

**ESKRIDGE REALTY (E & A), LLC**

**RZ/FDP 2013-PR-007  
PROFFERS**

**April 2, 2014**

Pursuant to Section 15.202303(a) of the Code of Virginia, 1950, as amended, the property owner who is the Applicant in this rezoning proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference – 49-3-((1))-87, 88, 89B (hereinafter referred to as the “Property”) shall be in accordance with the following conditions if, and only if, said rezoning request for the PDH-30 District is granted by the Board of Supervisors of Fairfax County, Virginia (the “Board”). In the event said application request is denied or the Board’s approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The Owners and the Applicant (“Applicant”), for themselves, their successors and assigns, agree that these proffers shall supersede any and all previously approved proffers or Special Exception conditions and shall be binding on the future development of the Property unless modified, waived, or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures. The proffered conditions are:

**I. GENERAL**

1. **Substantial Conformance.** Subject to the Proffers and the provisions of Sections 6-200 and 6-400 and Article 16 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Conceptual Development Plan/Final Development Plan (“CDP/FDP”) dated February 21, 2013, and revised through August 16, 2013 consisting of 17 Sheets, and prepared by VIKA Virginia, LLC and Lessard Group, and as further modified by these proffered conditions. This project is designed to be integrated into the

existing Merrifield Town Center Rezoning (latest approval as of the date of these proffers is PCA/FDPA 2005-PR-041-3 and also referred to as “Mosaic”), specifically from both an aesthetic and functional perspective, as an additional phase of the townhouse development approved for Parcels I and J. To that end this Property may also be referred to as “Parcel K” reflecting this intent.

2. **Minor Modifications.** Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDP/FDP described above encompassing the application Property may be permitted due to final architectural and engineering design, as determined by the Zoning Administrator.
3. **Density Credit.** All intensity/density attributable to land areas dedicated and/or conveyed at no cost to the Board or any other public entity pursuant to these proffers (including, without limitation, the dedications referenced below) shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the Property.
4. **Escalation.** The amounts of each cash contribution set forth in these Proffers shall adjust on a yearly basis (but not to exceed 3% increase for any given calendar year) from the base year of 2013, and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the “CPI”).
5. **Decks. Decks (including all attached flower boxes, trellises, lattice work and similar embellishments), bay windows, patios, chimneys, areaways, stairs and stoops, mechanical equipment and other similar appurtenances may encroach into minimum**

yards as depicted on the "lot typical" as shown on the CDP/FDP and as permitted by Section 2-412 and Article 10 of the Zoning Ordinance. The restrictions and limitations of this proffer shall be disclosed to purchasers prior to contract ratification and further disclosed in the homeowners association (HOA) documents. The HOA documents required above shall further stipulate that all decks be of a unified design subject to future modifications as determined by the HOA. In addition, all prospective purchasers shall be notified of the applicable County requirements as they pertain to matters of permitting and related construction requirements.

## II. HOMEOWNERS' ASSOCIATIONS

6. **Homeowners' Associations.** Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) in accordance with Sect. 2-700 of the Zoning Ordinance for the purpose of, among other things, establishing the necessary residential covenants governing the use and operation of common open space, stormwater management facilities, implementation of a Transportation Demand Management (TDM) program and other common facilities of the approved development and to provide a mechanism for ensuring the ability to complete the maintenance obligations and other provisions noted in these proffer conditions within the Property, except and to the extent that those obligations are assumed by the UOA.
7. **HOA subject to Umbrella Owners' Association (UOA).** As part of the effort to integrate this Parcel K into the existing townhome community on Parcels I and J and the larger Merrifield Town Center Rezoning, prior to issuance of the first RUP on the Property, the Applicant shall demonstrate that the HOA is a member of the UOA required to be established by the Merrifield Town Center Rezoning.

8. **Dedication to an HOA.** At the time of record plat recordation, open space, common areas, private roadways, and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA/UOA (as appropriate based on the agreement between the HOA and UOA) and shall be maintained by the same.
9. **Disclosure.** Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicants of the land use and parking restraints imposed by the proffers and/or approved parking reduction(s) as well as the TDM program, maintenance responsibility for the private roadways; guest parking spaces; painted walkways; stormwater management facilities; common area landscaping and any other open space amenities and shall acknowledge receipt of this information in writing. The initial deeds of conveyance and HOA and/or UOA governing documents, as applicable, shall expressly contain these disclosures.
10. **HOA/UOA Maintenance Obligations.** The Applicant, and then the subsequent HOA and/or UOA, shall have maintenance responsibilities that shall include, but not necessarily be limited to the following:
  - A. Maintenance of private streets, all sidewalks, park area, open-space, stormwater management facilities, recreational facilities and other common areas within the Application Property, including standard cleaning and lawn/landscaping maintenance and removal of snow from streets and all sidewalks (including VDOT sidewalks) within the Application Property. The HOA and/or UOA shall incorporate into its lawn maintenance contracts a prohibition against mowing with gas-powered equipment on Code Red days.
  - B. Repair of surfaces and site furnishings.

- C. Replacement of dead, dying, or diseased trees and landscaping within the Property with the same size and similar species as originally approved on the landscape plan.
- D. The TDM Program. As discussed below, the respective HOA and/or UOA documents shall specify the maintenance obligation as set forth herein with regard to participation in the Mosaic TDM Plan as applicable to the Property. Purchasers shall be advised in writing prior to entering into a contract of sale, and in the HOA/UOA documents, that the HOA/UOA shall be responsible, respectively, for such obligations.

### III. LAND USE

11. **Lot Yield and Uses.** The development shall consist of a maximum of twenty-five (25) single-family attached dwelling units.

### IV. PARKING

12. **Parking Tabulations.** Parking spaces shall be provided in accordance with the "Parking Tabulations" listed on Sheets C-2 of the CDP/FDP. The Applicant may establish surface parking spaces to be located along Merrifield Town Center generally as shown on the CDP/FDP (the "Parallel Spaces"). The Parallel Spaces are part of the total number of required parking spaces to be provided with the Proposed Development. One (1) of the Parallel Spaces shall be assigned for the exclusive use of the one-car garage unit shown on the CDP/FDP as Unit #9 to ensure all units will have exclusive access to two parking spaces (the "Assigned Space"). Except for this Assigned Space, the Applicant may restrict the use of those Parallel Spaces through appropriate signage or such other means as the Applicant determines for use as guest parking spaces specifically for visitors to these single family attached units. The Applicant may utilize such Parallel Spaces along

Merrifield Town Center to meet the parking requirements, so long as such spaces are striped and meet the dimension requirements of the PFM and are in the location shown on the CDP/FDP, subject to receiving approval of any necessary waivers and/or modifications.

13. **Parking Reduction/Agreement.** Notwithstanding the above, the Applicant may request a parking reduction or approval of a shared parking agreement pursuant to Article 11 of the Zoning Ordinance. Any modification of the required parking as approved by such parking reduction or agreement may be accommodated without requiring a PCA, CDPA or FDPÄ, provided that the location of the parking remains in substantial conformance with that depicted on the CDP/FDP.
14. **No Garage Conversion/Use of Garage.** Any conversion of garages or use of garages that precludes the parking of vehicles within the garage is prohibited. All garbage and/or recycling receptacles must be stored within a garage or beneath the face of the building unless such items are within twenty-four (24) hours of being collected. A covenant setting forth these restrictions shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the HOA and the Board of Supervisors. These restrictions shall also be disclosed in the HOA documents. Prospective purchasers shall be advised of these use restrictions, in writing, prior to entering into a contract of sale.

Further in order to encourage the efficient use of garage space, an exhibit depicting the most efficient use of the garage space including delineation, with dimensions, of the parking spaces along with how storage areas can be accommodated shall be provided to prospective purchases prior to entering into a contract of sale.

Further the Applicant shall install prior to occupancy of the eight (8) “tandem parking” units, infra-red electronic parking system, rumble strips, wheel stops or other similar measures within the garage space to assist future owners in accommodating parking their vehicles within the garage space.

Prior to issuance of the first RUP, the Applicant shall provide a website with a video demonstrating how to park within the tandem garages and tips on how to organize the garage space to best utilize the space (such as locations for hanging bicycles or providing shelving) and shall provide a link to such video to each owner prior to occupancy. This website video shall also be provided to the HOA in format to allow the HOA to circulate its members to circulate on an annual basis.

#### V. TRANSPORTATION – GENERAL

15. **Right-of-Way Dedication**. All road right-of-way (“ROW”) dedicated in conjunction with these proffers and/or as depicted on the CDP/FDP shall be conveyed to the Board of Supervisors in fee simple at the time of recordation of the final record plat for the contiguous development area, or upon written demand by Fairfax County and/or VDOT, which occurs first. All ROW dedication shall be subject to the “Density Credit” proffer in Proffer 3, regarding reservation of development intensity to the resident of the Property.
16. **Definition of “Construct”**. For the purposes of these proffers, “construct” shall mean that the committed road improvement is open to public traffic use whether or not formally accepted into the State road system.
17. **Private Streets**. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Fairfax County

Public Facilities Manual (“PFM”) as may be approved by DPWES, except to the extent DPWES may approve a modified section. The above construction standard shall not apply to parking spaces. The Applicant and/or successor HOA/UOA shall be responsible for the maintenance of all private streets on the Property.

18. **Off-Site Private Alley Easement.** A public access easement in a form acceptable to Fairfax County shall be provided over the Existing Private Alley between the Property and Parcel E as shown on the CDP/FDP. Such easement shall be recorded prior to record plat approval.
19. **Service Alleys.** The private alleys shown on the CDP/FDP which provide service and access to the rear of the townhomes shall be constructed by the Applicant consistent with the sections shown on the CDP/FDP and prior to the issuance of the initial RUP on the Property. The Applicant shall provide a public Emergency Vehicle Access easement in a form acceptable to Fairfax County over such private alleys at the time of record plat approval.
20. **Retaining and Screening Fence.** As shown on the CDP/FDP, a retaining wall and screening fence shall be constructed along the north property boundary. Such wall/fence shall be in substantial conformance with the maximum height, design, and pattern distribution shown on the CDP/FDP. Further, the color palette utilized for the screening fence shall consist of a minimum of two (2) colors from the color exhibit attached hereto as **Exhibit A**.
21. **Bus Stop Facilities.** If deemed necessary by FCDOT, the Applicant shall provide an easement for a future bus stop to be located along the Application Property’s frontage on Eskridge Road in a final location coordinated with and approved by FCDOT prior to

site/subdivision plan approval. The easement shall be recorded prior to site/subdivision plan approval. If FCDOT determines that such a bus stop is not necessary, then this proffer shall be deemed satisfied.

22. **Traffic Signal Easement.** If deemed necessary by FCDOT, the Applicant shall provide an easement for a traffic signal at the corner of Eskridge Road and Merrifield Town Center in a final location coordinated with and approved by FCDOT prior to site/subdivision plan approval. Such easement shall be located on common association property and not on any future single-family attached lot. The easement shall be recorded prior to site/subdivision plan approval. If FCDOT determines that such an easement is not necessary, then this proffer shall be deemed satisfied.

#### **VI. PEDESTRIAN AND BICYCLE CIRCULATION SYSTEM**

23. **Crosswalks across Merrifield Town Center.** The Applicant shall provide pedestrian cross-walks in the locations shown on the CDP/FDP across Merrifield Town Center Drive to integrate the Property into Parcels I and J. Such cross-walks shall be constructed prior to issuance of the first RUP for the Property.
24. **Re-scarify Southeast Corner of Eskridge Road and Merrifield Town Center.** Prior to issuance of the first building permit on the Property, the Applicant shall re-scarify and landscape the southeast corner of Eskridge Road and Merrifield Town Center in substantial conformance with that shown on the CDP/FDP, including the appropriate curb radius, subject to review and approval by DPWES and FCDOT.
25. **Bicycle Storage/Rack.** At least two (2) bicycle racks consistent in design with the street furniture installed in the Merrifield Town Center Rezoning and Parcels I and J shall be installed on the Property in the general location shown on the CDP/FDP prior to issuance

of the first building permit for a townhome on the Property. Such rack may be relocated in the future to other publicly accessible areas on the Property or Parcels I or Parcel J.

## VII. TRANSPORTATION DEMAND MANAGEMENT PROGRAM

26. **Transportation Demand Management – Relationship to Mosaic.** Pursuant to Proffer IX of the Merrifield Town Center Rezoning, the Mosaic which includes Parcels I and J, are subject to a comprehensive proffer related to Transportation Demand Management (TDM), including the creation of a TDM program intended to ensure a substantial reduction in the number of single occupant vehicle trips generated by that development beyond the 15% reduction identified in the Comprehensive Plan (the “Mosaic TDM Plan”). Given the relatively low number of units (no more than 25) associated with this application, it is not efficient for this Property to create a stand-alone TDM program. Therefore the intent of this proffer is to integrate Parcel K into the larger Mosaic TDM Plan in order to maximize the residential trip reduction associated with the Property. Unless specifically noted, to the extent these Proffers and the Mosaic TDM Plan proffer conflict, these proffers shall control.
27. **Role of UOA.** As discussed herein, the Property shall become part of the UOA, which is ultimately responsible for implementing the Mosaic TDM Plan. As such, the Property shall be subject to the Mosaic TDM Plan to the extent the Mosaic TDM Plan proffer requirements apply to the UOA, including but not limited to participation in funding the Mosaic TDM Plan as required by that proffer and the funding of the shuttle service to the Property as if it were part of the Mosaic. Participation in the UOA and the larger Mosaic TDM Plan shall be disclosed in the HOA documents and to every purchaser prior to their purchase of a lot.

28. **Definitions.** Unless otherwise noted in these proffers, the definitions contained in the Mosaic TDM Plan (Proffer IX.2.) shall control and have the same meaning as used herein.
29. **Role of Trip Reduction Goals.** The Mosaic TDM Plan incorporates a number of phased trip reduction goals for both office and residential development based on the availability of shuttle service and/or an area-wide circulator. As applied to the Property and consistent with the Mosaic TDM Plan, the objective of these TDM proffers shall be to reduce the number of baseline vehicle trips generated by the residential uses on the Property during weekday peak hours as set forth below. The number of vehicle trips generated and reduced shall be measured consistent with the Mosaic TDM Plan thus the goal for this Parcel K shall be as follows: Residential Goals. *Phase 1 -Pre-shuttle 7%; Phase 2-Post-shuttle/Pre-build out 13%; Phase 3- Post-shuttle/Post build out 26%; Phase 4- Post-shuttle/Post Areawide circulator 30%.* These TDM Reduction Goals shall remain in place until such time as the Applicant Control Period ends for the Mosaic TDM Plan as such is defined therein.
30. **TDM Plan Elements Applicable to Parcel K.** In order to achieve the trip reduction goals above, the Applicant shall, at minimum, implement the following TDM Plan elements, and may include other elements of the Mosaic TDM Plan:
- A. Prior to issuance of the first initial RUP on the Property, a one-time contribution of \$1,000 towards the establishment of an Areawide circulator to link uses within the Merrifield Suburban Center and Mosaic.
  - B. Pre-wiring of all units for internet access.

- C. Integrate a targeted-marketing program with Parcels I and J for residential sales that encourages and attracts TDM-oriented people such as one car or no-car individuals and families to live on the property, as well as targeting nearby office/retail workers.
  - D. Prior to issuance of a RUP, the Applicant shall distribute to all initial licensed residents fare media such as a SmarTrip card with a face value of \$25 in order to encourage/incentivize residents to utilize mass transit instead of single occupant vehicles.
  - E. The Applicant shall encourage all residents to participate in Annual Surveys conducted by the Mosaic Program Manager (the "PM").
  - F. The Applicant shall make a one-time contribution to the Mosaic Remedy fund in the amount of \$1,375 prior to the issuance of the first initial RUP for the Property.
  - G. The Applicant shall make a one-time TDM penalty contribution to the HOA in the amount of \$1,500 prior to the issuance of the last initial RUP for the Property.
31. **Interim TDM Elements.** Besides future participation in the Mosaic TDM Plan as part of the UOA and incorporation of the specific elements above, prior to issuance of the first initial RUP on this Parcel K, the Applicant shall demonstrate to FCDOT that the Property has been integrated into the Mosaic TDM Plan Components to the extent that such Mosaic TDM Plan Components (see Proffer IX.4 of the Mosaic TDM proffer) have been implemented as of the date of the first initial RUP request.
32. **FCDOT Modification of TDM Plan.** Even though the goal is to achieve an integrated TDM Plan with the Mosaic TDM Plan, there are elements in the administration of a unified TDM plan that may not be achievable or be applicable to both properties. In such

an event, the Applicant may seek a written determination from FCDOT for alternative administration of the Mosaic TDM Plan as applied to the Property with the intent of meeting the trip reduction goal stated above for at least the Property.

33. **Trip Counts.** In order to measure the Property's achievement of those residential goals outlined in proffers above, the HOA shall undertake a trip count no earlier than one (1) year after the issuance of the final initial RUP for the Property. Such count shall be coordinated with the Mosaic PM and to the extent possible occur on the same date as those counts conducted for Mosaic. The count shall be conducted on a Tuesday, Wednesday or Thursday during a non-holiday week when area public schools are in session. The results of the trip count shall be submitted to FCDOT and the Mosaic PM within 30 days of completion for their review and comment.

If the results of the trip count referenced above show the applicable goal for the Property has been met (as appropriate based on the status of the Mosaic TDM Plan) then no additional trip counts shall be necessary and the HOA shall continue to implement the TDM program in its normal course and as part of its participation in the UOA.

If the results of the trip count referenced above show the applicable goal for the Property has not been met, then the HOA shall meet with FCDOT and the Mosaic PM within two weeks following submission of the trip counts to discuss additional incentives/remedies that might be implemented on the Property. In such event, a second count will be conducted one year following the initial trip counts and submitted to FCDOT and the Mosaic PM within 30 days. If the second count reveals the applicable goal has not yet been met then the HOA shall pay to the County, the penalty contribution referenced in Proffer 29.G above. The HOA shall, in such event, continue to work with

the Mosaic PM to achieve the goals outlined above but no additional traffic counts, remedy fund contributions, or penalties fund contributions shall be required of the Property beyond those identified by these proffers.

## VIII. ENVIRONMENTAL

34. **Stormwater Management Facilities and Best Management Practices.** Stormwater management shall be provided as generally depicted on the CDP/FDP and as approved by DPWES if required at the time of site/subdivision plan approval (see Sheet C-7). The stormwater management techniques may include but are not limited to the following: underground detention vault, permeable pavement, infiltration trench, vegetated swale, filtera systems, or bay filters or other such technique permitted under the PFM and as approved by DPWES. The Applicant shall utilize pervious (jointed) pavers and amended soils (as such are defined in the PFM) in the locations shown on the CDP/FDP. All such facilities shall be located in a manner that is in substantial conformance with the CDP/FDP. Consistent with the BMP Narrative on Sheet C-7, at a minimum the Property shall achieve a reduction of 20% of phosphorous loading.

In addition, even though the PFM requires no additional detention is required as the Property is reducing the existing impervious area, consistent with the Stormwater Narrative on Sheet C-7, through a combination of runoff reduction due to the reduction in the impervious area on the site and the proposed underground detention facility and other stormwater management techniques, the Applicant anticipates a significant improvement in stormwater volume. At a minimum, at the time of site/subdivision plan approval, the Applicant shall demonstrate a reduction in the impervious area over existing conditions sufficient to support a 600 CF runoff reduction pursuant to the appropriate PFM

calculations. In addition to such runoff reduction, the Applicant shall further enhance stormwater detention on the site by installation of an underground stormwater vault of sufficient capacity to detain, at a minimum and notwithstanding potentially smaller detention shown on the CDP/FDP, 500 CF in accordance with the PFM. Such vault shall be installed prior to issuance of the first RUP for the Property. If warranted by final engineering, minor modifications to the size, location and configuration of the underground vault may be made in connection with site/subdivision plan approval. Adequate outfall shall be demonstrated in accordance with the PFM as determined by DPWES.

35. **Stormwater Management and BMP Maintenance.** After establishing the HOA and/or UOA, the Applicant shall provide the HOA and/or UOA and all future homeowners with written materials in the form of a manual describing the proper maintenance of any approved stormwater management facilities, including the need for inspections, cleaning and general maintenance in accordance with County guidelines and the manufacturer's guidelines. The Applicant shall establish an escrow for the HOA and/or UOA to provide for the future maintenance of such improvements as well as a contribution towards a reserve fund for the future replacement of the underground facility which will receive annual deposits from the HOA and/or UOA based on initial construction costs. The amount of such escrow shall be approved by DPWES.
36. **Lighting.** All on-site outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.

## **IX. LANDSCAPING AND OPEN SPACE**

37. **Minimum Open Space.** As depicted on the CDP/FDP, a minimum of 36 percent open space shall be provided in accordance with Zoning Ordinance requirements.
38. **Landscape Design.** Landscaping shall be generally consistent with the quality, quantity and the locations shown on CDP/FDP Sheets L-1 to L-3. Actual types, quantities and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of the first and all subsequent submissions of the site plan, for review and approval by Urban Forest Management. Such landscape plans shall provide tree coverage and species diversity consistent with the PFM criteria, as determined by Urban Forest Management. Landscaping shown on the CDP/FDP may be modified, if in substantial conformance with that shown on the CDP/FDP as approved by the Zoning Administrator and Urban Forest Management, to allow for final engineering considerations, such as final utility locations, low impact development facilities, sight distance requirements and other requirements. The Applicant shall coordinate the location of any utilities within open space areas to allow sufficient planting depth for trees and other landscaping as shown on the CDP/FDP. As a priority, where reasonably feasible as determined by Urban Forestry Management, DPWES, the Applicant shall install water, sanitary sewer and storm sewer utility lines within the street network to avoid conflicts with open space areas and streetscape elements shown on the CDP/FDP.
39. **Tree Size.** All shade trees provided as a part of the streetscape shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all new flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting, subject to the review and approval of the Urban Forester as shown on the CDP/FDP.

40. **Non-invasive Plant Materials.** Only non-invasive plant materials, including street trees, shall be used within the streetscape and open space areas, subject to approval by the County Urban Forest Management Division. Further, the intent is to match the species and plant materials utilized on Parcels I and J, thus the Applicant shall utilize similar plant species for comparable planting types (e.g. shrubs, street trees etc.) to create an integrated landscape design.
41. **Pedestrian Access Easement Over Pocket Park.** The Applicant shall grant a pedestrian access easement over those specific open space areas identified on the CDP/FDP as "Pocket Park." Such right of access shall be subject to the right of the Applicant and the successor HOA, as applicable, to establish reasonable rules and regulations pertaining to hours of public access, maintenance and repairs.

#### **X. UTILITIES**

42. **Underground Utilities.** The Applicant shall coordinate with utility companies (gas, power, telephone, cable etc.) to co-locate utilities where reasonably feasible. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall place all utilities serving the Property underground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground without approval of a PCA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from third-parties that, despite having been diligently pursued by the Applicant, are not available.

#### **XI. RECREATIONAL FACILITIES**

43. **On-Site Amenities and Facilities for Residents.** Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance, the Applicant shall expend a minimum of \$1,700.00 per single family attached unit for on-site recreation facilities. Prior to final bond release for the Proposed Development, the balance of any funds not expended on-site and/or for the construction of the on-site Pocket Park, shall be contributed to the Fairfax County Park Authority ("FCPA") for the provision of recreation facilities located in proximity to the Property.
44. **On-Site Pocket Park.** An on-site open space amenity area identified at the "Pocket Park" shall be provided on the Property as shown on the CDP/FDP to provide recreational opportunities for future residents of Parcels I, J and K and the larger Mosaic Rezoning. For purposes of these proffers the "Pocket Park" shall be all of the common area, including sidewalks, shown on the CDP/FDP between Buildings 2, 3 and 4 (an area approximately 142' x 60'). It shall include special landscape treatments, pavement treatments, outdoor seating, bike racks and other elements shown on the CDP/FDP and in the general locations shown on the CDP/FDP. In the future, the design of this Pocket Park may be modified as deemed appropriate by the Applicant or HOA provided, at a minimum, an equivalent level of street furniture and landscaping is provided. This area shall be retained in ownership by the Applicant or successor HOA/UOA, however the residents of Parcels I, J and K shall have access to such park. The Applicant/HOA/UOA shall reserve to the right to restrict access for special events or out of security and/or safety concerns for a limited duration necessary to accommodate such issues. Such Pocket Park shall be completed prior to issuance of a RUP for the first townhome.

45. **Recreational Cooperation with Mosaic.** In addition to the above commitment, prior to the issuance of the first RUP, the Applicant and/or the successor HOA shall submit a written request to the UOA and/or appropriate property owner requesting that the future residents of Parcel K have access to active recreational facilities located in the multi-family residential buildings in Mosaic in a similar manner to the access rights for the existing townhomes on Parcel I and J. It shall be the sole discretion of the UOA and/or such property owner as to the appropriate terms, if any, to allow such access.
46. **Providence District Recreation Contribution.** In addition to the above commitments, prior to issuance of the first RUP, the Applicant shall contribute \$5,000 to Nottoway Nights to support their programs and activities.

## **XII. SCHOOL CONTRIBUTION**

47. A contribution of \$125,856 (12 students X \$10,488 = \$125,856) shall be made to the Board of Supervisors for transfer to Fairfax County Public Schools (FCPS) and designated for capital improvements directed to the schools that service the subject property. The contribution shall be made at the time of, or prior to, issuance of site plan approval. Following approval of this Application and prior to the Applicant's payment of the amount set forth in this Proffer, if Fairfax County should increase the contribution per student, the Applicant shall increase the amount of the contribution for that phase of development to reflect the then-current contribution. In addition, notification shall be given to FCPS when construction is anticipated to commence to assist FCPS by allowing for the timely projection of future students as a part of the Capital Improvement Program.

## **XIII. URBAN DESIGN**

48. **Architectural Treatments.** The architectural treatment of the subject property is intended to incorporate the elements of the surrounding "Merrifield Town Center" development. Specifically, the architectural treatment shall mirror that already established for Parcels I and J through the use of unifying and similar elements, such as materials, textures, color patterns and distributions, window treatments, decorative details, lighting, landscaping, and roof pitches. Materials shall be brick, Fiber-Cement "Hardie-Panel" and Fiber-Cement "Hardie-Trim." The railings will be painted steel.
49. **Building Elevations.** The architectural design of single family attached dwellings shall be consistent with the quality of the elevations shown on Sheets A-1 and A-2 of the CDP/FDP. The Applicant reserves the right to revise the elevations as a result of final architectural and engineering design, provided the quality of design remains consistent with those shown, as determined by DPWES.
50. **Street Furniture.** All street furniture, including garbage cans, benches and lamp posts, shall be consistent, both in terms of materials and design, with the existing street furniture in Merrifield Town Center and to those used in Parcels I and J. Further, such street furniture shall be consistent in quality and character with the illustrative examples included in the CDP/FDP.
51. **Green Building Principles.** The following green building commitment shall apply to the single-family attached uses shown on the CDP/FDP. For this green building commitment, the applicant shall utilize one of the choices identified below (LEED for Homes or Earthcraft). Further, in addition to the choices identified herein, the Applicant may submit an alternative third party certification for the single-family attached uses shown on the CDP/FDP that meets the substantive intent of the choices identified below.

Such alternative third party certification must be reviewed and approved by DPZ prior to construction that utilizes such alternative certification.

A. If the Applicant selects the LEED for Homes option, the approval of the 1<sup>st</sup> Single Family attached Residential Use Permit, the Applicant will post a "green building escrow," in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of \$4,000 per unit based on an average square footage of 2,000 per unit. This escrow will be in addition to and separate from other bond requirements and will be released as a total sum, and not an individual dwelling unit basis, upon demonstration of attainment of certification for each dwelling unit, by the U.S. Green Building Council, under the current version at the time of project registration with the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that each dwelling unit has attained LEED certification will be sufficient to satisfy this commitment. If the applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification for each dwelling unit within one year of issuance of the final RUP, a proportion of the escrow related to the number of units failing to achieve certification will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within one year of issuance of the final RUP, documentation demonstrating that

LEED certification for any dwelling unit(s) has not been attained but that the dwelling unit(s) has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow proportionate to the dwelling unit(s) failing to achieve certification will be released to the applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant fails to provide, within one year of issuance of the final RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that any dwelling unit(s) has fallen short of certification by three points or less, the entirety of the escrow proportionate to the dwelling units failing to achieve certification will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification for any dwelling unit(s) application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame shall be extended until such time as evidence is obtained, and no release of escrowed funds shall be made to the Applicant or to the County during the extension. The time frame may also be extended as determined appropriate by the Zoning Administrator.

## **LEED-AP**

The applicant will include a LEED®-accredited professional as a member of the design team. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of having the project attain LEED certification. At the time of subdivision plan submission, the applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional.

## **Checklist**

The applicant will include, as part of the 1<sup>st</sup> Single Family Attached Residential Use Permit submission and building plan submission, a list of specific credits within the most current version of the US Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system that the applicant anticipates attaining. A professional engineer or licensed architect will provide certification statements at 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 LEED certification of the project.

## **Green Building Manual**

Prior to approval of the final RUP, the Applicant will provide to the Environment and Development Review Branch of DPZ a letter from a LEED®-accredited professional certifying that a green building maintenance reference manual has been prepared for use by future residents, that this manual has been written by a LEED-accredited

professional, that copies of this manual will be provided to all future residents and that this manual, at a minimum:

- provides a narrative description of each green building component, including a description of the environmental benefits of that component and including information regarding the importance of maintenance and operation in retaining the attributes of a green building;
- provides, where applicable, product manufacturer's manuals or other instructions regarding operations and maintenance needs for each green building component, including operational practices that can enhance energy and water conservation;
- provides, as applicable, either or both of the following: (1) a maintenance staff notification process for improperly functioning equipment; or (2) a list of local service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants, and caulks; and
- provides contact information that building occupants can use to obtain further guidance on each green building component; and
- the Applicant will, prior to approval of the final RUP, provide an electronic copy of the manual in pdf format to the Environment and Development Review Branch of the Department of Planning and Zoning.

**B. EarthCraft:**

If the Applicant selects the EarthCraft option, prior to issuance of the first RUP for a proposed building, the Applicant shall provide documentation to DPWES and DPZ that the building has been awarded certification in accordance with the EarthCraft House Program.

#### **XIV. AFFORDABLE HOUSING**

52. **Affordable Dwelling Units.** Prior to the issuance of the first Residential Use Permit for the single family attached units, the Applicant shall contribute to the Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2%) of the value of all the units approved on the Property. The one half of one percent (1/2%) contribution shall be based on the aggregate sales price of all of the units subject to the contribution, as if those units were sold at the time of the issuance of the first Residential Use Permit. The projected sales price shall be determined by the Applicant through an evaluation of the sales prices of comparable units in the area, in consultation with the Fairfax County Department of Housing and Community Development (HCD) and Department of Works and Environmental Services (DPWES).

#### **XV. OTHER**

53. **Temporary Signs.** No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale or rental of residential units on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Property to adhere to this proffer.

54. **Future Comprehensive Sign Plan.** At this time no additional permanent signage is proposed on the Property, except for wayfinding and parking signage. Such minor signage shall be consistent in design with that established for Parcel I and J. In the future if permanent signage is desired to be installed, such signage shall only be permitted pursuant to approval of a comprehensive sign plan that is consistent, both in terms of the design of the signs and number, location, and area of the signs, with the applicable approved comprehensive sign plan for Mosaic, if any. If possible, such a future comprehensive sign plan shall be formally incorporated into a larger comprehensive sign plan for the entirety of the Property and Mosaic.
55. **Unreasonable Delay.** Upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of an improvement set forth in these proffers has been unreasonably delayed by others or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement.
56. **Administrative Review.** Concurrent with the submission to DPWES of site plans, and any major inserts or revisions to said site plans, the Applicant shall submit copies of the same to the Providence District Supervisor and Planning Commissioner for the purpose of administrative review and comment.
57. **Successors and Assigns.** Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest, developer(s) of the site or any portion of the site, and the respective Homeowners' Associations described in Proffer XVI.

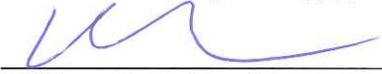
58. **Counterparts.** To facilitate execution, this Proffer Statement may be executed in as many counter-parts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart-part of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

**[SIGNATURES ON FOLLOWING PAGES]**

**EYA DEVELOPMENT LLC**  
(Contract Purchaser/Applicant  
of Tax Map 49-3 ((1)) 87, 88, 89B)

By:   
\_\_\_\_\_  
John M. Lester  
Title: Senior Vice President

**ESKRIDGE REALTY (E&A) LLC**  
(Title Owner of Tax Map 49-3 ((1)) 87, 88, 89B)

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

William C. Caldwell

Its: Managing Director

**Exhibit A**

