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June 25, 2012

VIA COURIER

William Mayland
Senior Staff Coordinator
Fairfax County Department of Planning and Zoning
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

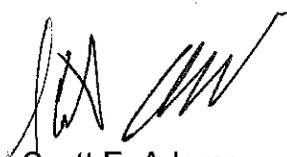
RE: **Insight Property Group/ City View (RZ/FDP 2011-LE-016)**
Signed Proffers

Dear Bill,

Enclosed please find a proffer set for the above referenced matter dated June 20, 2012. The proffer set includes original signatures from George W. Spicer and Agnes G. Spicer (the Property Owners) and Richard W. Hausler on behalf of Insight Property Group (the Applicant/Contract Purchaser).

Please let me know if you require any additional information.

Sincerely,



Scott E. Adams

Enclosure

Cc: Richard W. Hausler, Insight Property Group (via email)
Gregory A. Riegler, McGuireWoods LLP (via email)
Sarah E. Hall, Blankingship and Keith, PC (via email)

40176922.1

**PROFFERS
CITY VIEW
RZ/FDP 2011-LE-016**

March 2, 2012
March 19, 2012
April 20, 2012
May 4, 2012
May 11, 2012
May 16, 2012
May 22, 2012
June 12, 2012
June 20, 2012

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/applicant, for itself and its 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 tax maps as Tax Map 83-3-((11))-2, 3, 4, 5, & 6 and 83-3-((04))-A (collectively, the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application RZ/FDP 2011-LE-016 is granted by the Board of Supervisors of Fairfax County, Virginia. In the event said application request is denied or the Board's approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. Approval of this rezoning application shall supersede and replace the prior approval on a portion of the Property pursuant to RZ 84-L-041 and all proffers, conditions, and development plans associated therewith shall be null and void.

PREAMBLE

1. Conceptual/ Final Development Plan. The Property shall be developed in substantial conformance with the Conceptual Development Plan ("CDP ") and Final Development Plan ("FDP ") entitled "CITY VIEW CDP/FDP" dated March 2011 and revised through May 22, 2012, prepared by Urban, Ltd., consisting of Sheets 1 through 24.
2. Elements of CDP. Notwithstanding the fact that the CDP and FDP are presented on the same plan, the elements that are components of the CDP are limited to the perimeter points of access, the location of the buildings and amount and location of open space, uses, minimum and maximum number of dwelling units, the amount of non -residential uses, building heights, and setbacks from the peripheral lot lines and a modification to such elements shall require a subsequent CDPA or Proffered Condition Amendment. The Applicant reserves the right to request a Final Development Plan Amendment (FDPA) for elements other than Conceptual Development Plan (CDP) elements from the Planning Commission for all or a portion of the FDP in accordance with Section 16-402 of

the Zoning Ordinance if such an amendment is in accordance with these Proffers as determined by the Zoning Administrator.

3. Minor Modifications. Minor modifications to the CDP/FDP may be permitted when necessitated by sound engineering or that may become necessary as part of final site design or engineering, pursuant to Section 16-403(4) of the Zoning Ordinance. Minor modifications of building footprints may be permitted and the number of residential units (as defined herein) and corresponding adjustments made in required parking, Affordable Dwelling Units ("ADUs") and Workforce Dwelling Units ("WDUs") may be made, so long as (a) the provided open space is not reduced; (b) the building height is not increased; (c) the setbacks to the peripheral lot lines are not diminished; and (d) the development otherwise is in substantial conformance with the CDP/FDP as determined by the Zoning Administrator.

GENERAL

4. Proposed Development. Development on the Property shall include a maximum of 256,000 square feet of GFA, including Affordable Dwelling Units (ADUs), Workforce Dwelling Units (WDUs), and bonus GFA associated with the provision of ADUs and WDUs. A maximum of 245 residential units (including ADUs and WDUs) shall be constructed on the Property. Accessory uses and home occupations, including business centers inside the residential buildings are permitted. The Applicant reserves the right to construct service, resident amenity and storage uses in the cellar. The cellar space shall not contain habitable residential units. Telecommunication facilities are also permitted, provided such facilities are flush mounted and otherwise designed to be visually unobtrusive as determined by the Zoning Administrator. Commuter parking for non-residents shall not be permitted.
5. Building Height. The maximum building height shall be no greater than 4 stories or 50 feet. However, the portion of the building closest to Tax Map Number 83-3-((35))-0001 and labeled on Sheet 5 of the CDP/FDP as "PROP. BUILDING 1 MAX. HEIGHT = 40' (3 STORIES)" shall not exceed 3 stories or 40 feet. Building height shall be measured in accordance with the provisions of the Fairfax County Zoning Ordinance and shall be exclusive of those structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Zoning Ordinance.

PARKING

6. Zoning Ordinance Requirements. Parking shall be provided at the minimum parking requirements of Article 11 of the Fairfax County Zoning Ordinance in effect at the time of approval of this rezoning application, but in no case less than 1.6 parking spaces per dwelling unit. If parking is to be assigned to specific dwelling units, not less than one space shall be assigned to each unit, including

ADUs and WDUs. All parking shall conform with the geometric requirements set forth in the Fairfax County Public Facilities Manual (PFM).

ZONING ORDINANCE

7. Bicycle Parking. The Applicant shall install bicycle racks in the locations generally shown on Sheet 10 of the CDP/FDP, or in an alternative location determined in consultation with DPWES and FCDOT, and provide bike parking/storage facilities within the residential structure or parking structure. The racks and storage facilities shall collectively accommodate parking for no less than 40 bikes.

TRANSPORTATION

8. Bus Shelters. The Applicant shall provide two new solar powered bus shelters at the intersection of Poag Street and North King Highway, in the general locations shown on sheet 5 of the CDP/FDP. Final location and design of the bus shelters shall be determined in consultation with the Fairfax County Department of Transportation (FCDOT) and the Virginia Department of Transportation (VDOT) at the time of site plan review. The bus shelter shall be installed prior to issuance of the first Residential Use Permit ("RUP").
9. North Kings Highway Left Turn Lane. Subject to VDOT approval, the Applicant shall provide for the addition of a left turn lane at North Kings Highway and Shields Avenue and adjustment of the island configuration as generally depicted on sheet 23 of the CDP/FDP. The design shown on sheet 23 of the CDP/FDP is conceptual and subject to final engineering. Such improvement shall be substantially completed prior to issuance of the first RUP. For purposes of this proffer, the term "substantially completed" is defined as constructed and available for use by the public but not necessarily accepted for maintenance by VDOT.
10. Traffic Island Improvements. Prior to the issuance of the first RUP, the Applicant shall provide public art and enhanced landscaping on the traffic island as generally shown on sheet 23 of the CDP/FDP. The traffic island improvements shown on sheet 23 of the CDP/FDP may be modified by the Applicant in consultation with the Zoning Administrator without seeking a PCA if a realignment of Shields Avenue and North Kings Highway will change the anticipated use of the traffic island from a passive to an active use. All plantings and improvements within the traffic island are subject to approval by VDOT. The Applicant shall also assume maintenance responsibility for all improvements installed in the traffic island pursuant to this proffer, subject to approval of such maintenance responsibility by VDOT.

The final landscaping plan for the traffic island shall incorporate public art visible to both vehicles and pedestrians. The Applicant shall partner with local artists, including but not limited to the Lorton Arts Foundation Workhouse Arts Center.

The public art may be rotated at the Applicants discretion. The provision of public art shall be subject to approval by VDOT. The initial selection of public art and final location shall be selected by the Applicant in coordination with the Lee District Supervisor.

11. Traffic Signal. Prior to the issuance of the first RUP, the Applicant shall add a new traffic and pedestrian signal at North Kings Highway and Poag Street if it is approved and warranted by VDOT. The Applicant shall perform a warrant study for submission to VDOT. If the signal is not warranted by VDOT, the Applicant shall escrow funds for construction of a future signal by others.
12. Sidewalks and Crosswalks.
 - A. Prior to the issuance of the first RUP, the Applicant shall add two pedestrian crosswalks at North Kings Highway and Poag Street.
 - B. Prior to the issuance of the first RUP, the Applicant will construct a missing portion of the sidewalk along School Street consisting of approximately 700 linear feet generally between Pine Grove Circle and Shaffer Drive. The final location and configuration of the sidewalk shall be determined at site plan approval based on site conditions and the availability of existing right-of-way.
 - C. Subject to VDOT approval, and prior to the first RUP, the Applicant shall provide up to two (2) cross-walks on School Street in locations determined in consultation with VDOT, FCDOT, the community, and the Lee District Supervisor's office and connect the median pedestrian improvements across North Kings Highway.
 - D. Prior to the issuance of the first RUP, the Applicant shall repave the existing trail located between 2810 School Street and 2806 School Street, linking School Street to the rear of Mount Eagle Elementary School.
13. School Street Turn Lane. Subject to VDOT approval, the Applicant shall construct an additional turn lane along School Street and provide the re-striping of School Street in general accordance with sheet 22 of the CDP/FDP. The Applicant shall construct on-street parallel parking on School Street in general accordance with sheet 22 of the CDP/FDP. The Applicant shall diligently pursue approval from VDOT to restrict these spaces for loading/unloading and handicap parking. These are conceptual drawings and subject to final engineering. Such improvement shall be substantially completed prior to issuance of the first RUP. For purposes of this proffer, the term "substantially completed" is defined as constructed and available for use by the public but not necessarily accepted for maintenance by VDOT.
14. North Kings Highway Right Turn Lane. If warranted and/or required by VDOT, the Applicant shall install a right-turn lane from North Kings Highway to Poag Street by restriping the existing pavement. Such restriping shall be subject to approval by DPWES and VDOT. Should the Applicant be unable to obtain the necessary approvals to implement the re-striping, the Applicant reserves the right to construct the alternative turn lane shown on Sheet 24 of the CDP/FDP. Such

improvement shall be substantially completed prior to issuance of the first RUP. For purposes of this proffer, the term "substantially completed" is defined as constructed and available for use by the public but not necessarily accepted for maintenance by VDOT.

15. The Applicant's obligation to construct the improvements in Proffers 8, 9, 10, 11, 12, 13, and 14 (collectively the "Transportation Improvements") shall be contingent on the Applicant receiving any and all rights-of-way, easements and/or written consent necessary for the construction of the Transportation Improvements from any property owner, utility companies, and/or any governmental agencies (collectively, the "Approving Parties"), which approval(s) shall be granted at no cost to the Applicant, except for typical administrative fees and costs associated with preparation, approval and recordation of deeds, plans and plats and any other nominal fees. During site plan review, the Applicant shall diligently pursue and make good faith efforts to secure any such necessary approvals from the Approving Parties. In the event the Applicant is unable to secure necessary approvals from the Approving Parties prior to the time of receiving site plan approval, the Applicant shall provide written documentation of such efforts to DPWES and the Zoning Administrator and escrow funds for the future construction of the Transportation Improvements in an amount determined by DPWES and the Zoning Administrator to be sufficient for future construction by others.

If the Transportation Improvements require dedications by others and the Applicant is unable to obtain the necessary dedication by others, then the Applicant shall request the Board of Supervisors to condemn the necessary land and/or easements. It is acknowledged such request to the Board of Supervisors will not be considered until it is forward in writing to the Division of Land Acquisition or other appropriate County official and is accompanied by: 1) plans, plats and profiles showing the necessary right-of-way and easements to be acquired and details of the proposed Transportation Improvements to be constructed on said area; 2) an independent, 3rd party appraisal of the value of the proposed condemnation, including all damages to the residue of the property; 3) a sixty (60) year title search certificate of the right-of-way to be acquired; and (4) a letter of credit in an amount equal to the appraised value of the property to be acquired and all damages to the residue which can be drawn upon by the County. The public improvement plans shall be submitted to FCDOT concurrent with the Applicant's submission of such plans to DPWES. It is acknowledged that in the event the award for the condemnation is more than the appraised value, the amount of the award in excess of the letter of credit amount shall be paid to the County by the Applicant with forty-five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within sixty (60) days of such demand.

In the event the offsite right-of-way and/or easement described above cannot be acquired voluntarily, and Board of Supervisors elects not to condemn for such right-of-way, then the Applicant shall, prior to issuance of the building permit for the Building triggering the particular improvement, escrow funds with DPWES in an amount equal to the cost of constructing the improvement, including but not limited to the cost of right-of-way acquisition and utility relocation. Such funds shall be for use by the Board of Supervisors and/or VDOT to complete such improvement in the future and the Applicant shall be relieved of its obligation to complete the improvement.

16. Transportation Improvement Timing. The Zoning Administrator may administratively approve a later date for completion of the Transportation Improvements without requiring a PCA upon demonstration by the Applicant that despite diligent efforts and due to factors beyond the Applicant's control, the required Transportation Improvements have been delayed.

Prior to final approval of a public improvement plan for the improvements in Proffers 9 and 10, the Applicant and Zoning Administrator may agree to escrow the cost of the improvements in Proffers 9 and 10 as an alternative to constructing said improvements. The escrow alternative shall only be utilized if the Applicant and the Zoning Administrator agree that a realignment of Shields Avenue and North Kings Highway is reasonably likely to occur within 2 years after construction is completed on the Property. Any escrowed funds under this Proffer shall be utilized for the re-alignment of Shields Avenue and other transportation improvements in the immediate area of the Property.

17. Transportation Contribution. At the time of final site plan approval, the Applicant shall contribute \$94,000 for the re-alignment of Shields Avenue and other transportation improvements in the immediate area of the Property.
18. Traffic Calming Contribution. At the time of final site plan approval, the Applicant shall contribute \$20,000 for the construction and implementation of traffic calming measures on School Street.
19. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management program that shall be implemented by the Applicant, and subsequently, as appropriate, the property owner or Condominium Owners Association (COA), to encourage the use of transit (Metrorail and bus), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the residential uses constructed on the Property.
 - A. Trip Reduction Goals. The objective of the TDM Plan shall be to reduce the number of weekday peak hour vehicle trips generated by the residential uses located within the Property through the use of mass transit, ridesharing and other strategies including but not limited to those outlined in the TDM

Strategic Plan. In addition, the implementation of enhanced pedestrian and bicycle connections/facilities will provide safe and convenient access to nearby Metrorail and bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.

- i. Baseline. The baseline number of weekday peak hour residential vehicle trips for the proposed units within the Property against which the TDM Goals (as defined in subparagraph A.2.) will be measured shall be derived upon the number of residential units site plan approved, constructed and occupied on the Property as part of the proposed development at the time traffic counts are conducted in accordance with subparagraph H.1. or as qualified below and using the trip generation rates/equations applicable to such residential uses as set forth in the Institute of Transportation Engineers, Trip Generation, 7th Edition for Land Use Code = 220. In the event at Build Out, the Applicant has constructed fewer than 245 multifamily residential units as part of the proposed development, then the Baseline Trip generation numbers applicable upon Build Out shall be calculated as if 245 residential units had actually been constructed as reflected in the Traffic Impact Study for the City View prepared by Wells and Associates, Inc. dated March 16, 2010.
- ii. TDM Goal. The TDM strategies shall be utilized to reduce the P.M. peak hour vehicular trips by a minimum of twenty-five percent (25%) for the residential uses.

B. Components of the TDM Plan.

- i. Designation of TDM Program Manager (PM) to develop, implement and monitor the TDM Plan;
- ii. regular and on-going coordination with other Richmond Highway Corridor TDM programs and any Transportation Management Agency that may be established;
- iii. a targeted marketing program for residential sales/leases that encourages and attracts transit-oriented residents, such as bicyclists, one or no-car individuals/families and employees of nearby employers to live in the proposed development; provided, however, that such marketing shall be completed on a non-discriminatory basis in conformance with the Fair Housing Act and all other applicable laws and regulations;
- iv. integration of transportation information and education materials into residential sales/rental kits;

- v. coordination/assistance with vanpool and carpool formation programs, including but not limited to the County's ride matching services, with adjacent office buildings and homeowners associations and established local and/or regional guaranteed ride home programs;
- vi. establishment of a site-specific project website that includes multimodal transportation information, real-time travel and transit data, the possibility of online transit pass sales or value loading and connections to supporting links;
- vii. establishment of a location to be staffed/managed by the PM within the Property at which transit and ridesharing information is made available to residents; the location may be determined by the Applicant and may be part of the leasing/sales or concierge office or within the business center outlined in subparagraph 14 below;
- viii. a parking management plan, which shall include dedicated space for residential vanpools;
- ix. distribution of fare media or other incentives, at least one time, to all new residents of driving age, as well as on select occasions as an incentive;
- x. subject to agreement with third-party vendor(s), use of car sharing program(s) such as Zip Car;
- xi. "personalized transportation advising" integrated into new unit walk-throughs, including appropriate training of sales/leasing agents;
- xii. all residential units shall be pre-wired to provide internet access (or other technology that may be available) to permit residents to access the internet from home;
- xiii. space for and fit out of a business center for use by residents. Such business center shall consist of an aggregate of a minimum of 250 square feet of floor area and shall include areas for internet access, facsimile machine and copier; and
- xiv. participation in the Regional Commuter Program.

C. TDM Plan and Budget. Within ninety (90) days following the issuance of the first building permit for the Property, the PM shall prepare and submit an initial TDM Plan to FCDOT and request in writing, the County's review and comment. The TDM Plan shall include (i) the start-up components of the TDM Plan that will be put in place and (ii) an initial budget sufficient to

implement the TDM Plan for the remainder of the year and for the next calendar year (the "TDM Budget") which amount may be less but in no event shall not be more than \$39,050 (including the TDM Budget Contingency, as defined below) for each full calendar year, adjusted annually for inflation based on the CPI-U as defined in Proffer 41 unless increased at the sole discretion of the Applicant. With the submission of the initial TDM Plan, the Applicant shall provide the County with a copy of the approved proffers and the TDM Strategic Plan. The TDM Budget shall include a contingency equal to ten percent (10%) of the amount of the annual TDM Budget (the "TDM Budget Contingency"). If FCDOT has not responded with any comments to the PM within sixty (60) days of receipt of the initial TDM Plan and TDM Budget, the TDM Plan and TDM Budget shall be deemed approved. The Applicant shall provide written documentation demonstrating the establishment of the TDM Budget to FCDOT no later than thirty (30) days after FCDOT's response to the proposed TDM Budget and Plan or following the sixty (60) day period described above. Thereafter, the PM shall re-establish the TDM Budget for each successive calendar year, which shall cover the costs of implementation of the TDM Plan for such year (including the TDM Budget Contingency) up to \$26,860 as may be adjusted annually for inflation based on the CPI-U or as increased at the Applicant's sole discretion. The PM shall furnish a copy of the TDM Budget and TDM Plan for each year to the FCDOT and request in writing the County's review and comment in conjunction with the submission of the Annual Report as outlined in subparagraph G.2. A line item for the TDM Account shall be included in the Condominium Owners Association (COA) budget, if such is ever established. The association documents that establish and control the COA shall provide that the TDM Account shall not be eliminated as a line item in the COA budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies. The TDM Account shall be funded solely by the Applicant until such time as assessments of residents are implemented as provided in the COA documents.

D. TDM Account.

- i. Initial Funding. Within thirty (30) days after FCDOT's response to the initial TDM Budget and TDM Plan or following the sixty (60) day process described above, the Applicant, through the PM, shall establish and fund the TDM Account in an amount equal to the initial TDM Budget for the TDM Plan and including the TDM Budget Contingency but in any event no more than \$39,050 per full calendar year and as may be adjusted annually for inflation per any changes in the CPI-U or as increased at the Applicant's sole discretion, The PM shall provide written documentation demonstrating the establishment of the TDM Account to FCDOT within ten (10) days of its establishment.

- ii. Annual Funding. The TDM Account shall be replenished annually thereafter based on the forthcoming year's estimated TDM Budget.
 - iii. Management of TDM Account. The TDM Account shall be managed by the Applicant (or successor developer) through the PM until such time as the Applicant Control Period terminates. Thereafter, management of the TDM Account shall become the responsibility of the successor/COA. As applicable, a line item for the TDM Account shall be included in the COA budget upon the establishment of the COA. The association documents that establish and control the COA shall provide that the TDM Account shall not be eliminated as a line item in the UOA/COA budget, and that funds in the TDM Account shall not be utilized for purposes other than to fund the TDM Plan. The TDM Account shall be funded solely by the Applicant (or successor developer) until such time as the Applicant Control Period expires or the pro-rata assessments of residents are implemented as provided in the COA documents, whichever is first.
- E. TDM Remedy Fund. Concurrent with the establishment and funding of the TDM Account, the Applicant shall establish a separate, interest-bearing account referred to herein as the "TDM Remedy Fund." All interest earned on moneys deposited in the TDM Remedy Fund shall be added to the principal of the TDM Remedy Fund and used for TDM Remedy Fund purposes. Within thirty (30) days after the issuance of the first RUP for the Property, the Applicant shall contribute \$5,000 to the TDM Remedy Fund (as may be escalated pursuant to Proffer 41). Moneys from the TDM Remedy Fund shall be drawn on by the Applicant/successor or COA only for purposes of immediate need of TDM funding and may be drawn upon prior to any TDM Budget adjustments that may be required under Paragraph D, above.
- i. Excess Funds in TDM Account. Until such time as the TDM Goal is met, any funds remaining in the TDM Account at the end of any given year shall be carried over to the following year's TDM Budget or transferred in the Applicant's sole discretion, in whole or in part to the TDM Remedy Fund and/or Incentive Fund, as defined respectively in Paragraphs E or F. Neither the TDM Account nor TDM Remedy Fund will be required to accrue funds greater in value than 150% of the then-current TDM Account.
 - ii. Transfer of Remedy Fund. Upon expiration of the Applicant Control Period, the Applicant shall transfer any funds remaining in the Remedy Fund to the COA or successor developer/management company for TDM purposes.
- F. TDM Purchase Incentives. Within thirty (30) days after the issuance of the first RUP for the Property, the Applicant shall make a one-time contribution

of \$125/unit based on the total number of units reflected on the approved building plans to a segregated sub-account in the TDM Account to fund a transit incentive program for initial purchasers and/or lessees of residential units. Such program shall be prepared by the Applicant, in coordination with FCDOT, and shall include consideration for fare media distribution and value loading, financing incentives, and alternative incentives (such as grocery delivery) tailored to residents that are not likely to make use of alternative commute option benefits.

G. Monitoring and Reporting,

i. Surveys. Between September and November beginning with the year following issuance of the first RUP for the Property, the PM shall conduct a survey of residents (the "Survey") designed to evaluate the effectiveness of the TDM Plan in meeting the TDM Goal and to evaluate the need for changes to the TDM Plan. Following the first survey, the Applicant shall conduct additional surveys every two years. Surveys can be a standalone activity or transportation questions can be added to an existing survey effort. The PM shall coordinate the draft Survey materials and the methodology for validating Survey results with FCDOT at least thirty (30) days prior to each Survey. If a Survey reveals that changes to the TDM Plan are needed or advisable, then the PM shall coordinate such changes with FCDOT and, as necessary, adjust the TDM Budget and implement the revisions for the following year's program. The PM shall submit as part of each Annual Report (defined below) an analysis of the Surveys to FCDOT. Such analysis shall include at a minimum:

1. A description of the TDM measures in effect for the survey period and a description of how such measures have been implemented;
2. the number of people surveyed and the number of people who responded;
3. the results of the surveys taken during the survey period;
4. the number of residents, employees and/or others participating in the TDM programs, displayed by category and mode of use;
5. an evaluation of the effectiveness of the TDM program elements in place, including their effectiveness at achieving the TDM Goal, and, if necessary, proposed modifications; and
6. a description of the units constructed and occupied and the number of residential parking spaces leased/purchased on the

Property at the time the survey was conducted.

- ii. Annual Report. The PM shall report annually to FCDOT on the TDM Plan (the "Annual Report") no later than January 31st of each calendar year and after completion of the Survey, as required, and the annual Trip Count, as required. The Annual Report shall include (a) a description of the prior year's TDM strategic efforts, including, as applicable, sample marketing materials; (b) a financial statement that includes the TDM Budget and TDM Account revenues and expenditures for the preceding year; (c) an analysis of the Survey for the preceding year, (d) a compilation and analysis of any Trip Counts that were conducted during the preceding year; (e) discussion of any changes to the TDM Plan for the upcoming year; and (f) the TDM Budget for the upcoming year.
- iii. Adjustments to Calendar and Due Dates. Upon mutual agreement between FCDOT and the PM, the due dates for the delivery of the Annual Report may be extended by up to sixty (60) days if changes have occurred, or appear to have occurred, in trip characteristics resulting from changes to the TDM Plan that are not yet fully implemented as of the due date for the Annual Report.
- iv. Meetings with FCDOT. The PM shall meet with FCDOT annually, or as mutually agreed, to discuss the results of the Trip Counts, the Survey, the Annual Report and the TDM Plan.

H. Trip Counts.

- i. Annual Trip Counts. The PM shall conduct a Trip Count between September 1st and November 30th (excluding county/state/federal holiday weeks or when area public schools are not in session) beginning with the year following the issuance of the first RUP for the Property. The purpose of such Trip Count is to measure the actual vehicle trips generated by the residential uses constructed on the Property as of the date the Trip Count is completed and to evaluate whether such vehicle trips are less than, equal to or greater than the TDM Goal. Trip Counts provided to FCDOT shall include information on the number and percentage of RUPs as of the date of the Trip Count.
- ii. Methods. For purposes of this Proffer, Trip Counts shall be measured on three (3) days over a maximum two-week period (but not including a week containing a county/state/federal holiday or when area public schools are not in session) between September 1 and November 30 of each calendar year, or such other time as the PM and FCDOT shall mutually determine. At least thirty (30) days prior to conducting the

Trip Counts, the PM shall meet with FCDOT to review and reach agreement on the dates and methodology for the Trip Counts and the analyses to be done after the Trip Counts are complete. The Trip Counts shall include Peak Hour counts of vehicles entering and exiting driveways to the Property. The Trip Counts shall be conducted so that only trips generated by the residential uses on the Property shall be counted.

- iii. Frequency of Trip Counts. Once initiated, the PM shall conduct Trip Counts annually until such time as two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Property reaches Build Out as defined in subparagraph N.2. show that vehicle trips generated by the residential units are less than or equal to the TDM Goal. If the results of two (2) consecutive Trip Counts reveal that the TDM Goal has been met, then the Applicant Control Period shall expire as provided in this Proffer, the Letter of Credit (as defined in Paragraph L) (or cash, as applicable) shall be returned to the Applicant, and the Applicant shall have no further responsibility under this Proffer. Thereafter, the COA or successor developer/management company shall be responsible for the ongoing implementation of the TDM Plan pursuant to Paragraph I and shall conduct additional Trip Counts as set forth in this Proffer. Notwithstanding the provisions of this paragraph, FCDOT may request Trip Counts be undertaken at any time to validate traffic data, but not more frequently than once per calendar year. If such requests are made by FCDOT, the PM shall conduct the requested Trip Counts.
- iv. Evaluation. The results of each Trip Count shall be compared to the TDM Goal established in this Proffer to determine whether actual traffic counts are equal to, less than or greater than the maximum allowed trips for the TDM Goal as calculated in accordance with subparagraph A.2.

In the event the trips generated by the residential units at the time of the build-out count reveal that the TDM Goal outlined subparagraph A.2. has not been met for two consecutive years, then the Applicant shall (a) pay into the TDM Remedy Fund at a rate of \$25/unit if failure is less than 5% and \$50/unit if failure is greater than 5%; (b) develop modifications to the TDM Plan and TDM Budget; and/or (c) implement one or more of the supplemental strategies outlined in the TDM Strategic Plan to address the surplus of trips. The PM shall submit any such revision to the TDM Plan and TDM Budget to FCDOT as part of the Annual Report as outlined in subparagraph G.2., and request in writing the County's review and concurrence. If no written response is provided by FCDOT within forty-five (45) days of receipt of the Annual Report, the PM's revisions to the TDM Plan and

updated TDM Budget shall be deemed approved. Following approval of the revised TDM Plan and updated TDM Budget or after the forty-five (45) day period outlined above, the PM shall (a) increase the TDM Account with TDM Remedy Funds at the Applicant's sole discretion, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (b) implement the provisions of the revised TDM Plan.

If two (2) consecutive annual Trip Counts conducted in accordance with this Proffer reveal that the TDM Goal is met after Build Out of the Property, as defined in subparagraph A.2., then (i) no penalty is owed, (ii) the PM shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers, and (iii) the Applicant Control Period Expires, after which paragraph K below shall apply.

- I. Ongoing Implementation of TDM Plan. Once the Applicant Control Period has expired, the Letter of Credit/Cash (as defined in this Proffer) (as then-valued) shall be returned to the Applicant, and thereafter the COA or successor development/management company shall be responsible for ongoing implementation of the TDM Plan. The PM shall conduct additional Surveys and Trip Counts at five (5) year intervals to determine whether the TDM Goal, as established by this Proffer, continues to be met. In the event that an Annual Report submitted by the PM demonstrates through trend analysis that a change in commuting patterns has occurred that is significant enough to reasonably call in to question whether the TDM Goal continues to be met, as determined by FCDOT, then FCDOT may request the PM conduct additional Trip Counts on a more frequent basis (but not more frequently than once per year) to determine whether, in fact, the TDM Goal is being met.
 - i. Continuation of TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual trips generated remain equal to or less than the maximum number of trips permitted under TDM Goal, then the PM shall continue to implement the TDM Plan and to make Annual Reports to FCDOT.
 - ii. Further Revisions to TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual number of trips generated by the residential units are greater than the maximum number of trips permitted under the TDM Goal, as established by this Proffer, then the PM shall convene a meeting with FCDOT within thirty (30) days of the completion of the Trip Count to review the results of the Trip Count and the TDM Plan then in place and to develop modifications to the TDM Plan and the TDM Budget to address the surplus of trips. The PM shall submit any revisions to the

TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting and request in writing the County's review and concurrence. If no written response is provided by FCDOT within forty-five (45) days, the PM's revisions to the TDM Plan and updated TDM' Budget shall be deemed approved. Following approval of the revised TDM Plan and updated TDM Budget, the PM shall (a) increase the TDM Account with TDM Remedy Funds, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (b) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT. The PM shall repeat the process above (including additional adjustments to the TDM Plan, additional funding and additional monitoring) until the TDM Goal again has been met for two (2) consecutive years, whereupon the PM shall then be required to conduct Trip Counts only at five (5) year intervals, as described above.

- J. Enforcement. If the PM fails to timely submit the Annual Report for the Property to FCDOT as required by this Proffer, the County may thereafter issue the PM a notice stating that the PM has violated the terms of this Proffer and providing the PM sixty (60) days within which to cure such violation. If after such sixty (60) day period the PM has not submitted the delinquent Annual Report, then the Applicant and/or COA/successor, as applicable, shall be subject to a penalty of \$50 per day payable to Fairfax County to be used for transit or transportation related improvements in the vicinity of the Property until such time as the report is submitted to FCDOT.
- K. TDM Obligations. All residents and owners of property within the Property shall be advised of the TDM Plan described in these Proffers. All COA members shall be informed of any funding obligations resulting from the application of these Proffers prior to entering into a lease/contract of sale, and all such obligations shall be included in COA documents.
- L. Definitions.
 - i. Applicant Control Period. The "Applicant Control Period" is the period starting immediately following approval of this Rezoning Application and ending on the date when two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the proposed development reaches Build Out show that peak hour vehicle trips generated by the residential units are less than or equal to the TDM Goal (as defined herein); provided, however, that implementation of the TDM Plan may be assigned by the Applicant to a successor owner, but may not be assigned to a successor Condominium Owners Association (COA) until the Applicant Control Period has expired. Upon expiration of the Applicant Control Period,

the Applicant shall have no further obligations under this Proffer, the Letter of Credit/Cash (as defined in this Proffer) provided by the Applicant shall be returned to the Applicant, and on-going implementation of the TDM Plan and funding of the TDM Budget (and 10% contingency) shall be the responsibility of the successor as outlined in Paragraph I.

- ii. Build Out. For purposes of this Proffer, "Build Out" of the proposed development shall be deemed to occur upon the issuance of 100% of all Residential Use Permits ("RUPs") for all residential uses site plan approved and constructed on the Property.
- iii. Peak Hours. For purposes of this Proffer, the relevant weekday "Peak Hours" shall be that 60-minute period during which the highest weekday volume of mainline trips occurs between 6:00 to 9:00 AM and 4:00 to 7:00 PM, as determined by mechanical and/or manual traffic counts conducted at the site entrance on Poag Street, as approved in consultation with FCDOT. To determine the Peak Hour, such counts shall be collected beginning on a Monday at 2400 hours and continuing to the following Thursday at 2400 hours at a time of year that reflects typical travel demand conditions (e.g. September to May, not during a holiday week or when area public schools are not in session). The relevant Peak Hours shall be defined in conjunction with each of the Trip Counts (as defined herein) required pursuant to this Proffer. The methodology for determining the Peak Hours may be modified subject to approval of FCDOT, but without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.
- iv. TDM Program Manager. The TDM "Program Manager" shall be a qualified or trained on-site individual appointed by the Applicant to oversee all elements of the TDM Plan and act as the liaison between the Applicant/successor and FCDOT. The PM may be employed either directly by the Applicant/successor, or be employed through a property management company contracted by the Applicant/successor. The PM position may be part of other duties assigned to the individual, with TDM functions accounting for a minimum of approximately 20 percent of his/her duties.
- v. TDM Account. The "TDM Account" shall be an interest bearing account established by the Applicant with a banking or other financial institution qualified to do business in Virginia and used by the PM each year to implement the TDM Plan in accordance with the TDM Budget.
- vi. TDM Budget. The "TDM Budget" is the estimated costs sufficient to

implement the TDM Plan in a given year and shall include a contingency (the "TDM Budget Contingency") equivalent to a minimum of 10% of the amount of the TDM Budget. The TDM Budget as required by FCDOT may be less than, but shall be no more than \$26,860 (including the 10% TDM Budget Contingency) per full calendar year as adjusted for any increases in the CPI-U per Proffer 41. However, the Applicant may, at its sole discretion, increase the TDM Budget (including the TDM Budget Contingency) for any calendar year.

- vii. TDM Remedy Fund. The TDM Remedy Fund shall be an interest bearing account established by the Applicant with a banking or other financial institution qualified to do business in Virginia and used to supplement the TDM Account in support of additional TDM strategies that may be determined to be necessary following any of the Trip Counts for which sufficient funding is not immediately available via the then-existing TDM Account.

- 20. Key Intersection Monitoring. One year after reaching 75% occupancy of the Property, the Applicant shall perform a traffic study at up to 4 key intersections, to be determined in consultation with FCDOT. The traffic study shall include both weekday and weekend analysis. The study results shall be provided to the County and the Lee District Supervisor's office for use in evaluating future land use applications. The timing of the traffic study may be delayed in consultation with FCDOT and the Zoning Administrator based upon development activity in the immediate area of the Property.

SITE DESIGN AND AMENITIES

- 21. Landscape Plan. The CDP/FDP includes a conceptual landscape plan for the Property and detail sheets illustrating the plantings and other features to be provided. As part of each site plan submission, the Applicant shall submit to Urban Forest Management Division (UFMD) of DPWES for review and approval a detailed landscape plan (the "Landscape Plan"), which shall be consistent with the quality and quantity of plantings and materials shown on the CDP/FDP. Adjustments to the type and location of vegetation and the design of landscaped areas and streetscape improvements/plantings shall be permitted in consultation with DPZ, and as approved by UFMD.
- 22. Streetscaping. Streetscape improvements and plantings shall be provided as indicated on the CDP/FDP. Notwithstanding the foregoing, the Applicant reserves the right, in consultation with the Zoning Administrator, to alter, reduce, or eliminate the amount of on-street parking and/or shift the location of street trees along the proposed streetscapes to accommodate final architectural design, utilities and layout considerations, and sight distance requirements so long as such modifications are in substantial conformance with the CDP/FDP.

23. Pedestrian/Bicycle Circulation. In combination with the streetscape improvements identified in these Proffers, the Applicant shall provide sidewalks of varying widths and crosswalks at site entrances, as indicated on the CDP/FDP.
24. Amenities and Facilities for Residents. Pursuant to Paragraph 2 of Section 6- 409 of the Zoning Ordinance, the Applicant shall provide on-site recreational facilities for the future residents of the Property, including the following:
 - A. A private exterior recreational area to be located behind the building as illustrated on Sheet 11 of the CDP/FDP, with a lawn area, pavilion with outdoor kitchen and fireplace, seating area, benches, walking path, garden enclosure, specialty landscaping, passive recreational areas;
 - B. A Second private courtyard as illustrated on Sheet 11 of the CDP/FDP with a swimming pool, seating area, 6 foot pool fence, pergola shade structure, specialty landscaping, lounge chairs, garden enclosure, hardscape areas and passive recreational areas;
 - C. Party Room with kitchen and bar with the potential integration of a theater for community gatherings;
 - D. Fitness Center with ability to accommodate weight lifting machines;
 - E. Stretching Yoga Room that is located off of the fitness center;
 - F. "Hang-Out Lounge" with internet access for residents and guests;
 - G. Conference Room;
 - H. Bicycle parking/storage facilities to accommodate 40 bicycles as detailed in Proffer 7;

In the event it is demonstrated that the creditable facilities, pursuant to Article 6 of the Zoning Ordinance, do not have sufficient value, at the time of the issuance of the first Residential Use Permit, the Applicant shall contribute funds in the amount needed to achieve the overall proffered amount of \$1,700.00 per non-ADU residential unit to the Fairfax County Park Authority for off-site recreational facilities intended to serve the future residents, as determined by the Supervisor for the Lee District.

25. Public Art. Prior to the issuance of the first RUP, the Applicant shall install public art at the corner of Poag Street and North Kings Highway in the area designated as amenity space. The initial selection of public art and final location shall be selected by the Applicant in coordination with the Lee District Supervisor.

26. Off-site recreation. The applicant shall contribute \$330,000 to the Fairfax County Park Authority, prior to the issuance of the first RUP on the Property, for use at off-site recreational facilities intended to serve the future residents, as determined by FCPA in consultation with the Supervisor for the Lee District. The contribution in this proffer is based on an anticipated 165 one-bedroom units and 80 two-bedroom units. The contribution in this proffer is based on an anticipated 165 one-bedroom units generating 1.25 residents per unit and 80 two-bedroom units generating 2.0 residents per unit. The contribution level shall be increased or decreased based on the final unit type mix reflected on the approved site plan.
27. Lighting. Outdoor lighting shall comply with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. Building mounted security lighting shall utilize full cut-off fixtures with shielding such that the lamp surface is not directly visible. All perimeter upper level parking deck lighting fixtures shall not exceed the height of the parapet wall. Upper level interior lighting fixtures shall not exceed a height of 12 feet, shall be sited and shielded so as not to be visible from the ground plane to minimize glare to residential units, and shall utilize full cut-off fixtures. Interior parking garage lighting adjacent to the north wall shall be sited and shielded to minimize visibility from the exterior of the site.
28. Signage. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance or pursuant to a Comprehensive Sign Plan approved by the Planning Commission. Under the Comprehensive Sign Plan option, free standing or building mounted signage identifying the development may be permitted.

ARCHITECTURAL DESIGN

29. Building Design and Materials. The general architectural design of the proposed building is shown on Sheets 20 and 21 of the CDP/FDP (the "Conceptual Elevations"). The Conceptual Elevations are conceptual in nature and may be modified by the Applicant as part of final engineering and building design, provided that such modifications provide a similar quality of design and are in general conformance with that shown. Building materials, as generally reflected on the Conceptual Elevations, shall be: brick, masonry, and hardboard, provided that final architectural details and accents may include other materials. No EIFS shall be used. Bay windows, balconies, awnings, and other architectural details may be provided so long as such features do not extend more than eight (8) feet beyond the building footprints shown on the CDP/FDP, and provided that the streetscape features are maintained.

The architectural design of the northern facade of the garage structure shall be pre-cast concrete or cast-in-place and shall include solid spandrel panels that will provide screening for headlights. Brick inset panels to complement the brick on the building shall be utilized on the portions of the northern garage facade. The

color of the brick inset panels shall be harmonious with the building materials utilized on the main structure.

30. LEED Certification. The applicant will include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design—for Homes Multifamily Mid-Rise (LEED®-for Homes Multifamily Mid-Rise) or LEED-NC rating system, or other equivalent rating system determined to be applicable to the building(s) in consultation with the Environment and Development Review Branch of the Department of Planning and Zoning. A LEED-accredited professional (LEED-AP) who is also a professional engineer or licensed architect will provide certification statements at both the time of site plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification of the project.

In addition, prior to site plan approval, the applicant will designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

Prior to the building plan approval, the applicant will submit documentation, to the Environment and Development Review Branch of DPZ, regarding the U.S. Green Building Council's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED Silver certification. Prior to release of the bond for the project, the applicant shall provide documentation to the Environment and Development Review Branch of DPZ demonstrating the status of attainment of LEED certification or a higher level of certification from the U.S. Green Building Council for the building.

If the U.S. Green Building Council review of design-oriented credits indicates that the project is not anticipated to attain a sufficient number of design-related credits to support attainment of LEED Silver certification, the applicant will execute a separate agreement and post, a "green building escrow," in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of (\$2/square foot of gross floor area). This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED certification or higher level of certification, by the U.S. Green Building Council, under the most current version of the LEED- for Homes Multifamily Mid-Rise rating system or other LEED rating system determined, by the U.S. Green

Building Council. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that the building has attained LEED certification will be sufficient to satisfy this commitment.

If the applicant provides to the Environment and Development Review Branch of DPZ, within one year of issuance of the final RUP/non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow will be released to the applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the applicant fails to provide, within one year of issuance of the final RUP/non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of LEED certification by more than three points, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

31. Noise Attenuation. Exterior wall construction techniques shall be provided to ensure that a maximum interior noise level of approximately DNL 45 dBA shall be achieved for any dwelling unit that fronts on North Kings Highway and that a noise study shows will be exposed to noise levels in excess of DNL 65 dBA.
32. Tree Preservation. Prior to Site Plan approval, the Applicant, in consultation with the Urban Forestry Management Branch, shall develop and implement measures to reasonably protect off site trees and vegetation located at or near common property lines from grading and construction activity on the subject property. Such measures shall include, but not be limited to, root pruning, fertilization soil enhancements and similar measures recommended by UFM. The requirements of this proffer shall not require the Applicant to undertake or obtain permission for work beyond the boundaries of the Application property.

ENVIRONMENT

33. Stormwater Management.

- A. The Applicant shall implement stormwater management techniques to control the quantity and quality of stormwater runoff from the Property, as determined by DPWES. Stormwater Management Facilities, including the use of an underground detention vault, if a waiver is approved, and bioretention planters, shall be provided as generally depicted and described on Sheet 15 of the CDP/FDP. Best Management Practices (“BMPs”) will be provided onsite through structural storm water filters and bioretention planters. The Applicant reserves the right to include other Low Impact Design techniques such as the following: rain gardens, filtera systems, infiltration ditches, bay filters, storm tech chamber, drainage swales, and pervious pavers (including the PaveDrain® system). Subject to verified soil conditions being suitable for infiltration, opportunities for such infiltration based LID methods shall be reasonably maximized provided they shall be in substantial conformance with the CDP/FDP. The Applicant reserves the right to pursue additional stormwater management measures provided the same are in substantial conformance with the CDP/FDP including a waiver to allow the proposed underground detention facilities.
- B. The Stormwater Management Facilities shall be designed to release stormwater runoff from the site at a rate to be limited to 60% of the allowable release (a 40% reduction of the allowable release rate) as generally shown on sheet 15 of the CDP/FDP. The final design of the SWM facilities may change the computed allowable release rate as shown on the CDP/FDP due to changes in offsite controlled and onsite uncontrolled runoff.
- C. BMPs for the site shall be provided in excess of County minimum requirements for phosphorus removal. This shall be accomplished by utilizing bioretention planters having a 65% removal efficiency (being designed to treat the first 1 inch of runoff) and the stormwater filter having a 50% phosphorus removal efficiency. Final design calculations demonstrating adequate surface area, drawdown time, and 2 and 10 year routings shall be provided for the bioretention planters to show general, applicable compliance with the appropriate sections of the Public Facilities Manual during final site plan review and approval.
- D. Should the U.S. Environmental Protection Agency, or its designee, issue new stormwater management regulations affecting the Property, the Applicant shall have the right to accommodate necessary changes to its stormwater facility designs without the requirement to amend the CDP/FDP or these proffers or gain approval of an administrative modifications to the CDP/FDP or proffers, provided the facility designs substantially conform with the CDP/FDP.

34. Phase II Environmental Assessment. Prior to final site plan approval, the

Applicant shall complete a Phase II environmental investigation of the Property as deemed necessary by the findings of a Phase I environmental site assessment of the Property. The Applicant shall provide copies of the Phase I environmental site assessment and Phase II environmental investigation to DPWES prior to final site plan approval. If contamination is found in ground water, surface water or soil on the Property, the Applicant shall take such corrective action as required by and in accordance with all applicable Federal, State and County requirements and as otherwise reasonably necessary for protection of human health in the redevelopment of the Property.

AFFORDABLE HOUSING

35. Affordable Dwelling Units ("ADUs"). The Applicant shall provide ADUs on the Property equal to 6.25% of all dwelling units to be constructed on the Property. The ADUs shall be administered in accordance with Part 8 of Article 2 of the Zoning Ordinance (the "ADU Ordinance"). The ADU's shall be provided and administered as either for-sale or rental units consistent with market rate units in the same building in accordance with the requirements of the ADU Ordinance.

36. Workforce Dwelling Units ("WDUs"). In addition to the number of ADUs provided, the Applicant shall provide housing units on the Property that will be leased and/or sold to future residents who have a household income that is no more than 100% of the Area Median Income ("AMI") for the currently defined Washington, D.C. Metropolitan Statistical Area as determined by the U.S. Department of Housing and Urban Development if leased and no more than 120% of the AMI if for sale. If leased, the WDUs shall be equally distributed among two income tiers, with 50% for future residents who have a household income that is no more than 80% of the AMI and 50% for future residents who have a household income that is no more than 100% of the AMI. If for sale, the WDUs shall be equally distributed among three income tiers, with 1/3 for future residents who have a household income that is no more than 80% of the AMI, 1/3 for future residents who have a household income that is no more than 100% of the AMI, and 1/3 for future residents who have a household income that is no more than 120% of the AMI. The number of WDUs to be provided on the Property shall be equal to 5.75% of all non-ADU and ADU bonus dwelling units to be constructed on the Property. The WDUs shall be administered as set forth in the Board of Supervisors Workforce Dwelling Unit Administrative Guidelines adopted October 15, 2007.

PUBLIC/COMMUNITY FACILITIES

37. Adjacent School Street Shopping Center Contribution (Parcel 0833-04-0035, 6128-6138 N. Kings Highway). The Applicant shall provide a contribution of \$250,000.00 (for purposes of this Proffer the "Contribution") to be used for improvements to the School Street Shopping Center. Such improvements shall be designed to help ensure that there is a functional and aesthetic coordination

between the two parcels and shall include:

- (1) Additional parking;
- (2) Patio/plaza;
- (3) Building and signage improvements;
- (4) Landscaping and streetscaping; and
- (5) Stormwater management to direct flow from the new parking area to the facilities provided in Proffer 33 (collectively the "School Street Shopping Center Improvements").

Prior to site plan approval for the Property, the Contribution shall be deposited with Fairfax County to be held in escrow. Permits required to construct the School Street Shopping Center Improvements shall be filed with Fairfax County in a time frame that ensures concurrent completion with development on the Property. Such permits shall specify changes to the School Street Shopping Center that substantially conform with the School Street Shopping Center Improvements as further described in this Proffer and shown on Exhibit A, as reasonably determined by the Zoning Administrator or his/her designee. For the purpose of this proffer, any building façade improvements shall not require identical façade treatments and shall further recognize the need for retail branding and the incorporation of corporate identifiers by retail tenants. Similarly, recognizing site constraints associated with the School Street Shopping Center, there may be reasonable variation in the type and placement of landscaping and configuration of pedestrian connections. Upon approval of permits, the County shall release the Contribution to the Shopping Center Owner, or the Applicant on behalf of Shopping Center Owner (as directed by the Applicant), for use in accordance with the approved plans. The Shopping Center Owner or the Applicant, as applicable, shall construct the School Street Shopping Center Improvements concurrent with development of the Property and such improvements shall be substantially completed prior to issuance of the first RUP for the Property.

Upon demonstration by the Applicant that, despite diligent efforts, provision of the School Street Shopping Center Improvements has been unreasonably delayed by others, or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement. If despite diligent good faith efforts, the Applicant is unable to secure necessary approvals, the Applicant shall provide written documentation of such efforts to the Zoning Administrator and shall be relieved of the obligation to construct the School Street Shopping Center Improvements. In such circumstances, the Contribution, or any part of it not released and utilized for construction of the School Street Shopping Center Improvements shall remain in escrow for use on future pedestrian improvements and façade improvements in

the vicinity of the Property by others, as determined by the County in consultation with the Lee District Supervisor.

38. Public School Contribution. The Applicant shall contribute \$187,560 to the Board of Supervisors for transfer to FCPS for capital improvements at those schools within the "pyramid" serving the Application Property. The specific capital improvements shall be determined in consultation with, and with the approval of, both the Supervisor for the Lee District and the School Board Member for the Lee District. Such contributions shall be made prior to site plan approval for the Property and shall further be adjusted on a pro rata basis if the number of units actually built is less than the maximum allowed under this rezoning. The Applicant shall notify FCPS when it commences construction.

Following approval of this application and prior to the Applicant's payment of the amount set forth in this Proffer, if Fairfax County should increase the ratio of students per high-rise multifamily unit or the amount of the recommended contribution per student, the Applicant shall increase the amount of the contribution for the development to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the greater of the two amounts.

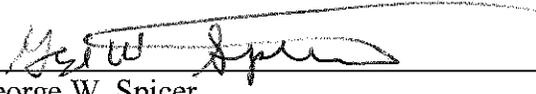
39. Edison Turf Field. Prior to the issuance of the final RUP, the Applicant shall contribute \$50,000 toward the establishment of turf on the recreational fields located at Thomas Edison High School.

MISCELLANEOUS

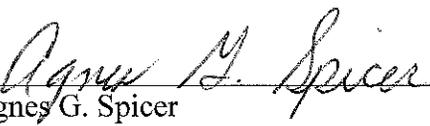
40. Owners Association. Should the residential units be offered for individual sale, the Applicant shall cause the recordation of a declaration creating a condominium owners' association (referred to as the "COA"). The COA documents (including budgets provided in any offering or sale materials) shall disclose the various proffer and maintenance obligations set forth in these Proffers. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a lease/contract of sale for units. If residential units are offered for individual sale, all ADUs and WDUs shall be administered in accordance with the ADU Ordinance and the Board of Supervisors Workforce Dwelling Unit Administrative Guidelines adopted October 15, 2007.
41. Escalation in Contribution Amounts. All proffers specifying contribution amounts or budgets for operational expenses, including but not limited to, Proffer 19 (Transportation Demand Management), the contribution and/or budget amount shall escalate on a yearly basis from the base year of 2012 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-U"), both as permitted by Virginia State Code Section 15.2-2303.3.

42. Advance Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
43. School Street Access. The Applicant shall not provide direct access from the Property to School Street.
44. Shaffer Drive Access. The Applicant shall not construct vehicular access between Shaffer Drive and Poag Street.
45. Public Access Easement. At the time of subdivision, the Applicant shall grant a public access easement over the public areas labeled on Sheet 11 of the CDP/FDP as "Dog Walk Area Detail Plan". The Applicant reserves the right as part of the public access easement to reasonably control access to, and use of, the public easement area.
46. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property may be the subject of a proffered condition amendment ("PCA"), Special Exception ("SE"), Special Permit ("SP"), or Final Development Plan Amendment ("FDPA") without joinder and/or consent of the owners of the other portions of the 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 Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.
47. 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 this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.
48. 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.

TITLE OWNERS OF TAX MAP #'s
83-3 ((11))-2, 3, 4, 5 & 6 and 83-3 ((4))-A:



George W. Spicer



Agnes G. Spicer

APPLICANT/CONTRACT PURCHASER
Insight Property Group LLC

By:  _____

Name: Richard W. Hausler

Title: Member/Authorized Signatory

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