12) months after approval of the warrant. If not warranted until occupancy and build out of all four (4) buildings, then the Applicant shall design, equip and install said signal, including those pedestrian features as may be required by VDOT, no later than issuance of the final RUP or Non-RUP for the fourth building. At any time, the Applicant may use any funds which have been escrowed with the County by others towards the signalization of this location if available. In the event the signal is not warranted with the four (4) building scenario, then the Applicant shall escrow \$150,000.00 towards the cost of future signalization of this intersection by others.

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61. Traffic Signal Modifications. If not previously completed by others, and concurrent with the site plan for the Van Buren Block, or the completion of the intersection improvements at Anderson Road/Colshire Meadow Drive, whichever occurs last, a signal modification plan for the Anderson Road/Chain Bridge Road intersection shall be submitted to VDOT and such signal modifications, including pedestrian enhancements as may be required by VDOT and in accordance with the phasing exhibits shall be constructed.

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62. Dolley Madison Boulevard Signal Timing Plans. Concurrent with the approval of the first site plan for the third office building to be constructed on the Application Property, the Applicant shall contribute a total of \$50,000.00 to be used to modify the signal timings in the Dolley Madison Boulevard corridor between the Capital Beltway and the Dulles Access Road. If at time of site plan submission for the eighth (8<sup>th</sup>) new building on the Application Property, signal timing modifications have not been requested by VDOT for the Route 123 corridor, the County may utilize those funds for other transportation improvements/enhancements in the Tysons East District.

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63. Fire Station Pre-emptive Signal Installation(s). When a fire station is constructed on the Taft Site, then the Applicant, prior to the issuance of a Non-RUP for the fire station, shall

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complete the following: (i) signal pre-emption at new signals warranted by VDOT and approved for construction on Old Meadow Road as referenced in Proffers 56 and 58 and at Old Meadow Road and Old Meadow Lane; and (ii) install signal pre-emption at the existing Old Meadow Road/Route 123 intersection.

64. Timing of Completion. Upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, any of the required transportation improvements have been delayed (due to, but not limited to, an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, necessary easements, site plan approval, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of such improvement.

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65. Grid of Streets Transportation Fund (the "Tysons Grid Fund") Contribution. The Applicant shall contribute the sum of \$6.44 per square foot of GFA for new non-residential space and \$1,000.00 per residential unit constructed on the Application Property in accordance with the Tysons Grid Fund adopted by the Board on January 8, 2013, as amended and subject to credits/in-kind contributions as permitted and identified below. Pursuant to The Tysons Grid Fund Guidelines (the "Guidelines"), the Applicant's contribution to the Tysons Grid Fund shall be made on a building by building basis in accordance with the Guidelines.

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Pursuant to the Guidelines, the Applicant has identified in conjunction with the rezoning application those improvements eligible for credit and the amount of credit (in whole or in part) based on his proportional impact on said improvement as determined based on data reflected in the Tysons East CTIA, as well as the Site Traffic Impact Analysis prepared by Wells + Associates for Scotts Run Station dated May 23, 2011 as revised through November 30, 2012.

- A. Seventy-five percent (75%) of the hard and soft costs associated with the construction/replacement of the Colshire Meadow Drive Bridge over Scotts Run;
- B. Costs associated with the widening of Colshire Meadow Drive along the Kiss-n-Ride Site frontage only as highlighted in Exhibit A equal to ½ of a four-lane, undivided cross-section;
- C. Costs associated with the widening of a ½ section of Colshire Drive along the Kiss-n-Ride Site frontage only, as highlighted in Exhibit A;
- D. One hundred (100%) of the costs associated with the preparation of APD Plans for the improvement of Route 123 as a Super Street as described in Proffer 52.A if submitted to VDOT and FCDOT within one (1) year of rezoning approval, as opposed to the timeline established in Proffer 52.A;
- E. Full credit for the difference in costs between only those tasks completed in association with the preparation/submission/approval of the APD (up to 30% design) Plans and the preparation/submission/approval of Final Design (100%) Plans and full credit for the construction of an interim/partial portion of the Super Street as described more fully in Proffer 53; and

F. ~~\_\_\_\_\_Thirty-five~~ percent (~~—%)(35%)~~ of the costs associated with the advancement of Colshire Meadow Drive, ~~Colshire Drive~~ and South Dartford Drive as described in Proffer 50.A.

G. In the event the Applicant must obtain off-site rights-of-way and/or easements to construct any of the improvements listed above, then the cost of such acquisition shall also be creditable against the Grid Fund. ~~Any~~The Applicant reserves the right to seek the Board's approval of the application of any excess credits associated with the provision of in-kind projects may be applied to the Scotts Run Station North (RZ 2011-PR-009) application.

66. Buy Out – Phase I District. At least sixty (60) days prior to recording any residential-~~condominium~~ documents that would change the use of one or more Building Sites from a multi-family residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business which is taxable for purposes of the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District") to a use that is not subject to the Phase I District tax, 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 such condominium documents for that Building Site. 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 based on the use of that Building Site prior to becoming subject to the condominium that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Board of Supervisors.

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67. Tysons-Wide Transportation Fund (the "Tysons-Wide Fund") Contribution. The Applicant shall contribute the sum of \$5.63 per square foot of GFA for all net new non-residential development and \$1,000.00 for each residential unit constructed on the Application Property in accordance with the Tysons-Wide Fund as adopted by the Board on January 8, 2013, as amended and subject to credits as may be permitted by the Board. The contribution shall be made on a building by building basis as set forth in the adopted Tysons-Wide Fund. This contribution shall not apply to any public facilities constructed on the Application Property. These payments may be made earlier than required pursuant to this paragraph at the sole discretion of the Applicant.

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In the event the Board expands the list of Tysons-Wide projects listed on Table 7 to include any of those improvements proffered to herein by the Applicant, then the Applicant reserves the right to seek pro-rata credit for such in-kind projects in accordance with the Board's guidelines for the Tysons-Wide Fund. Any pro-rata credit sought by the Applicant will be based on its proportional share of ~~PM peak hour 2050 traffic forecaststrips~~ as reflected in the Tysons East CTIA and/or the Traffic Impact Study prepared by Wells + Associates, Inc. for Scotts Run Station dated May 23, 2011, as revised through November 30, 2012.

68. Congestion Management Plan. The Applicant shall prepare and implement a construction congestion management plan during construction of each Building Site, as

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appropriate, through its development/construction manager and the TPM (as defined in Proffer 86), so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Application Property and on the public roadways adjoining the Application Property (each a "Congestion Management Plan").

- A. Each Congestion Management Plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane closures, and/or other construction related activities to minimize disturbance on the surrounding road network.
  - B. Each Congestion Management Plan shall also require the Applicant to coordinate its construction activities throughout construction with VDOT and FCDOT.
  - C. Such Congestion Management Plans shall be prepared by a qualified professional and submitted in connection with the VDOT permit for construction on the subject building site. In addition, the TPM shall coordinate any adjustments to the TDM Plan (as defined in Proffer 86) as necessary to address each Congestion Management Plan.
69. Bus Facilities. In conjunction with the improvement of Colshire Drive from Route 123 south to Colshire Meadow Drive as discussed in Proffer 50.B., the Applicant shall construct three (3) bus shelters with saw tooth bus bays along the west side of Colshire Drive and one (1) bus shelter with a saw tooth bus bay along the north side of Colshire Meadow Drive (if such bay is not to be used solely for lay-by operations and a shelter is not needed as determined by FCDOT or WMATA. The Applicant's obligation to that shelter only may be deemed null and void) in substantial conformance with those shown on Sheets C-4, C-6 through C-8 and A6.04 of the CDP as approved by FCDOT and WMATA.
70. Circulator. A dedicated bus lane and/or shelter for the circulator shall be constructed on Colshire Meadow Drive with Taylor Building Site B as shown on Sheets C-4, C-6 through C-8, C-20F and A6.04 of the CDP. The design of the circulator shelter shall be coordinated with FCDOT at the time of site plan for Taylor Building Site B. Prior to implementation of circulator service in Tysons East, this lane may be used as interim on-street parking.

#### PEDESTRIAN CIRCULATION

71. Pedestrian Circulation. Pedestrian connectivity shall be provided throughout the Application Property generally consistent with the concepts shown on the "Pedestrian Circulation Plan" on Sheet L-2 the CDP, through the use of elements such as terraces, sidewalks, trails, bus shelters, bus pull-offs and lawn areas, including connections to open space, trails and/or sidewalks located off-site. Off-site connections to existing trails, sidewalks, and/or open space, if any, shall be constructed subject to receipt of all necessary off-site easements provided by others to the Applicant at no cost, other than administrative costs associated with recordation of said easement among the land records

of Fairfax County. The Applicant shall make diligent efforts to obtain necessary off-site easements and, if requested, shall provide documentation demonstrating same to DPZ. If the necessary off-site easements cannot be obtained, the cost to construct the portion of such sidewalk or trail from the Application Property boundary to the existing or planned location of the off-site sidewalk or trail shall be escrowed with Fairfax County and, upon payment, the obligations of this proffer shall be deemed satisfied. Pedestrian connections, including off-site connections, interim connections and crosswalks, shall be included at FDP for each Building Site.

72. Trail Coordination on Route 123. Prior to installation of landscaping as shown on Route 123 with the Garfield Block, the Applicant shall coordinate with FCDOT regarding the installation of a pedestrian trail by others.

#### PUBLIC STREET RIGHT-OF-WAY

73. Public Streets. The Applicant shall work diligently with VDOT and the County during the FDP and site plan approval processes to ensure that the improvements proposed to existing and new public streets be accepted into the VDOT system for maintenance. As may be necessary with respect to all of the existing and new public streets, right-of-way as associated with each Building Site, and as may be further qualified by these proffers, shall be dedicated and conveyed to the Board in fee simple, as applicable, at the time of site plan approval. The dedicated area shall be shown at time of FDP and shall generally be from building zone to building zone as shown on the CDP and as further qualified by Proffer 41.J. In the event VDOT does not accept any dedicated public street as identified on the CDP and Proffer 50 for maintenance within seven (7) years of opening any street for public use, then such street may be retained by the Applicant, within its sole discretion and upon notification of the same to FCDOT, as a private street subject to a public access and maintenance agreement in a form acceptable to the County Attorney. In such event, a PCA, CDPA and/or FDPA will not be required and any density credit accrued with dedication pursuant to Section 2-308 of the Zoning Ordinance shall be retained by the Applicant.
74. Public Street Standards. All public street improvements proposed herein shall be subject to VDOT approval, and shall be in general conformance with the "Transportation Design Standards for Tysons Corner Urban Center," dated September 13, 2011, as may be amended, and subject to any permitted modifications and/or waivers that may be granted.
75. Vacations and Abandonments. In the event any public street right-of-way located within the Application Property or that abuts the Application Property, is vacated and/or abandoned subsequent to approval of the rezoning applications, such right-of-way area will become zoned to the PTC District pursuant to Section 2-203 of the Zoning Ordinance and such right-of-way area may be used, without requiring a PCA, CDPA or FDPA, for utilities and to accommodate sidewalks and streetscape elements consistent with the street sections shown on the CDP and/or with the Tysons Corner Urban Design Guidelines endorsed by the Board on January 24, 2012.

#### BICYCLE IMPROVEMENTS

76. Bicycle Lanes. Concurrent with construction of the street and streetscape improvements identified in these proffers, the Applicant shall provide pavement and striping for on-road bicycle lanes along the Application Property's frontages on Old Meadow Road, Colshire Drive (from Route 123 south to Colshire Meadow Drive), Colshire Meadow Drive, Old Chain Bridge Road and Anderson Road, all as shown on the CDP. Such lanes shall typically be four (4) to six (6) feet in width as shown on the CDP with the final dimension determined at the time of FDP approval. The time and installation of bicycle lane striping shall be subject to approval by VDOT in coordination with FCDOT at time of site plan approval for applicable individual Building Sites. In addition, the Applicant shall designate a northbound and southbound sharrow lane on Colshire Drive south of Colshire Meadow Drive subject to VDOT approval in consultation with FCDOT and in conjunction with the improvement of the intersection of Colshire Meadow Drive and Colshire Drive.
77. Bicycle Facilities. The Applicant shall provide bicycle racks, bike lockers, and/or bike storage areas on the Application Property, the specific locations of which shall be determined at the time of FDP approval, and may be further refined/modified at site plan, but in either event in consultation with FCDOT's Bicycle Coordinator or designee. The bicycle racks shall be as shown on the CDP, or other design approved by FCDOT. The total number of bike parking/storage spaces shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking for each building or group of buildings as determined at FDP. Signage shall be posted on the exterior side of the buildings near the entrances to bike parking/storage space to indicate bike parking/storage.

#### PARKING

78. Parking. Parking on the Application Property shall be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Zoning Ordinance, and as shown on the CDP. Tandem and valet parking, shall be permitted and, subject to Board approval, shall count toward parking requirements. Tandem parking spaces may be used for residential units with two cars and in office and hotel buildings where spaces are assigned by building management. The exact number of spaces to be provided shall be refined with approval of the FDP and determined at the time of site plan approval based on the specific uses. If changes in the mix of uses result in parking greater than that anticipated on the CDP, the additional parking spaces shall be accommodated within the proposed parking structures, without increasing the height or mass of the parking structures and buildings. The Applicant, to the extent feasible, shall provide controlled access to parking garages and, if installed, shall ensure that the control equipment is capable of counting vehicles entering and exiting all garages.
79. Future Revisions. The Applicant reserves the right to provide parking at different rates as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates shall not require a CDPA or PCA, provided there is no increase in the size or height of above-ground parking structures.
80. On-Street Parking on Private Streets. On-street parking may be provided on the private streets to meet the parking requirements of the Zoning Ordinance, so long as such spaces

are striped and meet the dimension requirements of the PFM, subject to receiving approval of any necessary waivers and/or modifications. Parking on private streets may be restricted through appropriate signage or such other means as determined appropriate by the Applicant as to its respective Building Site, and on-street parking spaces along any private streets and future public streets prior to dedication, that otherwise are not required to satisfy the parking requirements may be used as temporary or short term parking, car-sharing parking and/or similar uses.

81. On-Street Parking on Public Streets. On-street parking spaces along the public street frontages associated with each respective Building Site may be constructed as generally shown on the CDP and as may be adjusted at the time of FDP and/or site plan approval. Notwithstanding what is shown on the CDP, on-street parking shall be provided on the south side of Colshire Meadow Drive along the frontage of the MITRE Block as permitted by FCDOT and VDOT. If requested by the County and/or VDOT, signs shall be installed that restrict the use of those public on-street parking spaces. Public on-street parking spaces would be in addition to the total number of required parking spaces to be provided for each Building Site.
82. Unbundled Parking for Residential Uses. All for-sale residential units must 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).
83. Paid Parking for Non-Residential Uses. The Applicant may charge for parking on Building Sites, on a per-space basis, at rates that the Applicant deems to be market-competitive. At its sole option, the Applicant may elect to charge for parking within some or all of the parking levels associated with commercial building sites and on portions of the street network that are privately owned.
84. Temporary Trees on Interim Surface Parking Lots. Existing surface parking lots may be used for interim parking prior to replacement with parking garages or buildings and, in the event that such parking areas are not being used for construction parking or staging or remain undeveloped (except for parking) for more than eighteen (18) months, then temporary street trees shall be planted in existing grass areas along the perimeter of such lots at a minimum size of 2.0 inches in caliper approximately every 50 feet, to the extent feasible as determined by UFMD based on existing conditions and utility easements. This interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees. No interior parking lot landscaping shall be required nor provided for these interim surface lots.

#### TRANSPORTATION DEMAND MANAGEMENT ("TDM")

85. Tysons Transportation Management Association. The Applicant shall make a contribution to the Tysons Partnership 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 also contribute.

- A. The Applicant shall make a one-time contribution to the Tysons Partnership Transportation Council for the establishment of this future TMA based on a participation rate of \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses to be constructed on the Application Property.
  - B. Thirty percent (30%) of the total contribution to the TMA shall be paid upon site plan approval of the first new building to be constructed on the Application Property. The remaining seventy percent (70%) of the total contribution shall be paid in five (5) equal installments of fourteen percent (14%) each prior to the issuance of the first RUP or Non-RUP for the subsequent five (5) new buildings, but in any event no later than fifteen (15) years from the date of approval of these rezoning applications.
  - C. If subsequent to the approval of this Rezoning, a Tysons Corner Urban Center-wide TMA is approved by FCDOT and established for the purpose of administering TDM programs in the Tysons Corner Urban Center, then the Applicant may, in its sole discretion, join or otherwise become associated with such entity and transfer some or all marketing and/or monitoring functions of this TDM Program to the new entity, whereupon this Proffer in whole or in part shall be void and of no further force or effect. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this Proffer may be rendered null and void in whole or in part without the need for a PCA.
  - 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 Application Property. Further, any funds contributed to the Tysons Partnership Transportation Council would then be returned to the Applicant that paid such funds.
86. TDM Administrative Group. At such time as the Applicant has completed construction activities associated with the redevelopment of the Application Property and has terminated his marketing activities for the sale of any of the Application Property, then at such time, the Applicant's obligation to the administration of this TDM proffer shall be null and void and of no further force or effect. At such time, the TDM Administration Group (the "AG") shall fund, implement and administer the transportation demand management program (the "TDM Program") for the Application Property as described more fully below. The AG shall include one representative for each of the Building Sites depicted on the CDP. Prior to approval of the first site plan for new office development on the Application Property, evidence shall be provided to FCDOT that the terms and conditions associated with the AG have been established.
87. Transportation Demand Management Plan. The proffered elements of the TDM Program as set forth below are more fully described in the Scotts Run Station Transportation Demand Management Plan prepared by Wells + Associates, Inc. dated December 10, 2012 (the "TDM Plan") as may be amended. 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 Application 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 (1) year following issuance of the last initial RUP or Non-RUP for the 10<sup>th</sup> new building to be constructed on the Application 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 and office tenants of the Application Property (i.e., not including trips from hotel and 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 and office vehicle trips that would be expected to be generated by the uses developed on the Application 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 or the total gross square footage of office uses proposed to be constructed in each building on the Application Property as determined at the time of site plan approval for each 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 sq.ft. of GFA	30%
65 million sq.ft. of GFA	35%
84 million sq.ft. of GFA	40%
90 million sq.ft. of GFA	43%
96 million sq.ft. of GFA	45%
105 million sq.ft. of GFA	48%
113 million sq.ft. of GFA	50%

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 TDM Program Manager (TPM) shall, in consultation 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 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 – Site-Wide. The TDM Program shall include, but not necessarily be limited to, the following site-wide components, each of which are 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) Transportation Access Guide.
  - (vi) Live/work/play marketing to new tenants.
  - (vii) Pedestrian/bicycle accommodations.
  - (viii) Monitoring/reporting.
  - (ix) Parking Management.
  - (x) Commuter Café.
- D. TDM Program Components – Residential. The TDM Program shall include, but not necessarily be limited to the following residential components, each of which is more fully described in the TDM Plan.
- (i) Residential Transportation Coordinators.
  - (ii) Try Transit Campaign for new residents.
- E. TDM Program Components – Office. The TDM Program shall include, but not necessarily be limited to the following office components, each of which is more fully described in the TDM Plan.
- (i) Office Transportation Coordinators.
  - (ii) Coordinated Outreach and Marketing Activities with TDM Providers.
  - (iii) Try Transit Campaign for new employees.

- (iv) Provision of information with regard to Pretax Metrorail, Vanpool, and Bicycle Benefit Programs.
- (v) Provision of information with regard to Guaranteed Ride Home Program.
- (vi) Provision of information with regard to Carpool Matching Program.
- (vii) Provision of information with regard to Telework and Variable Work Hours.
- (viii) Provision of information with regard to Coordinate Outreach and Marketing Activities with TDM Providers.

F. 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 as coordinated with FCDOT can be made without requiring a PCA.

- (i) TDM Program Manager. If not previously appointed, the Applicant or AG shall appoint and continuously employ, or cause to be employed, a TPM for Scotts Run Station. The TPM shall be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Application 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 initial appointment of the TPM. Thereafter the Applicant or AG shall do the same within ten (10) days of any change in such appointment.
- (ii) Annual Report and Budget. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and Annual Budget no later than 180 days after issuance of the first building permit for the first new building on the Application Property. Every calendar year thereafter but no later than September 15th, the TPM shall submit an Annual Report, which may revise the Annual Budget in order to incorporate any new construction on the Application Property. The Annual Report shall include, at a minimum:
  - a. Details as to the components of the TDM program that will be put into action that year;
  - b. Any revisions to the budget needed to implement the program for the coming calendar year;
  - c. A summary of existing development levels in the Tysons Corner Urban Center, as well as specific to Scotts Run Station;

- d. A determination of the applicable Maximum Trips After Reduction for the Application Property;
- e. Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan; and
- f. Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Application Property in conjunction with each year's Annual Report.

The Annual Report and Budget shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report and Budget shall be deemed approved and the program elements shall be implemented. If FCDOT responds with comments on the Annual Report and Budget, 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 program 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 September 15th (the "Annual Report"), shall update the Annual Report and TDM Budget for each succeeding calendar year, modify or enhance program elements and establish a budget to cover the costs of implementation of the program for such year. The expected annual amounts of the TDM Budget are further described in the TDM Plan.

- G. 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 initial TDMWP and TDM 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 documents that establish the AG shall provide that the TDM Account shall not be eliminated as a line item in the governing budget 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 the following year. In no event shall the TDM Budget exceed a baseline of \$161,500.00 (this amount shall be adjusted annually from the date of rezoning approvals for the Application Property (the "Base Year")) and shall be adjusted on each anniversary thereafter of the Base Year in accordance with Proffer 86.F.(ii). 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.

- H. TDM Remedy Fund. At the same time the TPM creates and the Applicant 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 on a building by building basis at the rate of \$0.40 per gross square foot of new office uses and \$0.30 per gross square foot of new residential uses on the Application Property. Funding shall be provided by the building owners prior to the issuance of the first initial RUP or Non-RUP for each applicable new building. This amount shall be adjusted annually from the date of rezoning approvals of the Application 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.
- I. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the building owners, through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the Application Property. Such contributions shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office or residential uses to be constructed on the Application Property and provided prior to the issuance of the first RUP or Non-RUP for each individual building.
- J. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the Building Owners 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 Scotts Run Station, or for other TDM-related improvements or programs within Tysons Corner. To secure the Owners' obligations to make payments into the TDM Penalty Fund, the Owners 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 or Non-RUP for each new building on the Application Property, the TPM shall:
- (i) Establish the TDM Penalty Fund, if not previously established by the TPM, and/or
  - (ii) 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 Owners' 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 \$0.10 for each square foot of new office GFA or \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new building on the Application 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 or Non-RUP, as the case may be, for the first new building on the Application Property has been issued in accordance with Proffer 85 using the date of rezoning approvals 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 Owners (or the TPM) into the TDM Penalty Fund as provided below.

- K. 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 and/or office 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 Application Property beginning one year following issuance of the final initial RUP or Non-RUP for the first new building to be constructed on the Application Property. Person Surveys shall be conducted every three (3) years and Vehicular Traffic Counts shall be collected annually thereafter until the results of three consecutive annual traffic counts conducted upon Stabilization show that the applicable trip reduction goals for the Application Property have been met. At such time and notwithstanding the provisions below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend such Vehicle Traffic Counts or Person Surveys if conditions warrant.

(i) Remedies and Penalties.

- a. Pre-Stabilization. If the Maximum Trips After Reduction for the Application 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.

Such remedial measures shall be funded by the Remedy Fund, as may be necessary, and based on the expenditure program that follows:

<b>Maximum Trips Exceeded</b>	<b>Remedy Expenditure</b>
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

- 1) If the results of the Vehicular 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 shall be released back to the building owner(s) through the AG. The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time Vehicular Traffic Counts are conducted. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

<b>Up to 65,000,000 Square Feet of GFA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
0% - 4.9%	30%
5% - 10%	50%
10.1% - 15%	65%
15.1% - 18%	80%
18.1 - 20%	90%
>20%	100%

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

13.1% - 15%	90%
>15%	100%

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

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

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

<b>113,000,000+ Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
> 0.0%	100%

- 2) 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 AG for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization show that the trip reduction goals have been met.

b. Stabilization. If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Application 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.

- 1) If the results of the traffic counts conducted upon and subsequent to 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 above, then any remaining Remedy Funds shall be released back to the building owner(s) through the AG.
- 2) 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 Proffer 86.B.) are still exceeded after three (3) 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:

<b>Exceeded Trip Goals</b>	<b>Penalty</b>
Less than 1%	No Penalty Due
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

- 3) The AG through the TPM shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the AG 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).
- 4) The maximum amount of penalties associated with the Application Property, and the maximum amount the AG 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 AG once three (3) consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.

- L. 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 Vehicular Traffic 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.
- M. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in Proffer 86.J., the AG may request that FCDOT review the vehicle trip reduction goals established for the Application Property and set a revised lower goal for the Application Property consistent with the results of such surveys and vehicular traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Application Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- N. Continuing Implementation. The AG through the TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer in accordance with the timeline established in Proffer 86 above. The AG through the TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- O. Notice to Owners. All owners of the Application Property shall be advised of the TDM Program set forth in this Proffer. 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.
- P. 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 AG shall be Application to a penalty of \$100.00 per day not to exceed \$36,500.00 for any one incident. Such penalty shall be payable to Fairfax County to be used for multimodal, transit, transportation, or congestion management improvements within the vicinity of the Application Property, or in consultation with the TPM, for other TDM-related improvements or programs within Tysons Corner.

88. Transportation Demand Management for Retail/Hotel Uses. As provided in the above Proffer, certain components of the TDM Plan are applicable to and will benefit the proposed retail/hotel uses on the Application Property. Therefore, the Applicant will provide an additional TDM program tailored to specifically serve the Retail/Hotel Uses (the "Retail/Hotel TDM Program"). In no event will remedies, incentives, and penalties be assessed against any Retail/Hotel Uses, which may be established on the Application Property, nor will such uses contribute to the annual budget associated with the TDM Program for the Application Property.
- A. Goals of the Retail/Hotel TDM Program. Because tenants of the Retail stores and Hotels and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Application Property during Peak Hours. Given this, the Retail/Hotel TDM Program shall encourage Retail tenants, Hotel Guests and the Retail/Hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Application Property rather than focusing on the specific trip reductions during the weekday AM or PM Peak Hours.
- B. Components of the Retail/Hotel TDM Program. The Retail/Hotel TDM Program shall include, at a minimum, the components applicable to the Application Property that are described in this Proffer and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Retail/Hotel TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Retail/Hotel TDM Program components are further described in the TDM Plan.
- C. Employee/Tenant Meetings. The TPM shall hold an annual TDM meeting with the Retail store tenants and Hotel Managers to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TPM shall work with Fairfax County to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the Application Property tenants and their employees.
- D. Regional TDM Programs. The TPM shall make information available to Retail store tenants, Hotel Guests and the Retail/Hotel employees about regional TDM 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.

- E. Retail/Hotel TDM Program Participation Outreach. The TPM shall endeavor in good faith to encourage participation by Retail store tenants and Hotel Management in the Retail/Hotel TDM Program, including the encouragement of financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the TPM and property management in furtherance of this objective may include dissemination of information to, and solicitation of participation from, the tenant's in-store management at appropriate intervals. The TPM shall include a report to the County with respect to the activities described in the TDM Proffer as part of the Annual Report to be filed with the County. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants.
89. Existing Office or Interim Uses. Certain components of the TDM Plan are applicable to and would benefit not only the existing office uses on the Application Property but potential interim uses as well. The TPM shall make available information on those components to any existing occupied office and/or interim uses which remain or are established on the Application Property. Such uses shall not however be subject to monitoring nor will penalties be assessed against those existing office or interim uses. Beginning with the first year following the issuance of a building permit for any new building on the Application Property, the subsequent Annual Report shall be expanded to include those new office or residential uses developed.
90. 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 users to make informed travel decisions. This information shall be provided at initial occupancy of each building. The delivery of this information shall be made convenient for building occupants and visitors, such as via computer, cell phone, monitors, or similar technology. Such devices shall provide, but not be limited to, information on the following:
- A. Traffic conditions, road hazards, construction work zones, and road detours.
  - B. Arrival times and delays on Metrorail, Tysons Circulator, and area bus routes.
  - C. Real time parking conditions and guidance to current on-site parking vacancies, if available.
  - D. Bus stops pre-wired for real-time arrival/departures information, if available.

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.

91. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Zoning Ordinance, Affordable Dwelling Units ("ADUs") shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.
92. Workforce Dwelling Units. In addition to any ADUs that may be required, the Applicant shall provide for-sale and/or rental housing units on the Application Property, or off-site as determined at time of FDP submission, in accordance with the Board's Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units ("WDUs") shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed on the Application Property. The 20% applies to the total number of dwelling units to be constructed on the Application Property. If ADUs are provided in the development, 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. The WDUs generated by each residential building shall be provided within such Building Site, or off-site. In addition, the Applicant reserves the right to consolidate the WDUs into one or more Building Sites with the build-out of the Application Property, and thereby increase the number of WDUs in one or more Building Sites beyond twenty percent (20%) with a corresponding decrease in the number of WDUs in the other Building Sites. The WDUs in each building shall have a bedroom mix similar to the bedroom mix of the market rate units in the same building. If the WDUs are constructed in a stand-alone building on or off-site, the bedroom mix of the WDUs shall be similar to the bedroom mix of the market rate units of the same unit type on the Application Property. 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.
93. Agreements. Notwithstanding the foregoing, 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. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of the rezoning applications. Neither the Board nor Fairfax County 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 these proffers as they apply to WDUs shall become null and void and of no further force and effect. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.
94. Non-Residential Affordable Housing Contribution. For all non-residential development, excluding commercial retail/services and public uses, the Applicant shall select, within its sole discretion, one of the following two options for contributing toward the provision of affordable and/or workforce housing within Tysons Corner. These contributions shall be made to the Board, be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable at the time of issuance of the initial Non-RUPs for new office buildings or the hotel on the Application Property, excluding any retail/service uses and public uses. The options shall consist of either (i) a one-time contribution of \$3.00 for each square foot of GFA of new office or hotel use, or (ii) an

annual contribution of \$0.25 for each square foot of GFA of new office or hotel use continuing for a total of sixteen (16) years. This contribution is not subject to the provisions of Proffer 101. Should the Board adopt new policies for non-residential affordable housing contributions in Tysons Corner, the Applicant may, within its discretion, elect to comply with these policies in lieu of the contributions described herein without the necessity of a CDPA or PCA.

### STORMWATER MANAGEMENT

95. Stormwater Management. The Applicant shall provide the following with regard to stormwater management:

A. Stormwater Management Measures. Stormwater Management (SWM) measures for the Application Property shall be designed to protect receiving waters downstream of Tysons Corner 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. Site plans shall make use of certain LID techniques that will aid in runoff volume reduction and promote reuse throughout the Building Site. As a part of the LID techniques proposed, the Applicant shall provide green roofs both intensive and/or extensive. Other LID techniques may include, but 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 requirements of LEED 6.1 and 6.2 for each Building Site of the development based upon the LEED Boundary identified with each Building Site.

C. Calculations at FDP. At the time of each FDP for the Application Property, the Applicant shall provide calculations for the area included in such FDP showing the proposed volume reductions and shall work cooperatively with DPWES and DPZ to ensure that the first one inch of rainfall is retained or reused to the maximum extent practicable. This requirement may be met on an individual building basis or based upon the total area of the Application Property. Extended detention facilities and extended release techniques may be used to augment the proposed volume reductions. It is further understood that interim or temporary SWM and BMP measures may be required during any interim phase of the development of the Application Property.

Each FDP for the Application Property shall include the location and preliminary design of the SWM facilities including the access points to underground vaults. Access points, detailed at the time of FDP, shall be located outside of the landscape amenity panel and sidewalk zone of the streetscape.

- D. Calculations at Site Plan. With each site plan for the Application Property, the Applicant shall provide refined calculations illustrating conformance with the proposed volume reductions shown on the applicable 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. 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 ~~allowed by the PFM~~ or 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.

96. Tree Replacement. As shown on the CDP, 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.

#### NOISE ATTENUATION

97. Noise Attenuation. The Applicant shall reduce the interior DNL to no more 45 dBA for residential and hotel buildings and 50 dBA for office buildings on the Application Property. At the time of building plan application for the full shell building permit for each residential or hotel building, the Applicant shall submit to the Chief of the EDRB 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 or 50 dBA, as appropriate. 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 any residential building, the Applicant shall demonstrate that interior noise does not exceed 45 dBA.

98. Notification of Exterior Noise Levels. The Applicant shall notify potential tenants or purchasers of individual residential units with balconies, either in the lease or sales contract, that exterior noise levels may exceed 65 dBA.

#### PUBLIC FACILITIES

99. Scotts Run Stream Valley Plans. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and stream valley improvements in Tysons Corner, the Applicant shall provide plans prepared by Wetland Studies and Solutions entitled "Scotts Run Preliminary Stream Restoration Plan," dated January 2011 (the "Restoration Plan") for the restoration of the Scotts Run Stream Valley Park to the FCPA at no cost. The Restoration Plan shall be modified by the Applicant to permit phased construction and shall be submitted to the Fairfax County Park Authority at no cost within one hundred eighty (180) days of the approval of the rezoning applications.

#### PUBLIC FACILITIES

#### PROFFERS APPLICABLE ONLY TO RZ 2011-PR-010 (LAND BAY WEST)

The following Proffer 99 shall be applicable solely to Land Bay West that is subject to RZ 2011-PR-010. The term Applicant as used in Proffer 99 shall mean and refer to only the owner(s) of Land Bay West, that is subject to RZ 2011-PR-010, and its successors and assigns.

100. Public Facilities. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and athletic fields in Tysons Corner, the Applicant shall provide the following:

A. Athletic Field.

- (i) The Applicant shall install a synthetic turf athletic field with lights (the "Athletic Field"), approximately 210 feet x 250 feet, which includes fifteen (15) foot wide overruns, and parking on a portion of the parcel identified among the Fairfax County tax assessment records as 29-4 ((6)) 96A ("Parcel 96A" or the "Taft Site") as generally shown on Sheet L-4 of the CDP. The Athletic Field design shall be determined in coordination with the FCPA Synthetic Turf Construction Manager and shall satisfy the athletic field requirement as defined by the recommendations of the Comprehensive Plan for the Application Property and that property subject to RZ 2011-PR-009, up to 1,500,000 square feet of GFA. Should RZ 2011-PR-009 be approved by the Board with more than 1,500,000

square feet of GFA, the difference in athletic field credit shall be addressed on-site by the Applicant in RZ 2011-PR-009.

- (ii) To allow construction of the Athletic Field, the Applicant, at its sole cost and expense, shall submit to DPWES an RPA Exception application for redevelopment that shall be evaluated and administratively approved by DPWES as permitted redevelopment. The RPA Exception shall include a Water Quality Impact Assessment, and a floodplain study, if needed. Should DPWES not approve the RPA Exception application submitted by the Applicant, the size of the Athletic Field described in Proffer 99.A.(i), shall be proportionately reduced in size so that it does not encroach in the RPA, without a corresponding reduction in field credit.
- (iii) The Athletic Field, subject to receipt of approvals described above, shall be constructed no later than thirty-six (36) months after the conveyance of the Fire Station as described in Proffer 99.D.(vii). The Applicant, within its sole discretion, may complete construction earlier than this time period. That portion of Parcel 96A that supports the Athletic Field shall be dedicated to Fairfax County, subject to a reservation of density credit under Section 2-308 of the Zoning Ordinance, within one hundred twenty (120) days following completion of construction of the Athletic Field and bond release, except as may be extended in accordance with the provisions of Proffer 104.
- (iv) In addition to the Athletic Field improvements described above, the Applicant shall contribute the sum of \$125,000.00 to the Board of Supervisors to be distributed within the discretion of the Providence District Supervisor for park improvements and/or design of stream improvements in the vicinity of the Application Property. Said contribution shall be made within sixty (60) days of the approval of this rezoning application.

B. Stream Valley Improvements.

- (i) The Applicant shall permit and construct that phase of the Restoration Plan, as modified by the Applicant to identify construction phases, from Route 123 to the Taylor Block as shown on the CDP, subject to receipt of all necessary easements from the FCPA, WMATA and any other property owner as necessary, at no cost, exclusive of administrative costs as may be associated with the easements, including recordation among the Fairfax County land records. Said improvements shall be constructed in one or more phases as determined by the Applicant, in coordination with FCPA, with the site development work associated with an approved FDP on Grant Building Site A or earlier as elected by the Applicant within its sole discretion. Upon completion of improvements approximately 27,509 square feet of land as shown on the CDP shall be dedicated to the FCPA,

subject to a reservation of density credit under Section 2-308 of the Zoning Ordinance.

- (ii) The Applicant shall install hardscape improvements, including pedestrian pathways, terraces and a bridge crossing the stream valley, to improve its condition and facilitate its use. The construction of all hardscape improvements in the designated RPA shall be deemed a permitted improvement and shall not necessitate the approval of an RPA exception. Improvements shall be constructed subject to receipt of necessary easements from the FCPA, WMATA, and any other property owner as necessary, at no cost, exclusive of administrative costs as may be associated with the easements, including recordation among the land records. Improvements shall be in substantial conformance with the concepts and locations as shown on Sheet L-8 of the CDP as may be adjusted at FDP and site plan approval to allow for final engineering and design considerations. Additional plantings shall be installed to supplement existing vegetation. Said improvements shall be constructed in one or more phases as determined by the Applicant with development of Grant Building Site A, or earlier as elected by the Applicant, in coordination with FCPA, within its sole discretion. While subject to public access easements, the Applicant shall retain private ownership of its portion of the stream valley and reserves the right to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes.

- C. Colshire Meadow Bridge. Prior to the issuance of the first initial RUP or Non-RUP for the Trigger Building as hereinafter defined, the Applicant shall submit a plan to VDOT for the widening or replacement of the existing Colshire Meadow Bridge. The proposed bridge widening or replacement shall span the Scotts Run Stream Valley and shall not significantly alter the ~~pedestrian access and/or clearances associated property's use for park purposes consistent with its use as a park conveyance to FCPA.~~

Upon approval by VDOT of the bridge plans, the Applicant shall thereafter construct such bridge widening or replacement subject to the following conditions:

- (i) The Applicant is granted credit against the proffered contribution from the Application Property to the Tysons Grid Fund as provided in Proffer 63 for seventy-five percent (75%) of the hard and soft costs associated with such construction as evidenced by estimates to be provided at site plan as required by the Board's Tysons Grid Fund Guidelines; and
- (ii) All off-site rights-of-way and easements needed from other property owners are provided at no-cost to the Applicant, except for administrative costs which may include review fees and recordation among the land records.

Provided the foregoing conditions are satisfied, the Applicant shall initiate the construction of such widening or replacement and the bridge widening or replacement shall be completed no later than twenty-four (24) months after the issuance of the last initial RUP or Non-RUP of the last of the Building Sites identified as Grant Building Site B, or Taylor Building Site B, or the Hotel Block on the Application Property.

In the event any of the conditions outlined above are not fulfilled as of the date the Applicant is obligated to commence construction, then the Applicant shall be relieved of the obligation to construct such widening or replacement and will convey and release the bridge replacement or widening plans to VDOT for implementation by others. In such event, the Applicant shall instead contribute a pro-rata share towards its future construction by others. Said pro-rata share shall not exceed 25% of the cost to construct the bridge widening or replacement based on cost estimates to be provided by the Applicant to VDOT, FCDOT and DPWES. Said contribution shall be paid prior to issuance of the last initial RUP or Non-RUP for the last building of the Trigger Buildings to be constructed on the Application Property. Notwithstanding the aforementioned, the maximum amount to be contributed by the Applicant for this proffer shall not exceed \$1,162,696.00 as may be adjusted in accordance with Proffer 101.

For purposes of this proffer, the "Trigger Building" shall be determined as follows:

- (i) If the construction, defined as issuance of the first RUP or Non-RUP for the building, of Grant Building Site B precedes the construction of both Taylor Building Site B and the Hotel Block, then the Trigger Building shall mean the earlier to be constructed of Taylor Building Site B or the Hotel Block.
- (ii) If the construction, defined as issuance of the first RUP or Non-RUP for the building, of either Taylor Building Site B or the Hotel Block precedes the construction of Grant Building Site B, then the Trigger Building shall mean Grant Building Site B.

D. Fire and Rescue Station. The Applicant shall design, obtain the necessary permits for, construct and convey to Fairfax County a two-level freestanding building, including ~~bathrooms~~restrooms to serve the Athletic Field as described in Proffer 98.A., with three single loaded truck bays, containing approximately ~~15,000~~150 gross square feet and up to 22 designated exclusive parking spaces and four (4) public parking spaces (including required accessible spaces) on a portion of Parcel 96A for a fire and rescue station (the "Fire Station") in a location as generally shown on Sheet L-4 of the CDP in accordance with the following:

- (i) Specifications for Fire Station. The Fire Station shall be designed and constructed in accordance with, and to include those items identified in the "Fairfax County Fire Station Design Manual Adjusted for New Tysons

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East Station dated January, 2013", and the Fairfax County Guidelines for Engineers and Architects and Engineers, County, dated June, 2012, as such Design Manual and Guidelines may be amended through the date of Fairfax, Virginia, DPWES design and construction as a result of changes in applicable federal, state and/or local codes, and shall be of similar quality and specifications as the buildout of the completed Wolf Trap Fire Station (collectively, the "Fire Department Standards"), and and consistent with the Project Manual developed for the Baileys Bailey's Crossroads Station, dated October 10, 2012, and the Wolf Trap Station Construction Documents Specification, dated March 11, 2012, (collectively, the "Fire Department Standards"), or to such other standards or specifications as may otherwise be mutually agreed upon by the Applicant and the County. A copy of the cover sheetsheets and tabletables of contents of the Fairfax County Fire Station Design Manual Adjusted for New Tysons East Station, are the cover sheet of the Bailey's Crossroads Station Project Manual and the cover sheet of the Wolf Trap Station Construction Documents Specifications Department Standards is attached hereto as Exhibit AB. The Applicant shall not be responsible for the cost of any modifications to the Fire Department Standards adopted subsequent to the approval of this rezoning application with the exceptions of design deviations as described in paragraph (iv).f. and subject to the cost-sharing provisions of paragraph (iv).f. Specifications shall include the provision of stormwater management consistent with the requirements outlined in Proffer 94 for that portion of Parcel 96A (approximately 1.2 acres) that is developed with the Fire Station.

- (ii) Access. Access to the Fire Station shall be via Old Meadow Lane which is subject to a public ingress-egress easement, including use by County emergency, maintenance and police vehicles, recorded in Deed Book 18660 at page 206 among the Fairfax County land records. Said ingress-egress easement shall be vacated upon recordation of a Deed of Easement and Vacation in a form consistent with the document attached hereto as Exhibit B. Maintenance of Old Meadow Lane shall be performed by the Applicant in accordance with Exhibit BC. The maintenance escrow as described in Exhibit BC shall be posted upon conveyance of the land for the Fire Station as described in paragraph (vii). Said Agreement may be amended as mutually agreed to by the Applicant and Fairfax County without the necessity of a PCA, CDPA, FDP, or FDPA. The Applicant shall complete any required improvements to Old Meadow Lane prior to delivery of the Fire Station as detailed herein. The Applicant's obligations for the improvement and maintenance of Old Meadow Lane as proffered and as described in Exhibit B shall become null and void and of no further effect at such time as Old Meadow Lane, either in its current location or as relocated, is dedicated to Fairfax County in fee simple as a public street. If dedication requires a turnaround to meet VDOT standards, said turnaround shall be located on the Taft Site without the necessity of acquiring off-site easements and/or right-of-way.

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(iii) Design Coordination. The Applicant shall coordinate the design of the Fire Station with the Building Design and Construction Division of DPWES (the "BDCD") and the Chief of the Fairfax County Fire & Rescue Department ("F&R") as follows:

a. Commencement of Design. Upon receipt of notice to proceed from Fairfax County, which shall occur no earlier than January 1, 2018, the Applicant shall commence design of the Fire Station and preparation of a site plan for the Fire Station. The provision of notice by Fairfax County shall be satisfied with the delivery of written notification to the owners of record of the Lincoln and Grant Blocks that are the subject of RZ 2011-PR-010.

b. Site Plan. Site plan preparation shall be completed within 120 days from receipt of the notice to proceed described in paragraph (a) above. Prior to submission of a site plan for the Fire Station to DPWES, the Applicant shall submit a draft of the site plan to BDCD and F&R for their review and approval as described in paragraph (iv) below. The submission of a demolition permit for existing improvements may be submitted concurrently with the site plan. Demolition in accordance with a permit issued by Fairfax County shall occur at any time within the Applicant's sole discretion, but shall be at the Applicant's sole cost and shall be completed so as not to interfere with the timely construction of the Fire Station.

c. Construction Documents. During the preparation of the Construction Documents for the Fire Station and prior to submission for building permit approval, the Applicant shall submit 15% Construction Documents, 35% Construction Documents, and later 100% Construction Documents, to BDCD and F&R for their review and approval as described in paragraph e(iv) below.

(iv) Review Process. In each event of submission to, and review and approval by, BDCD and F&R as provided above, the following process shall apply:

e.a. The phrase "15% Construction Documents" in the preceding paragraph D(iii)(c) shall be construed to include drawings and specifications that lay out the scale and relationship of the program elements of the building and the building's relation to the site and any phasing requirements, and shall further specify the following:

1) Site-related: The location of all major elements – site entrance, SWM facility, parking, pedestrian facilities, and any public improvements (roads, trails, etc.)

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- 2) Building-related: The location and size of all program elements of the building, building entrances, the types of M/E/P systems (type of heating and cooling with a descriptive narrative explaining system type, operation and control and sequencing, the phase and size of electric service, whether gas will be used, type of fire protection systems, and description of water supply and waste systems). An outline specification is developed indicating the major building systems and materials.

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e.b. The phrase "35% Construction Documents" in the preceding paragraph D(iii)(c) shall be construed to include drawings and specifications that describe and fix the project's architectural, structural, mechanical, plumbing, and electrical systems, and shall further specify the following:

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- 1) Site-related: The location and size of all site elements including apparatus bay aprons and testing areas, path or access (including grade and turning radius) for the fire station apparatus, emergency generator and public and staff parking, which shall not preclude installation of the Athletic Field described in Proffer 99.A.

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- 2) Building-related: All program areas and sizes, all spaces meeting accessibility requirements, basic layout of all building systems, location and types of walls, types of building materials (not colors), selection of all major M/E/P systems and verification that they can be accommodated in the space provided, apparatus diesel exhaust system and venting outside the building, and designation of fire station alerting system.

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f.c. BDCD and F&R shall respond in writing to the Applicant as soon as possible but no later than within thirty (30) days of its receipt of plan or construction document submissions, either approving such plans or setting forth specific comments to the same. The commencement of the thirty (30) day review period shall not begin until the reviewing agency (BDCD or F&R) acknowledges receipt of the plan or construction document in writing. In the latter event any such response sets forth specific comments, the Applicant shall prepare a revised submission, subject to a fifteen (15) day BDCD/F&R review period, and the process shall continue with 15-day review periods until the submission is approved by BDCD and F&R. In the event the Applicant does not receive written comments within 30 days of its initial submission, written notice shall be submitted to BDCD and F&R requesting comments within 15 days. BDCD and/or F&R failure to timely respond to the initial

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submission or subsequent review periods as described herein shall be deemed the approval of such agency.

g.d. BDCD and F&R approval of submissions under this paragraph (iv) shall not be unreasonably withheld, conditioned or delayed. Should a number of revised submissions be requested of the Applicant, the delivery date as described in paragraph (vii) shall be proportionately extended by the Zoning Administrator in consult with BDCD and F&R without the necessity of a PCA unless the necessity of numerous revisions arose as a result of errors or omissions in the plans made by Applicant or the failure of Applicant's plans to comply with express requirements of applicable building codes.

h.e. BDCD and F&R review shall be cumulative, with the scope of review limited by the scope of previous comments and approval(s), such that in no event (i) shall comments on the site plan or construction documents be inconsistent with the existing zoning of the property, nor (ii) shall comments on the construction documents require an amendment to the site plan; provided, however, that any comment noting a failure of the submittal to conform to the Fire Department Standards shall not be so limited. In the event that the County requests changes to the site plan or any construction documents after having approved them, the Applicant will not unreasonably withhold its consent to any such requested changes; provided, however, Applicant may reasonably withhold such consent in the event the requested changes would result in a significant scope or schedule change. In the event that the Applicant agrees to make any such changes, the County shall agree in advance to reimburse the Applicant for any incremental expense, as reasonably determined by the Applicant and the County. Should such a change in accordance with this proffer result in a change order under the construction contract entitling the contractor to additional time, the delivery date as described in paragraph (viii) shall be proportionately extended without the necessity of a PCA.

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i.f. If (i) the County desires to modify the Fire Department Standards at the time of design and construction to conform to the current fire station and County standards, or (ii) any County comment to the Fire Station design deviates from the Fire Department Standards and, in either such case, would result in an incremental expense to the Applicant (including, but not necessarily limited to, design, financing/carry and/or construction costs), the Applicant shall have no obligation to incorporate such comment/change unless the County has first agreed to reimburse the Applicant for such incremental expense, as reasonably determined by the Applicant

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and the County. Notwithstanding the foregoing sentence, if any such comment/change results from a general, County-wide update to the components of the Fire Department Standards then the Applicant shall share the cost of any such changes on an equal basis with the County up to a total amount of \$500,000.00 of such incremental expenses (i.e. \$250,000.00 to be borne by the Applicant and \$250,000.00 to be borne by the County). Any incremental expenses beyond such amount shall be borne solely by the County. Should such a County comment, in accordance with this proffer result in a change order under the construction contract entitling the contractor to additional time, the delivery date as described in paragraph (viii) shall be proportionately extended without the necessity of a PCA.

j.g. Each request for BDCD and F&R approval under this paragraph shall be accompanied by an explanatory cover letter and a copy of this proffer. The review periods described herein begin upon receipt acknowledged in writing by BDCD and F&R of plans or construction documents.

k.h. Notwithstanding the requirement of BDCD and F&R approval under this paragraph, the Applicant may submit its site plan(s) and construction documents for regulatory review upon submission of such documents to BDCD and F&R; provided, however, that the Applicant shall update its regulatory submission to reflect the BDCD and F&R-approved version of such submission.

(v) Additional Development Requirements. In connection with the design, permitting, contracting and construction of the Fire Station, the Applicant agrees that the following requirements shall apply:

l.a. The Applicant shall provide the County with a list of proposed general contractors to be included in Applicant's invitation to bid. Such contractors shall be licensed by the Commonwealth of Virginia to act as general contractors for projects such as the Fire Station and shall, in the Applicant's judgment, be reputable and competent to perform the requisite work. If the County objects to any general contractor on Applicant's list as a result of the County having had a prior unsatisfactory experience with such contractor or for other reasonable and specifically articulated objective reasons, and so notifies the Applicant in writing prior to the Applicant's issuance of the invitation to bid, The Applicant shall issue invitations to bid to not less than six (6) general contractors.

m.a. The contract with the general contractor for the construction of the Fire Station shall be based upon the appropriate Standard Form of

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Agreement Between Owner and Contractor and associated General Conditions published by the *American Institute of Architects*, including, without limitation, the insurance and indemnification provisions contained therein.

Form

n.a. Applicant shall cause the contract with the general contractor to contain warranties typical in the Northern Virginia area for contracts of the general size and scope of the subject project. The warranty period shall be not less than one (1) year from final completion. The contract shall expressly provide that such warranties shall run to the benefit of the County following dedication of the Fire Station to the County.

e.a. The contract with the general contractor shall include customary provisions regarding the documentation to be provided in conjunction with draw requests, including, without limitation, back-up invoices or subcontractor draws and lien waivers.

a. If requested by BDCD, the Applicant shall afford representatives of BDCD reasonable access to the construction site to monitor construction activity and the condition of the Fire Station. Further, the Applicant agrees to invite BDCD to participate in the construction process in the following areas:

- 1) QC Inspections by representatives of BDCD;
- 2) Attendance in construction progress meetings and site walk-thru's;
- 3) Review/comment of design revisions;
- 4) Review/comment on RFI's and submissions to the extent they relate to deviations from the design specifications.

The Applicant shall reasonably accommodate any comments provided by BDCD. In particular, the Applicant shall accommodate any comments if a failure to do so would result in the Fire Station not being constructed in a good and workmanlike manner in substantial conformance with the approved site plan and construction documents, as required by paragraph (vi), below.

For purposes of clarity, the construction monitoring effort set forth in the preceding sentence inures to the benefit of the County in its proprietary capacity and is separate and distinct from the County regulatory inspection process. Any construction monitoring effort undertaken by the County/BDCD as provided herein shall be at the County's sole risk, cost and expense, and the County shall be solely liable for any loss, damage or injury caused by such effort and the County shall promptly restore, at its sole cost and expense, any damage to the Fire Station caused by such effort.

- (vi) Construction of Fire Station. The Applicant shall construct the Fire Station in substantial conformance with the approved site plan and Construction Documents. ~~During construction, the Fire Station may be inspected by representatives of BDCD and F&R to ensure construction in accordance with the approved site plan and construction documents.~~ The Applicant shall provide written notice to the County that the Applicant considers the Fire Station substantially complete, whereupon the County shall conduct an inspection of the Fire Station and provide the Applicant a list of reasonable "punch list" items to be completed by the Applicant. In the event that any damage to the Fire Station occurs after the completion of the "punch list", but prior to the final inspection, then the County may supplement the "punch list" to include any such elements of damage. The failure to include any items on such the "punch list" does not alter the responsibility of the Applicant to fully construct the Fire Station in substantial accordance with the approved Site Plan and Construction Documents. Upon completion of the "punch list," including any supplements thereto described above, the bonds posted for construction shall be released and the Fire Station shall be conveyed to Fairfax County as described in paragraph (vii). For purposes of this Proffer, "substantially complete(d)" shall mean the date, when: (i) construction of the Fire Station, including related infrastructure, is sufficiently complete such that the County can safely occupy and utilize the Fire Station for its intended use, subject only to certain unfinished items of construction that are not necessary for the issuance of occupancy permits or the safe use of the Fire Station for its intended use; and (ii) all required governmental inspections applicable to the construction have been conducted.
- (vii) Conveyance of Fire Station. Following the County's inspection of the Fire Station and release of construction bonds, the Applicant shall deliver a deed ~~for~~ conveying fee simple title to that portion of Parcel 96A that supports the Fire Station to Fairfax County, to include the substantially complete Fire Station, in its "as is, where is" condition, but free and clear of any then existing monetary lien (other than for property taxes not yet then due and payable), together with fee title for not less than 26 parking spaces to serve the Fire Station. Said conveyance may necessitate the need for a subdivision of Parcel 96A, which shall be recorded by the Applicant at its cost. In addition, the Applicant shall assign, and the County shall accept the assignment of, the construction contract with the general contractor, and any engineering and design contracts for the Fire Station to which the Applicant is a party, together with all of Applicant's warranty and enforcement rights under such contracts. The Applicant shall transfer to the County, and the County shall accept, all permits for the Fire Station. The Applicant shall transfer to the County, and the County shall accept, or otherwise substitute itself for the Applicant with respect to, all bonds, letters of credit, performance agreements, escrows and/or other obligations related to the Fire Station. The Applicant and the

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County acknowledge and agree that it is the intention of this provision that, upon the conveyance of the Fire Station to the County, the Applicant shall have no further obligation or involvement whatsoever with respect to the Fire Station and the parties shall reasonably cooperate to effectuate such other measures as may be required to fulfill such intent. The Applicant and the County shall mutually cooperate to effectuate the conveyance of the Fire Station to the County.

(vii) If Applicant Defaults, then, at the sole election of Fairfax County, the Applicant shall deliver the aforesaid deed to Fairfax County and the funds in the Fire Station Escrow Account as defined in Proffer 100 shall be released to Fairfax County by the escrow agent, whereupon the Applicant's, in RZ 2011-PR-010, obligations regarding the funding, design, permitting, bonding, construction, equipping, completion and dedication of the Fire Station shall terminate and be of no further force or effect; provided, however, that (i) the owner of any Building Site ~~with~~within RZ 2011-PR-011 which has not made the required Advance Funding Payment into the Fire Station Escrow Account required by Proffer 100 shall continue to be obligated to make such Advance Funding Payment, and (ii) to the extent it has not already done so, the Applicant under RZ 2011-PR-010 shall make a payment into the Fire Station Escrow Account for the properties in RZ 2011-PR-010 in the amount per square foot of GFA set forth in Proffer 100. Applicant shall be in "Default" if it breaches its obligations under Proffers 99.D.(iii), (v) or (vi) and such breach continues for thirty (30) days after receipt of notice from Fairfax County stating, in **BOLD AND CAPITALIZED** letters, that failure to timely remedy the breach shall constitute a Default. The notice shall be in writing and delivered by certified mail, hand delivery or overnight carrier, in each instance with a signed receipt.

(viii) Delivery Date. The Fire Station shall be substantially complete, including completion of punch list items, and delivered to Fairfax County on or before December 31, 2020, or three (3) years from receipt of notice to commence design, whichever is later; subject to the extensions provided for herein. In the event that the Applicant fails to deliver the Fire Station to Fairfax County as and when required by this proffer, then, until the Fire Station is delivered to Fairfax County, or the Applicant complies with the provisions of paragraph (vii) above, following Fairfax County's election to declare a Default, no building permits shall be issued for the Lincoln Block or the Grant Block to implement the improvements shown on the CDP, however, the Applicant may continue to advance FDPs and/or site plans for these properties and continue to obtain RUPs, Non-RUPs and other permits related to existing improvements or improvements under construction. This limitation shall not apply to existing and/or interim uses.

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- (ix) Extension of Deadlines. Notwithstanding the timing requirements of the preceding paragraphs, the Zoning Administrator may extend all deadlines for good cause shown without requiring a PCA.
  
- (x) Title. Fairfax County has been provided with, and has approved, a title report, dated July 23, 2010, issued by First American Title Insurance Company, with respect to Parcel 96A (the "Preliminary Title Report"). A copy of an updated title report for Parcel 96A shall be delivered to BDCD and F&R within thirty (30) days of Applicant's receipt of notice to proceed as described in paragraph (iii).a. Fairfax County shall have sixty (60) days from receipt of such updated report to review title and identify any objections. Objections shall be limited to those items that were not shown on the Preliminary Title Report and would prevent in the County's reasonable opinion the conveyance of good and marketable title to that portion of Parcel 96A on which the Fire Station is to be constructed, or which would prevent and prohibit the construction of the Fire Station as contemplated by this proffer. Applicant shall have the right to cure any such objections. Upon Applicant's removal of the objections, Fairfax County shall provide written affirmation that title is acceptable. Prior to or in conjunction with conveyance as described in paragraph (vii), an existing Declaration encumbering the Taft Site shall be further amended and/or supplemented in order to allocate 19,154 square feet of GFA to the Taft Site and said GFA shall be conveyed to the County. Should a Fire Station no longer be needed, the building, at no cost to the Applicant, may be re-built or re-modeled by the County for use by the County as a library, public school, County administrative offices, park, indoor recreation, community center, child care, or other use as agreed to by the Applicant and the County.
  
- (xi) Environmental. The Applicant has provided Fairfax County with a Phase I Environmental Assessment, prepared by URS Corporation, dated May 24, 2010 (the "Phase I"). Fairfax County has approved the environmental condition of Parcel 96A as reflected in the Phase I. The Applicant shall provide the County with an updated Phase I with thirty (30) days after receipt of notice to commence design pursuant to paragraph (iii) above. The Applicant shall remediate, if necessary, at the Applicant's sole cost and expense, any identified environmental hazards that violate any applicable federal and state laws, rules and/or mandatory regulations, and, if required by such laws, and/or mandatory regulations, taking into account the type of contamination, the nature of the property, its then-current and/or anticipated use and the construction means and methods to be used in conjunction with the construction of the Fire Station, obtain clearance from the applicable authorities prior to commencement of construction of the Fire Station. The Delivery Date shall automatically be extended in the event of delays caused by any necessary remediation work and/or obtaining a closure letter or other clearance from applicable authorities.

- (xii) Approvals Generally. Any approval of BDCD, F&R, or any other County department or agency given in such department or agency's proprietary capacity shall not be deemed the approval of, or entitle the Applicant to approval of, the County in its governmental and/or regulatory capacity.
  - (xiii) County as Owner. Upon conveyance of the Fire Station to the County, the County shall have no obligations as "Applicant" under these proffers by virtue of its ownership of the Fire Station.
  - (xiv) Other Alternatives. The Applicant reserves the right to enter into a separate binding written agreement with Fairfax County as to the terms and conditions of the dedication of land for the Fire Station following approval of those rezoning applications. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County. Neither Fairfax County nor the Applicant shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the dedication of land for and construction of a Fire Station shall be solely in accordance with such an agreement and the provisions of this proffer shall become null and void without the necessity of a PCA.
  - (xv) Credit. The Applicant reserves the right to apply public facilities credit for the construction and conveyance of the Fire Station to other properties owned by the Applicant and at the time of rezoning to PTC.
- E. Funding of Construction. The Applicant may withdraw funds for the construction of the Athletic Field, the Fire Station, the Stream Valley Improvements, and Colshire Meadow Bridge from the Escrow Accounts as described in Proffer 100.

#### PUBLIC FACILITIES

##### PROFFERS APPLICABLE ONLY TO RZ 2011-PR-011 (LAND BAY EAST)

The following Proffer 100 shall be applicable solely to Land Bay East that is subject to RZ 2011-PR-011. The term Applicant as used in Proffer 100 shall mean and refer to only the owner(s) of Land Bay East which is subject to RZ 2011-PR-011, and its successors and assigns.

101. Public Facilities. To address the Comprehensive Plan's recommendations regarding the provision of public facilities and athletic fields in Tysons Corner, the Applicant shall contribute the following:
- A. Escrow Account. The Applicant shall establish an escrow account (the "Public Facilities Escrow Account"), either held by Fairfax County, or by an escrow agent acceptable to the Applicant and Fairfax County, for the sole purpose of holding funds that will secure and fund construction of the improvements described in Proffer 99 as the Athletic Field, the Stream Valley Improvements, and Colshire Meadow Bridge (collectively referred to as "Public Improvements"). The Applicant shall establish a second escrow account, either held by Fairfax County,

or, within the discretion of the County, by an escrow agent acceptable to the Applicant and Fairfax County, solely to secure and fund construction of the Fire Station (the "Fire Station Escrow Account"). The terms described herein shall be detailed in one or more Escrow Agreement(s) in a form as agreed to between the Applicant and Fairfax County.

- B. Contribution. Prior to the issuance of the first RUP or Non-RUP for any Building Site, the Applicant for such permit shall make a cash payment into the Public Facilities Escrow Account in an amount equal to \$0.90 per square foot of GFA associated with the site plan that shall represent that Building Site's share of the estimated cost of the Public Improvements. In addition, prior to the issuance of the first RUP or Non-RUP for any Building Site, the Applicant for such permit shall make a cash payment into the Fire Station Escrow Account in an amount equal to \$1.35 per square foot of GFA associated with the site plan that shall represent that Building Site's share of the estimated cost of the Fire Station (collectively, the "Advance Funding Payment"). Notwithstanding the foregoing schedule for making Advance Funding Payments, in the event that the Applicant under RZ 2011-PR-010 is required to or elects to commence implementation of a Public Improvement or the development of the Fire Station, then, within sixty (60) days after receipt of written notice to that effect from the Applicant or the County, the owner of each Building Site which has not theretofore made an Advance Funding Payment, shall make the applicable Advance Funding Payment applicable to its Building Site for the Public Improvements and/or the Fire Station, as the case may be.
- C. Distribution of Funds from Public Facilities Escrow Account and the Fire Station Escrow Account.
- (i) Upon commencement of construction of any one or all of the Public Improvements as described in Proffer 99, the Applicant undertaking such development may request release of funds held in the Public Facilities Escrow Account. Said funds may be released, in whole or in part, upon submission of a written request by such developer, as approved by Fairfax County, to fund in whole or in part, the cost of design, permitting, bonding and construction of one or more of the Public Improvements. Said written request shall include a detailed accounting of funds necessary to scope, design, bond and construct the Public Improvement(s) and a draw down schedule. Only those funds necessary to complete the identified Public Improvement(s) shall be released in accordance with the schedule. If there are insufficient funds in the Public Facilities Escrow Account to construct the Public Improvement, said Public Improvement shall be constructed at the expense of the Applicant under RZ 2011-PR-010 as described in Proffer 99. The Escrow Account shall be closed upon completion of all Public Improvements, and any amount remaining in the Escrow Account shall be disbursed to the Applicant under RZ 2011-PR-010.

- (ii) Upon commencement of construction of the Fire Station as described in Proffer 99, the Applicant under RZ 2011-PR-010 may periodically request release of funds held in the Fire Station Escrow Account. Said release shall be requested in accordance with a drawn down schedule typical for the funding of a project such as the Fire Station and consistent with the timing and other requirements of a typical AIA construction contract, and supported by evidence of invoices. The Fire Station Escrow Account shall be closed upon completion of the Fire Station and any amount remaining in the Fire Station Escrow Account shall be disbursed to the Applicant under RZ 2011-PR-010. If there are insufficient funds in the Fire Station Escrow Account to construct the Fire Station as described in Proffer 99.D.(i), said Fire Station shall be constructed at the sole expense of the Applicant under RZ 2011-PR-010 as described in Proffer 99. Should the Fire Station for the Tysons East District, as defined by the Comprehensive Plan, be constructed by Fairfax County, then, (i) Fairfax County may utilize funds from the Fire Station Escrow Account solely for that purpose, (ii) the Applicant shall continue to make payments into the Fire Station Escrow Account as and when required by paragraph B above, (iii) the Applicant in RZ 2011-PR-010 shall make payments into the Fire Station Escrow Account in the amounts per square foot of GFA and in accordance with the schedule set forth in paragraph B, (iv) any amounts remaining in the Fire Station Escrow Account after the completion of construction of the Fire Station by Fairfax County shall be delivered to the Applicant in RZ 2011-PR-010, and (v) the Applicants', in RZ 2011-PR-010 and RZ 2011-PR-011, obligations regarding the funding, design, permitting, bonding, construction, equipping and completion of the Fire Station shall terminate and be of no further force and effect.

#### MISCELLANEOUS

102. Escalation. All monetary contributions, except as may be further specified in these proffers, shall escalate on a yearly basis from the base month of January 2014 and change effective each January 1 thereafter, as permitted by VA. Code Ann. Section 15.2-2303.3.
103. Tysons Partnership. The Applicant and successors shall become a member of the Tysons Partnership, or its residential equivalent.
104. Security. Upon request from Fairfax County Law Enforcement Authorities, Applicant shall give prompt, good faith consideration to a request for access to its security surveillance recordings by Fairfax County Law Enforcement Authorities. In determining if access may be made available, Applicant may consider trade secrets, privacy laws, confidentiality obligations, legal privileges and other concerns.
105. Due Diligence. Notwithstanding the foregoing, upon demonstration that, despite diligent efforts or due to factors beyond an Applicant's control, proffered improvements such as, but not limited to, the required transportation, publicly-accessible park areas, athletic fields, trail connections, and offsite easements, have been delayed (due to, but not limited

to, an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, necessary easements and site plan approval) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of such improvements.

106. Condemnation. To the extent off-site right-of-way and/or easements are required to construct any of the public infrastructure or public 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 as described below, the obligation of the Applicant to construct such public infrastructure or public improvements for which right-of-way and/or easements are not available shall be contingent upon the Board acquiring such right-of-way and/or easements at the Applicant's expense (meaning that the Applicant shall timely pay, without limitation, the condemnation award, all appraisal and other expert fees, court costs and attorneys' fees associated with such acquisition) through its powers of eminent domain after being requested to do so by such Applicant, in writing. The Applicant's written request will include: (i) plans and profiles showing the necessary right-of-way and/or easements to be acquired, including a description of the proposed public infrastructure and/or public improvements to be constructed and the public purpose to be served by such infrastructure and improvements; (ii) an independent third party appraisal of the value of the right-of-way and/or easements to be acquired and of all damages and benefits to the residue of the affected property; and (iii) copies of all correspondence between the Applicant and property owner of the right-of-way and/or easements to be acquired, including a good faith offer in writing by the Applicant to acquire from such property owner the right-of-way and/or easements for the appraised value. Said good faith offer shall consist of two (2) written offers sent to the property owner by certified mail a minimum of thirty (30) days apart and receipt of refusal in writing, or no response thirty (30) days after the mailing of the second request. 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 public infrastructure or public improvements described in these proffers, then that Applicant shall escrow the costs of such infrastructure or public improvements with the County for future implementation of such infrastructure or public improvements 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, and Non-RUP and RUP permits) for the Application Property, nor from commencing construction on the Application Property, 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.
107. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon the Applicant's successor(s) in interest and/or the owners from time to time of any portion of the Application Property during the period of their ownership. Once portions of the Application Property are 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.

108. 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.

{A0552068.DOC / 1 Draft proffers 03.11.13 (cln) 007079 000003}

APPLICANT/AGENT

CITYLINE PARTNERS LLC

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By: Michael R. Pedulla  
Its: Co-President

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP  
29-4 ((6)) 101A

LINCOLN 1700 OLD MEADOW ROAD LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
29-4 ((6)) 102

GRANT 1651 OLD MEADOW ROAD LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((1)) 6A

GARFIELD 1575 ANDERSON ROAD LLC

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By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((1)) 6B, 6C, 6D/  
CONTRACT PURCHASER OF PORTION  
OF SURPLUS VDOT RIGHT-OF-WAY

WESTGATE 1600 ANDERSON ROAD LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((28)) A

VAN BUREN 1616 ANDERSON ROAD LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((28)) C1

TAYLOR COLSHIRE MEADOW LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((28)) 4B/  
CONTRACT PURCHASER OF PORTION  
OF SURPLUS VDOT RIGHT-OF-WAY

JOHNSON I 7600 COLSHIRE LLC

---

By: Michael R. Pedulla  
Its: Executive Vice President

[SIGNATURES CONTINUE]

TITLE OWNER OF TAX MAP  
30-3 ((28)) 4C

THE MITRE CORPORATION

---

By: Sol Glasner  
Its: VP, General Counsel and Corporate Secretary

[SIGNATURES CONTINUE]

CONTRACT PURCHASER OF TAX MAP  
30-3 ((1)) 6A

JLB REALTY, LLC

---

By: Bay W. Miltenberger  
Its: Manager

[SIGNATURES CONTINUE]

TITLE OWNER OF PORTIONS OF COLSHIRE DRIVE RIGHT-  
OF-WAY TO BE VACATED AND/OR ABANDONED

FAIRFAX COUNTY BOARD OF SUPERVISORS

---

By: Edward L. Long, Jr.  
Its: County Executive

[SIGNATURES CONTINUE]

TITLE OWNER OF PORTIONS OF SURPLUS VDOT RIGHT-  
OF-WAY

VIRGINIA DEPARTMENT OF TRANSPORTATION

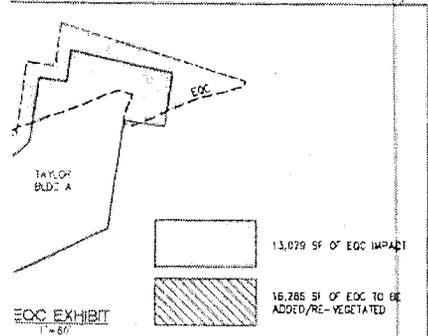
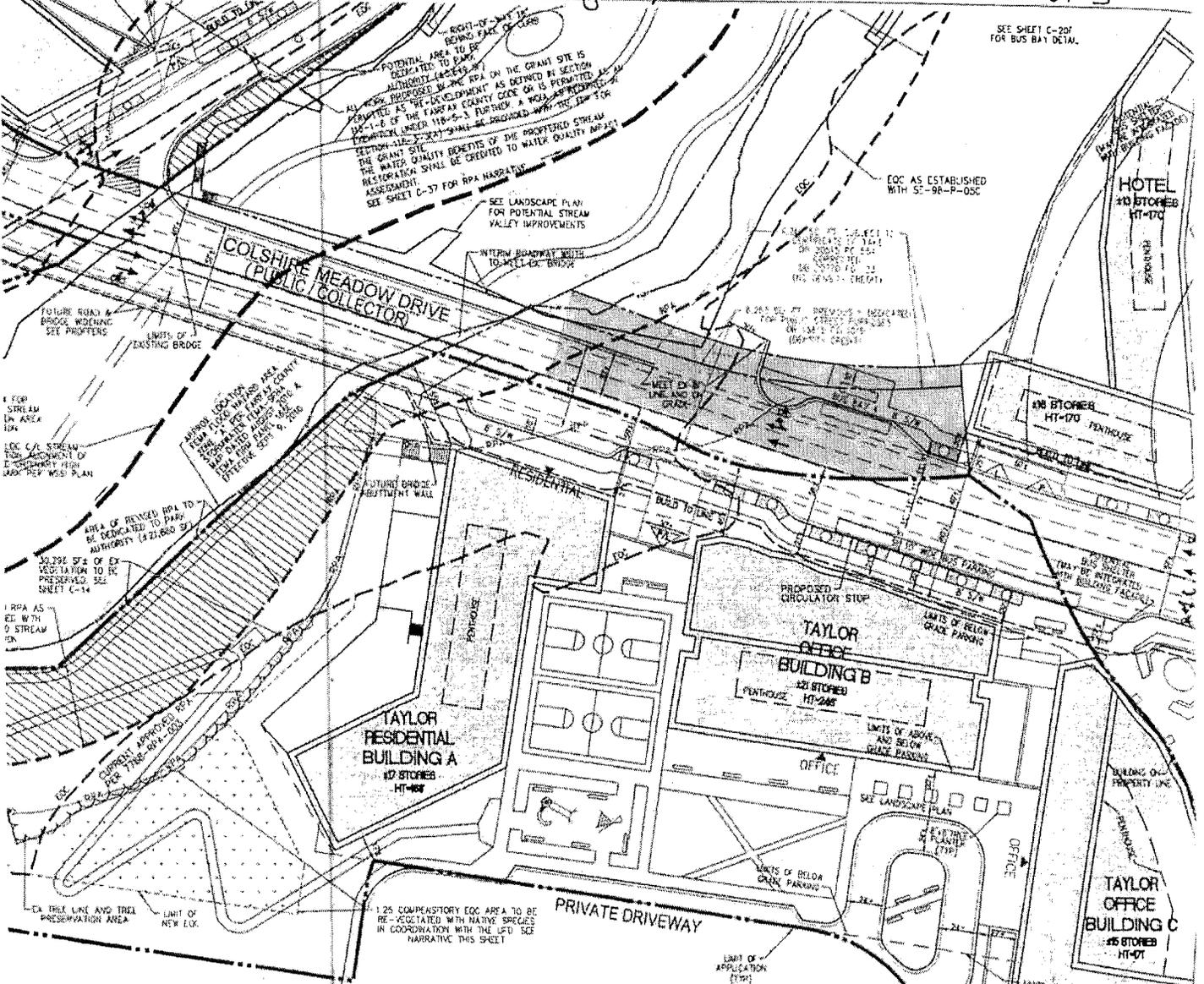
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SIGNATURES END]



1/2-Section Credit Exhibit (2 of 2)

3/8/13



MENT PLAN IS PROPOSING AN IMPACT OF 13,029 SF OF IMPACT. THIS PLAN PROVIDES A COMPENSATORY AREA TO (26,314 SF) PURSUANT TO SE 98-R-050 DATED FEBRUARY 24, 1998.

UNTY COMPENSATORY PLAN 2007 EDITION (ENHANCED THROUGH JULY 2012) INTEGRATED NETWORK OF ECOLOGICALLY VALUABLE LAND AND 1 OF TARRANT COUNTY.

LOCATED ON THE PROJECT SITE AND IS CONTIGUOUS TO THE EXISTING 1 THE RE-VEGETATION OF AN AREA THAT IS CURRENTLY MAINTAINED 15 AND HEREBY PLANT SPECIES AND STOCK. THIS MITIGATION 1 BE PROVIDED IN COORDINATION WITH THE UFD AT TIME.

- LEGEND:**
- TOWER
  - ABOVE GRADE BUILDING BASE
  - R-O-W VACATION
  - TREE PIT
  - PEDESTRIAN ENTRANCE
  - SHARED PARKING AND LOADING ENTRANCE
  - LOADING ENTRANCE
  - PARKING ENTRANCE
  - BIKE LANE
  - SHARROW BIKE LANE

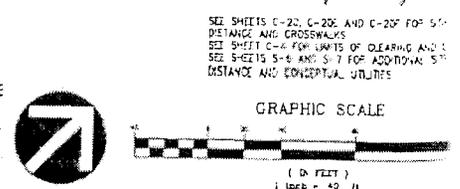
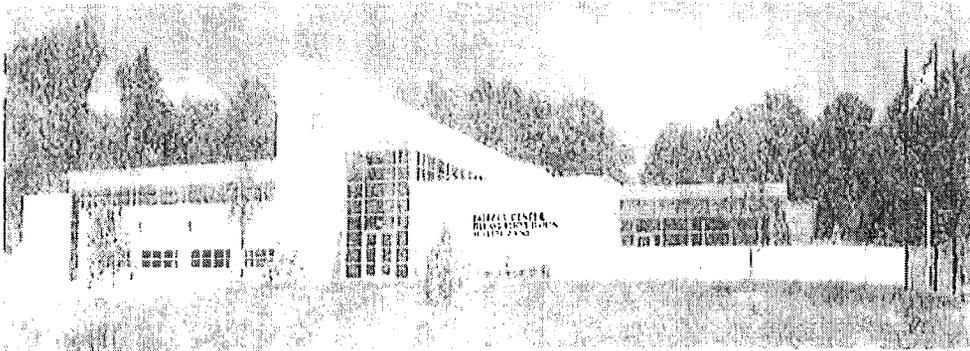


EXHIBIT B



**FAIRFAX COUNTY  
FIRE STATION**

**DESIGN MANUAL  
ADJUSTED FOR  
NEW TYSONS EAST FIRE  
STATION  
JANUARY 2013**

---

**ACKNOWLEDGEMENTS**



**Fairfax County  
Fire and Rescue Department**



**Fairfax County  
Public Works and Environmental Services  
Planning and Design Division**

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**Hughes Group Architects**

**Last Revised: 2011**

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# FAIRFAX COUNTY FIRE STATION DESIGN MANUAL

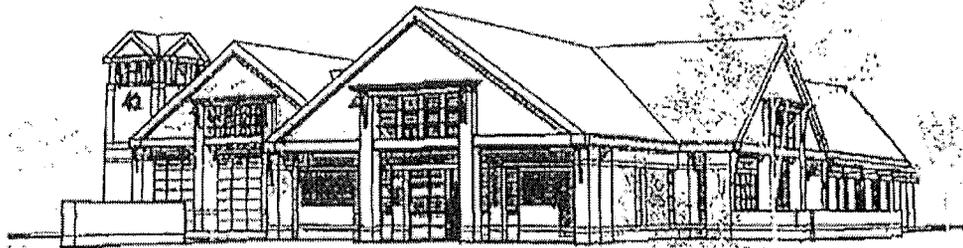
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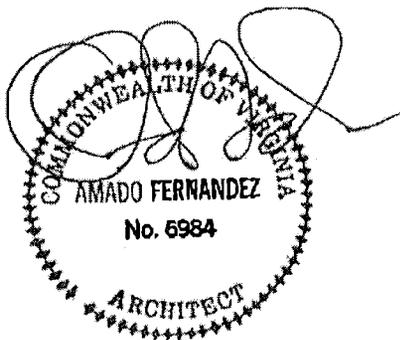
**Construction Documents  
Specification  
Volume I  
For**

**Wolftrap  
Fire Station  
Vienna, Virginia**



**March 11, 2011**

**Contract Number: CN06312186  
Project Number: 312/009094  
Owner: Fairfax County Department of Public  
Works & Environmental Services  
12000 Government Center Parkway  
Fairfax, VA 22035**

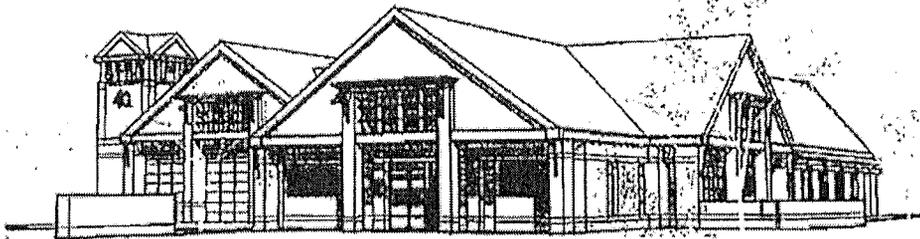


**Project Number: 0415  
Hughes Group Architects, Inc.  
22630 Davis Drive, Suite 175  
Sterling, VA 20164  
☎ 703.437.6600  
📠 703.834.1752**

**Construction Documents  
Specification  
Volume II  
For**

# **Wolftrap Fire Station**

**Vienna, Virginia**



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# BAILEY'S CROSSROADS VOLUNTEER FIRE STATION

PROJECT MANUAL - VOLUME 1 OF 2

Project Number: FS-000002-001  
Contract Number: CN 12 312 224  
Fund Number: 300-C30070



LEMAY  
ERICKSON  
WILLCOX  
ARCHITECTS

# BAILEY'S CROSSROADS VOLUNTEER FIRE STATION

PROJECT MANUAL - VOLUME 2 OF 2

Project Number: FS-000002-001  
Contract Number: CN 12 312 224  
Fund Number: 300-C30070



EXHIBIT C

THIS DEED OF EASEMENT AND VACATION ("**Deed**") is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between BIT INVESTMENT FIFTY-FIVE, LLC, a Delaware limited liability company, Grantor/Grantee ("**BIT 55**"), BIT INVESTMENT FIFTY-SIX, LLC, a Delaware limited liability company, Grantor/Grantee ("**BIT 56**"), TAFT 1766 OLD MEADOW LANE, LLC, a Delaware limited liability company, Grantor/Grantee ("**Taft**") (individually with BIT 55 and BIT 56, an "**Owner**" and collectively the "**Owners**"), GRANT 1651 OLD MEADOW ROAD LLC, a Delaware limited liability company, Grantor/Grantee ("**Grant**"), LINCOLN 1700 OLD MEADOW ROAD LLC, a Delaware limited liability company, Grantor/Grantee ("**Lincoln**"), and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic, its successors and assigns, Grantor/Grantee ("**County**").

**WITNESSETH:**

WHEREAS, Taft is the owner of Old Meadow Lane Outlot C (Tax Map 29-4 ((6))) by virtue of a deed recorded in Deed Book 21145, at Page 85, among the land records of Fairfax County (the "**Taft Property**"), as further depicted on that plat dated \_\_\_\_\_, revised through \_\_\_\_\_, entitled "\_\_\_\_\_" and prepared by \_\_\_\_\_, attached hereto and incorporated herein as Exhibit A ("**Plat**"); and

WHEREAS, BIT 55 is the owner of Old Meadow Lane Outlot B (Tax Map 29-4 ((6) B) by virtue of a deed recorded in Deed Book 21794, at Page 194, among the land records of Fairfax County, Virginia (the "**BIT 55 Property**"), as further depicted on the Plat; and

WHEREAS, BIT 56 is the owner of Old Meadow Lane Outlot A (Tax Map 29-4 ((6) A) by virtue of a deed recorded in Deed Book 21794, at Page 204, among the land records of Fairfax County, Virginia (the "**BIT 56 Property**"), as further depicted on the Plat; and

WHEREAS, Grant is the owner of certain property known as Lot 102, Section 2, Westgate Industrial Park, by virtue of a deed recorded in Deed Book 21145 at page 106 among the land records of Fairfax County, Virginia (the "**Grant Property**"); and

WHEREAS, Lincoln is the owner of certain property known as Lot 101A, Westgate Industrial Park, by virtue of a deed recorded in Deed Book 21145 at page 75 among the land records of Fairfax County, Virginia (the "**Lincoln Property**"); and

WHEREAS, the BIT 55 Property, the BIT 56 Property, the Taft Property, the Grant Property, and the Lincoln Property are not subject to the lien of any deed of trust; and

WHEREAS, the Grant Property and the Lincoln Property are subject to rezoning application RZ 2011-PR-010 and, pursuant to certain proffer conditions contained therein, the County is obligating them to maintain Old Meadow Lane following commencement of construction of a fire station to be located on a portion of Lot 96A, Westgate Industrial Park ("**Lot 96A**"); and

WHEREAS, Grant and Lincoln are collectively referred to herein as the "**Applicant Owners**"; and

WHEREAS, by Deed of Vacation and Easement recorded in Deed Book 18660 at Page 205, an easement for ingress and egress was recorded on the Property; and

WHEREAS, the County desires to vacate certain County easement rights granted in Deed Book 18660 at Page 205; and

WHEREAS, it is the desire of the Owners to convey certain easements to the County, all in accordance with the Plat.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Owners, does convey to the County, its successors and assigns, a public access easement for the purpose of vehicular ingress and egress by the County and the public over and across its respective property, said Easement being labeled as the "PUBLIC ACCESS EASEMENT" and more particularly bounded and described on the Plat attached hereto and incorporated herein (the "Easement Area"). The easement is subject to the following terms and conditions:

1. All streets, service drives, trails, sidewalks, and driveways and all appurtenant facilities installed in the Easement Area shall be and remain the property of BIT 55, BIT 56, and Taft, respectively, and their respective successors and assigns, who shall, subject to the provisions of paragraph 2 below, continue to maintain their respective portions of the Easement Area in substantially the same condition as exist for such portions of the Easement Area as of the date hereof.

2. From and after the Enhanced Maintenance Date (as hereinafter defined), Applicant Owners, at Applicant Owners' sole cost and expense, shall cause the Easement Area to be improved as required by the County for the fire station and maintained to the reasonable satisfaction of the County in accordance with the standards set forth on Exhibit B entitled "Maintenance Standards," as may be amended with County approval, attached hereto and incorporated herein, including, but not limited to, keeping the Easement Area free of snow during inclement weather to ensure safe passage for emergency, maintenance and fire department vehicles. For purposes hereof, the term "Enhanced Maintenance Date" shall mean the date a building permit is issued by the County for the construction of a fire station on Lot 96A, or such earlier date as may be designated by Applicant Owners.

3. The County and its agents shall have full and free use of the Easement Area for the purpose of vehicular ingress and egress by the County and the public and for the purposes set forth in this Section 3 and Section 5 below, and shall have all rights and privileges reasonably necessary to ensure its use of the exercise of the Easement Area solely as provided in this Deed, including the right, but not the obligation to perform, if Applicant Owners fail to do so, such repairs and maintenance in the Easement Area as the County may deem necessary. The cost of such repairs and maintenance shall be reimbursed to the County solely by Applicant Owners, their successors and assigns, upon demand. The County shall not look to BIT 55, BIT 56, or Taft for payment or reimbursement of any costs incurred hereunder.

4. None of the Owners shall install, and, if applicable, shall remove from its respective property, any existing, traffic-calming devices (e.g., speed bumps) located in the Easement Area.

5. Each of the County and its respective employees, agents, and contractors shall have the right to enter onto, to use, and to perform maintenance and other work upon the Easement Area for the purposes set forth in the Maintenance Standards. Neither the County nor any of its employees, agents, or contractors shall have any, and the Owners shall release the County and its employees, agents, and contractors from all, liability to the Owners arising out of or otherwise in connection with any action or inaction by the County, the Applicant Owners, and their respective employees, agents, and contractors in connection with this agreement, other than the gross negligence, willful misconduct or breach of this Deed by the County or its respective employees, agents and contractors.

7. Nothing herein shall be deemed to grant to Applicant Owners any rights to, on or over the BIT 55 Property or the BIT 56 Property, and nothing herein shall be deemed a waiver or release by BIT 55 or BIT 56, or their respective successors or assigns, of Applicant Owners, or their successors or assigns, from any claims for loss, cost, or damages arising out of their respective acts or omission or the acts or omissions of their agents or contractors.

8. The easement and all rights granted herein shall become null and void at such time as the Easement Area is dedicated as a public street in accordance with Fairfax County standards.

#### **VACATION OF EASEMENT**

In consideration of the premises and the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County does hereby vacate all of its right, title and interest in and to those portions of the ingress/egress easement for County emergency, maintenance and police vehicles created in Deed Book 18660 at page 206, as said vacated portions are more particularly described on the Plat.

#### **COVENANTS REAL**

The Owners and the Applicant Owners, declare that the agreements and covenants stated in this Deed are not covenants personal to the Owners and the Applicant Owners, but are covenants real, running with the land.

#### **FREE CONSENT AND DESIRE**

This Deed is made with the free consent and in accordance with the desire of the undersigned owners and trustees, if any.

#### **MISCELLANEOUS**

This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This Deed may be executed in counterparts, each of which shall be

deemed an original, but which together shall constitute one and the same instrument. This Deed is in accordance with the Statutes of Virginia and the ordinances in force in Fairfax County governing the platting and subdivision of land, and is approved by the proper authorities as evidenced by their endorsement hereto and the Plat.

Witness the following signatures and seals:

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]**

DRAFT

Witness the following signatures and seals:

BIT INVESTMENT FIFTY-FIVE, LLC,  
a Delaware limited liability company

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

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

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

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Virginia Notary Registration #: \_\_\_\_\_

DRAFT

BIT INVESTMENT FIFTY-SIX, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of  
\_\_\_\_\_, 2013, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

TAFT 1766 OLD MEADOW LANE, LLC  
a Delaware limited liability company

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

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

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

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Virginia Notary Registration #: \_\_\_\_\_

DRAFT

GRANT 1651 OLD MEADOW ROAD LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of  
\_\_\_\_\_, 2013, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

LINCOLN 1700 OLD MEADOW ROAD LLC  
a Delaware limited liability company

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

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

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

COMMONWEALTH OF VIRGINIA:

COUNTY OF \_\_\_\_\_: to-wit:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_,

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

DRAFT

Executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by authority granted by said Board.

APPROVED AS TO FORM:

Director, Department of Public Works &  
Environmental Services

\_\_\_\_\_  
Assistant County Attorney

By:

\_\_\_\_\_  
Branch Manager, Customer and Technical  
Support Center, LDS

Commonwealth of Virginia:  
County of Fairfax, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, Branch Manager, Customer and Technical Support Center, Land Development Services, Department of Public Works & Environmental Services.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

## Exhibit B

### Maintenance Standards

#### *General Maintenance:*

- Applicant Owners, their successors and assigns ("Applicant Owners") shall inspect the Easement Area at least quarterly to ensure that the road thereon ("Old Meadow Lane") is passable and maintained in a condition in accordance with the requirements of the Fairfax County Public Facilities Manual ("PFM"), and the Virginia Department of Transportation ("VDOT") standards. If such inspection finds unstable and cracked sections of pavement or concrete, Applicant Owners will replace such loose sections. Where road sections are unstable or show signs of base or surface failure, the total road and pavement structure for those sections will be replaced and reconstructed according to PFM and VDOT standards. Surface potholing is acceptable for emergency repairs during inclement weather. If such inspection finds pavement cracks of 0.25" or wider, Applicant Owners will fill and seal such cracks. If such inspections find tree branches that interfere with the travel of the fire station apparatus or discover distressed or unhealthy trees with the potential to fall into the road, those branches shall be trimmed and/or the trees removed. If such inspection finds elevation differences of 0.375" or more in adjacent surfaces of sidewalks, Applicant Owners will level such elevation differentials by removing and replacing materials.
- In between such inspections, Applicant Owners shall promptly clear any debris which would impede the normal flow of traffic and promptly repair any potholes.
- Prior to any significant maintenance and/or repair work, Applicant Owners shall provide advance notice to the County and coordinate such work with the County to ensure (i) that access over Old Meadow Lane to Old Meadow Road is sufficient for the passage of County emergency vehicles and is maintained at all times, and (ii) that the County has sufficient time to relocate any emergency vehicles apparatuses as it deems necessary.

#### *Snow & Ice Removal:*

- Applicant Owners shall maintain Old Meadow Lane with plowing of snow and treatment of ice to maintain Old Meadow Lane in a passable condition for travel.
- Applicant Owners shall be deemed on notice upon the local forecast of snow, sleet, or freezing rain to maintain Old Meadow Lane in a passable condition for travel.
- Travel lanes are to be kept open and passable through plowing and the application of the appropriate sand/salt mix.
- Applicant Owners must commence removal operations before two (2) inches of snow accumulate, and before one-quarter (1/4) inch of sleet or ice accumulates.

- Applicant Owners, or their agents or contractor, shall provide telephone numbers and e-mail addresses to allow communication twenty-four (24) hours per day, seven (7) days per week.
- Snowplow operations are to be accomplished in such a manner that a continued heavy snowfall does not cause snow buildup that would then make the Old Meadow Lane impassable. Plow operators are to be diligent and observant that no vehicle is "plowed in." Chemical treatment will include the application of anti-slip aggregate material whenever necessary where ice formation is probable or imminent.
- Applicant Owners, or their agents or contractor, shall begin applying the appropriate sand/salt mix during freezing rain and or sleeting conditions.
- Applicant Owners, or their agents or contractor shall use snow plows mounted upon serviceable trucks, trained personnel for the proper operation of this equipment, the number and type of equipment must be suitable for the forecasted snowfall removal. Upon the local forecast of two (2) or more inches of snow, the contractor will be required to have all larger equipment that will be required for the completion of responsibilities, eliminating the inability to transport heavy machinery during a snowstorm. Applicant Owners shall furnish properly maintained, licensed, insured, and reliably serviceable equipment and will be responsible for all repairs and maintenance to that contractor's equipment.
- In the event of an excessive snowfall and the otherwise designated push/pile locations at the contracted sites are unable to accommodate the volume of snow, Applicant Owners, or their agents or contractor, shall provide the necessary additional equipment to haul the snow to designated off-site locations.

*County Right to Perform Maintenance:*

- If Applicant Owners fail to maintain the Easement Area and Old Meadow Lane as provided herein, the County shall give Applicant Owners ten (10) days written notice of violation of this Agreement, specifying the violations and giving Applicant Owners an opportunity to cure the violations, and upon failure of Applicant Owners to cure the violations within said ten (10) day period (or such longer period as the County may reasonably permit, provided Applicant Owners commence cure efforts within such ten (10) day period), the County shall have the right, but not the obligation, to enter upon the Easement Area and Old Meadow Lane and perform such maintenance.
- Notwithstanding the foregoing, if Applicant Owners fail to timely perform maintenance related to snow and ice removal and/or treatment, or other maintenance resulting in or creating a safety hazard on Old Meadow Lane or otherwise threatening public safety, County has no obligation to provide Applicant Owners with advance notice of the violation and the County shall still have the right, but not the obligation, to enter upon the Easement Area and Old Meadow Lane and perform such maintenance.

*Escrow:*

- Within five (5) business days after the Enhanced Maintenance Date, Applicant Owners shall deposit the sum of \$75,000 with the County. This sum shall be placed by the County into an interest-bearing account so that interest may accrue and may be used by the County for the purposes set forth in this Agreement.
- In the event the County performs work of any nature, including labor, use of equipment, materials, and administrative costs under provisions of the previous section entitled "County Right to Perform Maintenance," whether by use of public forces or by private contract, the County is hereby authorized to draw upon the cash escrow to pay for such work.
- In the event any sums herewith deposited or accrued in escrow are used by the County pursuant to this Agreement, Applicant Owners agree to deposit within ten (10) business days' written notice by the County of such use, including written documentation of the expenditures, an amount sufficient to restore the escrow to its original balance. If Applicant Owners fail to timely restore the escrow, then, in addition to any other rights County may have, such unpaid amounts shall accrue interest at the then-current prime rate as set forth in the *Wall Street Journal*, plus 4%.

*Miscellaneous:*

- This agreement shall become null and void at such time as the Easement Area is dedicated as a public street in accordance with Fairfax County standards.