

The Commons RZ 2011-PR-017



Proffers Dated May 20, 2013

Commons of McLean L/CAL, LLC

Board of Supervisors Public Hearing

June 4th, 2013

PROFFERS
Commons of McLean L/CAL, LLC
RZ 2011-PR-017

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Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and applicant, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County 2012 Tax Maps as 30-3 ((28)) 5, 6, 8 and B4 (the "Subject Property") shall be in accordance with the following conditions if, and only if, the Board of Supervisors (the "Board") approves a rezoning (RZ 2011-PR-017) of the Subject Property from the R-20 and HC to the PTC and HC zoning districts.

The Subject Property is referred to as "The Commons."

GENERAL

1. Conceptual Development Plan. The Subject Property shall be developed in substantial conformance with The Commons Conceptual Development Plan ("CDP") dated January 14, 2011, and revised through May 6, 2013, prepared by VIKA, Inc., WDG Architecture, PLLC, and Parker Rodriguez, Inc. The CDP includes flexibility for a range of building heights for each of the proposed buildings, as indicated in the development tabulations shown on Sheet C-2 of the CDP. The proffered elements of the CDP are limited to the grid of streets, general location of the points of access, general location and footprint of the buildings, mix of uses, minimum and maximum building heights, amount and general location of urban park land and athletic field, and general quality and character of the streetscape. Other elements of the CDP may be adjusted or modified with approval of future Final Development Plans ("FDPs") in accordance with the provisions set forth in Sect. 16-402 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance") and these Proffers.
2. Minor Modifications. Minor modifications to the CDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDP without requiring approval of a Conceptual Development Plan Amendment ("CDPA") provided such changes are in substantial conformance with the CDP as determined by the Zoning Administrator and do not affect the proffered elements of the CDP identified in Proffer 1, pursuant to Par. 4 of Sect.16-403 of the Zoning Ordinance. The number of units, floors and square footage within and among the buildings may be adjusted as set forth on the CDP and in these Proffers, as long as (i) the maximum building setbacks from the property lines as shown on the CDP are maintained; (ii) the maximum building heights comply with those shown on the CDP; (iii) the overall maximum gross floor area as shown on the CDP is maintained; and (iv) the redevelopment is otherwise in general conformance with the CDP and these Proffers.

3. Declarations/Owners Associations. The Applicant shall cause the recordation of one or more declarations creating an umbrella owners' association ("UOA") and as necessary, condominium owners' associations ("COA") or declarations of covenants and agreements dealing with the governance of maintenance and operation of the Subject Property or other governance documents which will legally bind the Subject Property, (collectively referred to as the "Governance Documents"). Such Governance Documents shall be prepared, be legally effective and recorded prior to the issuance of the first Non-Residential Use Permit ("Non-RUP") or Residential Use Permit ("RUP") for new construction on the Subject Property. The respective Governance Documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations set forth in these Proffers, including the maintenance of certain streets, associated sidewalks and streetscapes, and site amenities such as, but not limited to, the publicly accessible park areas, as well as implementation of the transportation demand management (the "TDM") program. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a contract of sale, whether purchasing residential or commercial property. The notice requirements of this proffer shall not apply to renters of individual residential units.

PROPOSED DEVELOPMENT

4. Proposed Development. The maximum gross floor area ("GFA") permitted on the Subject Property is 2,622,400 square feet (the "Proposed Development"). Development of the Subject Property may include any use permitted in the Planned Tysons Corner Urban ("PTC") District, subject to limitations in these Proffers and in the PTC Zoning Ordinance. The primary use of the Subject Property shall be residential. However, up to 50,000 square feet of residential GFA may be converted to retail/service uses at the Applicant's sole discretion within the proposed buildings. The retail/service uses provided may include any retail or service use permitted in the PTC District, subject to the Use Limitations in Sect. 6-505, or uses accessory to the primary use. Such uses may be provided generally within the ground floor (*i.e.*, street level) of the proposed buildings; however, such uses may also be provided within upper floors if shown on an FDP. The type, extent and location of all retail/service uses shall be provided with the submission of each FDP. Potential retail/service locations, should the Applicant choose to provide them at its sole discretion, are conceptually shown on Sheet A.03 of the CDP.

Uses allowed by special exception or special permit in the PTC District may be authorized through a separate special exception or special permit process without the need for a PCA or CDPA, provided the use is in general conformance with the approved CDP.

5. Final Development Plans. FDPs approved for individual building sites on the Subject Property shall establish the maximum GFA for each building within the limits established by these Proffers and the CDP. The specific GFA for each building shall be established at final site plan. If the GFA approved with the FDP is less than the maximum shown on the CDP, or if the GFA approved with the site plan is less than the maximum shown on the FDP, the excess GFA may be utilized in another building or building(s) within the Subject Property, provided the excess GFA can be accommodated within the minimum

and maximum building height ranges shown on the CDP for the receiving buildings and subject to approval of the applicable FDP(s) or Final Development Plan Amendments (“FDPA(s)”) for the building(s) utilizing the excess GFA. In addition, the following information shall be provided with each FDP or FDPA not filed concurrently with this rezoning:

- A. Tabulations. A tabulation indicating the development status of all property subject to these Proffers shall be provided with each subsequent FDP and each site plan submitted for the Subject Property. The tabulation shall include a listing of all existing and proposed buildings, along with the GFA and uses approved on the CDP, FDP and site plan as may be applicable. The tabulation shall identify the reassignment of any excess GFA (as compared with what was originally shown on the applicable CDP) and shall be updated with each subsequent FDP and site plan approved for the Subject Property.
- B. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations of all property subject to these Proffers shall be provided with each FDP and site plan submitted for the Subject Property and shall be updated with each subsequent FDP and site plan approved for the Subject Property.
- C. Supplemental Transportation Information. The following information to supplement the requirements of the Zoning Ordinance: (i) a copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program; (ii) vehicular sight distance lines at all intersections within, and adjacent to, the FDP area overlaid on the Landscape Plan; and (iii) a comparison of the trip generation associated with the FDP, FDPA or site plan uses for the Subject Property based on ITE’s, 8th edition, Trip Generation compared to those uses reflected for that building site in the Transportation Impact Analysis prepared by Wells + Associates (“TIA”) dated May 2011 as revised through April 2012. If the trip generation associated with the FDP, FDPA or site plan results in more than 100 additional peak hour directional trips (inbound or outbound) then the Applicant shall provide such supplemental traffic analyses if required by VDOT and/or FCDOT to address such an increase in trips. Such supplemental analyses will be limited to an assessment of the site entrances, those off-site turn bays that directly serve the Subject Property and/or any of those intersections within the TIA study area.
- D. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDP including the location of the any utility vaults and maintenance points to stormwater management facilities overlaid on the Landscape Plan.
- E. Proposed Uses. A list of proposed uses, demonstration of how such uses meet the applicable “Use Limitations” of Section 6-505 of the Ordinance, and a description in the statement of justification of how the mix of uses at the build-out of the Subject Property will comply with these Proffers.

- F. Retail/Service Uses. At the time of FDP for each new building to be constructed on the Subject Property starting with the second building, the Applicant shall study, based on market conditions and other development within Tysons, whether all or a portion of the ground floor of the new building should include a retail/service component. Should the Applicant determine that a retail/service component would be viable, the Applicant shall design the building to accommodate such uses or provide flexibility for such uses in the future without the need for an FDPA. As part of this retail study, the Applicant shall also consider whether ground floor retail/service uses would be viable within buildings constructed in earlier development phases, provided such buildings are still owned or controlled by Commons of McLean L/CAL LLC at the time of the study.
- G. Architectural Elements. Specific information on architectural elements as provided in Proffer 7 as well as details regarding any parapet walls, cornices or similar projections extending more than three feet above the roof. In no case shall such features extend more than twenty feet above the roof.
- H. Build-to-Lines. Refinement of the build-to-lines based on proposed uses, location of possible outdoor dining areas, and identification of awnings and canopies that extend beyond the building zone.
- I. Streetscape. A graphic depiction of, and any adjustments to, the activated streetscape elements and refinement of, and adjustments to, streetscape elements.
- J. Garage Treatments. Elevations of proposed parking garage façade treatments that shall be designed to minimize views into the garages.
- K. Landscaping. Detailed landscape plans.
- L. Streetscape Furnishings. Submission of a “Streetscape Furnishing and Materials Plan.”
- M. Interim Conditions. Identification of specific proposed interim conditions within the FDP area and outside the FDP area.
- N. Phasing. Identification of specific proposed phased improvements and those generally set forth on the phasing-related exhibits provided on the CDP.
- O. Parking Spaces. Refinement of the number of parking spaces; demonstration that tandem spaces will be utilized only for residential units with two cars where spaces are assigned by building management; and assuming parking ratios in early phases exceed the maximum ratios allowed, a description and/or tabulation in the statement of justification discussing how the subject FDP and preceding FDPs are achieving the Comprehensive Plan's recommendations for phased parking such that at the build-out of the Subject Property the maximum parking rates are not exceeded. The proposed parking ratios will be reviewed in consideration of the TDM goals for the Subject Property and any outside factors

affecting driving behavior, with the overall objective being to ensure that excessive parking is not constructed and that transit use is encouraged to the greatest extent practicable.

- P. Loading Spaces. Identification of loading spaces located within 40 feet of a drive aisle and locations where parking garage and loading entrances have been consolidated into one building entrance.
 - Q. Parks and Recreation. Specific park details, site amenities and substitute recreation facilities. The Applicant shall attempt to identify areas on the Subject Property that may, with minimal disturbance to existing grade and vegetation, potentially be used as youth athletic practice areas on an interim basis provided such areas are still owned or controlled by Commons of McLean L/CAL LLC at the time of FDP.
 - R. Residential Amenities. Specific facilities and amenities to be provided for each residential building will be identified.
 - S. Provisions for Bicycles. Bicycle parking, storage and bicycle lane dimensions as provided in Proffers 43 and 44.
 - T. Stormwater Management. Specific stormwater management facilities and access points to underground vaults will be identified in addition to the other information to be provided at FDP, as specified in Proffer 57.
 - U. Bus Shelters. At the time of FDP, the Applicant will coordinate with FCDOT on the location of up to two (2) bus shelters and their designs on Anderson Road and one (1) on Dartford Drive.
 - V. Functional Drawings. Details with respect to sight distance and/or vegetation conflicts with building entrances and/or intersections as presented on Sheet L-19 of the CDP. Said functional drawings shall also include proposed right-of-way lines associated with existing/planned public streets.
 - W. Fencing. Identification of proposed fencing, screening, or barriers serving active recreational uses on roofs or adjacent to streets that exceed seven (7) feet in height. In no case shall such fencing exceed fourteen (14) feet in height.
6. Fire Marshal Evaluation. Changes to the CDP and FDPs shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA and/or FDPA, provided such modifications are made in consultation with the Fairfax County Department of Planning and Zoning (“DPZ”), Fairfax County Department of Transportation (“FCDOT”), the Urban Forest Management Division (“UFMD”) of the Fairfax County Department of Public Works and Environmental Services (“DPWES”) and the Office of Community Revitalization (“OCR”) and in substantial conformance with the intent of the CDP, FDP and these Proffers.

ARCHITECTURAL DESIGN

7. Architecture

- A. Materials and Design. Buildings shall create a sense of identity and place at a human scale through the use of unifying elements such as materials, textures, color, window treatments, detailing, lighting and landscaping. Buildings shall be designed of high-quality architecture and building materials that are typically used on the exterior of Class A residential buildings of a similar quality as conceptually depicted on the CDP, with architectural details provided at the time of FDP approval for the respective phases. No exterior insulation and finish systems (EIFS) shall be used except for potential use on mechanical penthouse enclosures or unless specifically approved by Fairfax County with an FDP for an individual building or phase. Each FDP shall, for the phase for which that FDP is filed, specify the building materials, architecture, and specific features designed to activate streetscapes, as further described below. Architectural plans, elevations, illustrations, materials and heights may be revised subsequent to CDP and FDP approval as a result of final architectural and engineering design, provided the quality of design remains in substantial conformance with that shown on the CDP and subsequent FDPs and set forth in these Proffers, as determined by DPWES in consultation with DPZ or OCR.
- B. Universal Design. A minimum of 10 percent (10%) of all dwelling units shall be designed and constructed with some Universal Design features, as determined by the Applicant. These elements shall be identified at the time of building plan submission.
- C. Bird-Friendly Features. At the time of building plan submission for the first new building to be constructed on the Subject Property, a study shall be prepared and submitted to OCR addressing whether bird-friendly design strategies may be employed to reduce bird injury and death due to in-flight collisions with buildings and/or building elements. The strategies to be studied should make the buildings visible to birds in flight and reduce reflections that distract or confuse birds though the use of appropriate glazing treatments or architectural elements, including using color, texture, opacity, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds. A narrative summarizing the results of that study and which strategies, if any, will be implemented shall be submitted to OCR at the time of each subsequent individual building permit issuance.
8. Build-to-Lines. Build-to-lines (“BTL”) have been established as depicted on the CDP, to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted provided such are in general conformance with the CDP and are shown on an approved FDP. Awnings and other architectural canopies attached to the building

frontage that project out from the BTLs shall provide adequate clearance for pedestrian movement and shall not conflict with street tree locations. At the time of FDP approval, if retail/restaurant uses are proposed, the Applicant shall identify possible locations along the street level for expanded areas for outdoor dining adjacent to cafes and restaurants. The Applicant shall provide appropriate building zones for such uses in keeping with the Comprehensive Plan recommendations that will ensure that such uses will not encroach upon sidewalk zones.

9. Activated Streetscapes and Ground Floor Elements. The Applicant shall provide for activated streetscapes by designing and constructing the exterior facades of ground floor areas adjacent to streets as generally described below, with modifications and further refinements permitted with the approval of FDPs.
- A. Buildings 1 and 3, as identified on the CDP, shall be designed and constructed with ground floors having a minimum floor to floor height of 14 feet. Buildings 2, 4, 5, 6 and 7 shall be designed and constructed with ground floors having a minimum floor to floor height of 16 feet to accommodate potential non-residential uses designed to activate the streetscape. Specific activation elements to be utilized for each building, along with any necessary modifications to the building architecture such as building elevations, window glazing and entries, shall be graphically depicted on the FDP for review and approval and may be further refined at site plan.
 - B. Where the ground floors of buildings incorporate non-residential uses, the building design shall include:
 - (i) functioning entry doors with a maximum separation of 75 feet or less, unless a greater separation is needed to accommodate larger tenant spaces or as may be permitted by the Zoning Administrator;
 - (ii) non-residential entries with recessed and/or welcoming entries incorporating awnings or canopies as appropriate; and
 - (iii) a minimum of 50% transparent glazing of the street wall up to a height of 9 feet above the adjacent sidewalk, with building entrances considered to meet a portion of the transparency guidelines.
 - C. In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, the building design shall include:
 - (i) to the degree feasible, lobby, recreational and amenity spaces, on the ground floors of the primary facade. Such spaces shall incorporate a minimum of 40% transparent glazing of the street wall up to a height of 9 feet above the adjacent sidewalk, with building entrances considered to meet a portion of the transparency guidelines;

- (ii) residential uses along the remainder of the building façade shall include a percentage of transparent glazed facades typical of windows required for dwelling units; and
 - (iii) individual dwelling units that have entrances with direct access to the street level shall utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).
- D. Parking structures along the ground floor facades of buildings shall be minimized. Above grade parking structures fronting on Colshire Meadow Drive, Main Street, South Street and East Lane shall incorporate non-residential uses, residential dwellings or associated amenity spaces at the ground level, or the general façade detailing of the building above may be continued to the ground plane. Above grade parking structures fronting on Anderson Road, Center Alley and Dartford Drive shall include screening composed of architectural systems designed to restrict views into the garage spaces from street level and provide a more attractive and enjoyable pedestrian experience. The details of such screening shall be provided at FDP for the review and approval of the Planning Commission.
- E. Loading/trash/service areas shall be screened from public view through the use of roll down doors or similar treatment.
10. Building Height. The number of floors shown on the CDP is conceptual and may be adjusted at FDP provided the maximum building heights are not exceeded. The final height for each building and specific steps in building height may be determined at the time of FDP, site plan or building permit approval, but shall be within the building heights range shown on the CDP, as measured from average grade.

All building penthouses and rooftop structures shall be integrated into the architecture of the buildings. The height and extent of any rooftop penthouse shall be provided in the FDP. Maximum building heights shall include penthouses and all rooftop structures. Structures to be located on the building roof outside of a penthouse or screened area that will occupy an area greater than 25% of the total roof may exceed the maximum building heights, provided they are for the purpose of achieving LEED certification and are reviewed by DPZ.

11. Rooftop Telecommunications and Mechanical Equipment. Telecommunications equipment may be placed on the proposed buildings' rooftops. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets. 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, or (iv) employ telecommunication screening material and flush-mounted antennas. Telecommunications equipment 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, landscaping or recreation courts may also be used to screen rooftop telecommunications equipment and mechanical units.

12. Historical On-site References. The Applicant shall incorporate historic references to past uses of the Property throughout the site, including reference to the original Commons of McLean buildings and their architect, Charles Goodman, as generally shown on Sheet L-18. Such references shall be provided with each corresponding FDP within which a historical reference is provided. The design, appearance, and specific location of the historical references may be modified at FDP and/or site plan in consultation with DPZ and OCR. The references shown within the Main Street median between Anderson Road and Center Alley shall be constructed following completion of the SWM features in the median referenced in Proffer 57, but in no case later than the issuance of the final RUP for Building 1.
13. Heritage Resource Documentation.
 - A. For the purpose of recording and documenting significant historic and architectural information that otherwise would be lost, the Applicant shall cause existing structures on the Subject Property to be photographed and documented, prior to any ground disturbing activity, by an individual who meets The Secretary of the Interior's professional qualification standards for history, architectural history or historic architecture, as specified at http://www.cr.nps.gov/local-law/arch_stnds_9.htm.
 - B. The report entitled *The Commons of McLean Eligibility Assessment for Fairfax County Inventory of Historic Sites* prepared by History Matters, LLC and dated June 17, 2011 (the "History Matters Report"), shall be used to identify significant historic and architectural features of the existing buildings and to guide the preparation of measured drawings and photographs. Such drawings and photographs shall be completed in accordance with the Historic American Building Survey ("HABS") standards, as specified at <http://www.nps.gov/history/hdp/standards/standards.pdf>. The number, subject matter and size of the drawings and the number and angle of photographic views shall be coordinated with DPZ heritage resource staff prior to the preparation of drawings and the taking of photographs. Completed drawings and photographs shall be approved by DPZ heritage resource staff prior to any ground disturbing activity.
 - C. The approved drawings, photographs and the History Matters Report (the "Documentation") shall be compiled in a format based upon HABS standards with the goal to provide architects, scholars and the general public with comprehensive documentation of the significant buildings, structures and cultural landscape significant in the growth and development of the built environment of Fairfax County.

- D. Prior to site plan approval for the first new building on the Subject Property, the Documentation shall be submitted to the Virginia Room of the Fairfax County Public Library and the Virginia Department of Historic Resources (VDHR). The Applicant shall notify DPZ in writing of such submission and provide a copy of the Documentation to DPZ.
14. Stereoscopic Photography and High Definition Video. Prior to any ground disturbing activity, the Applicant shall document the existing residential buildings on the Subject Property through the use of stereoscopic photography with the intent of conveying how the buildings relate to the landscape. In addition, the Applicant shall record a high definition video of a walking tour of the Subject Property that attempts to capture the topography of the Subject Property and how the residential buildings relate to each other and the surrounding landscape. Upon completion, digital copies of the photographs and video shall be provided to DPZ.
15. Festivals, Fairs or Similar Activities. The Applicant or its designee, shall be permitted to operate festivals, fairs or similar activities on the Subject Property, either in interim surface parking lots or within publically accessible private open space as shown on the CDP, including portions of Center Alley without limitation. The Applicant reserves the right to periodically close all or portions of Center Alley and Main Street, subject to VDOT approval as may be required for said activities. The Applicant shall coordinate with the Zoning Administrator regarding the issuance or approval of a temporary special permit as may be required under the Zoning Ordinance, which may include the establishment of an annual permit for continuing or seasonal events. Said events shall be limited to the following:
- A. A maximum of 26 events per year;
 - B. Admission or other fees may be charged;
 - C. Sponsorships by the Applicant, a civic organization, local Chamber of Commerce, charitable organization, service club, non-profit or similar entity; and
 - D. Compliance with all Health Department Regulations.

GREEN BUILDING AND SUSTAINABLE ENERGY PRACTICES

16. Residential Building Certifications.
- A. The Applicant shall include, as part of the building plan submission for each residential building to be constructed on the Subject Property, a list of specific credits that the Applicant anticipates attaining within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") for new construction rating system that is available at the time of the Applicant's registration of the building. Alternatively, the Applicant shall include such a list within the LEED for Homes rating system determined to be applicable by the U.S. Green Building Council ("USGBC"), or its equivalent (as

determined jointly by the Applicant and Fairfax County) that the Applicant anticipates attaining.

- B. In addition, prior to site plan approval, the Applicant shall designate the Chief of the Environment and Development Review Branch of DPZ as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Except as otherwise provided below as an alternative, a LEED or equivalent-accredited professional ("LEED-AP") who is also a professional engineer or licensed architect shall provide certification statements at the time of building plan review confirming that the items on the list are expected to meet at least the minimum number of credits necessary to attain "LEED Certified" status for the project.
- D. Prior to the building plan approval for each new building, the Applicant shall post, for each building, a "green building escrow," in the form of cash or a letter of credit as defined in the Public Facilities Manual ("PFM") from a financial institution acceptable to DPWES, in the amount of \$2.00/square foot of GFA. This green building escrow shall be in addition to and separate from other bond requirements and shall be released upon demonstration of attainment of LEED certification, by the USGBC, under the project's registered version of the LEED-NC or LEED for Homes 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 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 Fairfax County (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 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. Prior to any release of the escrow to the County, the Applicant shall first be notified and permitted an additional thirty (30) days to provide the necessary documentation and avoid forfeiture of the funds.

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 shall 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. As an alternative to the actions outlined in the paragraphs B, C, and D above, the Applicant may choose at its sole discretion to pursue a certification higher than LEED Certified, 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 to demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED Silver certification. Under this alternative, 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.

The Applicant may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft, Energy Star Qualified Homes for Multifamily High Rise, or the 2012 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance that may be implemented without an escrow. If one of the alternate residential rating systems listed herein is selected, the Applicant shall demonstrate attainment of the selected certification from a rater recognized through the selected progress prior to the issuance of the final RUP for the building. In the event certification is dependent on the post occupancy operation of the building, the Applicant shall demonstrate attainment of the selected certification prior to final bond release.

17. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide the following information and/or infrastructure:
- A. Electric Vehicle Charging Infrastructure and Parking Spaces. A minimum of one (1) electric vehicle recharging station in each parking garage that serves two (2) parking spaces and conduit to facilitate additional recharging stations in each

parking garage on the Subject Property. Upon review by DPZ, the Applicant may, at its sole discretion and in light of changing technology, substitute other technological features in place of a recharging station, provided that such features achieve a comparable benefit in terms of sustainable energy practices,

- B. Shared Energy. For any site plan that includes more than one building or in conjunction with each site plan submitted after the approval of two (2) site plans for the Subject Property, provide an assessment of the potential, within the area subject to the site plan, of shared energy systems, including but not limited to combined heat and power (CHP) (co-generation), micro-CHP, distributed energy resources, and district heating and/or cooling, and, if a shared energy strategy will not be pursued, a narrative discussion regarding the reason(s) for this outcome. At a minimum, the Applicant shall ensure that utility sleeves through the foundations of all of the proposed buildings are sized to accommodate a pipe/facility, a maximum of 12 inches in diameter, allowing for potential future energy sharing or alternate energy sources.
- C. Energy and Water Data. To the extent there are master electric, gas and water meters for entire buildings, upon request by the County, the Applicant shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for each building and the entire Subject Property.

URBAN SITE DESIGN AND LANDSCAPING

- 18. Landscaping. The CDP includes a conceptual landscape plan for the Subject Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas, courtyards and private amenity areas. As part of subsequent FDP and site plan approvals, more detailed landscape plans for each building phase shall be provided in general conformance with the concepts shown on the CDP with adjustments permitted so long as the quantity and quality of the landscaping provided and the function of the space remains consistent with that shown on the CDP. Such plan shall include the location of all known utilities and sight distance requirements overlaid on the planting plan.

As part of the site plan submission for each building phase, the Applicant shall submit to UFMD for review and approval a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and materials landscaping shown on the respective approved FDP. Specific trees targeted for preservation on the approved FDPs shall be protected as set forth in Proffer 19. Tree planting and streetscaping shall be provided as described in Proffer 21. Tree species and planting sites as set forth on the FDP, are subject to revision as may be approved by UFMD.

- 19. Tree Preservation within Anderson Park. The Applicant shall submit a tree preservation plan and narrative (the "Tree Preservation Plan") with the site plan submission for Anderson Park, as defined in Proffer 54. The Tree Preservation Plan shall be prepared by a certified arborist or a registered consulting arborist, and shall be subject to the review and approval of the UFMD.

- A. Tree Preservation Plan: The Tree Preservation Plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet outside the limits of clearing and grading and 10 feet inside the limits of clearing and grading for the FDP for Anderson Park. The Tree Preservation Plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the FDP and those additional areas in which trees can be preserved as a result of final engineering. In particular, the Tree Preservation Plan shall provide for the preservation of the approximately 14 mature willow oak trees located along the eastern side of Anderson Road, as depicted on Sheet L-9. The Tree Preservation Plan shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the Tree Preservation Plan.
- B. Tree Appraisal: The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater located on the Subject Property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called “Trunk Formula Method” contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective site plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the “Bonded Trees”) that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Subject Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives.

Upon release of the bond for the improvements on the Subject Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

- C. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist or registered consulting arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with a UFMD representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
- D. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading as shown on the FDP for Anderson Park, subject to allowances specified in these proffered conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or sidewalks in areas protected by the limits of clearing and grading as shown on the FDP, they shall be located in the least disruptive manner necessary as determined by UFMD. A replanting plan shall be developed and implemented, subject to approval by UFMD, for any areas protected by the limits of clearing and grading that must be disturbed for such sidewalks or utilities.
- E. Tree Preservation Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be

preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, UFMD shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD.

- F. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFMD, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
- (i) Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - (ii) Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - (iii) Root pruning shall be conducted with the supervision of a certified arborist.
 - (iv) A UFMD representative shall be informed when all root pruning and tree protection fence installation is complete.
- G. Demolition of Existing Structures. The demolition of all existing features and structures within areas of tree preservation fencing shown on the site plan shall be done by hand without heavy equipment and conducted in a manner that does not impact individual trees and/or groups of trees that are to be preserved as reviewed and approved by UFMD.
- H. Site Monitoring. During any clearing or tree/vegetation/structure removal within Anderson Park, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by UFMD. The Applicant shall retain the services of a certified arborist or registered consulting arborist to monitor the impact of construction and demolition work on tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFMD.
20. 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 shall contribute at the time of site plan approval for the first building to be

constructed on the Subject Property \$.002 (two tenths of a cent) per square foot of GFA for such building to the Fairfax County Tree Preservation and Planting Fund (“TPPF”).

21. Streetscape Elements. Streetscaping shall be installed throughout the Subject Property as conceptually illustrated on the CDP and at FDP. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a pedestrian sidewalk zone adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk zone and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to non-residential uses. The existing four (4) foot sidewalk located along the north side of Anderson Road shall be preserved to minimize impacts on the adjacent mature street trees, as shown on the CDP. Streetscaping elements may be adjusted at the time of FDP approval provided the quality of the streetscape is consistent with that shown on the CDP.

A. Street Trees. Tree planting sites are set forth on the CDP, subject to revision as may be approved on the FDP or at site plan review by UFMD. The Applicant shall retain the services of a certified arborist or registered consulting arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection. All tree planting sites shall meet the following specifications, unless otherwise approved by UFMD:

- (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 four feet of the base of the tree. Where minimum planting widths of 8 feet cannot be provided, structural cell technology, or other measures acceptable to UFMD shall be utilized.
- (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 rooting zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. 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. 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.

- (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 and multi-stemmed trees shall be a minimum of eight (8) feet in height at the time of planting.
 - (vi) Trees zones shall be installed with a fully automatic, drip irrigation system.
 - (vii) It is expected that street trees will have to be planted within existing utility easements and above percolation trenches and/or bio-retention facilities; and the Applicant shall replace any such street trees that are removed to facilitate repairs of such utilities or facilities.
- B. Non-Invasive Plant Materials. Invasive species, as defined in the PFM, shall not be used within the streetscape and landscaped open space areas.
- C. 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 CDP.
- (i) Conceptual Utility Master Plans. A conceptual utility master plan overlaid on a landscape plan shall be submitted with each FDP and shall include 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 or site plan approval to avoid conflicts with street trees, utilities and other site engineering considerations.
 - (ii) Conflicts. If there is no other reasonable option, utilities may be placed within open space or streetscape areas provided that the long-term health of new street trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP, as determined by UFMD. If at the time of site plan approval, new street trees shown on the FDP are in conflict with the existing or proposed utilities and alternative locations for such street trees that are satisfactory to UFMD cannot be accommodated, the Applicant may relocate or delete such trees in consultation with UFMD and/or relocate such utilities without the need for the issuance of a minor modification approved by DPZ or the approval of a PCA, CDPA or FDPA.
 - (iii) Access Points. Maintenance access points to SWM Facilities and electric vaults beneath the streetscape shall be located outside the pedestrian sidewalk zone of the streetscape to the extent feasible. If the access points

must be located in the sidewalk zone, they shall be designed as a lift out panel with the same paving materials as the sidewalk, be flush with the sidewalk, and meet ADA accessibility requirements.

- D. Sight Distance Considerations. Sight distances and anticipated road design speeds shall be depicted on the landscape plan in the FDP to demonstrate that all proposed street trees are viable. If determined at site plan approval that street tree locations conflict with sight distance requirements, the Applicant shall make efforts to gain approval of said trees by making minor adjustments to their locations or by removing their lower branches. However, in the event that VDOT, Fairfax County or any applicable utility company does not approve such tree locations, the Applicant shall be permitted to delete or relocate those tree location(s) in consultation with UFMD and without the need for the issuance of a minor modification approved by DPZ or approval of a PCA, CDPA or FDPA.
- E. Streetscape Furnishing and Materials. Unified and high quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan shall be provided as part of all FDPs. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces. Materials, furnishings, and lighting shall be compatible with the Tysons Corner Urban Design Guidelines, as defined below.
- F. Signage and Wayfinding. Signage for the Subject Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance. Alternatively, the Applicant may seek approval of a Comprehensive Sign Plan (“CSP”). The placement of traffic control signage on public streets shall be subject to the review and approval of VDOT. Wayfinding signage and elements proposed in a CSP shall be coordinated with the Tysons Partnership so as to facilitate a consistent wayfinding and signage system throughout the district, but shall not be subject to approval by the Tysons Partnership. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public amenities.
- G. Tysons Corner Urban Design Guidelines. The Applicant reserves the right, at its sole discretion but only after consultation with OCR, to utilize and follow in part, or in whole, the Tysons Corner Urban Design Guidelines (“TCUDG”) in lieu of the design specifications of these Proffers related to the specifications covered by such guidelines.
- H. Maintenance. The Applicant shall maintain in good repair and replace, as needed, all pedestrian realm elements within the Proposed Development. Elements to be maintained within the pedestrian realm include all publicly-owned areas between the curb and building façade and all privately-owned spaces that are between the

curb and the building facade. For any public areas, the Applicant shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the Board of Supervisors (or other public entity, as needed) to permit the Applicant to perform such maintenance, with the exception of repairs necessitated by contractors or utilities operating pursuant to a permit issued by VDOT or FCDOT. An alternative maintenance agreement may be entered into upon written agreement by both the County and the Applicant. Unless altered through an agreement by both the County and the Applicant, maintenance commitments shall include:

- (i) All plantings including trees, shrubs, perennials, and annuals;
- (ii) All associated irrigation elements;
- (iii) All hard surfaces including but not limited to paving and retaining walls;
- (iv) All streetscape furnishings including benches and bike racks;
- (v) All lighting fixtures, brackets and poles;
- (vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;
- (vii) All special drainage features, such as Low Impact Development facilities;
- (viii) Snow removal, including from on-street parking spaces on private access drives;
- (ix) Trash recycling and litter removal;
- (x) Leaf removal; and
- (xi) All urban park amenities in the development including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art, with the exception of those urban park amenities that are transferred to the Fairfax County Park Authority ("FCPA") or otherwise specified in these Proffers.

I. Interim Improvements. As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicant shall provide interim streetscape improvements as described in Proffer 23.

22. Lighting. All on-site, outdoor and parking garage lighting shall meet or be less than that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance and be compatible with the recommendations set forth in the TCUDG.

- A. Streetscape Lighting. All streetscape lights shall be compatible with the recommendations set forth in the TCUDG. To the extent possible, the Applicant shall attempt to use the same street lights along Colshire Meadow as the Scotts Run Station South application for the sake of continuity. The same or similar street lights shall be used consistently throughout the Proposed Development and be selected from those listed in the Tysons Urban Design Guidelines, or other lights as may be approved by DPZ, OCR, and DPWES.
 - B. 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 meet the requirements of Article 14 of the Zoning Ordinance.
 - C. Construction Lighting. During construction, the Applicant shall attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies.
 - D. Goodman Field Lighting. The Applicant shall construct field lighting for Goodman Field, as conceptually shown on Sheet L-08. Such lighting shall be designed in a manner that minimizes impacts on the adjacent residential buildings in terms of both visual appearance and spillover effects.
23. 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 Subject Property. At the time of each FDP approval, the Applicant shall identify the specific proposed interim conditions within the FDP area and outside the FDP area and shall ensure such conditions provide reasonable 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 revisions to parking and on-site circulation for the existing structure are adequate.
 - B. If interim improvements not located on the property subject to the FDP are contemplated with any FDP, such FDP shall specify how and when such improvements shall be constructed.
 - C. Interim conditions shall comply with the following general standards, provided that the improvements are acceptable to Fairfax County, VDOT, and all other utility companies as may be applicable:
 - (i) Construction of interim sidewalks on the Subject Property 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 toward 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 will 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 Zoning 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 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 approved 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 24 months;
- (vii) Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or wayfinding elements. Signage shall be in keeping with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved Comprehensive Sign Plan.

TRANSPORTATION IMPROVEMENTS

24. Grid of Streets. For the purposes of these Proffers, Anderson Road and Dartford Drive shall be considered to run north-south and Colshire Meadow Drive and Colshire Drive shall be considered to run east-west. The Applicant shall construct and open for use to the public a proposed grid of streets as generally located and depicted on the CDP and in accordance with the phased development set forth in these Proffers. The functional classification of those roadways comprising the grid of streets is summarized below:

Street	Classification
Anderson Road	Avenue
Colshire Meadow Drive	Collector
Dartford Drive (between Colshire Meadow Drive and Colshire Drive)	Collector
Colshire Drive (between Anderson Road and Dartford Drive)	Local
Main Street	Local
Center Alley	Service Street/Alley (private)
East Lane	Local
South Street	Local

- A. Public Streets. Those streets constructed within the limits of the Subject Property and identified on the CDP as Anderson Road, Colshire Meadow Drive, Dartford Drive, Colshire Drive, Main Street, East Lane, and South Street shall be designed and constructed as public streets. Public street improvements proposed herein shall be subject to VDOT approval and be in general conformance with the Transportation Design Standards for Tysons Corner Urban Center (the “Design Standards”) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the “MOA”), subject to modifications/waivers as may be granted. The Applicant shall design and construct these streets to meet the Design Standards and shall work diligently with VDOT and the County during the FDP and site plan approval processes to ensure that the improvements proposed to existing and new public streets will be accepted into the VDOT system for maintenance. As may be necessary with respect to all of the existing and new public streets, right-of-way, as may be further qualified by these proffers, shall be dedicated and conveyed to the Board in fee simple, as applicable, at the time of site plan approval.

The Applicant shall diligently pursue VDOT acceptance of those improvements to existing streets and those new public streets, as identified on the CDP and in these proffers, for secondary street maintenance in accordance with the process outlined in VDOT’s Secondary Street Acceptance Requirements (the “SSAR”), as amended. In the event that the Board of Supervisors has not requested VDOT to accept into the secondary street network those dedicated new public streets or those improvements to existing streets for maintenance within five (5) years of VDOT’s written certification that such streets and/or improvements have been constructed in a manner consistent with the VDOT approved plans and compliant with all applicable regulations, then such street(s) may be retained by the Applicant, upon notification of the same to FCDOT and with their concurrence, as a private street subject to a public access and maintenance agreement in a form acceptable to the County Attorney. In such event, a PCA, CDPA and/or FDPA will not be required.

- B. Rights-of-Way. At the time of site plan approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way for each of the public streets listed in Paragraph A above to a point inclusive of the landscape amenity panel and the sidewalk or to such standard as may be approved on the FDP, with the following exceptions:
- (i) If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line and shall grant a public sidewalk and utility easement in a form acceptable to the Office of the County Attorney, over the area of the amenity panel/sidewalk. This easement shall allow for the installation of signage necessary for the safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan.
 - (ii) If at the time of site plan approval it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT and/or Fairfax County, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.
 - (iii) Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or Fairfax County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney over such areas. This easement shall allow for the installation of signage necessary for the safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan.

- (iv) All right-of-way dedications shall be subject to advanced density credit as specified in Proffer 65.
- C. Naming. The Applicant reserves the right to provide different street names than those shown on the CDP.
- D. Parking Lanes. The Applicant shall provide on-street parking throughout the limits of the Subject Property as generally located on the CDP and as may be adjusted with FDP approval. The County and VDOT may restrict parking during peak commuting periods (typically 6:00 to 9:00 AM and 4:00 to 7:00 PM), in order to provide for turning movements to/from the public and/or private street network or to provide additional travel lanes. If requested by the County and/or VDOT, the Applicant shall install signs restricting parking.

The on-street parking spaces along public street frontages will be in addition to the total number of required parking spaces provided. The Applicant reserves the right to increase the amount of on-street parking shown on the CDP subject to approval by VDOT and FCDOT. The Applicant reserves the right to restrict the use of spaces along any private streets and on any future public streets prior to VDOT acceptance, through appropriate signage or such other means as the Applicant determines appropriate, that otherwise are not required to satisfy the parking requirements for use as temporary or short term parking, car-sharing parking and/or similar uses.

- 25. Street Improvements. All on and off-site public street improvements, on-site Service Streets and Private access drives together with appropriate/required pavement transitions shall be constructed with the redevelopment of individual buildings as reflected on Sheets A-11 through A-20 of the CDP (the "Phasing Plan"). Except as modified below, such improvements shall be completed and open for use by the public but not necessarily accepted by VDOT for maintenance prior to the issuance of the initial RUP or non-RUP for the individual building to be constructed.
- 26. Anderson Road.
 - A. Prior to site plan approval for the earlier to be constructed of Buildings 3 or 4, the Applicant shall submit plans to DPW&ES for the improvement of Anderson Road south from Old Chain Bridge Road to Colshire Drive as generally shown on Sheet C-7 of the CDP (excluding improvements to the Colshire Meadow Drive/Old Chain Bridge Road intersection if designed/constructed by others.)
 - B. The Applicant shall improve Anderson Road through the Subject Property as generally depicted on Sheets C-7, C-8 and C-11 of the CDP.
 - C. Notwithstanding the aforementioned, the raised median on Anderson Road south of Old Chain Bridge Road shall not be constructed/extended until such time as those townhomes located on the east side of Anderson Road (Buildings L and M) have been razed.

- D. Sections of Anderson Road shall be reconstructed with adjacent building phases as generally shown on the "Phasing Plan", except where modified by an FDP. The Applicant reserves the right, in its sole discretion to complete the improvements to Anderson Road as outlined in Paragraph A above as a single public road improvement or in separate segments, as long as at least the frontage improvements for respective individual buildings have been constructed prior to the issuance of the first RUP or Non-RUP for that building reflected on a site plan.
- E. Anderson Road shall be constructed in its entirety between Old Chain Bridge Road/Colshire Meadow Drive and Colshire Drive no later than twenty-four (24) months after the issuance of the first RUP for the third new building on the Subject Property.
- F. If at the time of site plan submission for existing building sites L and M, building site K is to remain, then the on-street parking along the east side of Anderson Road along the building site K frontage may be modified in order to retain interim access to building site K. In such event, those streetscape improvements along Anderson Road in the vicinity of building site K would be completed with the completion of Anderson Park.

27. Colshire Meadow Drive.

- A. If not previously constructed by others, in conjunction with the submission of the site plan for Building 2, the Applicant shall submit a VDOT public roadway plan (the "Road Plan") for the ultimate improvement of Colshire Meadow Drive from Anderson Road west to Dartford Drive including the intersections with Old Chain Bridge Road and Dartford Drive. Colshire Meadow Drive shall ultimately be constructed as generally reflected on CDP Sheets C-7 through C-8 consistent with the Phasing Sheets and the typical section presented on CDP Sheet C-11. The extent, final design and timing of these ultimate improvements to Colshire Meadow Drive, as generally described and referenced above, shall be provided in conjunction with the development of Building 2 or the third building to be constructed, whichever occurs first, and determined at the time of site plan approval for the individual building. The Applicant reserves the right, in its sole discretion, to complete such ultimate improvements as a single public road improvement or in two separate segments, as long as at least the frontage improvements for the respective individual building have been constructed prior to the issuance of the first RUP or Non-RUP for that building reflected on the site plan.

In the event that Colshire Meadow Drive cannot be completed to its ultimate cross section between Dartford Drive and Anderson Road without impacting existing uses on either the Van Buren Block (Cityline Partners) or the Subject Property, then the Applicant shall be permitted to construct interim improvements for this link and the Old Chain Bridge Road and Dartford Drive intersections as determined in consultation with VDOT and FCDOT.

- B. If an improvement to the section of Colshire Meadow Drive between Anderson Road and Dartford Drive, including the intersections with Anderson Road/Old Chain Bridge Road and Dartford Drive, including signal modifications, is to be constructed by others prior to site plan submission for Building 2 or the third building to be constructed on the Subject Property, whichever occurs first, then the Applicant shall dedicate and convey upon written demand by Fairfax County such right-of-way and ancillary easements necessary to facilitate such construction by others provided: (i) interim access to/from the existing residential units located along Ambergate Place is maintained at all times; and (ii) such improvements to the Subject Property are minimized and coordinated with the Applicant prior to site plan approval for the improvement of this section of Colshire Meadow Drive. In such event, the Applicant will escrow its share of the cost of the ultimate improvements along the site's frontages, if not previously escrowed or otherwise provided, for use/release by and/or to others prior to site plan approval for Building 2 or the third building to be constructed, whichever occurs first. Those specific streetscape improvements, as reflected on the Phasing Plan along the Building 1, 2 and Anderson Park frontages would then be constructed with the development of those building sites.
- C. The final design of the improvements to Colshire Meadow Drive as generally described above shall be determined in conjunction with the submission of all site plans for those portions of the Subject Property along Colshire Meadow Drive. Sections of Colshire Meadow Drive shall be constructed with adjacent building phases as generally shown on the Phasing Plan, except where modified by FDP. Such sections will be complete and open for public use no later than twenty-four (24) months after the issuance of the first RUP for Building 2 or the third building to be constructed, whichever occurs first. In such event, the Applicant may use any funds escrowed by others with the County for the improvement of Colshire Meadow Drive as described in Paragraph A above.

28. Anderson Road/Old Chain Bridge Road/Colshire Meadow Drive Intersection.

- A. If not previously constructed by others, in conjunction with the submission of the site plan for Building 2, the Applicant shall submit a VDOT public improvement plan for the ultimate improvement for the Anderson Road/Old Chain Bridge Road/ Colshire Meadow Drive intersection, including traffic signal modifications. The Anderson Road/Old Chain Bridge Road/Colshire Meadow Drive intersection shall ultimately be constructed as generally reflected on CDP Sheets C-7 through C-8 consistent with the Phasing Sheets and the typical section presented on CDP Sheet C-11. The extent, final design and timing of the intersection improvement, as generally described and referenced above, shall be provided in conjunction with the development of Building 2 or the third new building to be constructed on the Subject Property, whichever occurs first, and determined at the time of site plan approval for the individual building.
- B. If the ultimate improvement to the intersection of Anderson Road/Old Chain Bridge Road/Colshire Meadow Drive, including signal modifications, is to be

constructed by others prior to site plan submission for Building 2 or the third new building to be constructed on the Subject Property, whichever occurs first, then the Applicant shall dedicate and convey upon written demand by Fairfax County such right-of-way and ancillary easements necessary to facilitate such construction by others provided: (i) interim access to/from the existing residential units located along Ambergate Place and Anderson Road is maintained at all times; and (ii) such improvements to the Subject Property are minimized and coordinated with the Applicant prior to site plan approval for the improvement of this intersection. In such event, the Applicant will escrow its share of the cost of the intersection's ultimate improvements, if not previously escrowed or otherwise provided, for use/release by and/or to others prior to site plan approval for Building 2 or the third new building to be constructed on the Subject Property, whichever occurs first.

- C. The final design of the improvements to the intersection of Anderson Road/Old Chain Bridge Road/Colshire Meadow Drive, including signal modifications, as generally described above, shall be determined in conjunction with the submission of all site plans for portions of the Subject Property adjacent to that intersection. Sections of Colshire Meadow Drive, Old Chain Bridge Road, and Anderson Road shall be constructed with adjacent building phases as generally shown on the Phasing Plan, except where modified by FDP. Such sections will be complete and open for public use no later than twenty-four (24) months after the issuance of the first RUP for Building 2 or the third new building to be constructed on the Subject Property, whichever occurs first. In such event, the Applicant may use any funds escrowed by others with the County for the improvement of said intersection as described in Paragraph A above.

29. Dartford Drive

- A. Unless previously constructed by others, the Applicant shall construct Dartford Drive from Colshire Meadow Drive south to Colshire Drive in general accordance with the design on Sheets C-7 and C-8 of the CDP and Collector Street Section (Dartford Drive) depicted on Sheet C-11 with variable pavement/widening provided at select locations to accommodate certain turning movements and/or pavement transitions.
- B. The final design of the improvements to Dartford Drive as generally described above shall be determined in conjunction with the submission of all site plans for those portions of the Subject Property along Dartford Drive. Sections of Dartford Drive shall be constructed with adjacent building phases as generally shown on the Phasing Plan, except where modified by FDP. Such sections will be complete and open for public use prior to the issuance of the first RUP for the last of Buildings 2, 6 or 7 to be constructed.

30. Colshire Drive.

- A. The Applicant shall improve Colshire Drive along the Subject Property's frontage as generally depicted on Sheets C-7 and C-8 of the CDP. Colshire Drive shall be constructed in general accordance with the Public Local Street Section (Colshire Drive) depicted on Sheet C-11.
- B. The final design of the improvements to Colshire Drive as generally described above shall be determined in conjunction with the submission of all site plans for those portions of the Subject Property fronting Colshire Drive. Sections of Colshire Drive shall be constructed with adjacent building or park phases as generally shown on the Phasing Plan, except where modified by FDP. Such sections will be complete and open for public use prior to the issuance of the first RUP for the last new building or dedication of the park identified as Goodman Field, whichever occurs first. Right-of-way for Colshire Drive shall be dedicated and conveyed to the Board at the time of site plan approval for the last building to be constructed on the Subject Property or dedication of the park land for Goodman Field, whichever occurs first.
31. Main Street. The Applicant shall construct Main Street in general accordance with the design shown on Sheets C-7 and C-8 of the CDP and the Local Street Section (Main Street) depicted on Sheet C-11. Construction shall be provided as shown on the Phasing Plan and as further detailed at the time of FDP approval.
32. East Lane and South Street. The Applicant shall construct East Lane and South Street in general accordance with the designs shown on Sheets C-7 and C-8 of the CDP and the Local Street Section (East Lane and South Street) depicted on Sheet C-11. Construction shall be provided as shown on the Phasing Plan and as further detailed at the time of FDP approval.
33. Center Alley. The Applicant shall construct Center Alley as a private service alley in general accordance with the design shown on Sheets C-7 and C-8 and the Private Alley Section (Center Alley) depicted on Sheet C-11. Construction shall be provided as shown on the Phasing Plan and as further detailed at the time of FDP approval. A public access easement in a form acceptable to the Office of the County Attorney shall be granted for Center Alley and appurtenant facilities to facilitate inspection, pedestrian and emergency access; such public access easement to become effective upon completion of Center Alley.
34. Colshire Drive/Anderson Road Traffic Signal. Within 12 months of the issuance of the first RUP or Non-RUP for the 5th new Building on the Subject Property, the Applicant shall prepare and submit a warrant study for a new traffic signal at the intersection of Colshire Drive and Anderson Road. If the signal is warranted then the Applicant shall design and equip said signal, including those pedestrian features as may be required by VDOT, no later than twelve (12) months after approval of the warrant. In the event the signal is not warranted at that time, then the Applicant shall conduct a second warrant analysis within twelve (12) months of the issuance of the first RUP or Non-RUP for the last building to be constructed on the Subject Property. If warranted at that time, then the Applicant shall design and equip said signal, including those pedestrian features as may

be required by VDOT no later than twelve (12) months after approval of the warrant. If the signal is not warranted at that time, then the Applicant's obligation to said signal is deemed null and void and this proffer of no further force or effect.

35. Main Street/Anderson Road Pedestrian Signal. Within 12 months of the issuance of the first RUP or Non-RUP for the last new Building on the Subject Property, the Applicant shall prepare and submit a warrant study for a new signal at the intersection of Main Street and Anderson Road in order to facilitate pedestrian crossings. If the signal is warranted then the Applicant shall design and equip said signal, including those pedestrian features as may be required by VDOT, no later than twelve (12) months after approval of the warrant. In the event the signal is not warranted at that time, then the Applicant's obligation to said signal is deemed null and void and this proffer of no further force or effect.
36. Colshire Meadow Drive/Dartford Drive Traffic Signal. If not previously constructed by others, then within twelve (12) months of the issuance of the first RUP or Non-RUP for the second of new Buildings 1, 2 or 6, the Applicant shall prepare and submit a warrant study for a new traffic signal at the intersection of Colshire Meadow Drive and Dartford Drive. If the signal is warranted then the Applicant shall design and equip said signal, including those pedestrian features as may be required by VDOT no later than twelve (12) months after approval of the warrant. In such event, the Applicant may use any funds that may have been escrowed by others for such signal installation. In the event the signal is not warranted at that time, then the Applicant shall conduct a second warrant analysis within twelve (12) months of the issuance of the first RUP or Non-RUP for the last building to be constructed on the Subject Property. If warranted at that time, then the Applicant shall design and equip said signal, including those pedestrian features as may be required by VDOT no later than twelve (12) months after approval of the warrant. In such event, the Applicant may use any funds that may have been escrowed by others for such signal installation. If the signal is not warranted at that time, then the Applicant shall escrow with the County its pro rata share based on 2020 PM peak trip estimates as reflected in the TIA referenced in Proffer 5.C toward the cost of future signalization of this intersection by others.
37. Route 123 Restriping. Concurrent with the approval of the site plan for the fifth (5th) new building on the Subject Property, the Applicant shall contribute \$7,500 to the County for the restriping of select right-turn lanes to shared through/right lanes at up to three locations on Route 123 between the Beltway and the Dulles Access Road subject to VDOT approval. In the event, VDOT does not approve such restriping, then the County may use the funds for other transportation improvements/enhancements in the Tysons East District.
38. Traffic Signal Modifications. Concurrent with the submission of the site plan for the fifth new building on the Subject Property, the Applicant shall contribute a total of \$40,000 to be used to modify the signal timings in the Dolley Madison Boulevard corridor between the Beltway and the Dulles Access Road and at the Great Falls Street/Chain Bridge Road intersection as may be required by VDOT. If at the time of site plan approval for the fifth (5th) new building, signal timing modifications have not been requested by VDOT for the

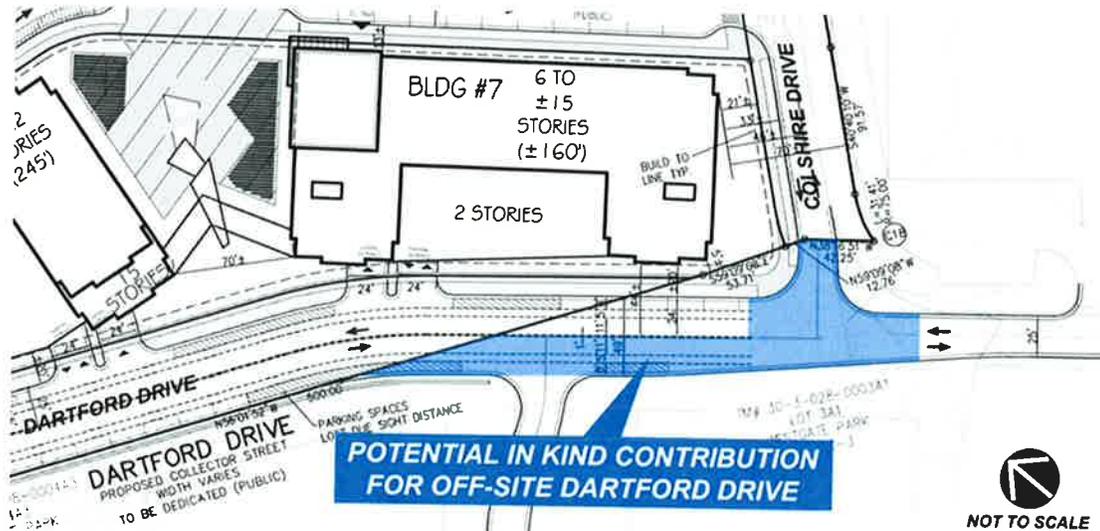
Route 123 corridor, the County may utilize those funds for any other transportation improvements/enhancements in the Tysons East District.

39. Route 123 Super Street Concept. The Applicant will contribute \$0.06 per square foot of GFA to Fairfax County for the reconstruction of that segment of Route 123 as a super street to be paid in three (3) equal installments of approximately \$31,469 each and one (1) final installment of approximately \$62,938. Said payments shall be made upon site plan approval for each of the first four buildings to be constructed. For purposes of this proffer only, this contribution shall be adjusted annually beginning with the second payment and every anniversary thereafter as permitted by Section 15.2 2303.2 of the Code of Virginia as amended.
40. Construction Traffic Management. The Applicant shall prepare and implement a construction congestion management plan during construction of each phase of the redevelopment, as appropriate, through its development/construction manager and the TPM, as defined in Proffer 50, so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Subject Property and on the public roadways adjoining the Subject Property. This management plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane or street closures, and/or other construction related activities to minimize disturbance on the surrounding road network.

Such plans shall be prepared by a qualified professional and submitted for review and comment to the VDOT, FCDOT and DPWES prior to issuance of the building permit for each phase. In addition, the TPM shall coordinate any adjustments to the TDM Plan, as defined in Proffer 50, that may be necessary to address any management plan issues.

41. Tysons Grid of Streets Transportation Fund. The Applicant shall provide a contribution of \$1,000 for each residential unit and \$6.44 for each square foot of non-residential space (excluding any public use facility) constructed on the Subject Property in accordance with the Tysons Grid Fund adopted by the Board on January 8, 2013, as amended and subject to credits/in-kind contributions as permitted and identified below. Pursuant to The Tysons Grid Fund Guidelines (the "Guidelines"), the Applicant's contribution to the Tysons Grid Fund shall be made on a building by building basis in accordance with the Guidelines.

The Applicant shall receive and deduct applicable in-kind credits against the contributions that would otherwise be due to the County for the Tysons Grid Fund in keeping with the Guidelines for the Tysons Grid Fund endorsed by the Board of Supervisors on January 8, 2013, as may be amended. Specifically, the Applicant shall receive credits for costs incurred by the Applicant for the construction of all or a part of off-site Dartford Drive (not including costs of the Property's frontage improvements) as reflected below and only if those improvements to Dartford Drive are constructed prior to the timeline outlined in Proffer 29.B above:



42. Tysons-wide Transportation Fund.

The Applicant shall contribute the sum of \$5.63 per square foot of non-residential space (excluding any public use facility) and \$1,000 for each residential unit constructed on the Subject Property in accordance with the Tysons Grid Fund adopted by the Board on January 8, 2013, as amended and subject to credits/in-kind contributions as permitted and identified below. Pursuant to the Guidelines, the Applicant's contribution to the Tysons Grid Fund shall be made on a building by building basis in accordance with the Guidelines. In the event the Board expands the list of Tysons-Wide projects as reflected on Table 7 of the Comprehensive Plan to include the Route 123 Super Street Concept referenced herein, then the Applicant reserves the right to seek credit for all or a portion of those funds contributed to the improvement of Route 123 as reflected in Proffer 39.

BICYCLE FACILITIES

43. Bicycle Circulation. In combination with the street and streetscape improvements identified in these Proffers, the Applicant shall provide pavement and striping for on-road bicycle lanes along the Subject Property's frontages with Anderson Road, Colshire Meadow Drive, and Dartford Drive. Such lanes shall typically be four (4) feet where adjacent to curb and gutter and five (5) feet in width where not adjacent to curb and gutter, as shown on Sheet C-11 with the final dimension determined at the time of FDP approval and may be further refined at site plan. Bicycle lane striping shall be subject to approval by VDOT.

44. Bicycle Parking. The Applicant shall provide bicycle racks and bike storage areas throughout the Subject Property, the specific locations of which shall be approved by FCDOT at the time of FDP approval and further refined with site plan approval. The bike racks shall be inverted U-style racks or other design approved by FCDOT. The total number of bike parking/storage spaces shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking for each building or group of buildings as determined at FDP and as may be further refined at site plan.

PARKING

45. Zoning Ordinance Requirements. Parking on the Subject Property shall be provided in accordance with the parking requirements for the PTC District set forth in Sect. 6-509 and Article 11 of the Zoning Ordinance, and as shown on the CDP. The exact number of spaces to be provided shall be refined with approval of the FDPs and determined at the time of site plan approval based on the specific uses, number of residential units and bedroom mix. If changes in the mix of uses or residential bedroom mix result in parking greater than that anticipated on the CDP, the additional parking spaces shall be accommodated within the proposed parking structures, without increasing the height or mass of the parking structures. Tandem spaces shall be utilized only for residential units with two cars where spaces are assigned by building management.
46. Future Parking Revisions. The Applicant reserves the right to provide parking at revised rates (rates referring to the number of parking spaces provided per dwelling unit for residential uses or per square foot of GFA for retail uses) as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates shall not require a CDPA or PCA, provided there is no increase in the mass or height of above-grade parking structures.
47. Parking Stipulations.
 - A. The Applicant shall provide controlled access to the parking garage and shall ensure that the control equipment is capable of counting vehicles entering and exiting the garage.
 - B. The sale or lease rates of parking spaces shall be “unbundled” from the purchase price or lease rate of the individual dwelling units; meaning a unit’s purchase price or lease rate shall be exclusive of parking costs.

TRANSPORTATION DEMAND MANAGEMENT

48. Tysons Transportation Management Association. The Applicant shall make a contribution to the Tysons Partnership towards the establishment of a future transportation management association (the “TMA”), which may be established for the Tysons Corner Urban Center and to which all other Tysons property owners will also contribute.
 - A. The Applicant shall make a one-time contribution to the Tysons Partnership Transportation Council for the establishment of this future TMA based on a participation rate of \$0.05 per gross square foot of new residential uses to be constructed on the Subject Property.
 - B. Twenty-five percent (25%) of the total contribution to the TMA shall be paid upon site plan approval of the first new building to be constructed on the Subject Property. The remaining seventy-five percent (75%) of the total contribution shall be paid in three (3) equal installments prior to the issuance of the first RUP

or Non-RUP for the next three (3) new buildings, but in any event no later than ten (10) years from the date of approval of these rezoning applications.

- C. If subsequent to the approval of this Rezoning, a Tysons Corner Urban Center-wide TMA is approved by FCDOT and established for the purpose of administering TDM programs in the Tysons Corner Urban Center, then the Applicant may, in its sole discretion, join or otherwise become associated with such entity and transfer some or all marketing and/or monitoring functions of this TDM Program to the new entity, whereupon this Proffer in whole or in part shall be void and of no further force or effect. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this Proffer may be rendered null and void in whole or in part without the need for a PCA.
 - D. If the TMA has not been established within three (3) years after the approval of this Rezoning, this Proffer shall be null and void with no further effect on the Subject Property. Further, any funds contributed to the Tysons Partnership Transportation Council would then be returned to the Applicant that paid such funds.
49. TDM Administrative Group. The Applicant shall establish a TDM Administrative Group (the "AG") to fund, implement and administer the transportation demand management program (the "TDM Program") for the Property as described more fully below. The AG shall include, at a minimum, one representative for each group of residential buildings under the same management company. Prior to issuance of the first building permit for new development on the Property, evidence shall be provided to FCDOT that the AG has been established.
50. Transportation Demand Management. The proffered elements of the TDM Program as set forth below are more fully described in the Commons Transportation Demand Management Plan prepared by Wells + Associates, Inc. dated October 11, 2012 (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Subject Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
- A. Definitions. For purposes of this Proffer, "Stabilization" shall be deemed to occur one-year following issuance of the last RUP for the final new building to be constructed on the Subject Property. "Pre-stabilization" shall be deemed to occur any time prior to Stabilization.
 - B. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents of the Subject Property during weekday

peak hours associated with the adjacent streets as more fully described in the TDM Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of residential vehicle trips that would be expected to be generated by the uses developed on the Subject Property as determined by the application of the Institute of Transportation Engineers' Trip Generation (8th Edition) rates and/or equations ("ITE Trip Generation"). The number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction." For purposes of this calculation, the maximum number of dwelling units proposed to be constructed in each building on the Subject Property as determined at the time of site plan approval for each building shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

Development Levels	Percentage Vehicle Trip Reduction
Up to 65 million SF of GFA	30%
65 million SF of GFA	35%
84 million SF of GFA	40%
90 million SF of GFA	43%
96 million SF of GFA	45%
105 million SF of GFA	48%
113 million SF of GFA	50%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the AG shall, in conjunction with the County develop a summary of the then existing (i.e., based on RUPs issued) development levels in Tysons Corner in order to determine the appropriate vehicle trip reduction goal.

If, through an amendment to the Comprehensive Plan, the Board of Supervisors should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.

- C. TDM Program Components – Property-wide. The TDM Program shall include, but not necessarily be limited to, the property-wide components described in the TDM Plan, including, but not limited to:
- (i) The installation of bicycle racks outside for visitors and
 - (ii) The installation of indoor bicycle storage for employees and residents.

- D. TDM Program Components – Residential. The TDM Program shall include, but not necessarily be limited to the residential components described in the TDM Plan, including but not limited to:
- (i) A minimum of one business center with flexibly-designed work/meeting space for small groups that may include computers, access to internet/wi-fi, printer(s), copier(s) and fax machine(s) will be located within one of the residential buildings in the development.
- E. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.
- (i) TDM Program Manager. If not previously appointed, the AG shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for The Commons. If not previously appointed, the TPM shall be appointed by the AG no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Property. The TPM duties may be part of other duties assigned to the appointee. The AG shall notify FCDOT and the District Supervisor in writing within 10 days of the appointment of the TPM. Thereafter the AG shall do the same within ten (10) days of any change in such appointment.
 - (ii) TDM Annual Report and Budget. If not already effectuated for the then-current calendar year, the TPM shall prepare and submit to FCDOT an initial TDM Work Plan (“TDMWP”) and Annual Budget no later than 180 days after issuance of the first building permit for the first new building on the Property. Each subsequent year the TPM shall prepare an Annual Report for the then-current calendar year, the TPM shall revise the Annual Report with the following year's submission to incorporate the new construction on the Subject Property. The Annual Report shall include, at a minimum:
 - a. Details as to the start-up components of the TDMWP that will be put into action effective with the first new building on the Subject Property;
 - b. The budget needed to implement the TDMWP (the “TDM Budget”) for the coming calendar year;
 - c. A summary of the existing development levels in the Tysons Corner Urban Center;
 - d. A determination of the applicable Maximum Trips After Reduction for the Subject Property;

- e. Provision of the specific details associated with the monitoring and reporting requirements consistent with the TDM plan; and
- f. Submission of an annual report to FCDOT by February 1st of each year beginning with the first calendar year following the submission of the first TDMWP and Budget.

The Annual Report shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report shall be deemed approved and the TDM program shall be implemented. If FCDOT responds with comments on the Annual Report, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter but in any event, no later than thirty (30) days after the meeting, the TPM shall submit such revisions to the Annual Report as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the approved TDM Budget. Thereafter the TPM, in conjunction with each Annual Report summarizing the results of the TDM Program to be submitted no later than February 1st, shall update the TDM program and TDM Budget for each succeeding calendar year, modify or enhance program elements and establish a budget to cover the costs of implementation of the TDM program for such year. The expected annual amounts of the TDM Budget are further described in Section 7.0 of the TDM Plan.

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

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in a year's TDMWP. In no event shall the TDM Budget exceed \$128,250 (this amount shall be adjusted annually from the date of rezoning approval for the Property (the "Base Year") and shall be adjusted on each anniversary thereafter of the Base Year as permitted by VA. Code ann. Section 15.2-2303.3. The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its

establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

- (iv) TDM Remedy Fund. At the same time the TPM creates and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the “TDM Remedy Fund”) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time, on a building by building basis, at the rate of \$0.30 per gross square foot of new residential uses on the Subject Property. Funding shall be provided by the building owners prior to the issuance of the first RUP for each applicable new building. This amount shall be adjusted annually from the date of rezoning approval of the Subject Property (the “Base Year”) and shall be adjusted on each anniversary thereafter of the Base Year as permitted by VA. Code Ann. Section 15.2-2303.3. Funds from the TDM Remedy Fund shall be drawn upon only for purposes on immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.
- (v) TDM Incentive Fund. The “TDM Incentive Fund” is an account into which the building owners, through the TPM, shall deposit contributions to fund a multi-modal incentive program for initial purchasers/lessees within The Commons. Such contributions shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new residential uses to be constructed on the Subject Property and provided prior to the issuance of the first RUP for each individual new building.
- (vi) TDM Penalty Fund. The “TDM Penalty Fund” is an account into which the AG shall, through the TPM, deposit penalty payments as may be required to be paid pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management associated with the Subject Property. To secure the AG’s obligations to make payments into the TDM Penalty Fund, the AG shall provide the County with a letter of credit or a cash escrow as further described below.

Prior to the issuance of the first RUP for each new building on the Property, the AG shall:

- a. Establish the TDM Penalty Fund, if not previously established by the TPM, and/or
- b. Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the AG’s obligations to make payments into the

TDM Penalty Fund (the “Letter(s) of Credit or Cash Escrow(s)”). The Letter(s) of Credit or Cash Escrow(s) shall be issued in an amount equal to \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new building on the Subject Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figure in the preceding sentence shall escalate annually from the first day of the calendar month following the date on which the first RUP for the first new building on the Subject Property has been issued as permitted by VA. Code Ann. Section 15.2-2303.3 using the date of rezoning approval as the base year. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the AG (or the TPM) into the TDM Penalty Fund as provided below.

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

F. Remedies and Penalties.

- (i) Pre-Stabilization. If the Maximum Trips After Reduction for the Subject Property is exceeded as evidenced by the Vehicular Traffic Counts outlined above, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and annual TDMWP.

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

Maximum Trips Exceeded	Expenditure
Up to 1%	No Remedy needed
1.1% to 3%	1% of Remedy fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

- b. If the results of the traffic counts conducted during Pre-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table below, then a portion of the Remedy Fund as outlined in the same table below shall be released back to the building owners through the TPM. The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time Vehicular Traffic Counts are conducted. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

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

65,000,000 – 84,000,000 SF of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
Meet Goal	50%
5% - 10%	65%
10.1% - 13%	80%
13.1% - 15%	90%
Reach Final Goal	100%

84,000,000 – 90,000,000 SF of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
Meet Goal	65%
5% - 8%	80%
8.1% - 10%	90%
Reach Final Goal	100%

90,000,000 – 96,000,000 SF of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
Meet Goal	80%
5% - 8%	90%
Reach Final Goal	100%

96,000,000 – 113,000,000 SF of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
Meet Goal	90%
5%	100%

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

- c. There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TPM for final distribution to the AG once three consecutive annual Traffic Counts conducted upon Stabilization show that the trip reduction goals have been met.
- (ii) Upon Stabilization.
 - a. If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Subject Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the

TDM Plan and annual TDMWP and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.

- b. If the results of the traffic counts conducted upon-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds shall be released back to the AG through the TPM.
- c. If, despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction based on the existing development levels for the Tysons Corner Urban Center, as described in Proffer 50B, are still exceeded after three consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

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

- d. The AG, through the TPM, shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the AG fails to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).
- e. The maximum amount of penalties associated with the Subject Property, and the maximum amount the AG shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of the above Proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) shall be released to the AG once three consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.

- G. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Vehicular Trip Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Trip Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- H. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the TPM may request that FCDOT review the vehicle trip reduction goals established for the Subject Property and set a revised lower goal for the Subject Property consistent with the results of such Person Surveys and Vehicular Traffic Counts provided for by this Proffer. In the event a revised lower goal is established for the Subject Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- I. Continuing Implementation. The AG through the TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The AG through the TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- J. Notice to Owners. All owners of the Subject Property shall be advised of the TDM Program set forth in this Proffer. The then current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.
- K. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicant shall be subject to a penalty of \$100 per day not to exceed \$36,500 for any one incident. Such penalty shall be payable to Fairfax County to be used for transit, transportation, or congestion management improvements within the vicinity of the Subject Property.
- L. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicant shall incorporate and maintain a system that provides pertinent traffic and transit information that allows users to make informed travel decisions. This information shall be provided at initial occupancy of each building. The delivery of this information shall be made convenient for building occupants and visitors, such as via computer, cell phone, monitors, or similar

technology. Such devices shall provide, but not be limited to, information on the following, if available:

- (i) Traffic conditions, road hazards, construction work zones, and road detours.
- (ii) Arrival times and delays on Metrorail, Tysons Circulator, and area bus routes.
- (iii) Real time parking conditions and guidance to current on-site parking vacancies, if available.
- (iv) Bus stops pre-wired for real-time arrival/departures information, if available.

The Applicant shall work with FCDOT and/or the Tysons Partnership to identify sources and facilitate electronic transmittal of data. Furthermore, the Applicant shall participate in efforts to implement any future dynamic traffic management program for the Tysons area.

AFFORDABLE/WORKFORCE HOUSING

- 51. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Zoning Ordinance, Affordable Dwelling Units (“ADUs”) shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.
- 52. 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 rental housing units on the Subject Property in accordance with the Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units (“WDUs”) shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development. The 20% applies to the total number of dwelling units to be constructed on the Subject Property. If ADUs are provided in the development, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

The WDUs generated by each residential building on the Subject Property shall be provided within said building, however the Applicant reserves the right to consolidate the WDUs into one or more buildings with the build-out of the Subject Property and thereby increase the number of WDU units in one or more buildings beyond twenty percent (20%) with a corresponding decrease in the number of WDU units in the other buildings. However, if Tower B of Building 5 is constructed with a height in excess of 175 feet, at least 20% of that tower's units shall be WDUs. The WDUs in each building shall have a bedroom mix similar to that provided in the market rate units in such building. Additionally, in the event that parking spaces are guaranteed to be made available for

lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU in the development.

The first 331 WDUs to be constructed on the Subject Property shall be affordable to various income level tiers in accordance with the following distribution:

Income Tier	WDUs Provided	% of Total
101-120% of AMI	24	7.3%
81-100% of AMI	54	16.3%
71-80% of AMI	157	47.4%
61-70% of AMI	94	28.4%
< 60% of AMI	2	.6%
Total	331	100%

Subsequently constructed WDUs, up to a total of 140 units, shall be affordable to various income level tiers in accordance with the Comprehensive Plan recommendations and as set forth below:

Income Tier	WDUs Provided	% of Total
101-120% of AMI	35	25%
81-100% of AMI	35	25%
71-80% of AMI	35	25%
61-70% of AMI	21	15%
< 60% of AMI	14	10%
Total	140	100%

Furthermore, should the Board of Supervisors' policies related to Workforce Dwelling Units in Tysons Corner be amended, the Applicant reserves the right, at its sole discretion, to opt in to the new policies, in part or in whole, without the need for a PCA and, if the Applicant so opts into any such new policies, the provisions of this Proffer which relate to the new policies of the Board of Supervisors which Applicant has elected to opt into shall no longer be effective. The Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the

terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

All tenants occupying existing units on the Subject Property shall be notified, in writing, at least 120 days prior to the commencement of any redevelopment activities. Such notice shall include a summary of the redevelopment plans and the anticipated potential impact on living conditions at the Subject Property. At such time as a specific phase of development will require demolition of existing units, those residents that occupy a unit that will be demolished will have an option, to the extent possible and as further described below, to transfer to a comparable, existing unit on the Subject Property or the portion of the existing Commons of McLean apartments that are not subject to this Application, or to a newly-constructed unit on the Subject Property. Furthermore, all future leases for existing units at the Subject Property shall include a clause notifying the prospective tenant that the Subject Property will be redeveloped if such redevelopment is to occur within the twelve (12) month period following commencement of the lease term.

The Applicant shall use all reasonable efforts to identify those residents who have school-aged children, are elderly, handicapped or are low-income, and ensure that these and other tenants who are displaced by redevelopment activities, and who wish to remain on the Subject Property, shall either be offered another comparable unit on the Subject Property or are provided with referrals to similar available units in close proximity to the Subject Property.

53. Non-Residential Affordable Housing Contribution. For all retail/service uses proposed above the ground floor of the proposed residential buildings, the Applicant shall select, within its sole discretion, one of the following two options for contributing toward the provision of affordable and/or workforce housing within Tysons Corner. These contributions shall be made to the Board, be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable at the time of issuance of the initial Non-RUPs for such retail/service uses. The options shall consist of either (i) a one-time contribution of \$3.00 for each square foot of GFA of such retail/service use above the ground floor, or (ii) an annual contribution of \$0.25 for each square foot of GFA of such retail/service use above the ground floor continuing for a total of sixteen (16) years. Should the Board adopt new policies for the reallocation or reduction of non-residential affordable housing contributions in Tysons Corner, the Applicant may, within its discretion, elect to comply with these policies in lieu of the contributions described herein without the necessity of a CDPA or PCA.

PARK AND RECREATIONAL FACILITIES

54. Publicly Accessible Parks and Recreational Facilities. Provision of publicly-accessible park and open space areas shall be in substantial conformance with the concepts, locations and minimum acreages depicted on the CDP and as further defined in these Proffers and may be adjusted at the time of FDP and site plan approval to allow for final engineering and design considerations. A wayfinding and signage system shall be developed in coordination with FCPA and the Tysons Partnership at the time of CSP, FDP and site plan approval and installed by the Applicant to ensure the public can easily identify and access all publicly accessible park spaces. The following parks and facilities shall be provided as generally shown on the CDP, with more specific details to be 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.

Prior to commencing construction of either Goodman Field or Anderson Park, as described below, the Applicant shall offer to meet with FCPA to ensure that the proposed design of these facilities meet or exceed all applicable FCPA standards for comparable County facilities (*e.g.*, athletic fields, sport courts).

- A. Goodman Field. The Applicant shall construct a Recreation-Focused park of approximately 3.41 acres bounded by Anderson Road, Colshire Drive, East Lane and South Street. The park shall be provided as generally shown on Sheet L-08 of the CDP and shall include the following facilities:
- (i) One full-size, full-service rectangular athletic field with a synthetic all-weather turf and field lights consistent with FCPA specifications. The field dimensions shall be 195 feet by 360 feet with an additional 15 foot overrun area on all sides.
 - (ii) Seatwall overlook adjacent to Colshire Drive.
 - (iii) Entry plaza at the corner of East Lane and South Street.

The Applicant shall dedicate Goodman Field in fee-simple to the FCPA for park purposes following completion of the improvements listed above. Such dedication shall be without any cost to the County or obligation to join any applicable owner's association. Improvements shall be complete prior to the issuance of the 100th RUP for the fifth building constructed on the Subject Property, or December 31, 2035, whichever occurs first, and dedication shall occur prior to the issuance of the 187th RUP for that same building. The Applicant reserves the right to reserve easements over the area to be dedicated that may be reasonably necessary to support the development of the remainder of the Subject Property. Such easements shall not unreasonably interfere with the use of the area to be dedicated as a public park.

The Applicant shall enter into an agreement with, FCPA, in a form acceptable to the County Attorney setting forth the details of the dedication, facility construction and perpetual maintenance responsibilities of the park. FCPA shall

be responsible for maintenance and future replacement of the athletic field and standard FCPA field lights and the Applicant shall be responsible for maintenance of the land outside the athletic field including the seatwall overlook, entry plaza and any non-standard field lights. The Applicant shall also provide and maintain public restrooms for users of the park within either Building 4, 5 or 7, the choice of which shall be at the Applicant's sole discretion. If provided in Buildings 4 or 5, the restrooms shall be accessed directly either from South Street or Center Alley. Any access on Center Alley shall include appropriate directional signage and be provided no further than one hundred (100) feet from South Street. If provided in Building 7, access shall be provided directly from East Lane.

B. Anderson Park. The Applicant shall construct an urban Common Green park of approximately 4.35 acres on the portion of the Subject Property located east of Anderson Road. The park shall include a mixture of hardscaping, landscaping and the following facilities:

- (i) A surface parking lot with approximately 36 spaces (existing lot to remain);
- (ii) Two asphalt basketball courts;
- (iii) Two sand volleyball courts;
- (iv) One play area for ages 5-12;
- (v) One play/exercise area with specialized apparatus for teenagers;
- (vi) Two fenced-in off-leash areas, one for small dogs and one for larger dogs;
- (vii) Open lawns, sidewalks, seating and other passive amenities; and
- (viii) A water feature or other focal point.

The Applicant shall dedicate Anderson Park in fee simple to the FCPA for park purposes following completion of the improvements listed above. Such dedication shall be without any cost to the County or obligation to join any applicable owner's association. Construction of Anderson Park shall be substantially complete prior to the issuance of the 100th RUP for the third building constructed on the Subject Property and dedication shall occur prior to bond release for that same building. However, in the event that the second building to be constructed on the Subject Property is Building 3, then the Applicant shall construct half of Anderson Park along with that building, as shown on the Phasing Plan. In that case, Anderson Park shall be completed prior to the issuance of the 100th RUP for the third building to be constructed on the Subject Property. The Applicant reserves the right to reserve easements over the area to be dedicated that may be reasonably necessary to support the development of the remainder of the Subject Property. Such easements shall not unreasonably interfere with the use of the area to be dedicated as a public park.

The Applicant shall enter into an agreement with FCPA in a form acceptable to the County Attorney setting forth the details of the dedication, facility construction and perpetual maintenance responsibilities of the park. The Applicant shall be responsible for routine maintenance of the park grounds and facilities and the FCPA shall be responsible for future capital costs of replacing the parking lot, tennis courts, sand volleyball courts and playground equipment.

- C. Public Plazas. The Applicant shall construct a public plaza of approximately 7,950 square feet at the corner of Colshire Meadow Drive and Dartford Drive adjacent to Building 2 (the "Building 2 Plaza") and a public plaza of approximately 24,250 square feet fronting on East Lane adjacent to Building 6 (the "Building 6 Plaza"), as generally shown on Sheet L-10 of the CDP. Both plaza areas shall include hardscaping, landscaping and public seating, and Building 6 Plaza shall include a terraced water feature or similar focal feature.

The Building 2 Plaza shall be constructed prior to bond release for Building 2. The Building 6 Plaza shall be constructed prior to bond release for Buildings 6 or 7, whichever is the later building to be constructed.

- D. Main Street Promenade. The Applicant shall construct public park space of approximately 24,950 square feet within the median of Main Street as shown on Sheets L-04, L-05 and L-18 of the CDP. Facilities shall include landscaping, historic references as noted in Proffer 12, pedestrian paths and seating. Construction shall occur in phases as shown on the Phasing Plan and may include interim park conditions as determined with approval of the FDP.
- E. Public Access. For the park areas described in Paragraphs C and D above, the Applicant shall retain the area(s) in fee simple, record public access easement(s) ensuring that the park space is open to the public for periods of times consistent with traditional Fairfax County parks subject to usual and customary rules and regulations, and provide for perpetual private maintenance.

55. Private Amenities and Recreation Facilities for Residents. The Applicant shall provide on-site recreational facilities for the future residents of the Subject Property as generally shown on the CDP. Pursuant to Par. 2 of Sect. 6-110 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,700 per market-rate and workforce residential unit on such recreation facilities. Prior to final bond release for each residential building, the balance of any funds not expended on-site, as determined by DPWES shall be contributed to the FCPA for the provision of recreation facilities serving Tysons Corner.

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

- A. Private courtyard terraces on the upper level of the parking podiums with seating areas, specialty landscaping, lawn and/or shaded areas and hardscape areas.
- B. Private exterior recreational area on the roof or podium level with facilities such as a swimming pool, lounge deck, and shade structure;
- C. Interior fitness center furnished with exercise equipment such as stationary bikes, treadmills, weight machines, free weights, etc., but not necessarily staffing; and
- D. Clubroom for resident gatherings and/or media/entertainment center.

PUBLIC FACILITIES

56. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$9,378 per net new expected student (based on a ratio of 0.087 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements to schools that serve the Tysons Corner area. Such contribution shall be made on or before the issuance of the first RUP for each residential building on the Subject Property and shall be based on the actual number of dwelling units built in each building.

If, prior to site plan approval for the respective residential buildings, Fairfax County should modify, on a county-wide basis, the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution shall be modified for that building to reflect the then current ratio and/or contribution.

ENVIRONMENT

57. Stormwater Management. The Applicant shall provide the following with regard to stormwater management:
- A. Stormwater Management Measures. Stormwater Management (SWM) measures for the Subject Property shall be designed to protect receiving waters downstream of Tysons Corner by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, strive to retain on-site and/or reuse the first 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 and other innovative BMPs.
 - B. LID Techniques. Site plans shall make use of certain LID techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicant shall provide green roofs both intensive and/or extensive. Other LID techniques may include, but not be limited to, tree box filters, pervious hardscapes/streetscapes, and stormwater reuse for landscape irrigation and air conditioning unit makeup water.

- C. LEED Requirements. Additionally, the SWM facilities shall be designed to accommodate not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes as contemplated within current LEED requirements, depending on the existing impervious condition. The above noted SWM Facilities shall be designed to (where applicable) meet the requirements of LEED 6.1 and 6.2 for each building/phase of the development based upon the LEED Boundary identified with each building/phase.
- D. Calculations at FDP.
- (i) At the time of each FDP, the Applicant shall provide calculations for that phase showing the proposed volume reductions and shall work cooperatively with DPWES and DPZ to ensure that the first inch of rainfall is retained or reused to the maximum extent practicable. This requirement may be met on an individual building basis or based upon the total area of the Subject Property. Extended detention facilities and extended release techniques may be used to augment the proposed volume reductions. Interim or temporary SWM and BMP measures may be required during any interim phase of the Proposed Development.
 - (ii) Supporting information shall be included, as part of each FDP submission, that is of sufficient detail, subject to DPWES's determination in coordination with the Environment and Development Review Branch of DPZ, to demonstrate the viability of the proposed stormwater management strategy for the area subject to the FDP. This information shall include the following:
 - a. For any BMP involving infiltration of water into the ground, soil testing information documenting that the soil will be able to support the proposed infiltration measure(s).
 - b. For any measure involving storage and reuse of stormwater runoff, documentation supporting assumed levels of water usage.
 - (iii) Each FDP shall include the location and preliminary design of the SWM facilities including the access points to underground vaults. Access points, detailed at the time of FDP, shall be located outside of the landscape amenity panel and sidewalk zone of the streetscape.
- E. Calculations at Site Plan. With each subsequent site plan, the Applicant shall provide refined calculations illustrating conformance with the proposed volume reductions shown on the FDP. The specific SWM facilities shall be determined at the time of site plan, and as may be approved by DPWES. While it is anticipated that compliance with the goal of retaining and/or reusing the first inch of rainfall will be confirmed at site plan by utilizing the proposed retention credits identified by Fairfax County as part of their stormwater spreadsheet, the Applicant reserves

the right to utilize any combination of LIDs (existing and future) measures to meet this goal, subject to the review and approval of DPWES. Similarly, if all other County suggested stormwater alternatives have been assessed and jointly determined by the Applicant and DPWES to be not practicable, the Applicant reserves the right to over detain the runoff from a one-inch rainfall to a release rate that mimics that of a "good" forested condition.

- F. Excess Volume Discharge. While it is the Applicant's intent to reuse the water, seasonal variations in reuse water demand will create fluctuations in the draw down period, and as such, the stormwater system will be designed (to the extent practicable) to not exceed 10 days of storage prior to reuse. However, if storage time exceeds 10 days, the Applicant shall have the right to discharge excess volumes off site at release rates allowed by the PFM or approved by the Director of DPWES that will mimic release rates from a good forested condition for a significant majority of rainfall events and/or excess volume should be directed to other facilities using a "treatment train" approach, if possible, as approved by the Director of DPWES.
- G. Main Street Median. The SWM Facilities within the Main Street median between Anderson Road and Center Alley, as generally shown on Sheet C-13, shall be constructed prior to the issuance of the first RUP for Building 1. Such facilities shall include a bioretention area and LEED reuse vault, unless modified at FDP or site plan. Modifications to the proposed design and layout of the SWM facilities may be made at FDP and/or site plan in consultation with DPZ, OCR and DPWES.
58. Noise Study. Prior to FDP approval for Building 1, and for each subsequent building, the Applicant shall provide a noise study to determine if the specific building will be affected by transportation generated noise. If the specific noise study concludes that the specific building will be affected by noise levels that require mitigation, then at site plan submission, the Applicant will submit a refined acoustical analysis. The refined acoustical analysis will incorporate findings from a building shell analysis based on the building plans to determine what, if any, noise attenuation measures may be needed. Such study shall be submitted to the Environment and Development Review Branch of DPZ and DPWES for review. Based on the findings of that report, the Applicant shall show any noise impacted units on the site plan and shall provide the following noise attenuation measures, unless otherwise modified by the findings of the building shell analysis.
- A. In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units anticipated by the study to be impacted by traffic noise through windows and walls having levels projected to be greater than 70 dBA Ldn shall employ the following acoustical measures:
- Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels

above 70 dBA Ldn. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 45 as dictated by the percent of glass. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

- B. In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units anticipated by the study to be impacted by highway noise having levels projected to be between 65 and 70 dBA Ldn, shall be constructed with the following acoustical measures:

Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of 65 to 70 dBA Ldn. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 39 as dictated by the percent of glass. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

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

PHASING

60. Development Phasing. For purposes of these Proffers “construct” shall mean that: 1) a committed road improvement is open to use by the public for travel whether or not the improvement has been accepted for maintenance by the state, and 2) a committed publicly accessible park space improvement is substantially complete and open to use by the public for use whether or not the improvement has been accepted by the County or FCPA. Development of the Subject Property shall be phased with the provision of streets, pathways to Metro, park and open space areas, and public facilities as shown on the Phasing Plan, as further outlined in these Proffers and as follows:

- A. Street construction shall occur as specified as stipulated elsewhere in these Proffers.
- B. Sidewalks and streetscape improvements along the frontages of each building shall be provided commensurate with the construction of each building.
- C. Private residential courtyard and roof-top amenities for each building as determined at the time of FDP approval shall be provided commensurate with the construction of each building.

- D. Service alleys providing access to parking and loading areas as determined at the time of FDP shall be constructed commensurate with the construction of each building.
 - E. Interim improvements as outlined in Proffer 23 and as may be determined at time of FDP approval shall be provided commensurate with the construction of each building.
61. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required transportation, publicly accessible park areas, 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 timeframes specified, the Zoning Administrator may agree to a later date for completion of these improvement(s).

MISCELLANEOUS

62. Condemnation. To the extent off-site right-of-way and/or easements are required to construct any of the public infrastructure or public improvements described in these proffers, and the Applicant has not been able to acquire such right-of-way or easements after documented, reasonable efforts to do so as described below, the obligation of the Applicant to construct such public infrastructure or public improvements for which right-of-way and/or easements are not available shall be contingent upon the Board acquiring such right-of-way and/or easements at the Applicant's expense (meaning that the Applicant shall timely pay, without limitation, the condemnation award, all appraisal and other expert fees, court costs and attorneys' fees associated with such acquisition) through its powers of eminent domain after being requested to do so by such Applicant, in writing. The Applicant's written request will include: (i) plans and profiles showing the necessary right-of way and/or easements to be acquired, including a description of the proposed public infrastructure and/or public improvements to be constructed and the public purpose to be served by such infrastructure and improvements; (ii) an independent third party appraisal of the value of the right-of-way and/or easements to be acquired and of all damages and benefits to the residue of the affected property; and (iii) copies of all correspondence between the Applicant and property owner of the right-of-way and/or easements to be acquired, including a good faith offer in writing by the Applicant to acquire from such property owner the right-of-way and/or easements for the appraised value. Said good faith offer shall consist of two (2) written offers sent to the property owner by certified mail a minimum of thirty (30) days apart and receipt of refusal in writing, or no response thirty (30) days after the mailing of the second request. In the event the County elects not to use its power of condemnation to acquire those off-site rights-of-way and/or easements necessary for construction of any of the public infrastructure or public improvements described in these proffers, then that Applicant shall escrow the costs of such infrastructure or public improvements with the County for future implementation of such infrastructure or public improvements by FCDOT, VDOT and/or others. The Applicant shall not be prevented from obtaining any land use

approval (including, without limitation, PCA, CDPA, FDP, FDPA, site plan, subdivision, grading permit, building permit, and Non-RUP and RUP permits) for the Application Property, nor from commencing construction on the Application Property, during the pendency of any eminent domain proceedings initiated pursuant to this proffer, nor any deferral of the County's exercise of eminent domain pursuant to this proffer, provided that all other prerequisites for obtaining such approvals and commencing such construction provided in these proffers have been met.

63. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording any final residential condominium documents for portions of the Subject Property located within the now existing 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 Subject 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 based on the use of that portion of the Subject Property subject to the condominium prior to this Rezoning that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.
64. Adjustment in Contribution Amounts. All monetary contributions, except as may be further specified in these proffers, shall adjust on a yearly basis from the base month of January 2014 and change effective each January 1 thereafter, as permitted by VA. Code Ann. Section 15.2-2303.3.
65. Advanced Density Credit. Advanced density credit is reserved consistent with the provisions of Par. 4 of Sect. 2-308 of the Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
66. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Subject Property may be the subject of a PCA, Special Exception ("SE"), Special Permit ("SP"), or FDPA without joinder and/or consent of the owners of the other portions of the Subject Property, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Subject Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.
67. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and their successors and assigns. Each reference to "Applicant" in these Proffers shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or the owners from time to time of any portion of the Subject Property during the period of their ownership. Once portions of the Subject Property are sold or otherwise transferred, the associated proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferor.

68. Tyson's Partnership. The Applicant shall become a member of the Tysons Partnership or its residential equivalent.
69. Construction Access and Hours. The parking of construction vehicles shall occur on the Property, including personal vehicles utilized by construction workers. No parking shall occur on adjacent roadways. Truck staging shall be permitted on adjacent roadways provided it does not occur in adjacent neighborhoods. The hours of exterior construction shall be posted, in English and in Spanish, on the perimeter of the site and shall be limited to the hours between 7:00 a.m. and 9:00 p.m. Monday through Friday and 8:00 a.m. to 9:00 p.m. on Saturdays. No exterior construction will occur on Sundays or the following federal holidays: Christmas Day, Thanksgiving Day, New Year's Day, Memorial Day, Fourth of July, and Labor Day. The Applicant shall provide the Providence District Supervisor with a point of contact for construction related issues and post such contact information, in English and in Spanish, on the perimeter of the site. The Applicant shall provide an initial response to construction related issues within 48-hours of receiving notice.
70. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON NEXT PAGE]

APPLICANT/TITLE OWNER OF TAX MAP
30-3 ((28)) B4, 5, 6, 8

COMMONS OF MCLEAN L/CAL LLC, a Delaware
limited liability company

By: LCOR RESIDENTIAL II LLC, a Delaware limited
liability company, its sole member

By: LCOR/CAL ASSOCIATES LLC, a
Delaware limited liability company, its sole
member



By: R. William Hard
Its: Executive Vice President

[SIGNATURE ENDS]