

PCA 2005-PR-041-3

***Eskridge (E&A) LLC
Merrifield Town Center***

PROFFER STATEMENT

June 7, 2012

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PCA 2005-PR-041-2
Eskridge (E&A) LLC
PROFFER STATEMENT

October 15, 2007

February 1, 2011

April 15, 2011

May 13, 2011

June 2, 2011

June 10, 2011

June 16, 2011

July 7, 2011

July 18, 2011

June 7, 2012

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Fairfax County Board of Supervisors' (the "Board") approval of this application PCA 2005-PR-041-3, Eskridge (E&A) LLC (the "Applicant") as owner, for itself and for its successors and assigns, hereby proffers that development of this partial PCA on approximately 4.62 acres inclusive of Tax Map parcels 49-3 ((37)) Parcels C, L and part of J and N (the "Property") shall be in accordance with the following proffered conditions (the "Proffers"), which, if approved, shall supersede any and all existing proffered conditions as to the area of this Amendment. In the event this partial PCA application is denied, these proffers shall immediately be null and void and the previous proffers shall remain in full force and effect.

I. GENERAL

1. **Substantial Conformance.** Subject to the Proffers and the provisions of Sections 6-200 and 6-400 and Article 16 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Conceptual Development Plan Amendment/Final Development Plan Amendment ("CDPA/FDPA") dated May 30, 2012, , consisting of Sheets 1 through 48, and prepared by VIKA, LLC., Lessard Group and SK&I Architectural Design Group, as further modified by these proffered conditions.
2. **Minor Modifications.** Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDPA/FDPA described above encompassing the application Property may be permitted due to final architectural and engineering design, as determined by the Zoning Administrator. Building footprints may be decreased, and the number of units and square footage within each building may be

category and (iv) cumulative total proposed in the respective site plans for each development Parcel A through J, broken down by uses. Said tabulations shall demonstrate compliance with the square footage limitations set forth in the tabulations and charts listed on the CDPA/FDPA. All references in the Proffers to "Parcels A, B, C, D, E, F, G, H, and/or I" are to the development parcels as identified in the CDPA/FDPA, and not as identified on the Fairfax County tax maps.

II. LAND USE

1. **Zoning Districts.** As delineated on the CDPA/FDPA, the approximately 31.37-acre land area that was rezoned by the Board on October 15, 2007, RZ 2005-PR-041 (the "Application Property") is zoned as follows:
 - A. Approximately 24.14 acres to the PDC District and comprised of development parcels A, B, D, F, H and I.
 - B. Approximately 7.23 acres to the PRM District and comprised of development parcels C, E, G and J.
2. **Permitted Uses.** The following uses shall be allowed on the respective portions of the Property, consistent with the CDPA/FDPA and the Parcel Allocation Chart referenced in Proffer II(4), below and set out in the CDPA/FDPA. Any use not set forth below and allowed in the respective District may be permitted with approval of a final development plan amendment, special exception or special permit, as applicable.
 - A. **PDC District "Principal Uses" Permitted.**
 - Business service and supply service establishments
 - Eating establishments
 - Establishments for scientific research, development and training
 - Financial institutions (without drive-through)
 - Garment cleaning establishments (without on-site processing)
 - Hotels
 - Offices, including medical offices/urgent medical care with no overnight stay
 - Personal service establishments
 - Public uses
 - Repair service establishments
 - Retail sales establishments
 - Theatres
 - B. **PDC "Secondary Uses" Permitted.**
 - Accessory uses, accessory service uses and home occupations as permitted by Article 10
 - Bank teller machines, unmanned

- Quick-service food stores
- Vehicle rental establishments, limited by the provisions of Sect. 9-518
- Commercial recreation uses (Group 5), limited to:
 - Bowling alleys
 - Billiard and pool halls
 - Health clubs
 - Ice Skating facilities
 - Any other similar commercial recreation use
- Eating establishments
- Financial institutions (without drive-throughs)
- Garment cleaning establishments (no on-site processing).
- Institutional uses (Group 3), limited to:
 - Home child care facilities
- Light public utility uses (Category 1) limited to electric substations and distribution centers including transformer stations, roof-top antennae and other facilities associated with a local radio, television, and/or cable access channel, and mobile and land-based telecommunication facilities. See Proffer II.12.C below.
- Offices, including medical offices/urgent medical care with no overnight stay
- Personal service establishments
- Quasi-public uses (Category 3), limited to:
 - Child care centers and nursery schools
 - Colleges, universities (without dormitories)
 - Cultural centers, museums and similar facilities
 - Independent living facilities
 - Private clubs
 - Private schools of special education
- Repair service establishments
- Retail sales establishments
- Vehicle transportation service establishments

- Single Family Attached

E. PDC and PRM "Temporary Uses" Permitted

- Festivals, fairs or similar activities, as defined in Paragraph F below
- Farmers' Markets, as defined in Paragraph G below
- Promotional activities of retail merchants
- Apartment sales and rental offices

F. Festivals, Fairs or Similar Activities. The Applicant shall be permitted to provide on the subject Property festivals, fairs or similar activities including, without limitation, farmers' markets, without the need for issuance or approval of a "Temporary Special Permit" in accordance with the following provisions:

- i. Maximum of 64 events per year;

shall be permitted to be up to 900 square feet maximum size, which kiosk, if not portable, shall be counted against the maximum amount of retail or non-residential GFA permitted on the Property. Said carts shall be located within park and plaza areas, as well as adjacent to non-residential uses, as determined by the Applicant, provided that, cumulatively, said carts do not negatively impact streetscape views, do not interfere with pedestrian movements or safety and conform with the standards set forth in the "Design Guidelines," as described below.

3. **Overall Maximum Floor Area Ratios and Gross Floor Areas.** Development on the Property as a whole shall not exceed 1,893,112 square feet of GFA of principal and secondary uses, at an overall 1.39 floor area ratio ("FAR"), including (i) "Affordable Dwelling Units" ("ADUs") and ADU-related density, and (ii) Workforce Housing-related density, as presented in the tabulations on Sheet 2 of the CDPA/FDPA, but excluding Cellar Space as defined in the Zoning Ordinance ("Cellar Space"). A maximum of 1,442,712 square feet of GFA, exclusive of Cellar Space, shall be permitted within the PDC zone, and a maximum of 610,000 square feet of GFA, exclusive of Cellar Space, shall be permitted within the PRM zone. Cellar Space shall be limited to 175,000 SF for all permitted uses, except dwelling units. Cellar Space dwelling units shall be limited separately to 25,000 SF. Nothing herein shall be construed to limit the Applicant's ability to utilize Cellar Space for storage or other uses not occupied by humans.
4. **Parcel Allocation Chart.** Land uses and building heights shall be allocated in accordance with the "Parcel Allocation Chart" which appears on the CDPA , Sheet 5. The Applicant, in its sole discretion, shall determine the final allocation for each Development Parcel in accordance with the limitations set forth in the FDPA charts shown on Sheets 6 and 7.
5. **Non-Residential Gross Floor Area.** To provide the "synergy" of uses envisioned for the Town Center, the total non-residential uses within both the PDC and PRM Zoning Districts combined shall consist of a minimum of 460,000 square feet of GFA and a maximum total of 1,196,144 square feet of GFA (excluding Cellar Space), which shall be allocated in accordance with the Site Tabulations on Sheet 2 and the "Parcel Allocation Chart" on Sheets 6 and 7 (and subsequent sheets) of the CDPA/FDPA generally as follows: 0 to 171,000 square feet of GFA in office and related uses; 10,000 to 120,000

nothing shall preclude the Applicant from constructing individual units of lesser or greater size than the average set forth herein.

8. **Allocation of Land Uses.** The allocation of dwelling units and residential and commercial gross floor area among the building parcels on the Property is represented on the CDPA/FDPA. The Applicant may reallocate dwelling units and/or gross floor area among the buildings depicted on the CDPA/FDPA without requiring a PCA or FDPA so long as (1) the total maximum FAR and residential square footage proffered above is not exceeded; (2) the Parcel Allocation Charts shown on the CDPA, Sheet 5 and FDPA on Sheets 6 and 7 is adhered to; (3) the minimum and maximum building heights shown on the CDPA are adhered to; (4) the footprint and configuration of individual buildings do not exceed that shown on the CDPA and FDPA except to the extent such change is deemed a minor modification, as determined by the Zoning Administrator; and (5) the maximum FAR limitations within the PRM and PDC Zoning Districts shown on the CDPA/FDPA, respectively, and for the Property overall as set forth in Proffer II.3 above, are not exceeded, as proffered here and as determined by the Zoning Administrator.
9. **Build-out in Phases.** Build-out of the Property may proceed in phases. The FAR constructed within a respective site plan-approved portion of the project may exceed the maximum density limitation set forth in Proffer II.3, so long as such maximum density limitation is not exceeded over the entirety of the Property at any time, as shall be demonstrated pursuant to Proffer I.6, and is consistent with the Parcel Allocation Chart and the CDPA/FDPA.
10. **Location of Residential Uses.** As depicted on the CDPA/FDPA, residential use shall be located on the upper floors (i.e. above the ground floor) of buildings on Parcels "C" and "E," and on the ground (which, because of topography and "front door" access design, may be deemed "Cellar Space") and/or upper floors of "G;" however, this shall not be construed to prohibit retail and related uses on the second floor, in addition to the ground floor, of such buildings or uses ancillary to residential on the ground floor of such buildings. Residential use may also be provided, as determined by the Applicant in its sole discretion, on Parcel "F" in accordance with the CDPA/FDPA. Residential use will be provided on Parcels H, I and J in accordance with the CDPA/FDPA. Parcel H will also be allowed, at the sole discretion of the Applicant, to provide retail and ancillary residential uses.

facilities as part of the architecture of the building(s), (ii) employing telecommunication screening material, and/or (iii) flush-mounted antennas utilizing colors consistent with the building treatment in the area where the antennas are to be installed.

13. **Parcel A Ground Floor Height.** In the event an office building is constructed at the corner of Lee Highway and Eskridge Road, as depicted for Parcel A Option 1 on Sheets 5 and 7 of the CDPA/FDPA, the Applicant shall provide a minimum clear height of 11 feet on the first floor to enable potential future use as ground-floor retail.

III. COMMUNITY SPACE

1. **Community Meeting Space.** Within one of the buildings located within Parcels G or H, a 1,000 square feet of GFA shall be provided to Fairfax County at no cost to the County to serve community needs, as coordinated with the County by the Owner of the Parcel it will be finally located in, in accordance with the following conditions:
 - A. Said "Community Space" shall be limited to uses and events such as exhibit and/or activity space, or other uses and events as may be agreed to by the owner of the building on Parcel G or H where the 1,000 s.f. space is located.
 - B. Within sixty (60) days following the receipt, of a building permit for said building that the 1,000 s.f. space is located in, or such later time as Owner of the said building, in its sole discretion, may choose prior to issuance of a Non-RUP for the building it is located in on G or H , the Owner shall request in writing that a Lease/License shall be prepared by the County Attorney and submitted to the Owner for review and approval. Said Lease/License shall include commercially reasonable terms substantially similar to other leases/licenses executed by the Board of Supervisors for leased space elsewhere in Fairfax County, except that there shall be no rent required of the County. Said Lease/License shall also provide that the Owner shall be permitted, in coordination with the County, to utilize said space on an agreed to basis for uses in conjunction with the building it is located in, and that the owner shall provide utilities, cleaning services and general maintenance for this space at no cost to the County.
 - C. In the event that Fairfax County fails to submit said Lease/License within 60 days of the request referenced above, fails to execute said Lease/License within 30 days after its language has been agreed upon by the County and the Owner of the

be issued for more than seventy-five percent (75%) of the total dwelling units approved on the Property until all of the RUPs have been issued for at least 75% of the ADUs required pursuant to this Proffer.

2. **Workforce Dwelling Units.** In addition to the ADUs required pursuant to this Proffer IV(1) above, the Applicant also shall provide 7.73 percent of all non-ADU, non-bonus density market rate multiple family dwelling units built on the Property as Workforce Dwelling Units ("WDUs"). The actual number of WDUs to be provided, attributable to multiple family residential units only, shall be determined at the time of site plan approval by applying 7.73 percent to the number of multi-family residential units (excluding all ADU's, ADU bonus density, and WDU bonus density) actually shown on the respective site plans. The WDUs shall be provided such that they are affordable to households with a maximum annual income of one hundred twenty (120) percent of the Area Median Income for the Washington Metropolitan Statistical Area ("AMI"). One-third of said units shall be affordable to future residents who have a household income of up to 80%, up to 100%, and up to 120%, respectively, of the AMI, regardless of building construction type. ADUs and/or Workforce Units (as defined in this Proffer) provided in any single Residential Building of the Proposed Development may be greater or less than twelve percent (12%) of the total residential units in such phase/building; provided, however, that the total number of ADUs provided upon completion of the Proposed Development shall satisfy, respectively, the above-defined twelve and one-half percent (12 ½%) of the total number of SFA units, and 4.27% of the total number of multiple family units (excluding any SFA ADUs provided as multiple family units), and the total number of WDUs provided upon completion of the Proposed Development shall be 7.73% of all non-ADU, non-bonus density multiple family dwelling units.

A. Definitions. The following terms used in these Proffered Conditions shall be defined as follows, unless specifically modified:

- i. Market-Rate Units. Dwelling units approved on the Property that are not subject to either the price/rental restrictions of Proffers IV(1) or IV(2);
- ii. Workforce Dwelling Units ("WDUs"). Dwelling units on the Property subject to the price/rental restrictions of this Proffer IV(2), but not subject to those of Proffer IV(1) or the ADU Ordinance except to the extent specified in Proffer IV(2)(G), below; and

shall not be less than that provided for the ADUs referenced in Proffer Paragraph IV(1) above. If the development of the Residential Buildings is phased or developed in sections, then the approved site plan(s) for each Residential Building shall also contain tabulations of the total number of ADUs by bedroom count, WDUs by bedroom count, and the number of Market-Rate Units by bedroom count on the Property. Whenever the calculation of the required ADU's and WDUs results in a fractional unit less than 0.5, then the number shall be rounded down to the next whole number, and any fractional unit of 0.5 or greater shall be rounded up to the next whole number.

- E. Location Change. If there is to be any change in the location of WDUs after the original approval of a site plan, the Applicant shall be responsible for amending the approved plans and plats to reflect the designation of the alternate WDU location(s) prior to the issuance of a Residential Use Permit for the new WDUs. However, in the case of a multiple family rental building that is under single ownership, the WDUs need not be specifically identified. In such rental buildings, the site plans, record plats and building plans shall identify the building as a rental project and shall note the total number of WDUs and the number of market rate units provided. For all for-sale buildings, the floor area of each WDU shall be noted on the approved site plan, record plat and building plan.
- F. Timing for Provision of the Work-Force Units. RUPs shall not be issued for more than ninety percent (90%) of the total dwellings units approved on the Property until all of the RUPs have been issued for all of the WDUs required pursuant to this Proffer.
- G. Provisions of the ADU Ordinance. The WDUs shall be administered in a fashion similar to ADUs pursuant to the below-specified provisions of the ADU Ordinance in effect at the time of the execution of these Proffers. The following specific provisions of the Zoning Ordinance shall apply to administration of the WDUs: Sections 2-805, 2-807, 2-810, 2-811, 2-812 (with a control period of 50 years for rental units and recording covenants committing to the above-mentioned control periods), 2-813, 2-817, and 2-818, including the recordation of the appropriate restrictive covenants in the land records of Fairfax County, except where such provisions directly conflict with these Proffers. Occupants of WDUs purchased or leased by the Board and/or HCD shall qualify for the household

designated by the County to oversee implementation of a Workforce Housing Program.

- J. Control Period. The price for subsequent re-rental WDUs shall be controlled for a period of fifty (50) years from the date of issuance of the first Residential Use Permit for each respective WDU. For for-sale WDUs, the price for the subsequent resales shall be controlled for a period of thirty (30) years after the initial sale. However, upon any resale, conveyance, and/or transfer to a new owner of such WDU within the initial thirty (30) year period of control, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale, conveyance, and/or transfer of the WDU. For any WDU that is owned for an entire thirty (30) year control period by the same individual(s), the price control term shall expire and the first sale of the WDU after such expiration shall be in accordance with Sect. 2-812(5) of the Fairfax County Zoning Ordinance.
- K. Compliance with Federal, State, and Other Local Laws/Severability. If it is found by a court of competent jurisdiction, that any portion of this Proffer related to providing WDUs violates any Federal, State or other local law, then the offending portion of this Proffer shall be deemed null and void and no longer in effect.
- L. Condominium Conversion. If a residential building was initially operated as a rental project, then subsequently is converted to a condominium project, any existing WDUs shall be maintained as WDUs and shall be administered as WDU Sale Units as set forth herein. The restrictions on any such WDU Sale Units shall be disclosed in the condominium declaration creating the condominium. Should the Applicant choose to relocate any such WDU to another rental building, the Applicant shall be responsible for amending the respective approved site plans to reflect the designation of the alternate WDU prior to the issuance of a Residential Use Permit for the respective new WDU.
- M. None of the ADUs or WDUs referenced above shall be required to be located within high-rise or single family attached residential buildings. As determined by the Applicant, the ADUs and WDUs for the entire 31-acre development may be located entirely within either the PDC or the PRM zone.
- N. WDUs that are included on approved site plans shall be deemed features shown for purposes of Section 15.2-2232 of Va. Code Ann. and, as such, shall not

buildings; provided, however, that the building height, outdoor rooftop amenities and general ground floor configuration (footprint) of such building(s) remain in substantial conformance with that shown on the CDPA/FDPA, the Parcel Allocation Chart and these Proffers. The Applicant may locate parking below private streets, and park areas. The Applicant reserves the right, however, to provide parking spaces in addition to the total number of parking spaces shown on the CDPA/FDPA if (i) such additional spaces result from the final design of the parking structures for the Principal and Secondary Uses so as to avoid partial garage floors; or (ii) to the extent necessary to accommodate uses established on the Property that result in a higher parking requirement than is shown on the CDPA/FDPA (e.g., eating establishments), provided that the building heights set forth in these Proffers are not exceeded.

3. **Shared Parking Agreement.** Notwithstanding the above, the Applicant may request a parking reduction or approval of a shared parking agreement pursuant to Article 11 of the Zoning Ordinance. Any modification of the required parking as approved by such parking reduction or agreement may be accommodated without requiring a PCA, CDPA or FDPA, provided that the location of the parking remains in substantial conformance with that depicted on the CDPA/FDPA.
4. **Temporary Parking** The applicant will provide temporary parking on Parcel F in conjunction with its grand opening ceremony for the project. The applicant also reserves the right to provide temporary parking on any undeveloped parcel, excluding areas designated to be parks, as the applicant deems necessary until such time each parcel is developed. The area of South Park, in a temporary condition, after the final RUP of Parcel H, will be seeded and remain a seeded lawn until such time construction of Parcel G commences. . Any temporary parking, other than construction staging, on Parcel G will have a landscaping hedge and/or decorative fence along the North Street, Penny Lane and South Park sides.
5. **Parallel Parking Spaces Along Internal Streets.** The Applicant may establish surface parking spaces to be located along either or both sides of "Festival Street," "Festival Street Extended," "North Street," "Strawberry Lane," "South Theatre Drive", "Penny Lane", and "EYA Lane (Internal Townhouse Street)" generally as shown on the Development Plan (the "Parallel Spaces"). The Parallel Spaces may be part of, or in addition to, the total number of required parking spaces to be provided with the Proposed

- B. A sixty (60) year title search certificate of the land to be acquired; and
 - C. A Letter of Credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue, if any, which can be drawn upon by Fairfax County. It is also understood that in the event the property owner is awarded more than the Letter of Credit in a condemnation suit, said excess amount of the award shall be paid to Fairfax County by the Applicant within five (5) days after said award has become final. It is further understood that all other costs incurred by Fairfax County, as defined above, in acquiring said land area shall be paid to Fairfax County by the Applicant upon demand.
4. **Private Streets.** Public access easements shall be provided on Festival Street, Festival Street Extended, Strawberry Lane, North Street, and South Theatre Drive within the limits of the Property. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Fairfax County Public Facilities Manual ("PFM") as may be approved by DPWES, except to the extent DPWES may approve a modified section (i) where parking structures are constructed under portions of private streets, or (ii) in areas where modification/elimination of curbs may occur to facilitate pedestrian circulation as depicted on Sheet 29 of the CDPA/FDPA. The above construction standard shall not apply to parking lots. The Applicant shall be responsible for the maintenance of all private streets.
5. **Strawberry Lane.** The Applicant shall be responsible for the maintenance of the dedicated portion of Strawberry Lane from Yates Way to the western edge of its intersection with Gallows Road, beginning at such time as that portion is ready to be accepted into the State system for maintenance and "Uniwest" has been released from its bond for said public improvement, which maintenance obligation shall be the subject of an executed Agreement with Fairfax County.
6. **Public Streets.** Any and all public streets shall be constructed in accordance with the PFM and/or VDOT standards, as determined by DPWES. Acceptance of public roads by VDOT into its roadway system shall be diligently pursued by the Applicant, and shall be accomplished prior to final bond release.
7. **Vacation/Abandonment.** Prior to final approval of any site plan and release of the record plat for recordation for any development section which includes development on an area of ROW to be abandoned/vacated, the Applicant shall obtain vacation and/or abandonment of the relevant portion of the Application Property, i.e., vacation and/or

11. **Yates Way Access.** No site plan for development of uses on Parcel B providing for direct vehicular access between Parcel B and Yates Way shall be approved by DPWES until such time as the following conditions are satisfied: (i) Parcel B has a legal right of direct vehicular access to Yates Way in the manner proposed by such site plan via either public or private easement or right of way over that certain approximately 10-foot-wide landscape strip along Parcel B's eastern boundary north of Strawberry Lane, being part of Parcel 49-4 ((1)) 8A, which strip separates the existing public access easement for Yates Way from Parcel B; and (ii) the Board of Supervisors' has approved a Proffered Condition Amendment for Parcel 49-4 ((1)) 8A which allows, among other things, for the modification or elimination of such approximately 10-foot-wide landscape strip referenced above.

VII. TRANSPORTATION – ROAD IMPROVEMENTS

1. **Eskridge Road.** The Applicant shall reconstruct Eskridge Road as set forth in detail in Site Plan SP-0561-02, as it may be revised by the Applicant and approved by DPWES ("PI Plan"), from its intersection at Lee Highway to the southern end of the Property ("Eskridge Road"). Said improvement shall be constructed and open to traffic consistent with the approved PI Plan, as said PI Plan may be modified or amended to reflect such additional improvements as are shown on the CDPA/FDPA as set forth below, prior to issuance of any Non-Residential Use Permits ("Non-RUPs") or Residential Use Permits ("RUPs") for any new buildings associated with the CDPA/FDPA. Notwithstanding the aforesaid, those improvements to Eskridge Road reflected on the CDPA/FDPA but not on the approved PI Plan (which consist of modifications to the median on Eskridge Road between Strawberry Lane and Route 29, and the extension of a continuous right-turn lane, as approved by VDOT, from Strawberry Lane north to eastbound Route 29) shall be constructed and open to traffic prior to the issuance of a Non-RUP for any use on Parcel A.
2. **Extension of Eskridge Road to Williams Drive.** Within 120 days of approval of the rezoning application, the Applicant shall prepare and submit to the County a preliminary design (as described below) of the extension of Eskridge Road from the southern Property boundary through to, and including, its the intersection with Williams Drive (PI Plan Station 28+57 through Station 32+50). Said extension shall be designed as a two lane, undivided section and shall include a transition from a three lane section at the

- A. Design. The Applicant shall provide said design on a Site Plan (or Site Plans if filed separately) for the development of Parcel A and Parcel B. Such design shall tie the Ultimate Southern Curb Line into the existing Route 29 conditions. The Applicant shall also, subject to VDOT approval (which shall be diligently pursued), redesign VDOT's road plans for its VDOT Project, and shall be responsible for the actual cost incurred, up to a maximum of \$30,000, for time and material for Applicant to effectuate said redesign to interface the VDOT Project with said Ultimate Southern Curb Line (the "Redesign").
- B. Construction. If the Applicant's construction timing for Parcel A and/or Parcel B precedes the VDOT Project, the Applicant shall construct the Ultimate Southern Curb Line consistent with the Redesign, to include the 42-inch storm drain pipe and the relocation of a 10-inch water line along the aforesaid frontage improvement. The pavement constructed by the Applicant shall tie into the existing Route 29 condition. Said construction shall be accomplished simultaneous with construction of the improvements on, respectively, the adjacent Parcel A and/or Parcel B, prior to issuance of a Non-RUP or RUP for the respective Parcel. If construction of the VDOT Project has begun on Route 29 west of Gallows Road prior to the development of Parcel A and/or Parcel B, the Applicant shall contribute \$300,000 for VDOT to construct the Ultimate Southern Curb Line as part of the VDOT Project, in accordance with the Redesign.
4. Lee Highway (Route 29) Offsite. As referenced in Proffer VII.9. below and as shown on Sheet 7 of the CDPA/FDPA (the "Yates Way" connection") the Applicant shall contribute \$200,000 toward the construction of an additional right turn lane as shown on Sheet 7 of the CDPA/FDPA from Yates Way to Gallows Road. Said contribution will be made at the time of the first site plan approval.
5. Strawberry Lane. Strawberry Lane shall be constructed by the Applicant as a private street in substantial conformance with that depicted on the CDPA/FDPA; east of Festival Street to the western edge of Yates Way, the Applicant shall construct a roadway measuring 49 feet face of curb to face of curb, including parallel parking in select locations as reflected on the CDPA/FDPA. Generally, west of Festival Street, the Applicant shall construct a roadway measuring 37 feet face of curb to face of curb. These improvements shall be constructed prior to issuance of the first Non-RUP or RUP for any of the Applicant's buildings located within Parcel (A) or Parcel (B).

temporary grading and/or construction easements not to exceed 12 feet in width, along the eastern property line as depicted on the CDPA/FDPA to facilitate ultimate construction of a private street connection by others to extend North Street eastward.

9. **Yates Way Extended.** Subject to provision of the necessary right-of-way and/or easements by others and in reliance upon finalization of the preliminary approval granted by FCDOT and VDOT, the Applicant shall extend Yates Way off-site, from its ultimate terminus as built by Uniwest, to and including a right-in/right-out intersection with eastbound Route 29 in accordance with VDOT requirements. The Applicant shall substantially complete construction of such extension prior to the issuance of the first Non-RUP or RUP associated with Parcel B, if such rights-of-way and/or easements are made available to the Applicant by others; notwithstanding the aforesaid, should VDOT require an interim condition that is less than a full right-in/right-out intersection, then Applicant shall substantially complete construction of such extension and such interim condition to the extent permitted by VDOT prior to the issuance of the first Non-RUP or RUP associated with Parcel B, if such rights-of-way and/or easements are made available to the Applicant by others.
10. **Service Alleys.** The alleys parallel to the eastern and western property line of the Property, which provide service and access to the loading areas and parking structures serving the principal and secondary uses in the buildings adjacent to them, shall be constructed by the Applicant consistent with the sections shown on the CDPA/FDPA prior to the issuance of the initial RUP or Non-RUP for the respective building adjacent to said alley.
11. **Traffic Signals.**
 - A. Applicant shall submit a traffic signal warrant study to VDOT concurrent with submission of to the final site plan for the Property. If not deemed warranted, Applicant shall grant such easements as may be required for installation of said signal in the future by others and shall otherwise be relieved of any obligation as to this signal. If warranted, the Applicant shall design, equip and construct said traffic signal subject to the availability of all rights-of-way and easements as outlined in Proffer VI.3.
 - B. The Applicant shall further modify the existing signal at Route 29 and Merrilee Drive to accommodate the construction of Eskridge Road at this location. Said signal modifications shall be designed to accommodate the ultimate

Property and shall include sidewalk connections extending to the property line. Each on-site sidewalk shall be constructed to the width shown on the CDPA/FDPA for such sidewalk and shall be maintained by the Applicant. Sidewalk improvements within existing or proposed VDOT right-of-way shall be in accordance with VDOT requirements. At the time of site plan approval for each respective phase of development the Applicant shall grant public access easements over the private sidewalks located within such phase.

2. **Route 29 Trail.** Subject to DPWES approval, the Applicant shall construct a ten-foot wide sidewalk/bike trail within the ROW across the Route 29 frontage of the Property, as generally shown on the CDPA/FDPA. The Applicant and its successor UOA (as defined below) shall maintain such sidewalk.
3. **Crosswalk at Future Eskridge Road/ Route 29 Intersection.** The Applicant shall provide pedestrian cross-walk striping as shall be approved by VDOT for each VDOT-designated pedestrian crossing of the Eskridge Road/Route 29 intersection.
4. **Pedestrian Connection to Luther Jackson Middle School.** A direct pedestrian access, which provides safe and convenient access for students residing within the subject Property during school hours, shall be provided generally as depicted on the CDPA/FDPA. The Applicant shall retain the right to restrict said access outside of school hours.
5. **Areawide Pedestrian Enhancements.** The Applicant shall contribute \$10,000 towards other areawide pedestrian enhancements to be used by the County within the area bounded by Route 50 to the south, Prosperity Avenue to the west, Gallows Road to the east and Lee Highway to the north.
6. **Bicycle Storage.**
 - A. **Office.** For office uses, secure bicycle storage shall be provided in the same location as the vehicular parking for the respective office building. Such storage shall be provided at a rate of one (1) storage space per 20,000 square feet of office GFA.
 - B. **Residential.** For residential uses, secure bicycle storage shall be provided in the same location as the vehicular parking for the respective multi-family residential building. Such storage shall be provided at a rate of one (1) storage space per eight (8) dwelling units.

employees, customers and residents who work and/or live in the buildings located on the Property. The TDM Plan shall complement the synergies expected from the Property and the numerous transportation systems management programs and improvements referenced elsewhere in these proffers.

2. **Definitions.**

- A. **Applicant Control Period.** The term "Applicant Control Period" shall be defined as the period starting upon the approval of this Rezoning Application and ending on the date when two (2) consecutive annual Trip Counts conducted starting at least one (1) full year after build out of the Property, as defined in Proffer IX.2.B below, shows that the trip reduction percentages listed in Proffer IX.3.A.i and/or ii have been met. The implementation of the TDM Plan may not be assigned to the UOA/HOA/COA until the Applicant Control Period has expired. Upon expiration of the Applicant Control Period, the Applicant shall have no further obligation under this Proffer IX, after which the on-going implementation of the TDM Plan and funding of the TDM Budget (and 10% contingency) shall be the responsibility of the UOA/HOA/COA as outlined in Proffer IX.4.L.
- B. **Build Out.** For purposes of this Proffer IX and the TDM Plan, "Build out" of the Proposed Development shall be defined to occur upon the issuance of (a) 100% of all RUPs for the residential units site plan approved and constructed on the Property in its entirety, (b) Non-Residential Use Permits ("Non-RUPs") representing 100% of the maximum floor area for the office uses site plan approved and constructed on the Property in its entirety, and (c) Non-RUPs representing 80% of the floor area for the retail and theatre uses constructed on the Property in its entirety.
- C. **Peak Hour.** The relevant weekday AM or PM "peak hour" shall be that 60-minute period during which the highest volume of mainline through volumes occurs between 6:00 and 9:00 AM and 4:00 to 7:00 PM, respectively, as determined by mechanical and/or manual traffic counts conducted by a qualified traffic engineering firm at two select locations on Gallows Road between Routes 29 and 50 and on Route 29 between Prosperity Avenue and Gallows Road, and as approved by 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.,

- H. TDM Account. The TDM Account shall be an interest bearing account established by the Applicant with a banking or 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 as defined in Proffer IX.2.I below.
- I. TDM Budget. The "TDM Budget" is defined as the estimated costs plus 10% (the "TDM Budget Contingency") needed to implement the TDM Plan in any given calendar year. The TDM Budget may be less than, but in any event shall be no more than \$236,300 (including the 10% TDM Budget Contingency and including approximately \$90,000 as the projected annual cost of the Shuttle) per full calendar year (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) as required by the FCDOT. However, the Applicant may, at its sole discretion, increase the TDM Budget (including the 10% Budget Contingency) for any calendar year if necessary in order to achieve the trip reduction goals outlined in Proffer IX.3.A.i and/or ii.
- J. TDM Remedy Fund. The "TDM Remedy Fund" shall be an interest bearing account, separate and distinct from the TDM Account, established by the Applicant with a banking or financial institution qualified to do business in Virginia and used to supplement additional strategies which may be required to achieve the goals established in Proffer IX.3.A.i and/or ii, and for which funding is not immediately available in the TDM Account.
- K. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the Applicant shall deposit penalty payments as may be required in accordance with Proffer IX.4.M.
3. **Trip Reduction Goals.** The goal of the TDM Plan is to reduce the number of weekday peak hour vehicle trips generated by the residential and office uses on the Property through the use of mass transit, ride-sharing and other strategies. The Property shall be designed to maximize interactions among the various uses on the Property such that fewer automobile trips will occur within the site and on the external road network through the creation of synergistic relationships among the uses within the Property. In addition, the implementation of the Shuttle Service, as well as enhanced pedestrian and bike facilities will provide convenient and safe access to nearby Metrorail and bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.

Property according to methods set forth in the ITE, 7th edition, Trip Generation manual for Land Use Codes 230 and 710 for the residential and office uses respectively. The number of residential units and office floor area for each phase will be based on those amounts reflected on individual approved site plans for the specific residential and office uses. In the event at Build Out the Applicant has constructed fewer than 749 residential units and/or 150,000 gross square feet (GSF) of office uses, respectively, then the baseline trip generation at Build Out shall be calculated as if 749 residential units and 150,000 GSF of office uses had actually been constructed.

4. **Components of the TDM Plan.** In order to meet the Trip Reduction Goals set forth in Proffer IX.3.A.i and ii, a TDM Plan shall be adopted and implemented by the Applicant, subject to FCDOT approval. The minimum components of the TDM Plan are specified in this Proffer and may be subsequently adjusted by mutual agreement between the Applicant (and subsequently the UOA/HOA/COA, as applicable) and FCDOT. All adjustments to the components of the TDM Plan contained in this Proffer IX.4 shall be approved by FCDOT and will not require a PCA. The TDM Plan shall include, at a minimum, those provisions pertaining to the residential and office uses on the Property as listed below, as well as those listed below pertaining to the retail and hotel uses, as qualified by Proffer X below. The minimum TDM Plan components are further described in the TDM Strategic Plan. The TDM Strategic Plan also includes information about possible supplemental TDM Plan components. In addition to the timing, phasing and implementation information in this Proffer, more detail is provided in the TDM Strategic Plan.

A. **Shuttle Component Applicable to the Property.** The Applicant shall provide the following in conjunction with the TDM Plan

- i. *Shuttle* -- Prior to the issuance of an initial RUP for the 400th dwelling unit or the 1st RUP within the third residential building to be constructed on the Property, whichever first occurs, the Applicant, individually or in conjunction with other property owners and/or developers within the Merrifield Town Center and the Dunn Loring Transit Station Area, shall operate or contract with a third party to operate and maintain the Shuttle for use by the residents and employees of the Property to provide access to and from the Dunn Loring Metro Station. Such service shall be available,

Further, Applicant may, in lieu of establishing the Property's own Shuttle (as committed in Proffer IX.4.A above) assist, at a cost not to exceed \$50,000, in establishing said Areawide Circulator by funding acquisition of the initial Circulator Vehicle or otherwise, so long as the Areawide Circulator's ongoing operation and expense beyond Applicant's pro rata share of said cost is provided by others, such as through a Pro Rata contribution system or a Business Improvement District.

B. TDM Components Applicable to the Property. In addition to the Shuttle proffers outlined in Proffer IX.4.A. above, at a minimum, the TDM Plan shall contain the following elements:

- i. *TDM Network* -- Establishment of a network of designated on-site TDM contacts among the Applicant, the UOA/HOA/COA, office building tenants, property managers and FCDOT through which to coordinate the implementation of the TDM Plan.
- ii. *Meetings with Community Groups* -- The PM shall organize and attend meetings with community groups and/or other organizations within the greater Merrifield Suburban Center that have a mutual interest in furthering the success of TDM programming and the effectiveness of mass transit and other non-SOV commuting measures.
- iii. *Website* -- Develop and maintain a TDM website for the Property that includes multi-modal transportation information, real-time travel and transit data, and links to transportation and telework sites.
- iv. *Personal outreach* -- Personal outreach by the PM to all new commercial/residential tenants to explain the TDM program and transit options.
- v. *Dissemination of information* -- Dissemination of information relevant to patrons and customers of the proposed new retail/commercial uses, residents, and office and hotel employees and guests about transit benefits programs, maps and schedules offered by WMATA, Fairfax Connector, the on-site shuttle provider and/or other transit providers.
- vi. *Transit benefits* -- Encouragement of employers to offer employee benefit options, including parking cash out, pre-tax/payroll subsidies for transit

structures as designated on Sheet 40 of the CDPA/FDPA and in Proffer VIII.6. The PM shall coordinate with the Halsted, Dunn Loring Metro, and Wilton House HOAs to encourage those residents to bike to the Property.

C. Additional TDM Components Applicable to Residential Buildings Only. In addition to the TDM program components described in Proffer IX.4.A.i through xiii above, at a minimum, the TDM Plan shall also have the following components as applicable to residents of the Property.

- i. *In-Unit Internet Access* -- All residential units shall be pre-wired to provide Internet access (or other technology that may become available) to permit residents to access the Internet from home.
- ii. *Sales/leasing marketing program* -- A targeted marketing program for residential sales/leases that encourages and attracts TDM-oriented people such as one and no-car individuals and families to live on the Property as well as a targeted marketing program to encourage on-site and nearby office workers to live in the on-site residential buildings. The Applicant shall actively support the PM in efforts to encourage employees of office tenants both on-site and elsewhere in Merrifield to live in the residential units on the Property through discussions between executives and officers of the office tenants and executives and officers of the Applicant.
- iii. *TDM incentives* -- One time distribution of fare media or other incentives to all initial residents of driving age as an incentive to occupancy.
- iv. *Transportation advising* -- "Personalized transportation advising" integrated into new unit walk-throughs, including appropriate training of sales/leasing agents.

D. Additional TDM Components Applicable to Office Building Only. In addition to the TDM program components described in Proffer IX.4.A.i through xiii above, at a minimum, the TDM Plan shall also have the following components as applicable to the office building tenants and employees:

- i. *Matching On-Site Office Employees to On-Site Residential Units* -- Residential units shall be marketed to on-site office employers and workers, including providing information in prospective tenant packages and possible discounts or financial incentives to those employees who live

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") plus ten (10) percent, which amount shall not be more than \$236,300 for each full calendar year (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) 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. If FCDOT has not responded with any comments to the Applicant 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 final plan and budget 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). The PM shall furnish a copy of the TDM Budget and TDM Plan for each year to the FCDOT and shall request in writing the County's review and comment in conjunction with the submission of the Annual Report as outlined in Proffer IX.4.J.ii A line item for the TDM Account shall be included in the UOA/HOA/COA budget upon the establishment of the same. The association documents that establish and control the UOA/HOA/COA shall provide that the TDM Account shall not be eliminated as a line item in the UOA/HOA/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 and commercial owners are implemented as provided in the UOA/HOA/COA documents.

H. 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 shall establish and fund the TDM Account in an amount equal to the initial TDM Budget for the TDM Plan and

amount of \$50,000 (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008). Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need of TDM funding to serve the Property, and may be drawn upon prior to any TDM Budget adjustments that may be required under Proffer IX.4.K.iv.b.ii. Upon expiration of the Applicant Control Period, the Applicant shall transfer the TDM Remedy Fund to the UOA/HOA/COA for TDM purposes.

J. TDM Incentive Fund. Prior to the issuance of the initial RUP for each Residential Building and the initial Non-RUP for the office uses site plan approved and constructed on the Property, the Applicant shall make a one time contribution (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) of \$50 per unit in each respective residential building and \$0.10 per gross square foot of office use for which an initial Non-RUP is issued, to a segregated sub-account in the TDM Account to fund a transit incentive program for, respectively, initial purchasers and/or lessees of the residential units or office uses. Such program shall be prepared by the Applicant through the PM and 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 and office tenants on the Property. The TDM Incentive Fund shall be established as an interest bearing account with a banking or other financial institution qualified to do business in Virginia. All interest earned on the account principal shall remain in the TDM Incentive Fund and shall be used for TDM incentive purposes only.

K. Monitoring and Reporting.

i. Annual Surveys. Between September and November, beginning one year after the issuance of the first building permit for the first residential or the first office building on the Property, whichever first occurs, and continuing annually thereafter until the Applicant Control Period expires, the PM shall conduct a survey of residents and/or office tenants designed to evaluate the effectiveness of the TDM Plan in meeting the TDM Goals applicable at that time and to evaluate the need for adjustments to the TDM Plan. The PM shall coordinate the draft Annual Survey materials and the methodology for validating the Survey results with FCDOT at a

that have been completed in the Proposed Development, (d) an analysis of the results of the Annual Survey, (e) a compilation and analysis of the results of any Trip Counts that were conducted during the year, (f) discussion of any changes proposed to the TDM Plan, (g) the amount of money then on deposit in the TDM Penalty, Incentive and Remedy Funds, and (h) utilization of the on-site shuttle service if available and operational.

- iii. Adjustments to Calendar and Due Dates. At the mutual agreement of the FCDOT and the PM, the due dates for the delivery of the Annual Report may be altered by up to sixty (60) days if changes have occurred, or appear to have occurred, in trip characteristics resulting from other events.
- iv. Meetings with FCDOT. The PM shall meet with FCDOT annually, or as mutually agreed upon, after submission of the Annual Report to discuss the results of the Trip Counts, the Annual Survey, the Annual Report and the TDM Plan.

L. Trip Counts

- i. Annual Trip Counts. The PM shall conduct a Trip Count annually between September 1st and November 30th (excluding weeks containing a county, state or federal holiday or when County public schools are not in session such as Thanksgiving week) beginning with the year following the issuance of the 100th RUP for the first residential building or Non-RUP for the first 50,000 square feet of office use constructed on the Property, whichever first occurs. The purpose of such Trip Count is to measure the actual vehicle trips generated by the residential and office 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 applicable phased TDM Goal (which is determined by the level of development completed and whether the point in time is pre-or post shuttle) set forth in Proffer IX.3.A.i and .ii above. Trip Counts provided to FCDOT shall include information on the percentage of RUPs and Non-RUPs issued for the Proposed Development as of the date of the Trip Count.

FCDOT, the PM shall conduct the requested Trip Counts within sixty (60) days after the County's request or as may be agreed up with FCDOT.

- iv. Evaluation. The results of each Trip Count shall be compared to the trip reduction goals established in Proffer IX.3.A above for the then-applicable phase of development on the Property to determine whether actual traffic counts are equal to, less than or greater than the maximum allowed trips for the then-applicable TDM Goal as calculated in accordance with Proffer IX.3.v

a. Pre-Build Out

- i. In the event the trips generated by the residential units and office uses prior to Build Out, as defined in Proffer IX.2.B, are equal to or less than the maximum allowed trips established in accordance with Proffer IX.3.A.i and i or ii and IX.3.B above, as determined for the then-applicable development phase of the Property, then (i) no penalty is owed, and (ii) the Applicant or the PM shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers, until Build Out is reached, after which Proffer IX.4.K.iv.b below shall apply.
- ii. In the event the trips generated by the residential units and/or office uses prior to Build Out, as defined in Proffer IX.2.B are greater than the maximum allowed trips set forth in Proffer IX.3.A.i and/or .ii above, as determined for the then-applicable development phase of the Property, then the PM shall (i) develop modifications to the TDM Plan and the TDM Budget and/or implement certain of the supplemental strategies as outlined in the TDM Strategic Plan to address the surplus of trips, (ii) submit any such revisions to the TDM Plan and TDM Budget to FCDOT as part of the Annual Report as outlined in Proffer IX.4.J.ii and request in writing the County's review and concurrence, and (iii) pay no penalties. If no written

cover any proportional additional costs to implement the updated TDM Budget; and (b) implement the provisions of the revised TDM Plan.

- ii. If two (2) consecutive annual Trip Counts conducted in accordance with this Proffer reveal that the trip reduction goals outlined in Proffer IX.3.A have been met after Build Out of the Property, as defined in Proffer IX.2.B, 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 Proffer IX.4.L below shall apply.

M. Ongoing Implementation of TDM Plan. Once the Applicant Control Period has expired, the UOA/HOA/COA shall be responsible for ongoing implementation of the TDM Plan. The PM shall conduct additional Trip Counts at five (5) year intervals to determine whether the relevant Phase 3 (or Phase 4) TDM Goal, as established by Proffer IX.3.A, continues to be met. In the event that an Annual Report submitted by the PM demonstrates significant enough reason to question whether the relevant Phase 3 or Phase 4 TDM Goal is met, then FCDOT may require the PM to conduct additional Trip Counts on a more frequent basis (but not more frequently than once per year) to determine whether, in fact, the relevant Phase 3 or Phase 4 TDM Goal is being met.

- i. Continuation of TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period has expired reveal that the actual trips generated remain equal to or less than the maximum number of trips permitted under the relevant Phase 3 or Phase 4 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 any subsequent Trip Counts conducted after the Applicant Control Period has expired reveals that the actual number of trips generated by the residential and office uses are greater than the maximum number of trips permitted under the relevant Phase 3 or Phase 4 TDM Goal, as established by this Proffer, then the PM

transportation incentives which will directly serve the Property. Such incentives shall include enhancements to the Shuttle, increased incentives, and/or a contribution to the establishment of the Areawide Circulator. The maximum aggregate amount of all penalties to be paid under Proffer IX.4.L.iv.b.i and Proffer IX.4.N. is \$100,000 (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008). No penalties shall be imposed while the Phase 1 and Phase 2 TDM Goals are applicable.

- a. Failure up to 10%. A failure in the reduction of trips in either or both of the Peak Hours by ten percent (10%) or less requires the Applicant to make a payment to the TDM Penalty Fund of \$10,000.
 - b. Failure Greater than 10% but less than or equal to 15%. A failure in the reduction of trips in either or both of the Peak Hours by more than ten percent (10%) but less than or equal to fifteen percent (15%) requires the Applicant to make a payment into the TDM Penalty Fund of \$15,000.
 - c. Failure Greater than 15%. A failure in the reduction of trips in either or both of the peak hours by an amount greater than fifteen percent (15%) requires the Applicant to make a payment into the TDM Penalty Fund of \$30,000.
- O. Enforcement. If the PM fails to timely submit the Annual Report 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 IX.4.J and providing the PM sixty (60) days after receipt of said notice 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 UOA/HOA/COA, as applicable, shall be subject to a penalty of \$200 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.
- P. Notice to Owners. All residents, tenants and employers of the Merrifield Town Center shall be advised of the TDM Plan. UOA/COA/HOA members will be informed of their funding obligations pursuant to the requirements of this Proffer

schedules (including hours of service), changes in transit service and other relevant transit-related topics. The PM shall invite Fairfax County and/or WMATA representatives to these meetings from time to time to speak to the group(s) about these and related subjects. Based on these meetings, the PM shall work with Fairfax County and/or WMATA to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the Property tenants and their employees.

- B. Transit Incentives. Utilizing the Retail/Hotel TDM Incentive Fund (described in paragraph C below), the PM shall provide financial incentives to Retail store tenants, Hotel guests and the Retail/Hotel employees to utilize transit. These incentives may include contests with fare card rewards, retail gift certificates and the like (for example—an award could be offered to the transit riding employee of the month/year or the tenant with the highest percentage of employees utilizing non-SOV transport to commute to and from the Retail uses).
 - C. Regional TDM Incentive Programs. The PM shall make information available to Retail store tenants, Hotel Guests and the Retail/Hotel employees about programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.
 - D. Ridesharing. The PM shall assist Retail store tenants and the Retail/Hotel employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.
4. **Retail/Hotel TDM Incentive Fund.** The Applicant shall establish a Retail/Hotel TDM Incentive Fund for use exclusively by the Applicant with Retail and Hotel employers and their employees. Such incentives could include gift certificate awards, fare card contests and/or give-aways, transit fairs specific to the Retail tenants, Hotel Guests, and the Retail/Hotel employees and for similar inducements or incentive activities. The Applicant shall make a one-time contribution to this fund at the time that the first TDM Budget is approved and funded per Proffer IX in the amount of \$10,000. At such time as a Retail/Hotel employer elects to financially contribute to the Retail/Hotel TDM Program, such contributions shall be utilized in addition to the Applicant's contribution (that is, the Applicant's contribution shall not be reduced or offset in any way).

subject property/detention facilities as currently developed shall be taken. The reduction of total discharge from the Property, as outlined above, shall apply to the sum of all stormwater flow from the Property at buildout and shall include Eskridge Road Improved. The control of runoff from the Eskridge Road Improved site shall include the increase in impervious area proposed in Fairfax County Plan #0561-PI-001 relative to the existing impervious area in said plan. The peak reduction will be on each facility combined. The discharge at either facility may vary from "good-forested" flows, so long as the reduction for the entire Property as a whole is achieved. A waiver to allow for underground detention, which includes an installation/maintenance cost burden estimate, has been submitted to Fairfax County DPWES. Development of the Property may be phased; the stormwater management quantity controls for each development phase shall provide detention capacity for the area proposed to be developed in the subject phase as well as for any other development phase for which control was previously provided. The location and size of these facilities shall generally conform to that shown in the CDPA/FDPA.

- B. Best Management Practices.** As part of the stormwater management associated with the Property, Best Management Practice (BMP) techniques will be utilized to improve the water quality of the runoff from the Property in the post-developed condition. Through the use of BMP facilities, such as sand filters, storm filters, other Fairfax County approved methodologies, or any combination thereof, the phosphorous removal rate on the subject property in the post-developed condition shall be a minimum of 40%. The Applicant shall make best efforts to provide phosphorous removal efficiency between 40% and 47%. (It should be noted that the PRM portion of the subject property qualifies as re-development, and therefore is subject to a phosphorous removal rate as low as 10%, but a minimum of 40% removal for the Property as a whole at buildout shall be achieved.) Prior to approval, the SWM Plan shall demonstrate the entire Property shall achieve a minimum of 40% phosphorous removal rate as opposed to any re-development reduction credits. Development of the Property may be phased, thus the BMP controls for each development phase shall provide phosphorous removal at a minimum 40% rate for the area within the development phase, as well as any other development phase for which removal was previously provided. The

Development, the Applicant shall establish an account (the "SWM Maintenance Account") to be used for the on-going maintenance of the SWM Facilities located on or serving the Property. The SWM Maintenance Account shall be an interest-bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for on-going maintenance of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/OCA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Maintenance Account semi-annually. The association documents that establish and control the UO/HOA/COA shall provide that the SWM Maintenance Account shall not be eliminated as a line item in the UO/HOA/COA budget, and that funds in the SWM Maintenance Account shall not be utilized for purposes other than to fund the maintenance of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Maintenance Account of \$44,464. The SWM Maintenance Account shall be funded through pro-rata assessments of the subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.

- iii. *SWM Replacement Fund.* Prior to issuance of the initial RUP or Non-RUP or the first building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Replacement Account") to be used as an escrow account for the eventual replacement of the SWM Facilities located on or serving the Property. The SWM Replacement Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for future replacement of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Replacement Account annually. The association documents that establish and control the UO/HOA/COA shall provide that the SWM Replacement Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that

- iii. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39.
 - iv. 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.
- B.** The Applicant shall submit a refined acoustical analysis prior to the submission of building plans for Parcels A or B, whichever occurs first, showing a hotel and/or residential units in order to determine the affected rooms/ units (if any), and shall provide such appropriate interior noise attenuation measures as may be required based on the noise impact from Lee Highway (Route 29) on such building. Such analysis shall be submitted to and approved by DPZ and shall be based on the accepted methodology contained said refined analysis. Any changes to the hotel and/or residential use premised on the conclusions of such a refined acoustical analysis shall be in substantial conformance with the CDPA/FDPA and these proffers, as determined by the Zoning Administrator.
- C.** Building plans for the hotel and/or residential buildings shall depict the final noise contours and all locations of the respective building/rooms/units, if any, that are subject to noise mitigation as provided herein.

XII. LANDSCAPING AND OPEN SPACE

- 1. Minimum Open Space.** As depicted on the CDPA/FDPA, within the PDC portion of the Application Property a minimum of 23 percent open space shall be provided, and within the PRM portion of the Property a minimum of 35 percent landscaped open space shall be provided in accordance with Zoning Ordinance requirements. Provision of the open space areas and improvements may occur in phases, concurrent with the phasing of development/construction of the Application Property. As such, the total area of open space provided at any given phase of development shall not be required to be equivalent to the minimum overall open space specified herein. Site plans (and subsequent revisions as may be applicable and relevant to landscaping) submitted for the respective phases of development shall include a landscape plan showing the open, streetscape and landscaping appurtenant to that respective phase of development, as generally shown on the CDPA/FDPA.

right to temporary closures for necessary maintenance, repairs, safety, and public welfare considerations, and programmed events.

6. Alternative Planting Width Details: Site Plans submitted for the respective phases of development that are subject to the Alternative Planting Widths shall include a landscape plan for that phase of development in conformance with the PCA/FDPA. Tree Species and planting sites are set forth on the PCA/FDPA, subject to revision as may be approved by the Urban Forest Management Division for those trees counting toward Tree Canopy Coverage. Where minimum planting widths of 8 feet can not be provided, the Applicant shall use Structural specifications for all planting sites that are:

- A minimum of 4' open surface width and 16 square feet open surface area for Category III and IV trees, with the tree located in the center of the open area;
- 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;
- Soil volume for Category II and IV trees shall be a minimum of 700 cubic feet per tree for single trees. For two trees planted in a contiguous planting area, a total volume of at least 1200 cubic feet shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal to 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.
- Soil specifications in planting sites shall be provided in the planting notes to be included in all subsequent site plan submissions.

XIII. UTILITIES

1. **Underground Utilities.** The Applicant shall coordinate with utility companies (gas, power, telephone, cable etc.) to co-locate utilities where reasonably feasible. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall place all utilities serving the Property underground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground without approval of a PCA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from

- D. A fitness center, which is a minimum of 1,200 gross square feet in size and includes equipment such as stationary bikes, treadmills, weight machines, free weights, etc; and
- E. A business center, which is a minimum of 500 gross square feet in size and includes broadband or high-speed data connections (including "secure" voice and/or data connections), computers, facsimile machine and similar items.
- F. If FDPA Option 2 (Sheet 9C) for Parcels C & E is constructed, then in addition to the minimum of \$955 per market rate unit expenditure referenced above, for those market rate residential units within Parcels C & E only, an additional \$350 per market rate residential unit will be expended on on-site recreational facilities which may include in addition to the above items, fitness lounge, cyber café, clubroom/party room, TV/theater areas, gaming center and conference room within the interior of the Buildings and a pool, private seating area(s), Zen garden with water feature, gas fire pit, and gas grills for outdoor entertaining within the exterior courtyards. Prior to final bond release for the Proposed Development, if FDPA Option 2 is constructed, the balance of any funds not expended within C&E for the items listed within this proffer, shall be contributed to the Fairfax County Park Authority ("FCPA") for the provision of recreation facilities located in proximity to the Property.

- 2. **On-Site Parks.** Two parks (described both below and also in the "Design Guidelines" referenced in "Urban Design" Proffer XVI.7 below) shall be provided on the Property and shall be interconnected through the use of a pedestrian-oriented promenade and an attractive streetscape system lined with special landscape treatments, water features, outdoor seating and entertainment areas. Said parks, while retained in ownership by the Applicant, shall be subject to public access easements, which shall reserve to the Applicant the right to restrict access for special events or out of security and/or safety concerns. "North Park" shall be subject to programmatic access by the Park Authority pursuant to a separate "Memorandum of Understanding" between the Park Authority and the Applicant, which shall be executed by February 8, 2012. These parks shall be designed to enhance and complement land uses sited along "Festival Street," which shall serve as the "main street" of the development and may include both hardscape and softscape elements, generally as depicted on the CDPA/FDPA but subject to final engineering and architectural design changes by Applicant. These parks and associated linear walkway system shall be owned, programmed and maintained by the Applicant, which shall grant public access easements as described below:

- A. "North Park" shall consist of at least twenty-seven thousand square feet which, when combined with the 16,561 square feet in the adjacent "Uniwest" park, shall

Residential Buildings will attend. Said contribution shall be based on student yield ratios of .047, .013 and .027 per unit for elementary, middle and high school, respectively for multi-family and .204, .057, and .118 per unit for elementary, middle, and high school, respectively for single-family attached. Such contribution shall be made at the time of final approval of the site plan for each residential building triggering the FCPS contribution for the students generated by that respective residential building.

2. **Escalation in Schools Contribution.** If, prior to site plan approval for the respective residential buildings, Fairfax County should increase the accepted ratio of students per subject multifamily unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution for that building to reflect the current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the reduced amounts.
3. **Luther Jackson Middle School Improvements.** In accordance with specific terms set forth in a separate "Memorandum of Understanding" between FCPS and the Applicant (the "MOU"), and in accordance with the approved Special Exception Amendment Application 99-P-008 (the "SEA") and SEA Plat as to the below parking spaces, the Applicant shall provide, respectively, natural turf ball-field(s), graded to meet FCPS grading standards for such ball-field(s), on approximately 4.50 acres in the general location of the existing athletic fields on the Middle School site, and the below parking spaces and associated features. Site plan approval for, and construction of said improvements associated with the natural turf ball-field(s) and parking spaces shall be provided by the Applicant at no cost to FCPS. As specified below, said improvements, or a cash contribution to the Board of Supervisors in lieu of certain of said improvements, shall be completed prior to issuance of the RUP for the first residential building on the Property and shall consist of the following:
 - A. Grading for both the below parking spaces and for improvement of the approximately 4.5 acres as natural turf ball-field(s) in accordance with FCPS requirements;
 - B. Construction of a minimum of 64 new parking spaces located along the Middle School's common boundary with the Property, which new parking spaces shall be counted towards the required parking for the Property (a system to ensure adequate access to these spaces for FCPS, the Property, and FCPS and in support of use of the ball-field(s), shall be provided in the MOU). The Applicant shall be

grading and hydro-seeding the 4.5-acre area, (b) providing, relative to the diamond-shaped natural turf field only, installation of an irrigation system to the satisfaction of FCPS and consistent with that detailed in the MOU, (c) providing four soccer goals, and (d) providing one permanent baseball backstop. In addition, under Alternative Two only, the Applicant shall make a one time cash-in-lieu of materials and construction contribution towards the synthetic turf field of \$45,000.00, which shall be paid to the Board of Supervisors at the time of final site plan approval for the ball-field improvements. This cash-in-lieu amount may be supplemented by the value, agreed upon by FCPS and this Applicant, of whatever other of the Alternative One or Alternative Two materials and improvements FCPS and the Providence District Supervisor shall determine, pursuant to the MOU, that Applicant shall not provide.

XVI. OTHER COMMUNITY CONTRIBUTIONS.

1. **Providence District Contributions.** At the time of approval of the final site plan for the first residential building, the Applicant shall contribute \$5,000.00 to each of the following entities or funds (up to a maximum of \$25,000.00 in total contributions) to support their activities and programs:
 - A. Providence District Tree Fund;
 - B. Dunn Loring Volunteer Fire Department;
 - C. Merrifield Fire Department;
 - D. Nottoway Nights; and
 - E. Providence District Library.

XVII. URBAN DESIGN

1. **Architectural Treatments.**
 - A. The architectural treatment of this "Merrifield Town Center" development shall create a sense of identity and place and preserve human scale through the use of unifying elements, such as materials, textures, colors, window treatments, decorative details, lighting, landscaping, and roof pitches. All building facades/elevations shall be designed to incorporate architectural elements and/or decorative details, except for those locations where a building façade: faces a

3. **Street Sections.** Streetscapes shall be provided generally as shown on the cross-sections on Sheets 29 through 33 of the CDPA/FDPA.
4. **Building Elevations.** The architectural design of commercial retail, office, hotel and multi-family buildings shall be consistent with the quality of the elevations shown on Sheets 16 through 27 of the CDPA/FDPA. The Applicant reserves the right to revise the elevations as a result of final architectural and engineering design, provided the quality of design remains consistent with those shown, as determined by DPWES.
5. **Building Materials.** Buildings shall consist of high quality materials, a combination thereof including, but not limited to, stone, cast stone, masonry, glass, precast, metal, cementitious fiber board, asphalt shingles, clay tiles, slate, wood or comparable materials. EIFS shall be limited solely to use on mechanical penthouses and architectural detailing not to exceed five percent of a building's façade.
6. **Parking Garage Façade Treatments.** Facades of above-grade garages facing Eskridge Road, Festival Street, Festival Street Extended and Strawberry Lane shall be treated with materials consistent with those materials used on companion buildings in accordance with the CDPA/FDPA and the "Design Guidelines" referenced below.
7. **Design Guidelines.** The overall concepts presented in the Merrifield Town Center Design Guidelines, prepared by RTKL and dated September 6, 2007, shall be used generally as a guide in the creation of architectural, landscape, street section, building elevation, North Park and South Park features and design elements.
8. **Security.** In consideration of security concerns along the southern property boundary, transitional screening shall be provided as depicted on Sheets 10, 11 and 33 of the CDPA/FDPA, and lighting shall be provided in this area to address safety concerns. Contingent upon the provision of diligently pursued off-site grading easements, the Applicant shall grade-out this property line and the immediately adjacent Middle School property to minimize or eliminate the need for a retaining wall in this area. In the event said off-site grading easements are not timely provided by the Fairfax County School Board, then the Applicant shall have the right to construct a retaining wall in this area.
9. **Green Building Principles.** The Applicant shall work with its architect to incorporate, in Applicant's sole discretion, environmentally sustainable attributes into its building program which may include, but not necessarily be limited to, such elements as high-efficiency mechanical systems, water efficient fixtures, CO2 sensors and air filters, and storage and collection of recyclables.

be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

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

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

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

LEED-AP

The applicant will include a LEED[®]-accredited professional as a member of the design team. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of

service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants, and caulks; and

- provides contact information that building occupants can use to obtain further guidance on each green building component.
- Prior to approval of the final RUP, the applicant will provide an electronic copy of the manual in pdf format to the Environment and Development Review Branch of the Department of Planning and Zoning.

LEED Online – DOES NOT APPLY TO LEED for Homes

B. EarthCraft:

Prior to issuance of the non-RUP/RUP for the proposed building, the Applicant shall provide documentation to DPWES and DPZ that the building has been awarded certification in accordance with the EarthCraft House Program.

XVIII. SIGNAGE

1. **Site 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 as may be approved by the Planning Commission. In either event, however, a coordinated signage system, including free-standing signs, way-finding signs (including those for sidewalks/trails) and potential retail awning signage, shall be provided for all residential and non-residential uses. Building mounted signage shall be compatible in terms of height, color, illumination and letter sizing, but may vary from retailer to retailer. If lighted, signage may be internally lighted, neon or lighted via downward-directed lights.
2. **Ticker "Sign".** As generally depicted on Sheet 17 of the CDPA/FDPA and subject to Planning Commission approval in a Comprehensive Sign Plan, a ticker element shall be permitted as an architectural feature integrated into the retail building façade located along the Festival Street and Strawberry Lane street frontages within either Parcel A or

5. **UOA Maintenance Obligations.** The Applicant, and then the subsequent UOA, shall have maintenance responsibilities that shall include, but not necessarily be limited to the following:
- A. Maintenance of private streets, all sidewalks, plazas, open-space, stormwater management facilities (as set forth in Proffer Section IX above), recreational facilities and other common areas within the Application Property including standard cleaning and lawn/landscaping maintenance and removal of snow from streets and all sidewalks (including VDOT sidewalks) with the Application Property. The UOA shall incorporate into its lawn maintenance contracts a prohibition against mowing with gas-powered equipment on Code Red days.
 - B. Repair of surfaces and site furnishings.
 - C. Replacement of dead, dying, or diseased trees and landscaping within the Application Property with the same size and similar species as originally approved on the landscape plan.
 - D. **The TDM Program.** The respective UOA and HOA/COA documents shall specify the maintenance obligation as set forth herein. Purchasers shall be advised in writing prior to entering into a contract of sale, and in the UOA documents and the HOA/COA documents, that the UOA/HOA/COA shall be responsible, respectively, for the maintenance obligations as set forth herein.

XX. OTHER

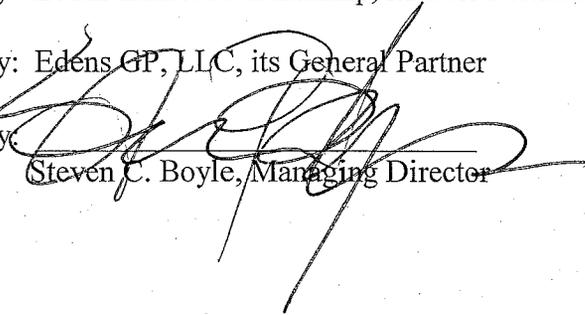
1. **Unreasonable Delay.** Upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of an improvement set forth in these proffers has been unreasonably delayed by others or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement.
2. **Administrative Review.** Concurrent with the submission to DPWES of site plans, and any major inserts or revisions to said site plans, the Applicant shall submit copies of the same to the Providence District Supervisor and Planning Commissioner for the purpose of administrative review and comment.
3. **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

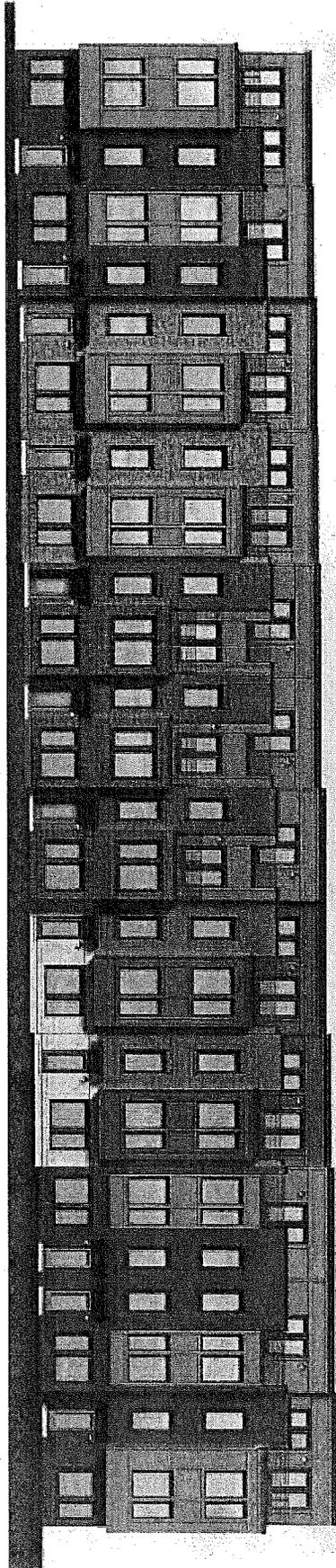
Applicant/Title Owner of TM No. 049-3((37)) parcels C, L, J pt., and N pt.

Eskridge (E&A) LLC

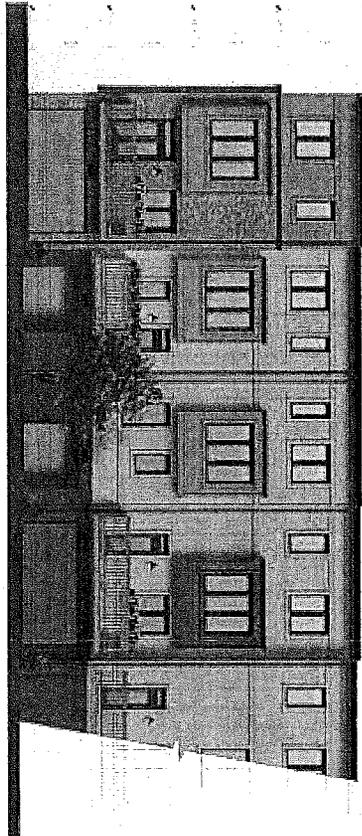
By: Edens Limited Partnership, its Sole Member

By: Edens GP, LLC, its General Partner

By: 
Steven C. Boyle, Managing Director



FRONT ELEVATION SCALE: 1/4" = 1'-0"



REAR ELEVATION SCALE: 1/4" = 1'-0"

CONCEPTUAL ELEVATIONS



FLOOR PLAN SCALE: 1/4" = 1'-0"

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MOSAIC TOWNHOMES
 KATHLEEN COUNTY, VIRGINIA
 JUL 24, 2013 ENCL004-000



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