

**CAPITAL ONE PROFFERS**

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**CAPITAL ONE PROFFERS  
PCA 2010-PR-021**

**May 5, 2014**

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and applicant for themselves and their successors and/or assigns (collectively referred to as the "Applicant") in this Proffer Condition Amendment application ("PCA") proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 29-4 ((5)) Parcel A2 (the "Property") shall be in accordance with the following conditions if, and only if, Proffer Condition Amendment application PCA 2010-PR-021 (the "Application") is granted by the Board of Supervisors (the "Board"). In the event that the application is denied, these Proffers shall be immediately null and void and of no further force or effect on the Property.

**GENERAL**

1. Conceptual Development Plan Amendment. The Property shall be developed in substantial conformance with the proffered elements of the Conceptual Development Plan Amendment dated May 6, 2013, and revised through February 18, 2014, prepared by William H. Gordon & Associates and consisting of 35 sheets (the "CDPA"). In addition to the specific Proffers contained herein, the proffered elements of the CDPA shall be limited to the grid of streets, general location of access points to buildings, general location of the buildings, mix of uses, minimum and maximum building heights, the amount and general location of urban park land, and general quality and character of the streetscape (the "Proffered Elements"). Other elements of the CDPA may be adjusted or modified with approval of future Final Development Plans ("FDP") in accordance with the provisions set forth in Section 16-402 of the Fairfax County Zoning Ordinance (the "Ordinance"), and these Proffers.
2. Minor Modifications. Minor modifications to the Proffered Elements of the CDPA and these Proffers may be permitted pursuant to Par. 4 of Section 16-403 of the Ordinance when necessitated by sound engineering or when necessary as part of final site design, and when such modifications are determined to be in substantial conformance with the Proffered Elements and these Proffers, as determined by the Zoning Administrator.
3. Future Applications. Any portion of the Property may be the subject of a Conceptual Development Plan ("CDP"), Conceptual Development Plan Amendment ("CDPA"), Final Development Plan ("FDP"), Final Development Plan Amendment ("FDPA"), Proffered Condition Amendment ("PCA"), Rezoning ("RZ"), Special Exception ("SE"), Special Permit ("SP"), Variance or other zoning action without joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 18-204 paragraph 5 of the Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property which are not the subject of such an application shall remain in full force and effect.

## PROPOSED DEVELOPMENT

4. Existing Development. The Property is approximately 26.21 acres in size and is developed with the existing Capital One corporate headquarters (“HQ”) building, which contains approximately 479,500 square feet (excluding basement space) (the “Capital One Headquarters”), a 26,000 square-foot conference facility (the “Conference Facility”), accessory buildings totaling 1,247 square feet, a structured parking facility containing approximately 1,529 spaces (the “Existing Parking Garage”), temporary athletic fields and sport courts (the “Temporary Athletic Facilities”), and 35 surface parking spaces (the “Existing Surface Parking”) (collectively, the “Existing Development”). The Existing Development, which totals 506,747 square feet of gross floor area (“GFA”) is shown on Sheet 4 of the CDPA and may remain in operation indefinitely. In the event that only a portion of the Property is redeveloped subject to an approved FDP and site plan, the portion or portions of the Property not subject to the FDP, including the Existing Development, may continue in operation as shown on Sheet 4 of the CDPA. The Applicant may also make minor modifications to the Existing Development as depicted on Sheet 4 of the CDPA, such as to permit changes to the Temporary Athletic Facilities and to accommodate the future Jones Branch Connector improvements, subject to the approval of the Zoning Administrator. Any use which is permitted in the PTC district and is (i) shown on an approved FDP, or (ii) approved by the Zoning Administrator, may also be permitted as an interim use subject to the Use Limitations in Section 6-505 of the Ordinance.

- A. Interior Improvements. For those buildings or structures existing on the Property as of the approval date of this Application, the Applicant may secure building permits for and make interior improvements to such buildings without triggering the requirement to reconstruct such buildings in conformance with the CDPA or any approved FDP.
- B. Casualty. The Applicant may restore any building or structure existing as of the approval date of this Application that later is destroyed or damaged by casualty, subject to Article 15 of the Ordinance.
- C. Parking. The Existing Parking Garage may remain in operation and will continue to serve the Existing Development until and unless an FDP and site plan are approved showing its removal.
- D. Temporary Athletic Facilities Lights. The Applicant may provide nighttime lighting for any of the Temporary Athletic Facilities, provided such lights utilize full cutoff, low-impact fixtures, are directed away from the adjacent Gates of McLean condominium community to the maximum extent possible, and are turned off no later than 10:00 pm each night.

5. Density Credit. In addition to the 26.21-acre Property, the Applicant is utilizing previously reserved density credit for land dedications totaling approximately 3.01 acres, as illustrated by the building tabulations on Sheet 3 of the CDPA.

6. Proposed Development. The development on the Property will supplement and partially replace the Existing Development, as more particularly described in the proposed phasing plan described below (collectively, the “Proposed Development”). The Proposed Development, which includes the Existing Development, shall not exceed 4,969,523 square feet of total GFA, which shall include a minimum of 800 dwelling units and up to 3,182,153 square feet of GFA of office space.

7. Phasing Plan. The buildings, plazas, uses and other improvements shown on the CDPA shall be constructed in accordance with the phasing outlined in Paragraphs A – E of this Proffer and described on Sheets 14 and 15A – E of the CDPA (the “Phasing Plan”). The phases of development reflected in the Phasing Plan may proceed in any order, provided that each phase includes the ultimate streetscape dimensions and design depicted on the CDPA. The Applicant shall update the Phasing Plan with each FDPA in order to provide additional details, including providing existing structures and facilities, the anticipated order of future development, the completion of the street grid, establishment of streetscapes and pedestrian elements, construction of parks, and updated interim conditions.

A. Capital One HQ Expansion Phase (Block B).

Phase Summary	GFA Range	Min./Max. Height	Prop. GFA	Max. Parking
Building 3 – Office	500,000 – 975,000 SF	368 – 470 feet	940,550	1,643
Building 3 – Retail	up to 44,600 SF	---	30,150	0
<b>Total for Phase</b>	<b>up to 1,019,600 SF</b>	---	<b>970,700</b>	<b>1,643</b>

B. Capital One Expansion II and Hotel Phase (Blocks A, B and E).

Phase Summary	GFA Range	Min./Max. Height	Prop. GFA	Max. Parking
Building 1 – Office	300,000 – 600,000 SF	150 – 352 feet	593,500	1,335
Building 1 – Retail	up to 13,000 SF	---	10,345	98
Building 2 – Hotel	50,000 – 81,500 SF	75 – 122 feet	81,388	100
Building 2 – Retail	up to 10,500 SF	---	8,249	27
Building 4 – Hotel/Conference	250,000 – 340,000 SF	150 – 250 feet	325,374	350
Stand-Alone Public Facility	30,000 SF	20 – 40 feet	(30,000)*	35
<b>Total for Phase</b>	<b>up to 1,045,000 SF</b>	---	<b>1,018,856</b>	<b>1,910</b>

C. Residential Commons Phase (Block C).

Phase Summary	GFA Range	Min./Max. Height	Prop. GFA	Max. Parking
Building 6 – Residential	300,000 – 518,000 SF	150 – 236 feet	499,569	498
Building 6 – Retail	up to 31,300 SF	---	30,670	28
Building 7 – Residential	200,000 – 274,800 SF	125 – 247 feet	272,500	254
Building 7 – Retail	up to 5,000 SF	---	4,976	13
Building 8 – Residential	200,000 – 370,000 SF	125 – 231 feet	356,479	372
Building 8 – Retail	up to 12,500 SF	---	12,470	0

<b>Total for Phase</b>	<b>up to 1,211,600 SF</b>	---	<b>1,176,664</b>	<b>1,165</b>
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D. Metro Station Phase (Block D).

<b>Phase Summary</b>	<b>GFA Range</b>	<b>Min./Max. Height</b>	<b>Prop. GFA</b>	<b>Max. Parking</b>
Building 9 – Residential	50,000 – 124,250 SF	75 – 175 feet	123,280	236
Building 9 – Retail	up to 3,850 SF	---	3,829	19
Building 10 – Office	400,000 – 484,000 SF	200 – 305 feet	459,623	742
Building 10 – Retail	up to 28,100 SF	---	28,092	142
<b>Total for Phase</b>	<b>up to 640,200 SF</b>	---	<b>614,824</b>	<b>1,139</b>

E. Financial Office Phase (Block E).

<b>Phase Summary</b>	<b>GFA Range</b>	<b>Min./Max. Height</b>	<b>Prop. GFA</b>	<b>Max. Parking</b>
Building 11 – Office	200,000 – 260,500 SF	150 – 266 feet	230,474	302
Building 11 – Integrated Public Facility	up to 30,000 SF	---	(30,000)*	35
Building 12 – Office	400,000 – 508,000 SF	250 – 305 feet	452,505	1,326
<b>Total for Phase</b>	<b>up to 798,500 SF</b>	---	<b>682,979</b>	<b>1,663</b>

\* Because it is a public use, the 30,000 SF proposed Stand-Alone Public Facility shown in Paragraph B and the 30,000 SF proposed Integrated Public Facility shown in Paragraph E are not tabulated in the Total for Phase and are not included within the maximum GFA for the Proposed Development. Specific details regarding these facilities can be found in Proffers 13 and 14.

8. Final Development Plans. FDPs and FDPAs may be submitted for the entire Property or a portion thereof, and will focus on the establishment of individual building sites or phases. Each FDP or FDPA shall establish the minimum and maximum GFA for each building that is proposed to be constructed with that FDP or FDPA, within the limits of the Phasing Plan set forth in Proffer 7 above. In addition, the Applicant shall provide the following information on each FDP or FDPA, for review and approval of the Planning Commission:

- A. Tabulations. A tabulation indicating the development status of all property subject to the Proposed Development shall be provided with each FDP and site plan submitted for the Property. The tabulation shall include a listing of all existing and proposed buildings and facilities, along with the GFA and uses approved on the CDPA, FDP and site plan as may be applicable. The tabulation shall be updated with each subsequent FDP and site plan submitted for the Property.
- B. Public Facility. Until the Stand-Alone Public Facility as set forth in Proffer 13 or the Integrated Public Facility as set forth in Proffer 14 has been constructed, each FDP shall contain proposed phasing information for the Public Facility.
- C. Architecture. The specific architectural design information as described in Proffer 16. In addition, architectural design elevations shall be presented for the

buildings 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, as well as the porosity, materiality, and entry locations at the ground floor of each building. Other details of building design (such as specific material or color selections, fenestration details, etc.) are subject to change in final architectural and site plans.

- D. Build-to Lines. Proposed Build-to Lines, including any proposed modifications to the Build-to Lines and/or the expanded streetscape areas as identified in Proffer 17.
- E. Conceptual Utility Plans. The Conceptual Utility Plans more specifically described in Proffer 19, including any anticipated conflict points between utility easements and proposed street trees and how these conflicts are proposed to be resolved prior to site plan approval.
- F. Lighting. Specific streetscape lights per Proffer 21.
- G. Surface Parallel Parking Spaces. The final number and location of on-street parallel parking spaces to be constructed within the applicable FDP area, in accordance with Proffer 27.
- H. Landscape Plan. A revised Landscape Plan, as described in Proffer 29.
- I. Streetscape. The details and any adjustments to the streetscapes as described in Proffer 30, including information regarding sight distance lines at all intersections and entrances included within the FDP area.
- J. Interim Conditions and Standards. Detailed information on the proposed interim conditions and standards, as described in Proffer 31.
- K. Stormwater Management. A detailed stormwater management plan, as described in Proffer 32.
- L. Right-of-Way Dedications. Any refinements to the right-of-way dedications described in Proffers 35 and 36.
- M. Security. A revised security plan as described in Proffer 36(F). As part of the security plans, the Applicant shall also provide a diagram with detailed locations of any bollards and security gates, including precedent images for each feature.
- N. Bicycle Facilities. Specific locations and the number of bicycle facilities to be provided as described in Proffer 44.
- O. Publicly Accessible Parks and Recreational Facilities. The specific details on parks and recreational facilities included within the area of the FDP, as described

in Proffers 48, 49 and 51. For the Metro Station Phase, the Residential Commons Phase, and the Capital One Expansion II and Hotel Phase, the Applicant shall also submit detailed plans with proposed amenities and programmatic elements for the parks and recreational facilities associated with those respective phases.

- P. Sustainable Energy Practices. The sustainable energy practices described in Proffer 53.
  - Q. Sight Distance Lines. Sight distance lines for all affected driveway entrances and signs, as necessary.
  - R. Bus Shelters. Details on any proposed bus shelter locations and designs per Proffer 46.
  - S. Functional Analysis. A transportation analysis that evaluates the intersections being constructed or modified as part of each FDP. The analysis will evaluate build out year conditions to determine the forecasted operational characteristics of the intersections.
  - T. Capital One Drive Parking and Loading. With submission of an FDP for the Residential Commons Phase described in Proffer 7(C) above, a detailed functional analysis for the parking and loading entrances associated with Building 7.
  - U. Capital One Tower Road Median. With submission of an FDP for either the Financial Office Phase or the Metro Station Phase, a proposal for construction of a median on Capital One Tower Road between the intersections of Dolley Madison Boulevard and Capital One Drive South, as depicted on Sheet 7 of the CDPA and subject to ultimate approval by VDOT and the Fire Marshal.
  - V. Workforce Dwelling Units. With submission of any FDP that contains residential development, details on the expected phasing for the construction of the required workforce dwelling units set forth in Proffer 59.
  - W. Optional Skylights/Pop-Ups. Sheet 10 of the FDPA for Block B reflects an optional skylight/pop-up on the west side of the Building 3 podium. The Applicant reserves the right to construct an alternate or additional skylight/pop-up on the east side of the podium.
9. Owners' Associations.
- A. Umbrella Owners' Association. Prior to the issuance of the first Residential Use Permit ("RUP") or Non-Residential Use Permit ("Non-RUP") for the first building constructed with the Proposed Development that is not owned by Capital One Bank and its subsidiaries, affiliates and/or successor companies, the Applicant shall establish an Umbrella Owners' Association (the "UOA"), whose

members will consist of a representative of each owner of land and/or buildings within the Property. The UOA shall provide for applicable proffer, maintenance and replacement obligations, including but not limited to implementation of the Transportation Demand Management (“TDM”) program, maintenance of private streets, sidewalks, streetscapes, publicly accessible private park areas and athletic facilities, stormwater management facilities not maintained as part of individual buildings, and any private utility systems.

- B. Homeowners’ and Condominium Owners’ Associations. For each residential building in which units are held for sale, the Applicant shall cause either a homeowners’ association and/or a condominium owners’ association (“HOA/COA”), as applicable, to be formed for that building prior to the issuance of the first RUP. Each of these associations shall also be members of the UOA.
- C. Disclosures. UOA and HOA/COA documents (including budgets provided in any offering or sale materials) shall specify the proffer, maintenance and replacement conditions and obligations set forth in these Proffers. Purchasers shall be advised in writing of these proffer conditions and obligations prior to executing a contract of sale.
  - i. The HOA documents for all residential units shall specifically include the required notifications contained in Proffer 25 (Exterior Noise Levels).
  - ii. All UOA and HOA/COA documents shall define and limit activities that are not permitted within sidewalk areas of the Proposed Development, such as commercial advertising and sandwich boards.
- D. UOA TDM Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be advised of their continuing obligation to the Transportation Demand Management plan (the “TDM Plan”) described in Proffer 42. All UOA and HOA/COA members shall be informed of any funding obligations for the TDM program prior to executing a contract of sale and all such obligations shall be included in UOA and HOA/COA documents.
- E. UOA Expansion. Nothing in this Proffer shall be construed to prohibit expansion of the UOA to include neighboring properties, at the sole election of the UOA.

10. Mix of Uses. The Property shall consist of a mix of residential, office, retail, public facility, service and hotel uses as described in the CDPA and these Proffers, subject to the limitation that the maximum square footage of all constructed uses on the Property shall not exceed 4,969,523 square feet of GFA. The Proposed Development may contain any use permitted by-right in Article 6, Part 5 of the Ordinance, subject to compliance with any Ordinance or proffered use limitations as demonstrated on an approved FDP or FDPA. Additional SE and/or SP uses may be permitted without a PCA, provided they are in substantial conformance with the Proffered Elements and these Proffers.

11. Retail Activated Space. Subject to FDP approval, within the areas shown on the CDPA that are permitted for retail and personal service uses, there will be a minimum of 100,000 square feet of GFA dedicated to uses that create activated and animated first-floor storefronts ("Retail Activated Space"). Of the required Retail Activated Space, at least 50,000 square feet of GFA will be established with Retail Activated Space prior to or with the first RUP or Non-RUP for the seventh new building constructed on the Property. For the purposes of the Proposed Development, Retail Activated Space shall include but not be limited to retail and personal service establishments, restaurants, banks and financial services, professional services, legal services, medical and dental offices, educational and tutoring facilities, public and civic uses (including the Public Facility as outlined in Proffers 13 and 14) and health clubs. Uses not specifically enumerated in or envisioned by this Proffer may be established provided the Zoning Administrator determines the use is in substantial conformance with this Proffer 11.

12. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty (60) days prior to recording residential condominium documents for any portion of the Property located within the Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Board.

### **PUBLIC FACILITIES**

13. Public Facilities. As described in more particular detail below, the Applicant shall (subject to this Proffer 13 and Proffer 14) design and construct a 30,000 square-foot public facility to be used by Fairfax County for community and/or recreational programs. The Applicant shall choose to implement one of the following two options:

- Stand-Alone to Integrated Option. The Applicant shall construct a stand-alone facility as generally depicted on Sheet 15A of the CDPA (the "Stand-Alone Public Facility") concurrently with the earlier of the third office building on the Property or the fourth building constructed on the Property, regardless of use. Upon the development of Building 11, the Applicant shall remove the Stand-Alone Public Facility and concurrently rebuild it as an integrated use within Building 11 (as provided in Proffer 14). The Applicant may request to instead locate the integrated public facility within any other new building in the Proposed Development if approved by the County as described in Proffer 14 (the "Integrated Public Facility").
- Integrated Option. If the Applicant elects to construct Building 11, or such other building as approved by the County as an alternative site for the Integrated Public Facility (consistent with Proffer 14), the Applicant shall construct the Integrated Public Facility concurrently with the earlier of the third office building constructed on the Property, or the fourth building constructed on the Property, regardless of use. Should the Applicant

select this option, it shall have no obligation to construct the Stand-Alone Public Facility described in Proffer 13.

For the purposes of Proffers 13 and 14, individual buildings that contain less than 25,000 square feet of GFA (such as guardhouses, pavilions, and similar structures) shall not count toward or trigger the requirement to construct either the Stand-Alone Public Facility or the Integrated Public Facility. If the Applicant proceeds with the Stand-Alone to Integrated Option, then the following provisions shall apply:

- A. Design and Scope. The Applicant shall design the Stand-Alone Public Facility so that it will include, among other things, a gymnasium of approximately 9,000 square feet, space for offices, and a multipurpose meeting room or rooms, any of which may be eliminated at the County's request. In addition to these required facilities, the Stand-Alone Public Facility will also include amenities that may include, but shall not be limited to, an exercise room, a game room, an arts/crafts room, a computer room, a commercial kitchen, restrooms, lockers and storage space. The programming and details of the Stand-Alone Public Facility will continue to be evaluated and modified, if needed, by the Providence District Supervisor's Office, OCR, the Department of Neighborhood and Community Services and the Applicant. The Applicant shall design the Stand-Alone Public Facility pursuant to: (i) the Fairfax County Guidelines for Architects and Engineers prepared by DPWES then in effect (the "Guidelines"), as further described below; (ii) shall be of the same quality and standards as defined in the plans and specifications for the Providence District Community Center; (iii) all then-current codes and regulations; and (iv) a design that is consistent with the quality of other reasonably comparable County facilities of similar use. All design documents are subject to County review and approval at each design phase as provided herein.
- B. Total Construction Cost. As further described herein, the total construction cost to the Applicant of the Stand-Alone Public Facility shall not exceed the sum of \$11,000,000.00, as adjusted on an annual basis by the Marshall & Swift Building Cost Index, with any adjustment beginning on January 1, 2015. Once a notice to proceed has been issued to the construction contractor, the total construction cost shall not be further adjusted (the "Total Construction Cost").

The Total Construction Cost shall consist of construction costs related to the Stand-Alone Public Facility ("County Hard Costs") as described in subsection (B)(i) below; costs attributable to the design of the Stand-Alone Public Facility, as described in subsection (B)(ii), below ("County Soft Costs"); and costs related to extending various utilities from the main line to serve the Stand-Alone Public Facility, as described in subsection (B)(iii), below ("Utility Costs").

At or promptly after the Initial Meeting (as defined in subsection D, below), and in any event before the Applicant's submission of Schematic Design drawings to the County, the Applicant and County shall agree as to which costs are County

Hard Costs, County Soft Costs, Utility Costs or Applicant Costs (as defined in subsection (B)(iv) below).

- i. County Hard Costs. For County Hard Costs, the Applicant shall include the construction costs for the base building and a complete interior build-out for the Stand-Alone Public Facility, including ceilings, lighting, plumbing, separate heating and cooling (HVAC), painted interior walls, electrical outlets, elevators, restrooms, and all finishes, to include gymnasium floor, any required bleachers, and basketball hoops. The Applicant shall not provide loose fixtures, furnishings, or equipment except for those specified in this Proffer. The budget submissions required in subsection (D) shall provide a detailed summary of the base building and interior build-out of the Stand-Alone Public Facility.
- ii. County Soft Costs. County Soft Costs shall consist of (a) the fee for the design consultants for the Stand-Alone Public Facility (base building and interior build-out) as further defined below, and (b) cost estimating fees. County Soft Costs shall also include special inspection services, HVAC commissioning, value engineering, survey, geotechnical, LEED registration, design and certification, and all inspections and permits.

Notwithstanding anything herein to the contrary, no more than \$600,000 (as adjusted on an annual basis by the Marshall & Swift Building Cost Index beginning January 1, 2015 to the date that a Non-RUP is issued for the Stand-Alone Public Facility) of County Soft Costs – including costs pertaining to architect(s); MEP, civil, and structural engineers; other consultants; and construction administration services – shall count toward the Total Construction Cost; any excess design costs shall remain at Applicant’s expense. This limitation shall not apply to changes to the approved design and/or scope of the Stand-Alone Public Facility after the 35% Design Development stage that are requested by the County.

- iii. Utility Costs. In addition to the County Soft Costs, the Applicant may include up to \$50,000 in the Total Construction Cost for the provision of electric power and up to \$15,000 for the provision of natural gas service to the Stand-Alone Public Facility (the “Utility Costs”). The budget does not include costs for permitting, tap and other related fees for the provision of water and sewer service to the Stand-Alone Public Facility. The cap on County Soft Costs referred to in subsection (B)(ii) will be increased by the estimated amount of such fees.
- iv. Applicant Costs. Total Construction Cost of the Stand-Alone Public Facility shall not include any costs other than County Hard Costs, County Soft Costs and Utility Costs; the Applicant shall bear all other costs of designing and constructing the building (“Applicant Costs”), including, without limitation: clearing and grading; earthwork; construction of

surrounding streets; Applicant's overhead, administrative, financing, legal, and/or zoning costs (although the Total Construction Cost will include any costs related to amending zoning approvals, to include submission of an FDPA, if such amendment is required to construct the Stand-Alone Public Facility design requested by the County); and costs for easement acquisition, preparation and recordation.

- v. Stormwater Management. The Applicant Costs shall include the design and construction of basic stormwater management facilities for the Stand-Alone Public Facility pursuant to VSMP #VAR102010, which has been issued to the Applicant through July 1, 2014 and can be extended through July 1, 2024. The Applicant Costs shall also include additional costs resulting from the Applicant's non-compliance with or modifications to its approved VSMP permit, or the expiration thereof. In such an instance, the Applicant will pay for the additional costs to design and construct any stormwater management facilities for the Stand-Alone Public Facility. Provided the Applicant complies with its approved VSMP, the Total Construction Cost shall include any additional stormwater management costs caused by compliance with the state stormwater regulations, 9VAC25-870-47, approved December 17, 2013 by the State Water Control Board.

C. Parking.

- i. Dedicated Parking Spaces. The Applicant will allocate a minimum of thirty-five (35) dedicated surface parking spaces for the Stand-Alone Public Facility, within the same block as the Stand-Alone Public Facility (the "Dedicated Parking Spaces"). The Dedicated Parking Spaces shall be included in the Total Construction Cost. Additional dedicated parking spaces may be made available to the County at the Applicant's discretion, at the then-market price. The County may elect whether to include any additional parking spaces purchased in the Total Construction Cost or to instead reimburse the Applicant for the cost of the additional spaces.
- ii. Unreserved Parking Spaces. The Applicant shall further maintain at least fifty-five (55) parking spaces as unreserved spaces available to users of the Stand-Alone Public Facility. At the Applicant's sole election, the unreserved spaces may also be utilized by other users of the Proposed Development and the general public on a first-come, first-served basis. Unreserved parking spaces may be located within the parking decks or along streets associated with the Proposed Development, but should provide easy access to the Stand-Alone Public Facility. The unreserved parking spaces may include up to ten (10) parking spaces certified for handicapped parking under the Americans with Disabilities Act. The Applicant shall be permitted to charge the same parking fee for users of the Stand-Alone Public Facility as for other users of these unreserved

spaces. Such unreserved spaces shall not contribute in any way to the Total Construction Cost.

- D. Design and Review Process. The Applicant shall coordinate preparation of the design of and budget for the Stand-Alone Public Facility, together with the design of the Dedicated Parking Spaces, with the Building Design Branch of DPWES (“BDB”) and other applicable agencies of Fairfax County, with BDB as the point of contact with responsibility for coordinating with other County agencies. Prior to such preparation of design and budget, the Applicant shall hold a pre-design conference with BDB (the “Initial Meeting”) to discuss scope and design parameters for the Stand-Alone Public Facility, to set a reasonable schedule and process for review and comment on the submission sets of drawings and budget (which schedule will provide the County no less than two (2) weeks to review CDPA, FDP, Schematic Design and Design Development documents, and no less than three (3) weeks to review 80% and 100% Construction Documents). The Applicant shall submit design and budget documents to BDB for County review and approval consistent with the Guidelines and the provisions of this Proffer at the following points: Conceptual Development Plan, Final Development Plan, Schematic Design (15%), Design Development (35%), 80% Construction Documents, and 100% Construction Documents. The Applicant shall address and incorporate all County review comments at each design phase, and shall provide a statement of probable construction cost prepared in accordance with this Proffer 13 and by a mutually agreed-upon independent, professional construction cost estimator at each design phase. The Applicant shall respond to all County plan review comments in writing, and shall incorporate such comments in the next design phase plan submission. Following Fairfax County approval of the 100% Construction Documents, no further design changes shall be made to the Stand-Alone Public Facility except as may be required to adjust the scope of the Stand-Alone Public Facility as provided in subsection (E)(i) below, or as a change order at County expense.
- E. Construction Bids. Once the 100% Construction Documents and budget for the Stand-Alone Public Facility have been approved by BDB, the Applicant shall obtain a minimum of four (4) construction bids for the approved design of the Stand-Alone Public Facility to ensure receipt of a competitive bid that, together with County Soft Costs and Utility Costs, is within the Total Construction Cost limit of \$11,000,000, as adjusted.

The Applicant’s construction contract shall:

- Carry builder’s risk insurance and, if the County elects to provide additional funding pursuant to subsection (E)(ii) below, require the contractor to carry commercial property insurance in a commercially reasonable amount and to name the “Board of Supervisors of Fairfax County, Virginia” as loss payee for any losses pertaining to the Stand-Alone Public Facility;

- Require the contractor to provide payment and performance bonds, each for the entire contract sum and naming the “Board of Supervisors of Fairfax County, Virginia” as an obligee on such bond;
- Permit the County, in its proprietary capacity, to inspect the Stand-Alone Public Facility and Dedicated Parking Spaces during construction, and reasonably address all identified deficiencies;
- Include warranties from the contractor as set forth in sections 4.6.1, 9.3.3, and 13.2 of the Fairfax County form General Conditions, such sections attached hereto as Exhibit A, as may be amended by mutual agreement between the Applicant and the Office of the County Attorney; and
- Include section 9.8 (including all subsections) of such General Conditions, also attached at Exhibit A, as may be amended by mutual agreement between the Applicant and the Office of the County Attorney, including County inspection rights on substantial completion of the Stand-Alone Public Facility, one-year post-completion guarantee, and guarantee bond.

Following receipt of the construction bids, the Applicant shall meet with the County to review the construction bids, which may be subsequently verified by the County through an independent source. If the estimated Total Construction Cost exceeds \$11,000,000 (as adjusted) at any design phase, or if the Applicant cannot obtain a construction bid for the approved design that, together with County Soft Costs and Utility Costs, results in a Total Construction Cost within the Applicant’s \$11,000,000 budget (as adjusted), then the County, in its sole discretion, shall elect and the Applicant shall consent to one of the following remedies:

- i. Option 1: Scope Adjustment. Adjust the scope of the project so that it can be bid within the \$11,000,000 limit (as adjusted), which adjustment shall not require a PCA;
- ii. Option 2: Accept County Funds. Accept additional funding from the County as needed to fully fund the Stand-Alone Public Facility, in which case:
  - a. The estimated amount of such additional County funding shall be determined upon receipt and analysis of construction bids. 45% of such amount shall be disbursed to the Applicant prior to the Applicant’s commencement of construction on the Stand-Alone Public Facility; another 45% upon substantial completion of the Stand-Alone Public Facility; and the remaining ten percent (10%)

disbursed upon receipt of the Non-RUP(s) for the Stand-Alone Public Facility, subject to (ii)(b) below; and

- b. Upon issuance of a Non-RUP for the Stand-Alone Public Facility, the Applicant and the County shall review the actual costs of construction of the Stand-Alone Public Facility and determine whether there are savings to be had under the construction contract (or other budget line items) which may offset the need for additional County funding (i.e., unused construction contract contingency).
- iii. Option 3: Contribution in Lieu of Construction. In lieu of any further design and/or construction requirement for the Stand-Alone Public Facility (but not for the Integrated Public Facility, which the Applicant must still provide in accordance with Proffer 14 below), contribute to the County the sum of \$11,000,000.00, as adjusted on an annual basis by the Marshall & Swift Building Cost Index, beginning on January 1, 2015 to the date of the County's election, less all permissible documented County Soft Costs incurred by the Applicant up to such time in furtherance of the design and construction of the Stand-Alone Public Facility. In the event this Option 3 is selected, the Applicant shall contribute the total amount due in a lump sum prior to the issuance of the first Non-RUP for the third office building constructed on the Property, or the fourth overall building constructed.

In the event the County does not select from the four remedies listed above within 180 days of formal notification that the bid exceeds the limits of the Total Construction Cost, the Applicant may unilaterally select to proceed with Option 3 (Contribution in Lieu of Construction), as defined in Proffer 13(E)(iii).

- F. Contingency Fund. Once the Applicant has an acceptable construction bid in place as provided herein, the Applicant shall be responsible for, in addition to the Total Construction Cost, a project-level construction contingency of \$500,000.00 ("Contingency Fund") to cover, to the extent of the contingency: (i) increases in costs that may occur from the time a bidder is selected to the time of site plan approval and building permit issuance, and (ii) change orders related only to design document ambiguities, errors, omissions or unforeseen construction conditions that relate solely to the Stand-Alone Public Facility and could not have been reasonably foreseen through the due diligence of the contractor or subcontractors ("Contingency Eligible Expenses"). Such ambiguities, errors, omissions, and unforeseen conditions related to the building site – for example, bad soils, environmental issues, etc. – shall remain at the Applicant's cost and shall not result in an increase in the Total Construction Cost or reduction in the Contingency Fund. In no event shall the Contingency Fund augment the approved design and/or budget of the Stand-Alone Public Facility. Other than (1) the amounts owed by the County pursuant to subsection (D)(ii) above, if any, (2) Contingency Eligible Expenses in excess of \$500,000, as adjusted, if any, and (3)

the costs of any change orders the County may reasonably request, the County shall have no responsibility for Stand-Alone Public Facility design or construction costs.

- G. Permitting and Construction. Following receipt of a construction bid producing a Total Construction Cost within the \$11,000,000 (as adjusted) limit (or such higher amount as may result from the County's allocation of additional funds), the Applicant shall diligently proceed to obtain site plan and building permit approvals for the Stand-Alone Public Facility based on the design documents approved by the County pursuant to Proffer 13(D) above and shall provide the County with a copy of such permit submissions. Following approval of the necessary permits for the Stand-Alone Public Facility, the Applicant shall diligently proceed to construct the Stand-Alone Public Facility as approved.
- H. Conveyance. Following issuance of the Non-RUP for the Stand-Alone Public Facility, the Applicant shall ground lease the Stand-Alone Public Facility to the County in accordance with the terms described below. Notwithstanding anything herein to the contrary, the parties may mutually agree to alter the conveyance method and/or any of the lease terms for the Stand-Alone Public Facility as described herein without the need for a PCA.
- i. Lease Term. The Applicant shall (a) offer such lease with a term of fifty (50) years, with automatic renewal options for two (2) successive fifteen (15) year terms thereafter; (b) the rent for such leasehold shall be nominal (i.e., \$10.00 annually); (c) the terms of the lease shall otherwise be acceptable to the County in its discretion, provided the County shall have no obligation to contribute to Common Area Maintenance ("CAM") payments; (d) the Applicant shall provide the County with a subordination and non-disturbance agreement from its lender(s) (if applicable) in a form acceptable to the County; (e) the County may terminate the lease upon one (1) year's advance written notice; and (f) the Applicant may terminate the lease to construct the Integrated Public Facility in accordance with Proffers 13 (K) and (L).
  - ii. Use Restrictions. The Applicant may elect to include as a term of the Stand-Alone Public Facility Lease a restriction which would, for a period that is coterminous with the lease term (including any extensions), prohibit the use of the Stand-Alone Public Facility as a commercial (i.e., non-County user) office, retail use, fire station, permanent shelter, mental health, or residential facility.
  - iii. Taxes, Operations and Maintenance. Except as specifically stated in this Proffer 13 (or as mutually agreed by the parties), the Applicant shall have no liability or responsibility for any of the following with regard to the Stand-Alone Public Facility: payment of real estate taxes (if any); interior and exterior maintenance (including snow removal); maintenance and

replacement of building systems; procurement of insurance; and payment for utilities.

- I. Coordination with the Electoral Board. In the event the Stand-Alone Public Facility is ever designated as a polling location by the Fairfax County Electoral Board or the Virginia State Board of Elections, the Applicant shall work with the General Registrar to provide reasonable accommodations for election-related activities, including, to the extent that the Dedicated Parking Spaces and Unreserved Parking Spaces are insufficient to accommodate voters, volunteers and other users, temporarily reserving a reasonable number of parking spaces for election-related activities.
- J. Location and Timing. The Applicant shall construct the Stand-Alone Public Facility concurrently with the earlier of (1) the third office building constructed on the Property, or (2) the fourth building overall constructed on the Property, regardless of use. The Director of the Department of Planning and Zoning ("DPZ"), acting in consultation with and upon direction from the Planning Commission, may direct the Applicant to postpone construction of the Stand-Alone Public Facility until a subsequent development phase. For the purposes of this Proffer 13, individual buildings that are less than 25,000 square feet of GFA (such as guardhouses, pavilions, and similar structures) shall not count toward or trigger the requirement to construct the Stand-Alone Public Facility.
- K. Emergency Generator. The Applicant shall incorporate into the design of the facility all necessary elements to accommodate a temporary emergency generator that allows all the essential building functions for a temporary public shelter, including HVAC and restrooms, to operate in the Stand-Alone Public Facility. The design shall include a location for the emergency generator, hook-up port to connect the emergency generator to the building systems, and the infrastructure and equipment required to allow transfer of the electrical power source from the primary building power supply to the emergency generator. In lieu of a temporary emergency generator, the County may specify a permanent emergency generator during the design phase up to and through its review of Design Development (i.e., 35%) documents; any cost related to the design and installation of a temporary or permanent generator shall be included in the Total Construction Cost. Any such generator will comply with all UOA requirements for the placement and use of, as applicable, temporary or permanent power generation facilities. Any generator shall also comply with the Fairfax County Noise Ordinance.
- L. Replacement Conditions. The Applicant may elect at any time to redevelop the Stand-Alone Public Facility consistent with the Proposed Development, provided that (i) such redevelopment permits construction of the Integrated Public Facility per the provisions of Proffer 14, (ii) if such redevelopment would require the Stand-Alone Public Facility to close, the Applicant must provide the County (through the Director of Neighborhood and Community Services, with a copy to the County Attorney) with at least twelve (12) months' prior written notice, and

(iii) the Applicant, at its cost, shall locate suitable temporary space until the Integrated Public Facility is complete and further in accordance with Proffer 13(L). As an alternative, the Applicant and the County may mutually agree to permanently relocate the Stand-Alone Public Facility to another building within the Proposed Development, and without the need for a PCA, CDPA or FDPA.

M. Temporary Public Facility. In the event the Applicant chooses to close the Stand-Alone Public Facility in order to develop the Integrated Public Facility, the Applicant shall at its own cost locate a suitable temporary space or spaces (the "Temporary Public Facility"), subject to the criteria below:

- i. the Applicant may house the recreational and community components of the Temporary Public Facility space in up to two separate facilities, provided the Applicant demonstrates to the Zoning Administrator that it has diligently pursued all commercially reasonable options to obtain space which will house the entire operation;
- ii. in the event the Applicant demonstrates to the County that a suitable Temporary Public Facility is not available, or if the County determines that it does not wish to pursue this Temporary Public Facility option, the Zoning Administrator may waive the Temporary Public Facility requirement;
- iii. the total space for the Temporary Public Facility shall be no less than 30,000 square feet;
- iv. the recreation component of the Temporary Public Facility should include access to a gymnasium with basketball hoops, restrooms, and changing facilities;
- v. if agreed to by the County, the Applicant may enter into an agreement with a private health club to provide access to Fairfax County residents in lieu of providing a specific recreation component;
- vi. the Temporary Public Facility should be located within the Tysons Corner Urban Center (as defined by the Comprehensive Plan), unless the Applicant provides to the satisfaction of the Zoning Administrator that such space is not available, in which case the Zoning Administrator may permit a location outside the Tysons Corner Urban Center;
- vii. fixtures and finishes in the Temporary Public Facility may reflect its status as an interim use, and shall not be required to contain the same quality or grade of finishes present in the Stand-Alone Public Facility or the Integrated Public Facility; and

- viii. the Applicant will reimburse the County a maximum of \$80,000 in documented moving costs associated with the move into and out of the Temporary Public Facility.
- N. Reimbursement for Fixtures. In the event the Applicant exercises its option to replace the Stand-Alone Public Facility, the Applicant shall reimburse the County for up to \$1.2 million in fixtures installed by the County at its cost within the Stand-Alone Public Facility, subject to the following conditions:
- i. in order to be reimbursable, there shall be a written record of when each applicable fixture was installed in the Stand-Alone Public Facility;
  - ii. the replacement value of each fixture shall be depreciated by 7.5% each year from the date of installation, such that on the tenth anniversary of its installation, an applicable fixture shall have no residual value;
  - iii. this reimbursement shall not apply to personal property and/or loose items including, but not limited to, furniture, exercise equipment, desks and other office furnishings, tables and any other items that can be reinstalled in the Temporary Public Facility and/or the Integrated Public Facility;
  - iv. the Applicant's reimbursement for such fixtures shall not exceed \$1.2 million.
- O. Vacation by County. Should the County choose at any time to vacate the Stand-Alone Public Facility and such space reverts to the Applicant's control, the space may be utilized by the Applicant for any use that is consistent with the Proposed Development.
- P. Shared Savings Contribution. In the event that the Stand-Alone Public Facility is constructed for less than the maximum Total Construction Cost of \$11,000,000, as adjusted, the Applicant shall contribute to the County a sum equal to one half the amount of the difference between the maximum adjusted Total Construction Cost and the actual construction costs (the "Shared Savings Contribution"). For instance, if the actual construction costs are \$10,000,000, the Applicant's Shared Savings Contribution shall equal \$500,000. The Shared Savings Contribution (if any) shall become due upon conveyance of the Stand-Alone Public Facility to the County as described in Proffer 13(H). In lieu of contributing a sum directly to the County, the County and the Applicant may mutually agree to use the Shared Savings Contribution for other Tysons-area priorities, or as a contribution toward increasing the maximum Total Construction Cost for the Integrated Public Facility as described in Proffer 14. In no case shall the Shared Savings Contribution include any unused amounts from the Contingency Fund.

14. Integrated Public Facility. The Applicant shall construct the Integrated Public Facility consistent with either the "Stand-Alone to Integrated Option" or the "Integrated Option," as each option is more specifically described in Proffer 13. The Integrated Public Facility shall contain

30,000 square feet of GFA and shall be located within a future office building to be used by Fairfax County for community and/or recreational programs. Although the Applicant has tentatively reserved space in Building 11, the Applicant may locate the Integrated Public Facility within any office building on the Property, subject to an approved FDP. The Integrated Public Facility shall be accessible through a separate entrance with ADA accessibility.

- A. Design and Scope. The Applicant shall design the Integrated Public Facility so that it will include, among other things, a gymnasium of approximately 9,000 square feet, space for offices, and a multipurpose meeting room or rooms, any of which may be eliminated at the County's request. In addition to these required facilities, the Integrated Public Facility will also include amenities that may include, but shall not be limited to, an exercise room, a game room, an arts/crafts room, a computer room, a commercial kitchen, restrooms, lockers and storage space. The programming and details of the Integrated Public Facility will continue to be evaluated and modified, if needed, by the Providence District Supervisor's Office, OCR, the Department of Neighborhood and Community Services and the Applicant. The Applicant shall design the interior of the Integrated Public Facility pursuant to the Fairfax County Guidelines for Architects and Engineers prepared by DPWES then in effect (the "Guidelines"), as further described below, and such that the Integrated Public Facility is designed to be consistent with the quality of other comparable County facilities of similar use. All design documents are subject to County review and approval at each design phase as provided herein.

The Integrated Public Facility shall be located either entirely on the first floor or on both the first and second floors of the building in which it is located.

- B. Total Construction Cost. As further described herein, the total construction cost to the Applicant of the Integrated Public Facility shall not exceed the sum of \$5,420,000.00, as adjusted on an annual basis by the Marshall & Swift Building Cost Index, with any adjustment beginning on January 1, 2015. Once a notice to proceed has been issued to the construction contractor, the total construction cost shall not be further adjusted (the "Total Construction Cost").

The Total Construction Cost shall consist of (a) construction costs unique to the Integrated Public Facility ("County Hard Costs") as described in subsection (B)(i) below, and (b) a portion of costs not unique to the Integrated Public Facility but attributable to the design of the building itself, as described in subsection (B)(ii), below ("County Soft Costs").

At or promptly after the Initial Meeting (as defined in subsection D, below), and in any event before the Applicant's submission of Schematic Design drawings to the County, the Applicant and County shall agree as to which costs are County Hard Costs, County Soft Costs, or Applicant Costs (as defined in subsection (B)(iii) below).

- i. For County Hard Costs, the Applicant shall include only the costs of a complete interior build-out for the Integrated Public Facility, including ceilings, lighting, plumbing, separate heating and cooling (HVAC), painted interior walls, electrical outlets, elevators, restrooms, and all finishes, to include gymnasium floor, any required bleachers, and basketball hoops. The Applicant shall not provide loose fixtures, furnishings, or equipment except for those specified in this Proffer. No portion of the core building or site shall be included as County Hard Costs, unless specifically stated in these Proffers. The budget submissions required in subsection (C) shall provide a detailed summary of the interior build-out of the Integrated Public Facility.
- ii. County Soft Costs shall consist of (a) the fee for the design consultants for the Integrated Public Facility (interior build-out) as further defined below (b) building permit and inspection fees, and (c) cost estimating fees.

For County Soft Costs, the Applicant shall include in the Total Construction Cost the pro rata share of the expense attributable to the Integrated Public Facility, as measured by the fraction of the actual square footage of the Integrated Public Facility as finally designed (including ancillary space used solely for the Integrated Public Facility, such as space for separate emergency generators, stormwater management vaults, or ventilation systems), divided by the actual square feet of the entire building as indicated on the final permitted building plans.

Notwithstanding anything herein to the contrary, no more than \$500,000 (as adjusted on an annual basis by the Marshall & Swift Building Cost Index beginning on January 1, 2015 to the date that a Non-RUP is issued for the Integrated Public Facility) of County Soft Costs – including costs pertaining to architect(s); MEP, civil, and structural engineers; other consultants; and construction administration services – shall count toward the Total Construction Cost; such excess design costs shall remain at Applicant's expense. This limitation shall not apply to changes to the approved design and/or scope of the Integrated Public Facility after the 35% Design Development stage that are requested by the County.

- iii. Total Construction Cost of the Integrated Public Facility shall not include any costs other than County Hard Costs and County Soft Costs; the Applicant shall bear all other costs of designing and constructing the building ("Applicant Costs"), including, without limitation: clearing and grading; earthwork; SWM/BMP; costs to extend utilities to the building (new and relocated); costs associated with site-specific LID facilities; landscaping and hardscaping; Applicant's overhead, administrative, financing, legal, and/or zoning costs; costs for easement acquisition, preparation and recordation; site permit and inspection fees and Special Inspection Program inspections; any portion of costs agreed (i) to be

unique to the remainder of the building or private development, (ii) to relate to site preparation, and/or (iii) to be a cost that Applicant would have incurred in designing and constructing the building.

C. Parking.

- i. Dedicated Parking Spaces. The Applicant will allocate a minimum of thirty-five (35) dedicated parking spaces for the Integrated Public Facility, within the same structure as the Integrated Public Facility (the “Dedicated Parking Spaces”). The Dedicated Parking Spaces shall be at no cost to the County and no costs related thereto shall be included in the Total Construction Costs. Additional dedicated parking spaces may be made available to the County at the Applicant’s discretion, at the then-market price. The County may elect whether to include any additional parking spaces purchased in the Total Construction Cost or to instead reimburse the Applicant for the cost of the additional spaces.
- ii. Unreserved Parking Spaces. The Applicant shall further maintain at least fifty-five (55) parking spaces as unreserved spaces available to users of the Integrated Public Facility. At the Applicant’s sole election, the unreserved spaces may also be utilized by other users of the Proposed Development and the general public on a first-come, first-served basis. Unreserved parking spaces may be located within the parking decks or along streets associated with the Proposed Development, but should be proximate to, and provide easy access to, the Integrated Public Facility. The unreserved parking spaces may include up to ten (10) parking spaces certified for handicapped parking under the Americans with Disabilities Act. The Applicant shall charge the same parking fee for users of the Integrated Public Facility as for other users of these unreserved spaces. Such unreserved spaces shall not contribute in any way to the Total Construction Cost.

- D. Design and Review Process. The Applicant shall coordinate preparation of the design of and budget for the Integrated Public Facility, together with the design of the Dedicated Parking Spaces, with the Building Design Branch of DPWES (“BDB”) and other applicable agencies of Fairfax County, with BDB as the point of contact with responsibility for coordinating with other County agencies. Prior to such preparation of design and budget, the Applicant shall hold a pre-design conference with BDB (the “Initial Meeting”) to discuss scope and design parameters for the Integrated Public Facility and the Dedicated Parking Spaces, to set a reasonable schedule and process for review and comment on the submission sets of drawings and budget (which schedule will provide the County no less than two (2) weeks to review CDPA, FDP, Schematic Design and Design Development documents, and no less than three (3) weeks to review 80% and 100% Construction Documents), and to agree, as described in subsection (B)(ii) above and in accordance with this Proffer 14, as to the allocation of costs into

County Hard Costs, Applicant Costs, and County Soft Costs categories. The Applicant shall submit design and budget documents to BDB for County review and approval consistent with the Guidelines and the provisions of this Proffer at the following points: Conceptual Development Plan, Final Development Plan, Schematic Design (15%), Design Development (35%), 80% Construction Documents, and 100% Construction Documents. The Applicant shall address and incorporate all County review comments at each design phase, and shall provide a statement of probable construction cost prepared in accordance with this Proffer 14 and by a mutually agreed-upon independent, professional construction cost estimator at each design phase. The Applicant shall respond to all County plan review comments in writing, and shall incorporate such comments in the next design phase plan submission. Following Fairfax County approval of the 100% Construction Documents, no further design changes shall be made to the Integrated Public Facility or the Dedicated Parking Spaces except as may be required to adjust the scope of the Integrated Public Facility as provided in subsection (E)(i) below, or as a change order at County expense.

- E. Construction Bids. Once the 100% Construction Documents and budget for the Integrated Public Facility have been approved by BDB, the Applicant shall obtain a minimum of four construction bids for the approved design of the Integrated Public Facility to ensure receipt of a competitive bid that, together with County Soft Costs, is within the Total Construction Cost limit of \$5,420,000, as adjusted.

The Applicant's construction contract shall:

- Carry builder's risk insurance and, if the County elects to provide additional funding pursuant to subsection (E)(ii) below, require the contractor to carry commercial property insurance in a commercially reasonable amount and to name the "Board of Supervisors of Fairfax County, Virginia" as loss payee for any losses pertaining to the Integrated Public Facility;
- Require the contractor to provide payment and performance bonds, each for the entire contract sum and naming the "Board of Supervisors of Fairfax County, Virginia" as an obligee on such bond;
- Permit the County, in its proprietary capacity, to inspect the Integrated Public Facility and Dedicated Parking Spaces during construction upon reasonable notice;
- Include warranties from the contractor as set forth in sections 4.6.1, 9.3.3, and 13.2 of the Fairfax County form General Conditions, such sections attached hereto as Exhibit A, as may be amended by mutual agreement between the Applicant and the Office of the County Attorney; and

- Include section 9.8 (including all subsections) of such General Conditions, also attached at Exhibit A, as may be amended by mutual agreement between the Applicant and the Office of the County Attorney, including County inspection rights on substantial completion of the Integrated Public Facility, one-year post-completion guarantee, and guarantee bond.

Following receipt of the construction bids, the Applicant shall meet with the County to review the construction bids, which may be subsequently verified by the County through an independent source. If the estimated Total Construction Cost exceeds \$5,420,000 (as adjusted) at any design phase, or if the Applicant cannot obtain a construction bid for the approved design that, together with County Soft Costs, results in a Total Construction Cost within the Applicant's \$5,420,000.00 budget (as adjusted), then the County, in its sole discretion, shall elect and the Applicant shall consent to one of the following remedies:

- i. Option 1: Scope Adjustment. Adjust the scope of the project so that it can be bid within the \$5,420,000.00 limit (as adjusted), which adjustment shall not require a PCA;
- ii. Option 2: Accept County Funds. Accept additional funding from the County as needed to fully fund the Integrated Public Facility, in which case:
  - a. The estimated amount of such additional County funding shall be determined upon receipt and analysis of construction bids. 45% of such amount shall be disbursed to the Applicant prior to the Applicant's commencement of construction on the Integrated Public Facility; another 45% upon substantial completion of the Stand-Alone Public Facility; and the remaining ten percent (10%) disbursed upon receipt of the Non-RUP(s) for the Integrated Public Facility, subject to (ii)(b) below; and
  - b. At or prior to the issuance of the first Non-RUP for the Integrated Public Facility, the Applicant and the County shall review the actual costs of construction of the Integrated Public Facility and reasonably determine whether there are savings to be had under the construction contract (or other budget line items) which may offset the need for additional County funding (i.e., unused construction contract contingency).
- iii. Option 3: Construction of Shell. Construct the 30,000 square foot Integrated Public Facility space as a cold dark shell (i.e., without drywall, HVAC, lighting, or tenant improvements of any sort, but including utility connections) (the "Integrated Public Facility Shell"), in which case:

- a. The Applicant shall also construct the thirty-five (35) Dedicated Parking Spaces for use by the Integrated Public Facility;
  - b. The Applicant shall provide temporary generator hookups as described in Proffer 14(J); and
  - c. Prior to the issuance of the first Non-RUP for the building in which the Integrated Public Facility shell is constructed, the Applicant shall contribute \$5,420,000, as adjusted (less all applicable County Soft Costs) to the Board or its assigns for use in constructing the interior of the Integrated Public Facility.
- iv. Option 4: Contribution in Lieu of Construction. In lieu of any further design and/or construction requirement for the Integrated Public Facility, shall contribute to the County the sum of \$11,000,000.00, as adjusted on an annual basis by the Marshall & Swift Building Cost Index, from January 1, 2015 to the date of the County's election, less all permissible documented costs incurred by the Applicant up to such time in furtherance of the design and construction of the Integrated Public Facility. In the event this Option 4 is selected, the Applicant shall contribute the total amount due in a lump sum prior to the issuance of a Non-RUP for the office building in which the Applicant and the County planned to locate the Integrated Public Facility (unless the County has opted to allow construction of the Integrated Public Facility to occur concurrently with a later office building).

In the event the County does not select from the four remedies listed above within 180 days of formal notification that the bid exceeds the limits of the Total Construction Cost, the Applicant may unilaterally select to proceed with Option 3 (Construction of Shell), as defined in Proffer 14(E)(iii).

- F. Contingency Fund. Once the Applicant has an acceptable construction bid in place as provided herein, the Applicant shall be responsible for, in addition to the Total Construction Cost, a project-level construction contingency of \$500,000.00 ("Contingency Fund") to cover, to the extent of the contingency, change orders related only to design document ambiguities, errors, omissions or unforeseen construction conditions that relate solely to the Integrated Public Facility and could not have been reasonably foreseen through the due diligence of the contractor or subcontractors ("Contingency Eligible Expenses"). Such ambiguities, errors, omissions, and unforeseen conditions related to the building site and/or the remainder of the building – for example, bad soils, environmental issues, etc. – shall remain at the Applicant's cost and shall not result in an increase in the Total Construction Cost or reduction in the Contingency Fund. In no event shall the Contingency Fund augment the approved design and/or budget of the Integrated Public Facility. Other than (1) the amounts owed by the County pursuant to subsection (E)(ii) above, if any, (2) Contingency Eligible Expenses in

excess of \$500,000, as adjusted, if any, and (3) the costs of any change orders the County may reasonably request, the County shall have no responsibility for Integrated Public Facility design or construction costs.

- G. Permitting and Construction. Following receipt of a construction bid producing a Total Construction Cost within the \$5,420,000 (as adjusted) limit (or such higher amount as may result from the County's allocation of additional funds), the Applicant shall diligently proceed to obtain site plan and building permit approvals for the Integrated Public Facility based on design documents approved by the County pursuant to Proffer 14(D) above and shall provide the County with a copy of such permit submissions. Following approval of the necessary permits for the Integrated Public Facility, the Applicant shall diligently proceed to construct the Integrated Public Facility as approved.
- H. Conveyance. Following issuance of the Non-RUP for the Integrated Public Facility, the Applicant shall lease the Integrated Public Facility, including the Dedicated Parking Spaces, to the County in accordance with the terms described below. Notwithstanding anything herein to the contrary, the parties may mutually agree to alter the conveyance method and/or any of the lease terms for the Integrated Public Facility as described herein without the need for a PCA.
- i. Lease Term. The Applicant shall (a) offer such lease with a term of fifty (50) years (less all time that the Stand-Alone Public Facility was operational, if any), with automatic renewal options for two (2) successive fifteen (15) year terms thereafter; (b) the rent for such leasehold shall be nominal (i.e., \$10.00 annually); (c) the terms of the lease shall otherwise be acceptable to the County in its reasonable discretion, provided (I) the County shall have no obligation to contribute to CAM payments other than regarding the Dedicated Parking Spaces and other elements that are specific to the Integrated Public Facility, and (II) if a casualty event results in the closure and/or full or partial destruction of the Integrated Public Facility and/or the Dedicated Parking Spaces, the Applicant shall with reasonable promptness reconstruct a cold, dark shell for the Integrated Public Facility and/or replacement dedicated parking spaces, as applicable; (d) the Applicant shall provide the County with a subordination and non-disturbance agreement from its lender(s) if applicable) in a form acceptable to the County; and (e) the County may terminate the lease upon one (1) year's advance written notice.
  - ii. Use Restrictions. The Applicant may elect to include as a term of the Integrated Public Facility Lease a restriction which would, for a period that is coterminous with the lease term, plus any extensions, prohibit the use of the Integrated Public Facility as a commercial (i.e., non-County user) office, retail use, fire station, permanent shelter, mental health, or residential facility.

- iii. Taxes, Operations and Maintenance. Except as specifically stated in this Proffer 14 (or as mutually agreed by the parties), the Applicant shall have no liability or responsibility for any of the following with regard to the Integrated Public Facility: payment of real estate taxes (if any); interior maintenance; maintenance and replacement of building systems that are specific to the Integrated Public Facility; procurement of insurance; and payment for separately-metered utilities.
  - iv. Recreational Facilities. Recreational facilities that are constructed within Block E for use by the owners and tenants within that block shall also be made available to users of the Integrated Public Facility during the full term of the lease, under the same terms as they are made available to other tenants.
- I. Coordination with the Electoral Board. In the event the Integrated Public Facility is ever designated as a polling location by the Fairfax County Electoral Board or the Virginia State Board of Elections, the Applicant shall work with the General Registrar to provide reasonable accommodations for election-related activities, including, to the extent that the Dedicated Parking Spaces and Unreserved Parking Spaces are insufficient to accommodate voters, volunteers and other users, temporarily reserving a reasonable number of parking spaces for election-related activities.
- J. Emergency Generator. The Applicant shall incorporate into the design of the facility all necessary elements to accommodate a temporary emergency generator that allows all the essential building functions for a temporary public shelter, including HVAC and restrooms, to operate in the Integrated Public Facility. The design shall include a location for the emergency generator, hook-up port to connect the emergency generator to the building systems, and the infrastructure and equipment required to allow transfer of the electrical power source from the primary building power supply to the emergency generator. In lieu of a temporary emergency generator, the County may specify a permanent emergency generator during the design phase up to and through its review of Design Development (i.e., 35%) documents; any resulting impact to the building design by a temporary or permanent generator shall be included in the Total Construction Cost. Any such generator will comply with all UOA requirements for the placement and use of, as applicable, temporary or permanent power generation facilities. Any generator shall also comply with the Fairfax County Noise Ordinance.
- K. Redevelopment. The Applicant may elect to redevelop the building containing the Integrated Public Facility, provided that: (i) such redevelopment does not occur in the first fourteen years following construction of the Integrated Public Facility, (ii) such redevelopment permits reconstruction of the Integrated Public Facility within the same building and in accordance with the provisions of this Proffer 14, (iii) if such redevelopment would require the Integrated Public Facility to close, the Applicant must provide the County (through the Director of

Neighborhood and Community Services, with a copy to the County Attorney) with at least twelve (12) months' prior written notice, and (iv) the Applicant, at its cost, shall locate suitable alternative space for a temporary Integrated Public Facility. As an alternative, the Applicant and the County may mutually agree to permanently relocate the Integrated Public Facility to another building within the Proposed Development, and without the need for a PCA.

- L. Vacation by County. Should the County choose at any time to vacate the Integrated Public Facility and such space reverts to the Applicant's control, the space may be utilized as Retail Activated Space as defined in Proffer 11.
- M. Shared Savings Contribution. In the event that the Integrated Public Facility is constructed for less than the maximum Total Construction Cost of \$11,000,000, as adjusted, the Applicant shall contribute to the County a sum equal to one half the amount of the difference between the maximum adjusted Total Construction Cost and the actual construction costs (the "Shared Savings Contribution"). For instance, if the actual construction costs are \$10,000,000, the Applicant's Shared Savings Contribution shall equal \$500,000. The Shared Savings Contribution (if any) shall become due upon conveyance of the Integrated Public Facility to the County as described in Proffer 14(H). In lieu of contributing a sum directly to the County, the County and the Applicant may mutually agree to use the Shared Savings Contribution for other Tysons-area priorities. In no case shall the Shared Savings Contribution include any unused amounts from the Contingency Fund.

### **URBAN DESIGN GUIDELINES**

15. Capital One Design Guidelines. In order to provide for the implementation of the Tysons Urban Design Guidelines and the concepts which further the design commitments provided throughout these Proffers and in the CDPA, the Applicant has submitted Capital One Design Guidelines dated November 2013, which are attached as Exhibit B (the "Capital One Design Guidelines"). The CDPA, which includes elements from the Capital One Design Guidelines, provides a baseline of urban design elements that shall be utilized to implement the urban design vision for this neighborhood. All FDPs submitted for the Proposed Development shall be in substantial conformance with the Tysons Urban Design Guidelines and the urban design components of the CDPA as determined by the Zoning Administrator, in consultation with the Office of Community Revitalization ("OCR"). In any instance of inconsistency between the Capital One Design Guidelines and the approved CDPA/FDP and/or Proffers, the CDPA/FDP and any related Proffers shall govern.

### **BUILDING ARCHITECTURE**

- 16. Architecture.
  - A. Materials and Design. Buildings shall be designed with high quality architecture and building materials. The exterior building materials used in the development of the new residential, office and hotel buildings shall consist of glass, steel, brick

masonry, architectural pre-cast, stone masonry, architectural concrete and/or other materials of similar quality that are typically used on the exterior of Class A office buildings and residential and hotel buildings of a similar quality. No Exterior Insulation and Finish Systems (EIFS) shall be utilized on any of the new proposed residential, office or hotel buildings. Each FDP or FDPA submitted for the Proposed Development shall provide specific design information on building materials, architectural massing and fenestration, and specific features designed to activate the streetscapes as depicted on the CDPA. Modifications may be made to the building architecture shown on an approved FDP or FDPA subject to review and approval by the Zoning Administrator to establish consistency with the CDPA and FDP. A minimum of ten percent (10%) of all residential dwelling units shall be designed and constructed with some Universal Design features. These elements shall be identified at the time of building plan submission.

- B. Bird-Friendly Features. At the time of site plan submission for each new building on the Property, the Applicant shall submit a study to OCR describing whether bird-friendly design strategies may be employed to reduce bird injury and death due to in-flight collisions with the building and/or building elements. The strategies to be studied should make the building visible to birds in flight and reduce reflections that distract or confuse birds through the use of appropriate glazing treatments or architectural elements, including color, texture, opacity, patterns, louvers, screens, or ultraviolet materials that are visible to birds. In addition, the Applicant shall study whether interior lighting should be reduced and direct lighting which is visible from the exterior should be eliminated to reduce a building's attractiveness to birds flying at night. The Applicant shall describe the results of its studies, and summarize the extent to which any of the bird-friendly strategies will be implemented, in a narrative at the time of building permit issuance. To the extent strategies are identified but not implemented, the narrative shall describe the reason(s) for the exclusion of such strategies.

17. Build-to Lines. Build-to Lines have been established as depicted on Sheet 5 of the CDPA to create an urban, pedestrian-oriented environment where buildings are located close to streets and pedestrian areas are located between buildings and streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along the Build-to Lines, but modifications to either side of the Build-to Lines shall be permitted, provided such modifications are in general conformance with the CDPA and the Proffers, as determined by the Zoning Administrator, and are shown on an approved FDP. Awnings and other architectural canopies attached to building frontages that project out from the Build-to Lines shall not extend beyond the building zone that is identified on the CDPA (except as shown on an approved FDP), shall provide adequate clearance for pedestrian movement and shall not conflict with street tree locations. At the time of FDP approval, the Applicant shall identify possible locations within the Building Zone for expanded outdoor dining areas at the street level and adjacent to restaurants and cafes, and shall provide appropriate building zones for such uses in keeping with the Comprehensive Plan recommendations.

18. Building Heights. The minimum and maximum heights of the proposed buildings shall be in substantial conformance with the building heights indicated in Proffer 7 and shown on the CDPA. The height limit does not include penthouses, elevators or mechanical equipment rooms pursuant to Section 2-506 of the Ordinance. Penthouse structures and other architectural features shall be architecturally integrated with buildings. The Applicant shall screen mechanical equipment located on the rooftops of the proposed buildings from ground level view, using opaque parapet walls and other screening walls, materials or devices. The maximum height for Building 3 shall be as shown on the approved FDP, including the penthouse structure.

19. Utility Locations. The locations of underground utilities including, but not limited to, water, sanitary sewer and storm sewer utility lines shall be installed within the street network 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 CDPA.

- A. Conceptual Utility Master Plan. A conceptual utility master plan (the "Conceptual Utility Master Plan") overlaid on a landscape plan is provided on Sheet 32 of the CDPA and includes general locations for all stormwater cisterns and vaults, electrical vaults, storm sewer lines, sanitary sewer lines, and conceptual locations for other utilities. Adjustments to the type and location of utilities shall be permitted at the time of FDP and/or site plan approval to avoid conflicts with street trees, utilities and other site engineering considerations.
- B. Conceptual Utility Plans. Each FDP submission shall include a conceptual utility plan (each a "Conceptual Utility Plan") overlaid on a landscape plan. With each Conceptual Utility Plan the Applicant shall refine the locations of all utilities included within the FDP area, and shall locate all such utilities in a manner that minimizes conflicts with trees to the maximum extent feasible. The Applicant may further refine the locations of utilities at site plan, subject to approval by DPWES and the applicable utility or utilities.
- C. Conflicts. If there is no other option, 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 CDPA, and as determined by the Urban Forestry Management Division of DPWES ("UFMD").
- D. Access Points. Maintenance access points to stormwater management facilities and electric vaults beneath the streetscape shall be located outside the pedestrian walkway zone to the extent feasible, and shall be shown on the Conceptual Utility Plan submitted with each FDP. For access points located in the walkway zone, a removable panel or access manhole shall be employed utilizing similar paving materials as the surrounding streetscape, provided it does not impact ADA accessibility and is flush with the surrounding walkway. No part of this Proffer shall preclude the Applicant from incorporating venting mechanisms into the removable panel if such mechanisms are required by the applicable utility.

20. Rooftop Telecommunications Equipment and Mechanical Units. Telecommunications equipment, mechanical units and all appurtenant facilities may be placed on the rooftop of any building constructed on the Property. Any such new facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or set back sufficiently from the perimeter of the roof and penthouse such that they are generally not visible from the surrounding streets at street level when viewed at a reasonable distance from the property line of the Property. Screening measures may, without limitation, (i) include screening with architectural features and/or landscaping compatible with the building façade architecture, (ii) include the facilities as part of the architecture of the buildings, (iii) utilize compatible colors, and/or (iv) employ telecommunication screening material and flush-mounted antennas. Telecommunications equipment on the rooftops of buildings also may be architecturally integrated onto the façades of the building where necessary to ensure on-street and/or open space coverage. Rooftop amenities such as amenity terraces or facilities and landscaping may also screen rooftop telecommunications equipment and mechanical units on the buildings.

## LIGHTING

21. Lighting. All on-site, outdoor and parking garage lighting levels shall meet or be less than that permitted under the Outdoor Lighting Standards of Section 14-900 of the Ordinance and shall include lighting fixtures consistent with the guidance contained in the Tysons Corner Urban Design Guidelines. All parking lot and building mounted security lighting shall utilize full cut-off fixtures. Wall-washer type lighting shall use fixtures with shielding such that the lamp surface is not directly visible. One of the options for streetscape lights from the Tysons Corner Urban Design Guidelines, or suitable alternatives as approved on an applicable FDP, shall be selected and shall remain consistent throughout the Proposed Development. In the event the specific selected streetscape lights are discontinued from production at any time in the future, the Applicant may select an alternate option from the Tysons Corner Urban Design Guidelines. In addition, the Applicant's building plans shall each incorporate any commitments associated with Proffer 16.

22. 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 parking structure not constructed of solid walls. Such lighting shall comply with the requirements of Article 14 of the Ordinance.

23. Construction Lighting. During construction of Buildings 4, 7 and 8 (which are the buildings located closest to the existing Gates of McLean) and 1, 10, 11 and 12 (which are the buildings located closest to the existing Regency and Encore Condominium buildings), the Applicant's general contractor shall implement night and construction light mitigation measures such as providing appropriate light bulb shielding along the sides of the buildings that face Dolley Madison Boulevard (Route 123) and/or the Jones Branch Connector. The Applicant will also explore utilization of timers and/or motion sensors during construction of these buildings so that its temporary construction lighting might be turned off or reduced in intensity during non-working periods. In implementing this Proffer, the Applicant and its contractors shall comply with all governing federal, state and/or local health and safety requirements and standards, such as those specific night lighting standards as may be required by Fairfax County, the U.S.

Occupational Safety and Health Administration (“OSHA”), the Federal Aviation Administration and Virginia Occupational Safety and Health (“VOSH”).

### **NOISE ATTENUATION**

24. Indoor Noise Attenuation. The Applicant shall reduce the interior Day/Night Noise Level (“DNL”) to no more than 45 dBA for residential and hotel buildings and 50 dBA for new office buildings constructed on the Property. At the time of building plan application for the full shell building permit for each residential and/or hotel building, the Applicant shall submit to the Chief of the EDRB of the Department of Planning and Zoning (the “E&D Chief”) for approval, 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 through testing of noise levels that interior noise does not exceed 45 dBA. Each Indoor Noise Study shall be conducted using the approved standards for noise attenuation that are in place for the Tysons Corner Urban Center at the time of each applicable building permit that triggers such study.

25. Exterior Noise Levels. The Applicant shall notify potential tenants or purchasers of individual residential units with balconies, either in their leases or sales contracts, as applicable, that exterior noise levels may exceed 65 dBA, which is the policy established by Fairfax County for outdoor recreation in residential areas impacted by high noise levels.

### **PARKING**

26. Parking. Parking on the 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 Ordinance. The exact number and location of spaces provided in each phase shall be refined with the approval of each FDP and shall be determined at the time of site plan approval based on the specific uses in each phase. The Applicant may apply to reduce or share parking among the uses and buildings within the Proposed Development as part of the approval of each FDP or as part of a separate parking reduction approved by the Board, subject to the minimums contained in the Ordinance. The Applicant shall not be permitted to apply for a reduction in the number of Dedicated Parking Spaces reserved for the Stand-Alone Public Facility or the Integrated Public Facility. If changes to the mix of uses at the time of site plan approval result in parking greater than that anticipated on the CDPA, additional parking spaces may be provided to the extent they can be accommodated without increasing the height or mass of the parking structures shown on the CDPA and refined as part of the FDP. Updated parking tabulations for the Property shall be provided with each FDP and site plan for the Property. Parking shall generally be located in close proximity to the respective uses. At its sole option, the Applicant may elect to charge for parking within some or all of the parking decks, and for the on-street parking spaces on the portions of the street network that are privately owned. The Applicant may also enforce its

property rights by removing vehicles that are parked illegally, consistent with applicable regulations.

The Applicant shall provide controlled access to parking garages and shall ensure that the control equipment is capable of counting vehicles entering and exiting each garage. The sale or lease rates of individual parking spaces shall be “unbundled” from the sale or lease rates of individual residential dwelling units, meaning that a dwelling unit’s purchase price or lease rate shall be exclusive of parking costs.

27. Surface Parallel Parking Spaces. The Applicant shall provide parallel on-street parking spaces along the streets in the Proposed Development, as generally shown on the CDPA. The final number and location of spaces shall be determined upon FDP approval for each phase of development. The Applicant reserves the right to restrict use of the parallel spaces provided along its private streets by posting appropriate signage or such other means as the Applicant determines appropriate for parallel on-street parking spaces that are not required to satisfy the parking requirements for use as temporary or short term parking, car-sharing parking and/or similar uses. The Applicant shall maintain in good repair, and remove snow from, any on-street parallel parking spaces on private streets.

## SIGNAGE

28. Signage.

- A. Advertising/Commercial Signage. The Applicant shall provide signage as permitted by Article 12 of the Ordinance, or as approved through a Comprehensive Sign Plan (“CSP”), at which time signage will be governed by such approval. The existing approved signage on the Property may remain in place until and unless it is supplanted by a new CSP.
- B. Wayfinding Signage. Any future CSP submitted by the Applicant shall address wayfinding. Wayfinding signage and elements shall be coordinated with the Tysons Partnership (or successor organization) to facilitate a consistent wayfinding and signage system throughout Tysons and/or the subdistrict. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public facilities/amenities, and may incorporate appropriate technology to assist users in navigating the area. The placement of traffic control signage on public streets shall be coordinated with VDOT. In the event FCPA requires additional signage or wayfinding that is beyond what is shown on the Applicant’s CSP, the Applicant shall cooperate with any required approvals for such signage, provided such approvals are obtained at no cost to the Applicant.
- C. Off-site Signage. As part of any future CSP, the Applicant reserves the right to seek approval for off-site signage, in accordance with Par. 2 of Sect. 12-210 of the Ordinance.

## LANDSCAPING AND STREETSCAPES

29. Conceptual Landscape Plan. Sheet 9 of the CDPA includes a conceptual landscape plan for the Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas including courtyards, and private amenity areas (the "Conceptual Landscape Plan"). As part of each FDP submission, more detailed landscape plans for each building phase shall be provided in general conformance with the Conceptual Landscape Plan, with adjustments permitted so long as the quantity and quality of the landscaping provided and the function of the space remains consistent with the Conceptual Landscape Plan, as determined by the Planning Commission during FDP review. As part of the site plan submission for each building phase, the Applicant shall submit to the Urban Forestry Management Division ("UFMD") of DPWES for review and approval a detailed landscape plan (each a "Final 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 (if applicable), 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.

30. Streetscapes. Streetscapes shall be installed throughout the Property as conceptually illustrated on Sheets 12, 12A and 12B of the CDPA. Streetscape elements shall include a landscaped amenity panel located immediately behind the face of curb, a clear pedestrian sidewalk adjacent to the landscaped 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, storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to retail and service uses. Streetscape elements may be adjusted at the time of FDP approval and/or site plan approval, provided the quality and dimensions of the streetscape are in substantial conformance with that shown on the CDPA.

A. Street Trees. Tree planting sites are set forth on the CDPA, subject to revision as may be approved on the FDP or at site plan review by UFMD. Where minimum planting widths of 8 feet cannot be provided, structural cell technology or other measures acceptable to UFMD shall be used to satisfy the following specifications for all planting sites:

- i. A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area;
- ii. A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below pavement), with no barrier to root growth within 4 feet of the base of the tree;
- iii. Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where paving above root zones

is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. Minimum soil volumes of 700 cubic feet will be achieved in areas of lower pedestrian volume and where pavement 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 area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Greater soil volumes will be provided in areas of lower pedestrian volume;

- iv. Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions;
  - v. All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all 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;
  - vi. Tree zones may be installed with a fully automatic, drip irrigation system; and
  - vii. It is expected that street trees will have to be planted within existing utility easements, and the Applicant shall replace any street trees that are removed to facilitate repairs of utilities in these easements.
- B. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, shall not be used on the Property.
- C. Sight Distance Considerations. Sight distances and anticipated road design speeds shall be depicted on the Landscape Plan submitted with each applicable FDP to demonstrate that the locations of all proposed street trees are viable. If determined by DPWES at the time of site plan review that street tree locations conflict with sight distance requirements, the Applicant shall investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the changes anticipated above, the Applicant shall be permitted to relocate the affected street tree without the need for confirmation from DPZ, subject to approval by UFMD. If the deleted street tree(s) result in a tree canopy below 10% on the Property, the street tree(s) must be accommodated in another location on the Property, as approved by DPZ in consultation with UFMD.
- D. Streetscape Furnishings, Materials and Lighting. The Applicant shall provide unified and high-quality streetscape materials, which may include, but shall 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 for each area subject to an FDP shall be provided as part of that FDP, and 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 Capital One Design Guidelines and the Tysons Corner Urban Design Guidelines. The Applicant shall utilize non-slip surfaces in areas designed to be used by pedestrians.

E. Maintenance. The Applicant shall maintain in good repair and replace in kind, as needed, all pedestrian realm elements within the Proposed Development, to include any maintenance required to maintain ADA compliance. Elements to be maintained within the pedestrian realm include all publicly-owned areas and all privately-owned spaces (with or without public access easements) that are between the curb and the building façade (the “Pedestrian Realm”). For any publicly-owned portions of the Pedestrian Realm, the Applicant shall enter into the appropriate agreement prior to bond release for the associated site plan, in a form approved by the Office of the County Attorney, with the County (or other applicable public entity) to permit the Applicant to perform such maintenance. The Applicant shall not be required to repair or restore any elements of the Pedestrian Realm within publicly-owned areas that are damaged by public employees, contractors, or permittees that are not acting under the direct authority of the Applicant or the UOA. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant without the requirement for a PCA. Maintenance commitments within the Pedestrian Realm shall include but are not limited to:

- i. All plantings including trees, shrubs, perennials, and annuals;
- ii. All associated irrigation elements;
- iii. All hard surfaces, including but not limited to paving and retaining walls;
- iv. All streetscape furnishings including benches and bicycle racks;
- v. All lighting fixtures, poles and brackets;
- vi. All special drainage features, such as Low Impact Development (“LID”) facilities;
- vii. Snow removal;
- viii. Trash recycling and litter removal;
- ix. Leaf removal;

- x. Any sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes that are not VDOT standard devices; and
- xi. All urban park amenities in the Proposed Development including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art, with the exception of any urban park amenities that are transferred to Fairfax County Park Authority ("FCPA").

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 the interim streetscape improvements described in Proffer 31.

F. Ownership. Portions of the Pedestrian Realm will be dedicated in fee simple to the County of Fairfax (or equivalent government body or agency), as shown on Sheets 12, 12A and 12B of the CDPA, subject to the following conditions:

- i. The County and/or VDOT will permit all stormwater and other facilities to be constructed and maintained as shown on the CDPA, subject to the Applicant accepting maintenance responsibilities for said facilities;
- ii. The County and/or VDOT will permit the Applicant to continue using security bollards that are constructed within streetscape areas and shown on an approved FDP;
- iii. The Applicant shall continue to maintain the Pedestrian Realm facilities as described in this Proffer 30; and
- iv. Dedication of any portions of the Pedestrian Realm intended to be publicly-owned shall occur concurrently with dedication of the adjacent roadway, or if an interim streetscape is to be constructed, such dedication may be delayed until the completion of the final streetscape, as specified in Proffer 36.

G. Public Access. For areas within the Pedestrian Realm that are privately-owned, the Applicant shall dedicate public access easements, in a form approved by the Office of the County Attorney, for the area between the back of the sidewalk and the curb. All public access easements shall be subject to the following conditions:

- i. Building Zones. The Applicant may exclude from public access easements the areas identified as building zones on Sheet 5 of the CDPA, to the extent that sidewalk dining and retail browsing areas, and other related functions and facilities are expected to be placed within those building zones;
- ii. Private Streetscape Areas. Public access easements shall not be required on private streetscape areas as designated on an approved FDP; and,

- iii. Maintenance, Construction and Trespassers. For all areas that remain in private ownership, the Applicant may retain the right to temporarily limit portions of those areas, as necessary, for maintenance, cleaning, construction, renovation and/or private events, and may exercise such other reasonable controls over such areas to prevent the general public from acquiring rights of access that are inconsistent with the status of the Property as private property.

31. Interim Conditions and Standards. Due to the size of the Proposed Development and the time anticipated for completion, phased redevelopment may result in various interim conditions on the Property. At the time of each FDP approval, the Applicant shall identify the specific proposed interim conditions both within and outside the FDP area and shall ensure that such conditions provide pedestrian connections, vehicular circulation, temporary landscaping and streetscapes, public park treatments, and screening/treatment of exposed or partially complete above-grade parking structures.

- A. If an interim condition or phase includes partial demolition of an existing structure, the FDP for that phase shall include all or a portion of the existing structure, as applicable, to ensure that revisions to parking and on-site circulation for the existing structure are adequate.
- B. If interim improvements not located within the FDP area are contemplated with any FDP, such FDP shall specify how and when such improvements shall be constructed. Such interim improvements include, but are not limited to, interim athletic fields and field houses, transportation improvements, entrances to the McLean Metrorail Station, relocated security gates, and/or guardhouses.
- C. Provided they are acceptable to Fairfax County, VDOT, and all other utility companies as may be applicable, interim conditions shall include the following improvements:
  - i. Construction of interim sidewalks a minimum of a five (5) feet in width and installation of interim street lights along the interim sidewalks, as needed to ensure a safe, convenient pedestrian path to the Metro Station;
  - ii. Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, to the extent feasible based on existing conditions and utility easements. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees;
  - iii. Provision of interim designs for publicly-accessible open spaces which shall include interim landscaping, pedestrian pathways, seating, signage and recreational facilities as determined at FDP;

- iv. Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Ordinance for interim surface parking lots, unless waived or modified at the time of FDP or site plan approval;
  - v. Application of a screening system (which may be removable) where above grade garage structures that will be interior when later phases are complete are exposed at phase lines. 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 facades, and that shall partially obscure the garage view from outside the garage until the next phase is constructed. The specific screening system to be utilized for each building shall be determined at the time of FDP approval and be graphically depicted on the FDP. Alternate temporary garage screening and the use of banners and/or temporary art works as a part of the screening system may be permitted with FDP approval;
  - vi. Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within 12 months; and,
  - vii. Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or way-finding elements.
- D. The Applicant reserves the right to accommodate the necessary, interim grading and construction required outside the limits of any approved FDP in order to account for temporary contractor trailers, temporary construction parking, temporary staging areas, material supplies, stockpiling and cut to fill earthwork. Similar site adjustments to the limits of grading may also be necessary due to the construction of the Jones Branch Connector (by others). The Applicant shall grade and seed areas on the Property where existing improvements are removed to accommodate a portion of the development shown on an approved site plan, but which are not used for construction staging and/or are not scheduled to have construction commenced on them within 12 months. The Applicant will restore impacted areas upon completion of construction to ensure conformance with the CDPA and approved FDPs.

### **STORMWATER MANAGEMENT**

32. Stormwater Management. The Applicant shall provide the following:
- A. Stormwater Management Measures. Stormwater Management (“SWM”) measures for the Property shall be designed to protect receiving waters downstream of Tysons by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, strive to retain on-site and/or reuse the first one inch of rainfall.

Proposed SWM and Best Management Practice ("BMP") facilities shall follow a tiered approach as identified by DPWES, which may include infiltration facilities (where applicable), rainwater harvesting/detention vaults, runoff-reducing facilities and other innovative BMPs. The applicant will utilize and be compliant with the state stormwater regulations, 9VAC25-870-47, time limits on applicability, approved December 17, 2013 by the State Water Control Board.

- B. LID Techniques. The Applicant shall make use of certain Low Impact Development ("LID") techniques that will aid in runoff volume reduction and promote reuse throughout the Property. As a part of the LID techniques proposed, the Applicant shall provide intensive and/or extensive green roofs for a certain percentage of roof tops as shown in the SWM computations within the CDPA. Other LID techniques may include, but shall not be limited to, tree box filters and stormwater reuse for landscape irrigation and makeup water for mechanical purposes. Additionally, the SWM facilities shall be designed to accommodate the pre-developed (existing) peak release rates as shown in the SWM computations within the CDPA, based on the existing impervious condition.
- C. Tree Replacement. As shown on the CDPA/FDPA, the Applicant is requesting a modification of PFM Section 12-0505.6B to allow for trees located above any proposed percolation trench or bio-retention area to count toward the 10-year tree canopy requirement. In the event that any of the said trees may need to be removed for maintenance or repair of those facilities, the Applicant agrees to replace removed trees as determined by the UFMD to sustain the 10-year canopy.
- D. Calculations at FDPA and Site Plan. If there is an FDPA submission and also at the time of site plan submission, the Applicant shall provide calculations showing the proposed volume reductions and illustrating conformance with the proposed volume reductions shown on the approved FDP and showing conformance with the present LEED 2009 rating system. The specific SWM facilities shall be determined at the time of site plan, as may be approved by DPWES.

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

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 maximize stormwater reuse. Smart cistern technology may be deployed, allowing the Applicant the right to discharge excess volumes off site in order to optimize system storage. Where possible, excess volume should be directed to other facilities using a "treatment train" approach, as approved by the Director of DPWES.

## TRANSPORTATION

33. Tysons Grid of Streets Transportation Fund. The Applicant shall contribute to the Tysons Grid of Streets Transportation Fund in accordance with the "Guidelines for the Tysons Grid of Streets Transportation Fund" adopted by the Board on January 8, 2013 (except as modified by these Proffers). At the time of issuance of the first RUP or Non-RUP for each new building on the Property, a contribution shall be made to the Tysons Road Fund in the amount of \$6.44 per square foot of net new non-residential GFA or \$1,000 per residential unit for which the RUP or Non-RUP is requested. For the GFA associated with the Capital One HQ Expansion Phase, the amount of the contribution shall be \$4.07 per square foot for the first 593,253 square feet of GFA. Credits shall be allowed against such contributions for the costs of qualifying off-site intersection improvements provided pursuant to these Proffers. This contribution shall not apply to any public-use facilities constructed on the Property, including the Public Facility described in Proffers 13 and 14. These payments may be made earlier than required pursuant to this Proffer.

34. Tysons-wide Road Fund. In addition to the Grid Fund contribution above the Applicant shall contribute to the Tysons-wide Road Fund in accordance with the "Guidelines for the Tysons-Wide Transportation Fund" adopted by the Board of Supervisors on January 8, 2013 (except as modified by these Proffers), the sum of \$5.63 per square foot for all new non-residential GFA in each new building, and \$1,000 for each residential unit constructed on the Property. The contribution associated with each building shall be paid in a lump sum, based on the actual GFA of non-residential space and/or the actual number of residential units in the building, with payment to occur prior to the issuance of the first RUP or Non-RUP for each building. This contribution shall not apply to any public-use facilities constructed on the Property, including the Public Facilities described in Proffers 13 and 14.

Seventy-five percent (75%) of the value of property associated with the Jones Branch Dedication described in Proffer 35 shall be credited against any contributions due to the Tysons-wide Road Improvements Fund prior to the Applicant's payment of the same, provided that the Jones Branch Dedication has been fully executed. For the purposes of this Proffer, the value for the Jones Branch Dedication shall be established at \$98.00 per square foot of actual land dedicated.

35. The Jones Branch Connector Project. The Applicant has designed the Proposed Development to accommodate FCDOT and VDOT plans for the future Jones Branch Connector bridge project, which will connect Scotts Crossing Road and Jones Branch Drive (the "Jones Branch Connector").

- A. Right-of-Way Dedication. The Applicant shall dedicate in fee simple, at no cost to Fairfax County or the Commonwealth of Virginia (VDOT), a portion of the Property shown on Sheet 3 of the CDPA, up to a maximum of 1.65 acres, for the construction of the Jones Branch Connector (the "Jones Branch Dedication"). The actual land area to be dedicated shall in no case exceed the 1.65-acre area shown on Sheet 3 of the CDPA, and shall be based on the right-of-way plans furnished at the time of dedication.
- B. Dedication Timing. The Applicant shall complete the Jones Branch Dedication within 90 days of a formal request from Fairfax County, provided that:
- i. the requests to modify the adjacent Jones Branch Connector interchange with I-495 Express Lane ramps as specified in the JBC Interchange Modification Report ("IMR") have been fully approved by the Federal Highway Administration ("FHWA") and VDOT;
  - ii. Fairfax County has identified funds to cover at least 75% of the estimated cost of the Jones Branch Connector project;
  - iii. the Applicant shall have continuous access from Scotts Crossing Road (with the exception of bona fide emergencies and subject to normal, commercially reasonable construction requirements) to the existing entrances, Capital One Drive North and Capital One Drive South (once constructed);
  - iv. the Applicant shall be permitted to utilize the Jones Branch Dedication area at no cost for construction and staging activities related to the Capital One HQ Expansion Phase and the Capital One Expansion II and Hotel Phase, provided such activities do not interfere with the construction of the Jones Branch Connector project, subject to a maintenance and access agreement and as determined by FCDOT and/or VDOT; and
  - v. the Applicant shall be permitted to include language in the deed of dedication specifying that the use of the Jones Branch Dedication will be limited to public street, other transportation and/or transit-related uses.
- D. Additional Conveyance of Easements. Conveyance of any temporary construction or grading easements required for construction of the Jones Branch Connector shall be at no cost to the County, provided that such conveyance of easements does not in any way inhibit construction of the Capital One HQ Expansion Phase, the Capital One Expansion II and Hotel Phase, the Metro Station Phase, or the Residential Commons Phase. The Applicant shall also convey any necessary permanent utility easements at no cost to the County, provided such easements are located on portions of the Property that are proposed for future public dedication and that such easements do not in any way inhibit

construction of the Capital One HQ Expansion Phase, the Capital One Expansion II and Hotel Phase, the Metro Station Phase, or the Residential Commons Phase.

- E. Gates of McLean Access Road. Sheet 15 of the CDPA identifies a secondary access road for Gates of McLean residents that connects with the proposed grid of streets on the Property between the existing Conference Facility and Building 3 (the "Secondary Access Road"). The Applicant shall construct, prior to the issuance of the first Non-RUP or RUP for the first building constructed as part of the Capital One HQ Expansion Phase, a portion of the Secondary Access Road beginning on the Property and ending at the proposed loading entrance to the hotel building for the Capital One Expansion II and Hotel Phase, notwithstanding the boundaries shown on Sheet 7 of the CDPA. The Zoning Administrator may elect to delay or waive this improvement in the event VDOT, the Federal Aviation Administration, or any other related agency withholds timely approval for this improvement despite diligence on the part of the Applicant, or if there are construction delays despite the Applicant's best efforts. Once it has been constructed and is open to traffic, the Applicant shall provide continuous access to the Gates of McLean Access Road, subject to bona fide emergencies and normal, commercially reasonable construction requirements.
- F. Maintenance and Snow Removal. If permitted by VDOT or FCDOT, the Applicant shall provide appropriate maintenance and snow removal for the off-site portion of the Secondary Access Road from the Gates of McLean property line to the Applicant's property line, from the time it is constructed. If required, the Applicant shall enter into an appropriate agreement with VDOT or FCDOT to provide such maintenance and snow removal in accordance with commonly-accepted industry standards.

36. Internal Grid of Streets and Road Improvements. The Applicant shall construct the internal grid of streets for the Property in phases, as outlined in the Phasing Plan. The internal grid of streets shall consist of the streets identified on the CDPA as Capital One Drive North, Capital One Drive South and Capital One Tower Road. The internal grid shall also include the on-site portion of the Gates of McLean Access Road.

- A. Public Streets and Streetscapes. The Applicant shall dedicate right-of-way for Capital One Tower Road and portions of Capital One Drive North and Capital One Drive South (the "Public Streets"), to a point inclusive of the landscape amenity panel and sidewalk as shown on Sheets 14 and 15A – E of the CDPA. The Public Streets shall be designed and constructed to be generally consistent with the document entitled "Transportation Design Standards for Tysons Corner," as approved by the Board on September 13, 2011 (and including any subsequent amendments) or to such standard as may be approved on the FDP. 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 the Public Streets and the area of the landscape amenity panel/sidewalk can be accepted into the VDOT system for maintenance. As may be necessary with respect to all of the

Public Streets, the Applicant shall dedicate and convey to the Board in fee simple right-of-way, as applicable, including the area of the landscape amenity panel/sidewalk, at the time of the relevant site plan approval and as stated below in Proffer 36(D), with the following exceptions:

- i. If, at the time of site plan approval, it is determined that parking garages, stormwater management facilities, utility vaults or other similar facilities proposed to be located beneath or within the landscape amenity panel/sidewalk prevent VDOT and/or the County from accepting the landscape amenity panel/sidewalk as part of the public right-of-way, only right-of-way measuring a maximum of eighteen (18) inches from the proposed face of curb line shall be dedicated to the County in fee simple and a public sidewalk and utility easement in a form acceptable to the County Attorney, over the area of the amenity panel/sidewalk shall be granted to the County. 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 any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDPA or any subsequent FDP, as determined at the time of site plan.
- ii. If, at the time of site plan approval, it is unclear whether parking garages, stormwater management facilities, utility vaults or other similar facilities proposed to be located beneath or within the landscape amenity panel/sidewalk will be acceptable to VDOT and/or the County, or if the landscape amenity panel/sidewalk will not be constructed to its final condition, only right-of-way measuring a maximum of eighteen (18) inches behind the face of curb shall be dedicated to the County in fee simple and right-of-way for potential future dedication of the landscape amenity panel and sidewalk areas shall be reserved. 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 in fee simple. 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 the County and/or VDOT subject to the stipulations in these Proffers.
- iii. Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT to be included in state right-of-way, and if the County also declines to accept them as right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, shall be granted in its place. 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 any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDPA or any subsequent FDP, as determined at the time of site plan.

- B. Public Street Standards. All Public Streets proposed herein shall be subject to VDOT approval and be in general conformance with the standards included in Attachment C (Transportation Design Standards for Tysons Corner Urban Center) of the Memorandum of Agreement approved by the Board on September 13, 2011, as may be amended (the "MOA").
- C. Private Streets and Streetscapes. Portions of Capital One Drive and the associated streetscapes (the "Private Streets"), as shown on Sheets 12A and 12B of the CDPA, shall remain privately-owned and maintained, and shall be designed and constructed to be generally consistent with the CDPA. The Applicant shall maintain in good repair and replace, as needed, the paving and other elements associated with the Private Streets. The Private Streets shall be constructed and maintained to the standards contained in the PFM and shall be designed to be as consistent as possible with the Public Streets, subject to FDP approval and PFM requirements.
- D. Timing of Dedications. The public portions of Capital One Drive North and Capital One Tower Road shall be dedicated prior to the issuance of the first RUP or Non-RUP for the third building on the Property, subject to any and all exceptions contained within this Proffer 36. The public portion of Capital One Drive South shall be dedicated prior to the issuance of the first RUP or Non-RUP for the first building constructed within either the Residential Commons Phase or the Metro Station Phase.
- E. Timing of VDOT Acceptance. Each Public Street shall be accepted into a public maintenance system prior to bond release for the applicable phase. Until and unless each Public Street is accepted into VDOT's maintenance system (or a comparable public maintenance system approved by the Zoning Administrator), it shall be considered a Private Street and the Applicant shall dedicate and record a temporary public access easement in a form acceptable to the Office of the County Attorney over all street and sidewalk areas until such time as the right-of-way is dedicated to the County as outlined in this Proffer 36. The Applicant shall not be required to dedicate temporary public access easements for any Private Streets that are within secure areas, as designated on an approved FDP. Nothing in this Proffer shall prevent the Applicant from constructing, dedicating, or applying for public acceptance of any portion of the Public Streets in advance of the required time shown on the CDPA, provided the Public Street is shown on an approved FDP and subject to acceptance by VDOT or an equivalent government agency approved by the Zoning Administrator.
- F. Security. If shown on an approved FDP, the Applicant may install security walls and bollards. The Applicant may also install security gates and guardhouses as

necessary at the entrances to parking garages (including any access drives), as long as it demonstrates that any stacking on adjacent public streets will not create a hazard or unreasonable delays. Minor modifications shall be permitted to these security facilities periodically to permit the Applicant to respond to new or different security threats, subject to approval by the Zoning Administrator.

- G. Definition of "Construct." For the purposes of this Proffer, the term "construct" shall mean that the committed road improvement is open for use by the public for travel, whether or not the improvement has been accepted for public maintenance.
- H. Street Names. The Applicant reserves the right to provide different names for the streets than shown on the CDPA.
- I. Joint Maintenance and Reciprocal Easement Agreements. Prior to or concurrent with the establishment of the UOA, the Applicant shall prepare and record reciprocal easements, joint maintenance agreements, or other covenants to provide for the ongoing maintenance of the private portions of the internal grid of streets.

37. Traffic Signal. Subject to review and approval by VDOT and/or FCDOT as applicable, the Applicant shall install a traffic signal at the intersection of Capital One Drive North and Capital One Tower Road no later than the issuance of the first RUP or Non-RUP for the third building constructed on the Property, excluding buildings that contain less than 25,000 square feet of GFA (such as guardhouses, pavilions, and similar structures). The Applicant shall provide VDOT and/or FCDOT with the requisite traffic signal plans for review and approval, as applicable. All right-of-way associated with signal equipment (poles, equipment, boxes, etc.) located on the Property that is not already dedicated shall be subject to traffic signal easements permitting maintenance by VDOT and the County, as applicable.

At the Applicant's request, the Zoning Administrator may determine that installation of the signal may be delayed for good cause, in which case the Applicant shall, at its option: (a) agree to a later trigger for installation of the traffic signal, but no later than the issuance of the first RUP or Non-RUP for the final building constructed as part of the Proposed Development; or (b) provide an escrow to the County in the amount of \$250,000, in which case the Applicant's commitment to design and construct the signal shall be extinguished.

38. Improvements to Route 123. Concurrent with the first site plan submission for the development phase that follows the Capital One HQ Expansion II and Hotel Phase, the Applicant shall submit plans for a raised median on the northbound lanes of Dolley Madison Boulevard between the travel lanes and the dual left turn lanes for the purpose of restricting left turn movements for vehicles exiting the Capital Beltway onto northbound Dolley Madison Boulevard. If approved by VDOT, the Applicant shall construct the improvement prior to the issuance of a RUP or Non-RUP for the first building associated with the relevant phase. The Zoning Administrator may elect to delay or waive this improvement in the event VDOT withholds timely approval for this improvement despite diligence on the part of the Applicant, or if there are construction delays despite the Applicant's best efforts.

39. Route 123 Super Boulevard. The Applicant shall contribute \$0.126 per square foot of new development (excluding the Existing Development) for the purpose of reconstructing Dolley Madison Boulevard as a "Super Boulevard," as proposed in the Consolidated Traffic Impact Analysis for Tysons East dated February 19, 2013. Payments shall be made in four equal installments, based on the maximum approved GFA for the Proposed Development, beginning with site plan approval for the third building constructed on the Property. Thereafter, the Applicant shall contribute each future installment upon site plan approval for the fourth, fifth, and sixth buildings. The contribution shall not apply to buildings that contain less than 25,000 square feet of GFA (such as guardhouses, pavilions, and similar structures). The contributions described in this Proffer shall be adjusted per the formula outlined in Proffer 61, except that the base year shall be assumed to be January 1 of the year following VDOT approval of Advanced Preliminary Design Plans for the Super Boulevard concept.

40. Capital One Tower Road Safety Improvements. Prior to FDP approval for any development phase that includes Building 10 and/or Building 11, the Applicant shall submit to FCDOT for review and approval a plan proposing safety improvements for the portion of Capital One Tower Road between Capital One Drive South and Dolley Madison Boulevard. The safety improvements shall include a median and channelization of the loading entrances that front Capital One Tower Road. If approved by FCDOT, with concurrence by VDOT and the Fire Marshal, the Applicant shall construct the approved Safety Improvements prior to issuance of the first Non-RUP for the relevant phase.

41. Congestion Management Plans.

- A. The Applicant shall prepare and implement a construction congestion management plan prior to construction of each phase through its development/construction manager and the Transportation Coordinator (as defined in Proffer 42), so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways adjoining the Property (each a "Congestion Management Plan").
- B. Each Congestion Management Plan shall identify anticipated construction entrances, construction staging areas and construction vehicle routes. Furthermore, each Construction Management Plan shall describe how the Applicant will coordinate its construction material deliveries, lane closures, and/or other construction-related activities with FCDOT and/or VDOT so to minimize disturbance on the surrounding road network.
- C. Each Congestion Management Plan shall also demonstrate the Applicant's coordination throughout construction with VDOT, FCDOT, the Dulles Rail Project Entities and the entities constructing the HOT lanes project, as applicable. Furthermore, the Applicant shall monitor the off-site transit and roadway improvements (including, but not limited to, the Dulles Corridor Metrorail Project, the Capital Beltway and HOT Lanes projects) and adjust its Congestion Management Plans accordingly.

- D. Each Congestion Management Plan shall be prepared by a qualified professional and submitted for review and comment to the Providence District Supervisor, the Providence District Planning Commissioner, FCDOT and DPWES upon submission of the initial site plan for each phase. In addition, the Transportation Coordinator shall coordinate any adjustments to the TDM Plan (as defined in Proffer 42) as necessary to address each Congestion Management Plan.

### **TRANSPORTATION DEMAND MANAGEMENT**

42. Transportation Demand Management. The Applicant shall fund, implement, and administer a TDM program as described in this Proffer and as further outlined in the "Capital One TDM Plan" prepared by UrbanTrans Consultants, Inc. dated May 1, 2013, which is attached hereto and made a part of these Proffers as Exhibit C (the "TDM Implementation Plan"). Modifications, revisions and supplements to the TDM Implementation Plan, including the Transportation Demand Management Work Plan ("TDMWP") may be approved by FCDOT and can be made without the need for a PCA.

The Applicant or any successor, including the UOA, shall remain obligated under this Proffer until such time as two consecutive post stabilization trip generation analyses reveal that the applicable trip reduction objectives are being met (the "Applicant Control Period"). For purposes of this Proffer, stabilization shall be defined to occur upon the later of one year following issuance of the last initial RUP for a dwelling unit to be constructed in the Proposed Development or one year following issuance of the last Non-RUP for floor area representing 80% of full occupancy of the final non-residential building to be constructed in the Proposed Development ("Stabilization").

If, subsequent to the approval of the Proposed Development, a Tysons-wide TDM entity is established for the purpose of administering TDM programs in the Tysons Corner Urban Center, then the Applicant, with approval from FCDOT, and without requiring a PCA, may join or otherwise become associated with such entity and transfer all functions of this TDM program to the new entity whereupon this Proffer shall be void and of no further force or effect.

- A. Objective. The objective of this TDM program shall be to reduce the vehicle trips generated by the office and residential uses within the Proposed Development (less and except the Public Facility as described in Proffers 13 and 14) during weekday peak hours by meeting the percentage trip reduction goals set forth in Table 12 of the Implementation Plan and as further refined below. The percentage trip reduction goals shall apply to the number of dwelling units and new office space proposed and reflected on any FDPs submitted for the Property. The Applicant or the UOA, as applicable, shall meet the vehicle trip reduction targets noted below. The trip reduction targets become applicable upon the development reaching the "Initial Development," which is defined as the year following issuance of the first RUP or Non-RUP for the first new building constructed on the Property. Vehicle trip reduction targets are set as follows:

0 to 1/8 Mile

1/8 to 1/4 Mile

Year	from Station	from Station
2010 – 2020	45%	35%
84 million SF of GFA (2030)	55%	45%
96 million SF of GFA (2040)	60%	50%
113 million SF of GFA (2050)	65%	55%

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. In this event, no PCA will be required.

A TDM penalty fund, as described in Section 3.6 of the Implementation Plan, will be posted by the Applicant to ensure continued efforts of the TDM Program to meet the proffered goals (the "Penalty Fund"). The TDM Penalty Fund is either a letter of credit or cash escrow established through an account into which the Applicant will deposit penalty payments as may be required to be paid pursuant to the TDM Proffer for non-attainment of trip reduction goals.

If, upon Stabilization of the Proposed Development, the percentage trip reduction goals are not being met, remedies and penalties will be enforced. During the period prior to Stabilization, if the percentage trip reduction goals are not being met, remedies only will be applied. Following the Applicant Control Period (ACP), if the percentage trip reduction goals are not being met, then only remedies will be applied against the Applicant or the UOA, as applicable.

- B. The Applicant or the UOA, as applicable, shall verify that the proffered trip reduction objectives are being met through the provision of person surveys, traffic counts and/or other such methods as may be reviewed and approved by FCDOT. The procedures for implementation of the surveys and traffic counts and the timing for the surveys and traffic counts are defined in Section 5 of the Implementation Plan. FCDOT may postpone surveys and traffic counts due to levels of occupancy or other outside factors. In the event that survey and traffic count data conflict, traffic count data will be utilized to verify compliance with the proffered trip reduction objectives.
- C. The Applicant or the UOA, as applicable, will summarize the results of the TDM Program annually on February 15<sup>th</sup> for FCDOT as outlined in Section 5.1 of the Implementation Plan. Should the Applicant or UOA fail to provide a TDM Program summary on or before February 15<sup>th</sup> of each year the county may charge the Applicant or UOA a fine of \$100 per day until the day upon which the TDM Program Summary is submitted to FCDOT.
- D. If the applicable trip reduction goal is not met in any year following Initial Development for any building on the Property, then the Applicant shall coordinate with FCDOT to address and implement such remedial measures as may be

developed in accordance with the Implementation Plan and annual TDM Work Plan. In addition, funds for remedial TDM measures will be drawn from the TDM Remedy Fund at the following rate for each building exceeding trip reduction goals:

Exceeded Trip Goals	Remedy
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

At no point shall the amount of penalties assessed exceed the amount of funds available in the Remedy Fund.

- E. If any building within the Proposed Development achieves its trip reduction goals for three consecutive years, Remedy Funds that were earmarked for that building and still remaining after any previously assessed penalties shall be returned to the Applicant in accordance with the table below. All remaining Remedy Funds shall be released to the Applicant at the end of the Applicant Control Period:

Square Feet of GFA in Tysons	Distance from Metro Station								Cum. % Remedy Fund Returned
	0 to 1/8 Mile		1/8 to 1/4 Mile		1/4 to 1/2 Mile		Beyond 1/2 Mile		
	Goal	Achieved	Goal	Achieved	Goal	Achieved	Goal	Achieved	
Up to 65,000,000	45%	45%	35%	35%	30%	30%	25%	25%	30%
Up to 65,000,000	45%	50%	35%	40%	30%	35%	25%	30%	50%
65,000,000	50%	55%	40%	45%	35%	40%	30%	35%	65%
84,000,000	55%	60%	45%	50%	40%	45%	35%	40%	80%
90,000,000	58%	63%	48%	53%	43%	48%	38%	43%	90%
96,000,000	60%	65%	50%	55%	45%	50%	40%	45%	100%
105,000,000	63%	65%	53%	55%	45%	50%	43%	45%	100%
113,000,000+	65%	65%	55%	55%	45%	50%	45%	45%	100%

- F. If after the second remedial evaluation cycle during the Applicant Control Period and upon Stabilization of the Proposed Development, the Applicant has not met the applicable TDM trip reduction goal for the Property, the Applicant shall be assessed a penalty according to the following scale:

Exceeded Trip Goals	Penalty
1% to 3%	5% of Penalty Fund
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

At no point shall the amount of penalties assessed exceed the amount of funds deposited into the Penalty Fund as outlined in Item I.

- G. At the conclusion of the Applicant Control Period all funds remaining in the Penalty Fund shall be returned to the Applicant.
- H. The Applicant shall provide a letter of credit from an accredited financial institution for the sum of forty cents (\$0.40) per net new square foot of commercial GFA and thirty cents (\$0.30) per net new square foot of residential GFA toward the Remedy Fund. A separate letter of credit shall be provided for each new building upon issuance of the first RUP or Non-RUP for each building, and shall provide funds equal to the actual amount of GFA included in the building. The funds guaranteed with each letter of credit shall be continuously available for the Remedy Fund until released in accordance with the terms of this Proffer. The Applicant shall not contribute funds for the proposed Public Facility as described in Proffers 13 and 14.
- I. The Applicant shall provide a letter of credit from an accredited financial institution for the sum of ten cents (\$0.10) per net new square foot of commercial GFA and five cents (\$0.05) per net new square foot of residential GFA toward the Penalty Fund. A separate letter of credit shall be provided for each new building upon issuance of the first RUP or Non-RUP for each building, and shall provide funds equal to the actual amount of GFA included in the building. The funds guaranteed with each letter of credit shall be continuously available for the Penalty Fund until released in accordance with the terms of this Proffer. The Applicant shall not contribute funds for the proposed Public Facility as described in Proffers 13 and 14.
- J. The Applicant shall contribute the sum of ten cents (\$0.10) per square foot for commercial space and five cents (\$0.05) per square foot for residential space toward the TMA Start-up Fund, based on the "Proposed GSF by Land Use" shown on Sheet 3 of the CDPA. The Applicant shall not contribute funds for the proposed Public Facility as described in Proffers 13 and 14. The Applicant shall contribute the funds at the time of the first site plan approval for the buildings or phases shown below:

Capital One HQ Expansion Phase (Bldg. 1)	\$229,500
Third New Building	\$76,400
Fourth New Building	\$76,400

Notwithstanding the above, the Applicant shall make all TMA Start-up Fund contributions on or before the 10<sup>th</sup> anniversary of the issuance of the first RUP or Non-RUP for the Proposed Development.

If the County does not establish a TMA within three (3) years of the time the first contribution has been made, or if the TMA is not operational within four (4) years of the first contribution, all TMA Start-up Funds shall be returned to the Applicant.

- K. The Applicant shall contribute the sum of two cents (\$0.02) per square foot for commercial and residential space toward the Incentive Fund. Funds will be allocated on a building-by-building basis upon issuance of the first RUP or Non-RUP for each new office or residential building. All funds remaining in the Incentive Fund at the end of the Applicant Control Period shall be returned to the Applicant. The Applicant shall not contribute funds for the proposed Public Facility as described in Proffers 13 and 14.

43. 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 the time the first occupancy permit is issued for 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; and,
- D. Bus stops pre-wired for real-time arrival/departures information.

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.

**PEDESTRIAN AND BICYCLE IMPROVEMENTS**

44. Bicycle Facilities.

- A. Storage Facilities. The Applicant shall provide and maintain bicycle racks, bicycle lockers, and bicycle storage areas throughout the Property, with the general locations and number of facilities to be determined at the time of FDP approval for each phase. The Applicant shall coordinate the final number and location of facilities with FCDOT at the time of site plan submission for each building, and may provide any necessary refinements to the number and/or location of the facilities as approved by FCDOT and without the need for an FDPA. The total number of storage spaces provided shall be generally consistent with the Fairfax County Guidelines for Bicycle Parking, and shall be shown on each FDP. The Applicant shall construct a multi-modal bicycle hub (the "Bicycle Hub"), which may contain such amenities as a bicycle station and facilities for bicycle sharing, storage and repair. The Applicant shall provide details on the Bicycle Hub with the FDP for the Metro Station Phase, and shall fully construct and have the Bicycle Hub operational prior to the issuance of the first RUP or Non-RUP for the final building within that phase.
- B. Dedicated Bicycle Lanes. The Applicant shall provide dedicated bicycle lanes in the locations depicted on the CDPA. Prior to FDP approval for each relevant phase, the Applicant shall work with FCDOT to determine whether any modifications are required to the bicycle lanes shown on Capital One Tower Road, particularly on the intersection approaches. Subject to FCDOT approval, the Applicant may modify these dedicated bicycle lanes without the need for a PCA.

45. Pedestrian Crosswalks and Signals. If approved by FCDOT and VDOT, the Applicant shall install pedestrian countdown signals at the intersection of Capital One Drive North and Capital One Tower Road concurrently with the Traffic Signal described in Proffer 37. Pedestrian crosswalks will be installed at the unsignalized intersections within the internal grid of streets subject to approval by VDOT and/or FCDOT, as applicable.

## **PUBLIC TRANSPORTATION**

46. Bus Shelters. If requested by Fairfax County, the Applicant shall construct a bus shelter in the streetscape along Capital One Drive South prior to issuance of the first RUP for the Residential Commons Phase at a cost of no more than One and One-Fifteenth percent (1.15%) of the cost of an average bus shelter based on the County's Unit Pricing Schedule in effect at the time the bus shelter is installed. The design of such bus shelter shall be coordinated with Fairfax County such that it is compatible with a Tysons-wide bus shelter strategy, and shall make provisions for electrical conduit for the purpose of providing real-time bus arrival information. In addition, the Applicant shall provide all necessary construction and grading easements at no cost to the County, as determined by FCDOT.

47. Metrorail Station-Related Facilities.

- A. At-Grade Pedestrian Connection. Prior to the issuance of the first Non-RUP for the hotel associated with the Capital One Expansion II and Hotel Phase, an at-

grade pedestrian connection (the "At-Grade Connection") shall be constructed as generally shown on Sheet 15A of the CDPA. The design for the At-Grade Connection shall be further refined in the site plan for the Capital One Expansion II and Hotel Phase. The At-Grade Connection shall consist of additional entry doors on the rear side of the McLean Metrorail Station, any required utility extension and/or relocation within the station, an associated concrete pad (the "McLean Station Improvements") and a pedestrian sidewalk on the Property between the property line and the existing pavement for discontinued Old Springhouse Road (the "Capital One Property Improvements").

- i. McLean Station Improvements. If permitted by WMATA and/or the County, the Applicant shall design the McLean Station Improvements in substantial conformance with the CDPA using a competitive bidding process involving at least three (3) contractors. Prior to construction of the McLean Station Improvements, WMATA and/or the County (as applicable) shall approve their ultimate design. If the Applicant is not permitted to design and construct the McLean Station Improvements, the Applicant shall petition WMATA and/or the County to design and construct the McLean Station Improvements in substantial conformance with the CDPA.
  - ii. Cost Limitations. If the Applicant's competitive bidding process or WMATA's estimates (as applicable) results in a cost for design and construction of the McLean Station Improvements that exceeds \$300,000, the Applicant shall notify DPZ in writing and, if requested, discuss potential changes in the scope or design details to reduce the costs and/or determine whether Fairfax County is willing to contribute the funds necessary to complete the improvement. If no agreement can be reached with WMATA and Fairfax County within six months from the time DPZ is notified, the Applicant may elect at any time after that date to contribute to Fairfax County the sum of \$300,000 in lieu of constructing the McLean Station Improvements, upon written assurances that the contribution will be used only for the McLean Station Improvements described in this Proffer.
  - iii. Capital One Property Improvements. The Applicant shall construct the Capital One Property Improvements simultaneously with the McLean Station Improvements, and the Capital One Property Improvements shall be available for use prior to the issuance of the first Non-RUP for the hotel associated with the Capital One Headquarters and Hotel Phase. If the McLean Station Improvements are not constructed or if such construction is delayed under the terms of this Proffer, the Applicant may also delay construction of the Capital One Property Improvements accordingly.
- B. Fees for Connections. The At-Grade Connection is envisioned to provide public benefits and will serve several neighboring land bays in addition to the Property.

In the event WMATA, Fairfax County, or the Metropolitan Washington Airports Authority (“MWAA”) changes their existing policies and charge the Applicant a fee for the purpose of providing or maintaining any connection to the Metro Station, the Applicant shall be released from all responsibility for constructing the At-Grade Connection, as described in this Proffer 47, and shall instead proceed with the notification and contribution process described in Proffer 47(A) above.

- C. Disapproval by WMATA. The Applicant shall pursue the At-Grade Connection in good faith. Nonetheless, if WMATA disapproves the Applicant’s plans for the At-Grade Connection despite such good faith efforts, the Applicant shall be released from all responsibility for constructing the At-Grade Connection, as described in this Proffer 47.
- D. Unavoidable Delay. For the purposes of this Proffer 47, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant’s control, either the McLean Station Improvements or the Capital One Property Improvements have been delayed (such as the inability to secure necessary permission from WMATA, despite the Applicant’s best efforts) beyond the required times set forth in this Proffer, the Zoning Administrator may agree to a later date for dedication/completion of such improvement.

### **PARKS AND RECREATIONAL FACILITIES**

48. Publicly Accessible Parks and Recreational Facilities. The Applicant shall provide park spaces and recreational facilities throughout the Property that will be open and accessible to the general public in accordance with the Phasing Plan on Sheets 14 and 15A – E of the CDPA and the following:

A. General Provisions.

- i. Public Access and Use. The Applicant shall retain in fee simple and perpetually and privately maintain any areas that are not specifically dedicated to the FCPA for park purposes, and shall record public access easement(s) over them so as to permit public use and access during the times customarily permitted in the County’s public parks. Prior to recording any deed restrictions on the Property that would restrict the use of the publicly-accessible park areas, the Applicant shall submit such deed restriction to the County Attorney and FCPA for review and approval.
- ii. Agreement with FCPA. The Applicant shall also enter into an agreement with FCPA, prior to bond release for each phase that includes publicly-accessible parks, and contains details on the processes for planning and coordinating public and private activities and events within the publicly-accessible park areas. As part of such agreement, the Applicant may negotiate the ability to temporarily limit the public’s access to portions of the parks for maintenance, cleaning, construction, renovation and/or

private events, as necessary, and may exercise such other reasonable controls over the park areas so as to prevent the general public from acquiring rights of access that are inconsistent with the status of the Property as private property.

- iii. Signage. A way-finding and signage system shall be developed in coordination with FCPA, and shall be installed by the Applicant as approved to ensure the public can easily identify and access all publicly-accessible park spaces. The Applicant shall not be responsible for obtaining approval for such signage through a separate CSP or CSPA, but will cooperate with FCPA in the event such approval becomes necessary.
- iv. Parks and Facilities. Publicly-accessible parks and facilities shall be provided as generally shown on Sheets 25 – 28B of the CDPA and in accordance with the Capital One Design Guidelines, with more specific details provided at the time of FDP approval. Additional or substitute recreational facilities to those listed below may be approved with the FDP provided such facilities result in an equivalent or enhanced quality of recreational opportunities.

B. Capital One Expansion II and Hotel Phase (A-1 and A-2). The Applicant shall construct urban pocket parks of approximately 0.10 acres between the existing Conference Facility and Building 1 prior to the first RUP or Non-RUP for the final building associated with the Capital One Expansion II and Hotel Phase, as generally shown on Sheet 28 of the CDPA. Amenities for each park shall include, but not be limited to, decorative pavers and planters of various sizes and designs, flush planting beds with ornamental shrubs and groundcovers, benches, and a focal element such as a water feature, art, a sculpture or similar amenity. All park details are subject to adjustment with site plan submission and approval, provided they are in general conformance with an approved FDP.

C. Capital One HQ Expansion Phase (B-1).

- i. Office Building Pocket Park. Prior to the issuance of the first RUP or Non-RUP for Building 3, the Applicant shall construct a pocket park of approximately 0.46 acres for the space adjacent to Building 3 in the Capital One HQ Expansion Phase, as generally shown on Sheet 25 of the CDPA. The park will include amenities such as decorative pavers and planters of various sizes, large shade trees, ornamental trees with shrubs and groundcovers, landscape buffers, outdoor café seating and benches, multiple focal elements, a minimum of one water feature, open spaces, amphitheatre seating and/or walls, stainless steel or stone security bollards, and decorative security walls. All Office Building Pocket Park details may be adjusted with site plan submission and approval.

- ii. Temporary Private Athletic Field. In the event a site plan for Building 4 has not been submitted within eighteen months after the issuance of the first Non-RUP for Building 3, the Applicant shall construct and operate a temporary athletic field until such time as Building 4 is constructed, in the location shown on Sheet 15 of the CDPA and Sheets 29 and 29A of the FDPA. The temporary athletic field will be maintained and utilized by the Applicant and any athletic leagues designated by the Applicant in its sole discretion. Moreover, the Applicant may provide nighttime lighting for any of the facilities associated with the Temporary Athletic Facilities, provided such lights utilize full cutoff low-impact fixtures, are directed away from the adjacent Gates of McLean condominium community to the maximum extent possible, and are turned off no later than 10:00 pm each night.

D. Residential Commons Phase (Block C).

- i. Common Green. Prior to the issuance of the first RUP for the final building associated with the Residential Commons Phase, a common green shall be installed of approximately 1.51 acres, and will contain passive recreation areas for residents and guests. The common green shall also encompass an active recreation area with a recreational field and a playground, as generally shown on Sheet 26 of the CDPA and as further described in Proffer 51 below. Additional phasing details will be provided on the FDP for this phase.
- ii. Pocket Parks. Prior to the issuance of the first RUP for the final building associated with the Residential Commons Phase, the Applicant shall construct three (3) pocket parks totaling approximately 0.32 acres using primarily softscape features, including shade trees (each a "Residential Commons Pocket Park"). The general features and treatment of all pocket parks is shown on Sheet 28 and Sheet 28A of the CDPA. Additional phasing details will be provided on the FDP for this phase.

E. Metro Station Phase Urban Park (Block D). Prior to the issuance of the first RUP or Non-RUP for the final building associated with the Metro Station Phase, the Applicant shall install a park of approximately 1.59 acres for use as both an urban park and as a stream valley park. The park shall combine water features, a gently sloping hardscape area and walkways to encourage visitors to explore the more natural areas around the Scotts Run Stream Valley, and shall be constructed as generally shown on Sheets 27 and 27A of the CDPA. Additional phasing details, including the provision of periodic civic events, will be provided on the FDP for this phase.

F. Financial Office Phase (Block E). Prior to the issuance of the first RUP or Non-RUP for the final building associated with the Financial Office Phase, a pocket park shall be constructed containing a total of approximately 0.07 acres, and shall be located between the two office buildings associated with this phase. The features and treatment of all

pocket parks is generally shown on Sheet 28 of the CDPA. Additional phasing details will be provided on the FDP for this phase.

49. Private Amenities and Recreational Facilities for Residential Uses. The Applicant shall provide on-site recreational facilities for the future residents of the Property. Pursuant to Par. 2 of Section 6-110 of the Ordinance, the Applicant shall expend a minimum of \$1,700.00 per market-rate and workforce dwelling unit (as defined in Proffer 59 herein) on such recreational facilities. Prior to final bond release for the final phase of the Proposed Development, the balance of any funds not expended on-site, as determined by DPWES, shall be contributed to the FCPA for the provision of recreational facilities serving Tysons.

At the time of each FDP submission, the Applicant shall propose specific facilities and amenities that will be provided for each residential building, or shared between two or more buildings for the use and enjoyment of the residents of the building/buildings. Amenities to be provided may include but shall not be limited to:

- A. Private exterior recreational areas or courtyards on the upper level of parking podiums with seating areas, specialty landscaping, lawn and/or shaded areas and hardscape areas, volleyball courts, pickleball courts, putting greens, bocce courts, boules courts, board table games, or similar recreational facilities as may be approved with each FDP;
- B. Private exterior recreational areas on the roof or podium level with a swimming pool, lounge deck, and shade structure;
- C. Interior fitness center, a minimum of 1,000 square feet in size, furnished with exercise equipment such as stationary bicycles, treadmills, weight machines, free weights, and other equipment, but not necessarily staffed; and
- D. A club room and/or entertainment center for resident gatherings.

50. Fitness Facilities. The Applicant shall provide fitness facilities that include a sport court or sport courts, by choosing one of the two alternatives below:

- A. Health Club Alternative. The Applicant may include a health club or gym containing up to 60,000 square feet of GFA. If provided, the health club shall include at least one full-size basketball court and one full-size tennis court, and shall be open for use by residents of the Proposed Development and the general public through a paid membership or paid use arrangement. This facility would be intended to serve the needs of leagues and individuals.
- B. Sport Court Alternative. As an alternative to providing the health club described above, the Applicant may instead provide two half-court basketball courts and one tennis court (or equivalent sport courts or facilities as determined at the time of FDP approval, or as subsequently determined by the Zoning Administrator) as part of the private recreational amenities for residents. Should this option be

implemented, the cost to build the sport courts may be counted toward the minimum recreational expenditures described in Proffer 49.

51. On-site Recreational Field. Prior to issuance of the first RUP for the last building in the Residential Commons Phase, the Applicant shall provide a synthetic turf recreational field (the "Recreational Field") within the Common Green as shown on Sheet 26 of the CDPA. Additional phasing details shall be provided with the FDP for the Residential Commons Phase. The Recreational Field shall be provided subject to the following conditions:

- A. Lighting. The Applicant shall provide lights for the Recreational Field and shall ensure the hours for lighting are consistent with the times lights are available at other Fairfax County athletic fields administered by the Department of Neighborhood and Community Services. At its sole option, the Applicant may employ electronic devices designed to dim or extinguish the lights during times when the Recreational Field is not scheduled or in use.
- B. Scheduling. The Applicant shall permit Fairfax County to schedule use of the Recreational Field by the public between the hours of 5:00 pm and 10:00 pm from Monday through Friday, and between the hours of 8:00 am and 12:00 noon on Saturdays and Sundays (the "Public Scheduling Hours"). During all other times, scheduled use of the Recreational Field shall only be for residents or members of the UOA. Nothing in this Proffer shall be construed to limit public access to the Recreational Field during times when it has not been scheduled either by the County for the public or by the Applicant for its residents or the UOA.
- C. Applicant's Scheduling. Prior to each scheduling season, the Applicant may withhold up to a maximum of 15% of the Public Scheduling Hours for use by members of the UOA. Such reservation shall be made in accordance with the Fairfax County Fields Allocation Policy.
- D. Maintenance. The Applicant shall be responsible for maintenance and typical life cycle replacement costs for all elements of the Recreational Field. Public access to the Recreational Field may be limited for a reasonable duration during maintenance and/or replacement of facilities.
- E. Parking. The Applicant shall ensure that all users of the Recreational Field are able to utilize parking facilities on the Property, as necessary.
- F. Field Markings. Recreational Field users shall be permitted to utilize temporary marking and/or striping equipment including but not limited to temporary paint, goals, cones, and flags. Additional details will be established in the written agreement in Proffer 51(G) below.
- G. Agreement. Prior to the time the Recreational Field is established, the Applicant and Fairfax County shall enter into an agreement, consistent with this Proffer, to formalize the details of scheduling, maintenance, and liability insurance.

## GREEN BUILDING PRACTICES

52. Green Building Certifications. For each office or hotel building, the Applicant shall provide documentation to the Environment and Development Review Branch 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 – New Construction ("LEED") prior to bond release for each respective phase. Each residential building shall attain, at a minimum, "LEED Certified" or equivalent. In addition:

- A. The Applicant shall include a U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") accredited professional as a member of the design team for each office building. The LEED accredited professional shall work with the team to incorporate LEED design elements into the project so that each non-residential building will be positioned to attain LEED Silver certification. At the time of site plan submission, the Applicant shall provide documentation to the Environment and Development Review Branch of the Department of Planning and Zoning ("DPZ") demonstrating compliance with the commitment to engage such a professional.
- B. The Applicant shall include, as part of the site plan submission and building plan submission for each building, a list prepared by the LEED accredited professional of specific credits that the Applicant anticipates attaining within the LEED rating system determined to be applicable to the project. The LEED accredited professional shall provide certification statements at both the time of site plan review and the time of building plan review indicating that the items on the list should meet at least the minimum number of credits necessary to position each building to attain the proffered level of LEED certification.
- C. Prior to issuance of the first Non-RUP or RUP for each building, the Applicant shall provide to the Environment and Development Review Branch of DPZ a letter from the LEED accredited professional certifying that a green building maintenance reference manual has been prepared for use by future building occupants, that this manual has been written by a LEED accredited professional, that copies of this manual shall be provided to all future building occupants and that this manual, at a minimum:
  - i. 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.
  - ii. 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.

- iii. Provides, as applicable, either or both of the following:
  - a. Maintenance staff notification process for improperly functioning equipment; or
  - b. 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.
- iv. Provides contact information that building occupants can use to obtain further guidance on each green building component.
- v. Prior to issuance of the first Non-RUP for each office building, or the final RUP for each residential building the Applicant shall provide an electronic copy of the manual in PDF format to the Environment and Development Review Branch of DPZ.

D. Green Building Escrow. Prior to building permit approval, the Applicant will execute a separate agreement and post, for each building covered by this Proffer, a green building escrow, in the form of a letter of credit from an accredited financial institution, in the amount of \$2.00/square foot of GFA (the "Green Building Escrow"). The Green Building Escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED certification, by the USGBC, under the applicable 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 Environment and Development Review Branch of DPZ of documentation from the USGBC that each building has attained LEED certification will be sufficient to satisfy this commitment. At the time LEED certification is demonstrated to the Environment and Development Review Branch of DPZ, the escrowed funds shall be released to the Applicant.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within three (3) years of issuance of the final RUP or Non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED certification, 50% of the Green Building Escrow will be released to the Applicant; the other 50% will be released to the 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 three (3) years of issuance of the final RUP or Non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED

certification or demonstrating that the building has fallen short of LEED certification by more than three (3) points, the entirety of the escrow for that building 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 application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

- E. Waiver of Escrow. As an alternative to providing a Green Building Escrow, as described in this Proffer, the Applicant may choose at its sole discretion to pursue a certification higher than LEED Silver, in which case a LEED or equivalent-accredited professional will provide certification statements at the time of 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, the Applicant shall submit documentation to the Environment and Development Review Branch of DPZ demonstrating 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, the Applicant is not required to provide a Green Building Escrow unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED Silver certification.

## **SUSTAINABLE AND SHARED ENERGY**

53. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide the following information with each FDP submission:

- A. Shared Energy. For any FDP that includes more than one building, an assessment of the potential, within the area subject to the FDP, 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, a narrative discussion regarding the reason(s) for this outcome. For single-building FDP submissions and for other FDPs where shared energy systems will not be pursued, the Applicant shall provide an assessment of the potential for incorporation into building designs of measures that will cause these buildings to be "shared energy ready," that would encourage buildings to be incorporated into a broader shared energy network in the future.

- B. Electric Vehicle Charging Infrastructure. To further promote efficient, renewable and sustainable energy practices, prior to issuance of the first RUP or Non-RUP for each building, the Applicant shall provide a minimum of one electric vehicle recharging station that serves two parking spaces for electric cars in the associated parking structure, and space and infrastructure to accommodate additional electric vehicle-ready parking spaces should the Applicant elect to install them. If the Applicant demonstrates to the satisfaction of the Zoning Administrator that a particular recharging station is being utilized less than 30% of the time during any 30-day period, the Applicant may remove or disable the charging station.

### **PUBLIC SCHOOLS CONTRIBUTIONS**

54. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$10,488 per expected student generated by each residential building (based on the assumed rate of pupil generation approved by the Fairfax County School Board at the time of contribution) to the Fairfax County School Board to be utilized for capital construction and capacity enhancements to schools in the Tysons area. The contributions shall be made on or before the issuance of the first RUP for each residential building on the Property, and shall be based on the actual number of residential units constructed in each building. In the event fewer residential units are built than estimated at the time of payment, the overpayment amount shall be applied to the public schools contribution for future phases of the Proposed Development.

If, prior to site plan approval for each respective residential building, the County should increase the accepted ratio of students per multi-family 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. 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.

55. Notification of Construction. At the time of site plan submission for each residential building or buildings, the Applicant shall notify the facilities planning division of the Fairfax County Public Schools ("FCPS") of the approximate timing for construction of the residential units, and the number of residential units anticipated in each building.

## ENVIRONMENT

56. Scotts Run Restoration. Prior to final bond release for the Metro Station Phase, the Applicant shall provide stream bank restoration using “natural channel stream design concepts” to the maximum extent practicable as defined in Sec. 10.1-560 of the Code of Virginia for the portion of Scotts Run located within the Property (the “Stream Restoration”). The Stream Restoration shall accommodate the stream crossing and existing easements while maintaining the wetlands in that area, accommodate the existing and expected future off-site flows within a stable channel, and shall be reviewed in accordance with Sec. 10.1-561. The conceptual design of the Stream Restoration will be depicted on the first FDP for the Metro Station Phase and the Applicant shall prepare a detailed plan (the “Stream Restoration Plan”) to submit with the first site plan for the Metro Station Area. The Stream Restoration Plan shall be reviewed by DPWES if necessary, and shall be approved by the U.S. Army Corps of Engineers (“COE”) and the Virginia Department of Environmental Quality (“DEQ”). Written documentation of COE and DEQ approval of the Stream Restoration Plan shall be provided to DPWES prior to site plan approval. Specific success criteria (the “Success Criteria”), maintenance and monitoring criteria (the “Maintenance and Monitoring Criteria”), and information regarding reports on these criteria (the “Monitoring Reports”) shall also be included in the Stream Restoration Plan.

Subject to written approval by the Providence District Supervisor, the Applicant may satisfy the Stream Restoration requirement in this Proffer 56 by electing to participate in a regional plan to restore a larger portion of Scotts Run that is promulgated by the private sector or the County.

57. Tree Preservation and Planting Fund Contribution. To promote enhancement of the Fairfax County Tree Canopy through growth of trees on private and public land, the Applicant will contribute at the time of the first site plan approval two tenths of a cent (\$.002) per square foot of the maximum proposed GFA as stated in Proffer 6 to the Fairfax County Tree Preservation and Planting Fund (“TPPF”). This contribution will supply tree saplings, volunteer support, and information to landowners about how they can enhance tree canopy on their properties. Additionally, this contribution may be used for educational activities in the Fairfax County Public Schools, should they choose to participate. As an alternative, the Applicant may elect to donate trees to Fairfax County (or an organization designated by Fairfax County) that are a minimum of 6” caliper. Each tree donated by the Applicant shall reduce the required TPPF contribution by \$500.

## AFFORDABLE AND WORKFORCE DWELLING UNITS

58. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Ordinance, Affordable Dwelling Units (“ADUs”) shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.

59. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant shall also provide for-sale and/or workforce dwelling units (“WDUs”) on the Property in accordance with the Board’s Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. WDUs shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results

in not less than 20% of the total residential units constructed as part of the Proposed Development. The 20% applies to the total number of dwelling units to be constructed on the 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.

- A. WDU Specifications. The WDUs generated by each residential building on the Property shall be provided within that building. However, the Applicant reserves the right to consolidate the WDUs into one or more buildings with the build-out of the Property and thereby increase the number of WDU units in one or more buildings beyond 20% with a corresponding decrease in the number of WDU units in the other buildings. The WDUs shall have a bedroom mix similar to that provided in the market rate units. A minimum of 10% of the dwelling units designated as ADUs and WDUs shall be designed and constructed with Universal Design features, as determined by the Applicant. Additionally, in the event that parking spaces are assigned to individual market rate dwelling units, at least one parking space shall be designated for use by each ADU and/or WDU in the development.
- B. Agreements. Notwithstanding the foregoing, should the Board's policies related to WDUs in Tysons be amended, the Applicant reserves the right, in its sole discretion, to opt in to the new policies, in whole or in part, without the need for a PCA and, if the Applicant so opts into any such new policies, the provisions of this Proffer which relate to the old policies of the Board which Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the ADUs and/or WDUs, as applicable, following approval of this Application. If the Applicant and the County enter into such an agreement, it shall be on terms mutually acceptable to both the Applicant and the County and may occur after the approval of this Application. Neither the Board nor any other County agency shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications shall be recorded in the Fairfax County land records.
- C. Non-residential Affordable Housing Contribution. The Applicant shall contribute \$3.00 for each square foot of non-residential space (excluding ground-level Retail Activated Space and space reserved for public facilities as described in Proffers 13 and 14) built on the Property to the Board for the provision of affordable and/or workforce housing to serve Tysons. Such contribution shall be made prior to the issuance of the first Non-RUP for each non-residential building, and shall be based on the actual gross floor area of non-residential space constructed in each building.

- D. WDU Architecture. For any residential building where WDUs are located, the exterior architecture for the building(s) containing WDUs shall be of similar architectural quality and complementary to the other residential buildings within the Proposed Development, and shall comply with the Capital One Design Guidelines referenced in Proffer 15.

### MISCELLANEOUS

60. Advance Density Credit. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Ordinance for all eligible dedications described herein, including the Jones Branch Dedication described in Proffer 35.

61. Adjustment of Monetary Contributions. All monetary contributions specified in these Proffers shall be adjusted on an annual basis from the base month of January 2013 (except as noted below) and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers [1982-84=100] (not seasonally adjusted) ("CPI-U"), both as permitted by Va. Code Ann. Section 15.2-2303.3.

- A. Public Facility. For the purposes of the Stand-Alone Public Facility in Proffer 13 and the Integrated Public Facility in Proffer 14, the Marshall and Swift Building Cost Index shall be substituted for the CPI-U, and shall adjust from the base month of January, 2015. The Applicant's commitment to reimburse the County up to \$1.2 million for installed fixtures as part of Proffer 13(N) shall not be adjusted.
- B. Super Boulevard. For the purposes of Proffer 39, the base year shall be assumed to be January 1 of the year following VDOT approval of Advanced Preliminary Design Plans for the Super Boulevard concept.
- C. TDM Program. The provisions of Proffer 61 shall not apply to the TMA contributions associated with the TDM program described in Proffer 42.
- D. Metrorail Station-Related Facilities. The \$300,000 cost limitation and alternative contribution of the same amount in Proffer 47 shall not be adjusted.

62. Severability. Any of the phases and/or buildings may be the subject of a PCA, SE, SP, CDPA, FDP or FDPA without joinder and/or consent of the owners of the other phases or buildings, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases or buildings. Previously-approved zoning applications applicable to a particular land bay that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.

63. 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 Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

64. Tyson's Partnership. The Applicant and successors shall become a member in the Tyson's Partnership, or its residential equivalent.

65. Security. Upon request, the Applicant will share its security surveillance recordings with Fairfax County law enforcement authorities. The Applicant will follow common channel protocols for voice, wireless, and data surveillance. The Applicant reserves the right to withhold information in the limited instances where its voluntary disclosure would jeopardize trade secrets or violate other legal protections (for instance, privacy laws, legal privileges, etc.)

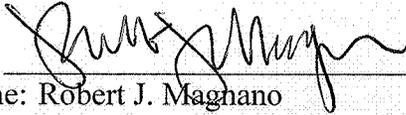
66. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

67. Applicant's Diligence. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond its control, the required transportation, publicly accessible park areas, athletic field improvements, or other proffered 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 time frames specified, the Zoning Administrator may agree to a later date for completion of these improvement(s).

68. Construction Briefings. All construction crews will be informed of those specific proffered commitments that relate to their areas of responsibility. As necessary, the briefings shall be translated for those employees who are not proficient in English.

Signature on following page

CAPITAL ONE BANK (USA), NATIONAL ASSOCIATION  
a national banking association  
Owner of Tax Map # 29-2 ((5)) A2

By:   
Name: Robert J. Magnano  
Title: Senior Vice President, Facilities Management/Real Estate