

PROFFERS
Tysons West Residential, L.L.C.
JBG/Tysons Hotel, L.L.C.

RZ 2011-HM-032
August 23, 2013

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PROFFERS

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Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and Applicants, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicants"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County tax maps as 29-1 ((1)) 10D and 29-3 ((20)) C2 and C3 (collectively, the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application 2011-HM-032 (this "Rezoning") is granted.

GENERAL

1. Conceptual Development Plan. The Property shall be developed in substantial conformance with the certain elements of Promenade at Tysons West Conceptual Development Plan ("CDP") dated June 30, 2011 and revised through June 12, 2013, prepared by VIKI Incorporated, Hord Coplan Macht Incorporated, MV+A Architects and LandDesign, Inc.
2. Proffered CDP Elements. It shall be understood that the proffered elements of the CDP are limited to the grid of streets, general location of the points of access, general location of the buildings, general mix of uses, minimum and maximum gross floor area ("GFA"), minimum and maximum building heights, build-to-lines, amount and general location and character of urban park land, and general quality and character of the streetscape. The Applicants have the option to request a Final Development Plan (FDP) for elements other than the CDP elements for all or a portion of the CDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.
3. Minor Modifications. Minor modifications to the proffered elements of the CDP may be permitted when necessitated by sound engineering or that may become necessary as part of FDP approval or final site design or engineering, pursuant to Section 16-403(4) of the Ordinance. The Applicants shall have the flexibility to modify the layout shown on the CDP without requiring approval of an amended CDP provided such changes are in substantial conformance with the CDP as determined by the Zoning Administrator. Building envelopes and the number of units, rooms, floors and square footage within and among buildings may be adjusted as set forth on the CDP and in these proffers, as long as (i.) the building setbacks from the property lines as shown on the CDP are maintained; (ii.) the minimum and maximum number of residential units and the minimum and maximum building heights comply with those shown on the CDP; and (iii.) the redevelopment otherwise is in substantial conformance with the CDP and the proffers.

4. Declarations/Owners Associations. The Applicants shall cause the recordation of an umbrella owners association (“UOA”) or the equivalent in the form of one or more reciprocal easement and/or joint maintenance and/or joint development agreements, and other governance documents as necessary (collectively referred to as “UOA or equivalent”), to provide for various proffer and maintenance obligations, including but not limited to, implementation, administration and funding of the TDM program, maintenance of the private streets and sidewalks, streetscapes and furnishings therein, publicly accessible park areas and any private utility systems. Such governance documents shall be submitted to the Office of the County Attorney to ensure they provide for the various proffers and maintenance obligations not otherwise covered by separate agreement with Fairfax County (the “County”) and/or the Virginia Department of Transportation (“VDOT”). Said UOA or equivalent may be expanded to include other nearby properties.

PROPOSED DEVELOPMENT

5. Proposed Development. The maximum gross square footage permitted on the Property is 1,792,961, including approximately 182,141 gross square feet of retail and office uses in Existing Building D and approximately 430,820 gross square feet of hotel use in Existing Building E which are proposed to remain (the “Proposed Development”). The Proposed Development may include all permitted uses in the Planned Tysons Corner Urban (“PTC”) District, subject to limitations in the development tabulations on Sheet C-2A of the CDP (the "Development Tabulations") and these Proffers. Notwithstanding what is shown on the Development Tabulations, the maximum number of dwelling units in Building B shall be 300.

The Retail Use category provided in the Development Tabulations may include any non-residential use permitted in the PTC District other than office and hotel uses, subject to the use limitations contained in Paragraph 14 of Section 6-505 of the Zoning Ordinance. First floor Retail Uses will be incorporated to activate the streetscape as generally shown on the CDP. It is anticipated that: i) 75% of Buildings A and B's frontages along Westwood Center Drive and Cornerside Boulevard, excluding all building lobbies and building egress, fire access and other building utility space necessary for code compliance will include first floor Retail Uses; ii) 75% of Buildings C's frontages along Cornerside Boulevard south of Ashgrove Lane, including the facades of Building C fronting on to Park Space E, and along Future Street, excluding all building lobbies and building egress, fire access and other building utility space necessary for code compliance will include first floor Retail Uses; and iii) 75% of Buildings D's frontage along Cornerside Boulevard, excluding all building lobbies and building egress, fire access and other building utility space necessary for code compliance will include first floor Retail Uses. Such Retail Uses may include, but not be limited to, ATMs, business service and supply service establishments, quick service food stores, fast food restaurants, community uses, health clubs and similar commercial recreation uses, personal service establishments, retail sales establishments, financial institutions, eating establishments, educational and tutoring facilities, professional services, legal services, medical and dental offices, public and civic uses and other similar uses. The general extent and

location of all Retail Uses shall be provided with the submission of each FDP, and shall be subject to review and approval.

Uses allowed by special exception or special permit in the PTC District may be authorized through a separate special exception or special permit process without the need for a PCA or CDPA if layout is in substantial conformance with the CDP as determined by the Zoning Administrator.

6. Interim Structures and Uses. In order to provide activity on the Property and avoid portions of the Property being vacant for an extended period of time, new interim structures may be constructed and interim uses permitted in the area of future Buildings A, B and C. Such interim buildings shall require approval of an FDP or special permit as may be applicable but shall be deemed in conformance with the CDP subject to the following conditions:

- A. Any use permitted in the PTC District may also be permitted as an interim use, with the exception of residential, hotel uses and drive-through uses, subject to the use limitations of Section 6-505 as may be waived or modified.
- B. New interim structures shall not be located in the areas reserved for Cornerside Boulevard and Future Street.
- C. New interim structures shall provide improvements to pedestrian connectivity and interim streetscaping in accordance with Proffer 25.
- D. Prior to the construction of Buildings A and B and with approval of an FDP, the area of the A/B Block may be used for the following interim uses: 1) temporary retail use establishments, either in temporary buildings or pop-up venues such as storage/shipping containers, with associated parking; 2) interim park space; 3) interim place-making uses and associated parking; 4) festivals, fairs and similar uses as set forth in Proffer 7 and associated parking; and/or 5) interim commercial off-street parking.

Interim commercial off-street parking, if provided, shall be consistent with that shown on approved site plan 6279-SP-004. This parking may include tandem and valet parking. Interim improvements, including interior and peripheral parking lot landscaping, streetscaping, Tysons standard light fixtures, and interim sidewalks as described in Proffer 25A shall be provided with the interim lot. This parking shall be in addition to the permitted parking for the proposed uses on the Property and shall be permitted to remain for a maximum period of three (3) years following issuance of the 150th RUP for Building C. The Applicants shall provide written notification to FCDOT and DPZ when the 150th RUP for Building C has been issued, so there is a clear indication when the three (3) year period begins.

- E. It is demonstrated how the new interim structures and uses meet the requirements of Paragraph 8 of Section 6-505 of the Zoning Ordinance.

The development of new interim structures shall not require compliance with the other proffered commitments set forth in these Proffers unless otherwise determined at the time of FDP approval for the interim use.

7. Festivals, Fairs or Similar Activities. The Applicants, or their designee, shall be permitted to operate festivals, fairs or similar activities, including, but not limited to, farmers' markets and food vendors, on the Property, either in the interim surface parking lot identified in Proffer 6D or within publicly-accessible privately owned open space shown on the CDP, including portions of the private streets, such as Future Street. The Applicants shall coordinate with the Zoning Administrator regarding the issuance or approval of a temporary special permit as may be required under the Zoning Ordinance, which may include the establishment of an annual permit for continuing or seasonal events. In addition, the Applicants reserve the right to periodically close portions of the private transportation network, including Future Street for said activities.
8. Final Development Plans. FDPs approved for individual building sites on the Property shall establish the range of GFA, range in the number of dwelling units and mix of uses for each building within the limits established by these Proffers and the CDP. The specific GFA and number of dwelling units for each building shall be established at final site plan. If the maximum GFA or maximum number of dwelling units approved with the FDP is less than the maximums shown on the CDP, the excess GFA or dwelling units may be utilized in another building or building(s) within the Property, provided the excess GFA or dwelling units can be accommodated within the maximum building height for the building utilizing the excess GFA or dwelling units as shown on the CDP, the minimum building height for the building providing the excess GFA or dwelling units as shown on the CDP is maintained, and subject to approval of the applicable FDP(s) or FDPA(s) for the building(s) providing and utilizing the excess GFA or dwelling units.

In addition, the following information shall be provided on each FDP.

- A. Tabulations. A tabulation indicating the development status of all property subject to RZ 2011-HM-032 shall be provided with each FDP and site plan submitted for the Property. The tabulation shall include a listing of all existing and proposed buildings, along with the GFA and uses approved on the CDP, FDP and site plan as may be applicable. The tabulation shall identify the reassignment of any excess GFA (as compared with what was originally shown on the CDP) and shall be updated with each subsequent FDP and site plan approved for the Property.
- B. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations of all property subject to RZ 2011-HM-032 shall be provided with each FDP and site plan submitted for the Property and shall be updated with each subsequent FDPA and site plan approved for the Property.
- C. TDM Supplement. A copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program and a comparison of the trip generation based on ITE's 8th

Edition, Trip Generation, associated with the FDP, FDPA or site plan uses for the building site compared to those uses reflected for that building site in the Transportation Impact Analysis prepared by Wells & Associates ("TIA").

- D. Sight Distance. Vehicular sight distance lines at all intersections within, and adjacent to, the FDP area overlaid on the Landscape Plan as provided in Proffer 22.
- E. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDP including the location of the any utility vaults and maintenance points to stormwater management facilities overlaid on the Landscape Plan.
- F. Proposed Uses. A list of proposed uses and demonstration of how such uses meet the applicable "Use Limitations" of Section 6-505 of the Ordinance.
- G. Architectural Elements. Specific information on architectural elements and building heights as provided in Proffers 11 and 15.
- H. Build-to-Lines. Refinement of the build-to-lines based on proposed uses, location of possible outdoor dining areas, and identification of awnings and canopies that extend beyond the building zone, as provided in Proffer 12.
- I. Streetscape. A graphic depiction of, and any adjustments to, the activated streetscape elements as provided in Proffer 13 and refinement of, and adjustments to, streetscape elements as provided in Proffer 24.
- J. Garage Treatments. Proposed parking garage façade treatments as provided in Proffers 11 and 14.
- K. Loading /Trash/Service Area Treatment. Proposed loading/trash/service area treatments as provided in Proffer 13.
- L. Landscaping. Detailed landscape plans as provided in Proffer 23.
- M. Streetscape Furnishings. Submission of a "Streetscape Furnishing and Materials Plan" as provided in Proffer 24.
- N. Interim Conditions. Identification of specific proposed interim conditions within the FDP area and outside the FDP area as provided in Proffer 25.
- O. Phasing. Identification of specific proposed phased improvements in accordance with Proffer 9 and those generally set forth on the phasing-related exhibits provided on Sheets A207 of the CDP (the "Phasing Sheet").
- P. Parking Spaces. Refinement of the number of parking spaces as provided in Proffer 41; details, to the extent known, as to when tandem spaces and/or valet parking will be utilized; and assuming parking ratios in early phases exceed the maximum ratios allowed, a description and/or tabulation in the statement of

justification discussing how the subject FDP and preceding FDPs are achieving the Comprehensive Plan's recommendations for phased parking such that at the build-out of the Property the maximum parking rates are not exceeded as provided in Proffer 42.

- Q. Parks and Recreation. Specific park details, site amenities and substitute recreation facilities as provided in Proffer 53.
- R. Residential Amenities. Specific facilities and amenities to be provided for each residential building.
- S. Stormwater Management. Identification of specific stormwater management facilities and access points to underground vaults as provided in Proffers 24 and 60.

9. Development Phasing. The Proposed Development includes five (5) buildings, which are identified on the CDP as Buildings A through E. Buildings D and E are existing. Development of Buildings A, B, and C, as well as interim uses proposed in the A/B Block, may proceed in any order provided that each such building provides the phasing conditions depicted on the Phasing Sheet and that all proffers that apply to such building are addressed with the redevelopment of that building. Where a proffer establishes an obligation that applies to a building, reference to "Applicant" in such proffer shall mean the party undertaking the development of such building.

The Applicants shall construct the grid of streets and provide pedestrian and streetscape improvements, public parks, private amenities and public facilities on the Property in conjunction with the development of each new building in accordance with the Phasing Sheet and as further described in these Proffers. In addition, interim improvements as outlined in Proffer 25 and as may be determined at time of FDP approval shall be provided commensurate with the construction of each building. Minor adjustments to the phasing may be approved with FDP approvals without the requirement for a PCA or CDPA, provided the adjustments do not materially adversely affect the other phases.

For purposes of these Proffers "construct" shall mean that: i) a committed road improvement is substantially complete and is available for use by the public for travel whether or not the improvement has been accepted for maintenance by the state, and ii) a committed publicly accessible park space improvement is substantially complete and open to use by the public for use whether or not the improvement has been accepted by Fairfax County or the Fairfax County Park Authority ("FCPA").

10. Fire Marshal Evaluation. Changes to the CDP and FDPs shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA and/or FDPA, provided such modifications are made in consultation with the Department of Planning and Zoning ("DPZ") and are in substantial conformance with the CDP, FDPs and these Proffers.

ARCHITECTURAL AND URBAN DESIGN

11. Architectural Design. The architectural treatment of all new buildings within the Proposed Development shall create a sense of identity and place, and shall create human scale through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting, and landscaping as illustrated in the CDP. New buildings shall be designed with high quality architecture and building materials that are typically used on the exterior of Class A office buildings and residential, retail and hotel buildings of a similar quality. Architectural details, including locations where access points to individual residential units address the streetscape, shall be provided with the submission of an FDP and finalized at site plan.
12. Build-to-Lines. Build-to-lines (“BTL”) have been depicted on the CDP, to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted provided such are in general conformance with the CDP and are shown on an approved FDP and/or site plan. Awnings and other architectural canopies attached to the buildings shall not extend beyond the building zone, except as may be shown on an approved FDP. At the time of FDP or site plan, the Applicants shall identify possible locations along the street level, outside of the pedestrian sidewalk as described in Proffer 24, for areas for outdoor dining.
13. Activated Streetscapes and Ground Floor Elements. Activated streetscapes shall be provided through careful design of streetscapes and exterior facades of ground floor areas adjacent to streets, as illustrated in the CDP Buildings A, B, and the facades of Building C fronting Cornerside Boulevard, Ashgrove Lane and Future Street, but not the parking structures and entrances associated with said buildings, shall generally be designed and constructed with ground floors having a minimum floor to floor height of 16 feet to accommodate retail uses designed to activate the streetscape. In addition, the Applicants shall provide for a hierarchy of activated streetscapes as delineated on Sheet L-1.3 of the CDP and described below. The specific activation elements to be utilized for each building shall be graphically depicted on the FDP (and as generally depicted on the CDP) for each building site.
 - A. Primary Pedestrian Corridors. These areas are designed to accommodate major pedestrian activity, providing access to the Metro Station and accommodating access to, and encouraging interaction with, a variety of uses on the Property. Primary Pedestrian Corridors and the facades of Building C fronting on to Park Space E shall generally incorporate the following elements, which may be adjusted with approval of an FDP:
 - (i) The ground floors of buildings shall incorporate active uses along approximately 75% of the street frontage, with functioning entry doors into such applicable uses provided with a maximum separation of 75 feet or less, unless a greater separation is needed to accommodate larger tenant

spaces or as may be permitted by the Zoning Administrator. A minimum 60% of the area of the street front ground floor facades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials.

- (ii) In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, the building design of the primary facades shall incorporate, to the degree feasible, recreational and amenity spaces on the ground floor with a minimum of 35% of the ground floor façade below the ceiling, constructed with windows and/or doors or other transparent materials or semi-transparent materials, and/or incorporate entries in to individual dwelling units from the street level.
- (iii) Parking structures along the ground floor facades of buildings shall be minimized, but where they occur, the general façade detailing of the building above shall be continued to the ground plane or display windows provided.
- (iv) Loading/trash/service areas along Primary Pedestrian Corridors shall be minimized. Where such loading/trash/service areas do occur along Primary Pedestrian Corridors, they shall be screened from public view through the use of roll down doors or similar treatment.

B. Secondary Pedestrian Corridors. These areas are designed to accommodate moderate pedestrian activity, accommodating access to a variety of uses on the Property. Secondary Pedestrian Corridors shall generally incorporate the following elements, which may be adjusted with approval of an FDP:

- (i) Where the ground floors of buildings (not including the associated parking garages which are addressed in Proffer 14) incorporate non-residential uses, functioning entry doors into such applicable uses shall be provided with a maximum separation of 75 feet, or greater if shown on an approved FDP or as may be permitted by the Zoning Administrator. A minimum of fifty percent (50%) of the area of the street front ground floor façades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials.
- (ii) In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, the building design of the primary facades shall incorporate, to the degree feasible, recreational and amenity spaces on the ground floor with a minimum of 35% of the ground floor façade below the ceiling, constructed with windows and/or doors or other transparent materials or semi-transparent materials, and/or incorporate entries in to individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).

- (iii) Parking structures along the ground floor facades shall have screening composed of architectural systems designed to mitigate views into the parking structure from street level, or the general façade detailing of the building above may be continued to the ground plane.
- (iv) Loading/trash/service areas shall be screened from public view to the extent feasible through the use of roll down doors, architectural treatments, other such similar treatment or by locating these areas at a distance away from the streetscape area.

C. Tertiary Pedestrian Corridors. These areas are designed to accommodate modest pedestrian activity making connections to less intense areas. Tertiary Pedestrian Corridors, not located along private alleys, shall incorporate the following elements:

- (i) Where the ground floors of buildings (not including the associated parking garages which are addressed in Proffer 14) incorporate non-residential uses, a minimum of twenty percent (25%) of the area of the ground floor facades of such buildings shall be constructed with glazed windows and doors or other transparent, translucent materials or semi-transparent materials.
- (ii) In residential buildings that do not incorporate Non-Residential Uses on part or all of the ground floors, efforts shall be made to incorporate, recreational and amenity spaces on the ground floor with appropriate transparency.
- (iii) Parking structures along the ground floor facades shall have screening composed of architectural systems and/or landscaping treatments designed to mitigate views into the parking structures from street level, or the general façade detailing of the building above may be continued to the ground plane.
- (iv) Access to parking garages and loading/trash/service areas are encouraged to be located along Tertiary Circulation Corridors. Loading/trash/service areas shall be screened from public view to the extent possible, through the use of roll down doors, recessed entryways and/or similar treatment

14. Parking Structure Facades. New parking structures associated with Buildings A, B and C site shall be designed to provide a pleasant and attractive experience along the streetscape as illustrated in the CDP. The FDPs for these buildings shall include the specific design features for the parking facades, as generally outlined below:

- A. Above the street level, screening may include an active layer of occupied space, building façade treatments and detailing to resemble the tower above, or architectural systems and/or landscaping designed to minimize views into the garage parking spaces from street level shall be applied. In some cases, retail signage and architectural expressions may be extended above the street level to

provide a variety of storefront experiences, as may be permitted by the Zoning Ordinance. Architectural materials to treat parking structure facades may include, but not be limited to: metal framing systems with inserted panels of wire mesh, metal, glass, natural vegetation or other materials; precast concrete or masonry elements; glass stair towers and elevators or other systems.

- B. Parking garage and loading/trash/service areas along the ground floor facades shall incorporate continuation of the façade detailing of the building above to the ground plane, or screening composed of architectural and/or landscaping treatments designed to mitigate views into the structures from street levels to the extent commercially practicable
- C. Where loading/trash/service areas are provided, then loading/trash/services areas shall be screened from public view through the use of roll down doors, recessed entryways and/or similar treatment.
- D. Parking garage and loading/trash/service entrances may be relocated and/or adjusted with FDP approval, provided such relocation or adjustment does not negatively impact the quality of the streetscape or significantly increase the width of the loading entrance.

15. Building Heights. The minimum and maximum building heights for the proposed buildings on the Property are identified on the CDP. The final height for each building and specific steps in building height shall be determined at the time of FDP approval. Particular consideration shall be given to including a stepback in the facades of Buildings A and B in order to reduce any potential for a tunnel effect along Westwood Center Drive. The final heights may be less than the maximum heights shown on the CDP but not less than the minimum, provided the building retains a similar urban form to that shown on the CDP.

Building heights shall be measured in accordance with the provisions of the Fairfax County 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 Ordinance, including for example, penthouses and other rooftop structures. Such penthouses and other rooftop structures may be constructed as permitted under Section 2-506 of the Ordinance. All building penthouses/rooftop structures shall be screened and integrated into the architecture of the building. The height and extent of any rooftop penthouse shall be provided on the FDP for each building site, as well as any rooftop parapet, wall, or fencing in excess of that permitted by the Zoning Ordinance.

16. Telecommunications Equipment. Telecommunications equipment may be placed on the proposed residential and non-residential buildings' rooftops. Any such facilities must comply with the applicable requirements of the Ordinance and be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets at street level. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas.

BUILDING PRACTICES

17. Residential Building Certifications.

- A. The Applicants shall include, as part of the building plan submission for any residential building to be constructed on the Property, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design New Construction (LEED®-NC) rating system at the time of the project's registration, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicants and Fairfax County), that the Applicants anticipate attaining.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification of the building.

- B. The Applicants shall designate the Chief of the Environment and Development Review Branch ("EDRB") of DPZ as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Prior to the building plan approval for the building to be constructed, the Applicants shall post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual (PFM), in the amount of \$2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-NC certification, by the USGBC, under the project's registered version of the LEED-NC rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to EDRB of documentation from the USGBC that each building has attained LEED-NC certification will be sufficient to satisfy this commitment.
- D. At the time LEED-NC certification is demonstrated to the EDRB, the escrowed funds and/or letter(s) of credit shall be released to the Applicants.

If the Applicants provide to EDRB, within three (3) years of issuance of the final RUP for the building, documentation demonstrating that LEED-NC certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED-NC certification, 50% of the green building escrow will be released to the Applicants; 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 Applicants fail to provide, within three (3) years of issuance of the final RUP for the building, documentation to EDRB demonstrating attainment of LEED-NC certification or demonstrating that the building has fallen short of LEED-NC certification by three (3) points or less, 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 Applicants provide documentation from the USGBC demonstrating, to the satisfaction of EDRB, that USGBC completion of the review of the LEED-NC certification application has been delayed through no fault of the Applicants, the Applicants' contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicants or to the County during the extension.

- E. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicants may choose, at its sole discretion, to pursue a certification higher than LEED-NC, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-NC Silver certification.

Prior to building plan approval for the building to be constructed, the Applicants shall submit documentation, to EDRB, regarding the USGBC'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-NC Silver certification. Under this alternative, the Applicants are not required to provide a "green building escrow" unless the Applicants fail to provide the above referenced documentation that the building is anticipated to attain LEED-NC Silver certification.

Prior to final bond release of each building, the Applicants shall submit documentation to EDRB, confirming the status of LEED certification.

- F. As an alternative to the actions outlined in the Paragraphs A, C, D and E above the Applicants may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft, Energy Star Qualified Homes for Multifamily High Rise, or the 2012 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance that may be implemented without an escrow. If one of the alternate residential rating systems listed herein is selected, the Applicants shall demonstrate attainment of the selected certification from a rater recognized through the selected program prior

to the issuance of the final RUP for the Building Site. In the event certification is dependent on the post occupancy operation of the building, the Applicants shall demonstrate attainment of the selected certification prior to final bond release

18. Non-Residential Building Certifications.

- A. The Applicants shall include, as part of the building plan submission for any new non-residential building to be constructed on the Property, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design Core and Shell (LEED®-CS) rating system at the time of the project's registration, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicants and Fairfax County), that the Applicants anticipate attaining.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-CS Silver certification of the building.

- B. The Applicants shall designate the Chief of EDRB as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Prior to the building plan approval for the building to be constructed, the Applicants shall post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual (PFM), in the amount of \$2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-CS Silver certification, by the USGBC, under the project's registered version of the LEED-CS rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the Environment and Development Review Branch of DPZ of documentation from the USGBC that each building has attained LEED-CS Silver certification will be sufficient to satisfy this commitment.
- D. At the time LEED-CS Silver certification is demonstrated to EDRB, the escrowed funds and/or letter(s) of credit shall be released to the Applicants.

If the Applicants provide to EDRB, within three (3) years of issuance of the final Non-RUP for the building, documentation demonstrating that LEED-NC

certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED-CS Silver certification, 50% of the green building escrow will be released to the Applicants; 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 Applicants fail to provide, within three (3) years of issuance of the final Non-RUP for the building, documentation to EDRB demonstrating attainment of LEED-Silver certification or demonstrating that the building has fallen short of LEED-CS Silver certification by three (3) points or less, 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 Applicants provide documentation from the USGBC demonstrating, to the satisfaction of EDRB, that USGBC completion of the review of the LEED-Silver certification application has been delayed through no fault of the Applicants, the Applicants' contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicants or to the County during the extension.

- E. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicants may choose at its sole discretion to pursue a certification higher than LEED-CS Silver, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-CS Gold certification.

Prior to building plan approval for the building to be constructed, the Applicants shall submit documentation, to EDRB regarding the USGBC'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-CS Gold certification. Under this alternative, the Applicants are not required to provide a "green building escrow" unless the Applicants fail to provide the above referenced documentation that the building is anticipated to attain LEED-CS Gold certification.

Prior to final bond release of each building, the Applicants shall submit documentation to EDRB confirming the status of LEED certification.

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

- A. Electric Vehicle Charging Infrastructure. The Applicants shall accommodate a minimum of two "electric vehicle-ready" parking spaces in each new parking garage serving Buildings A, B or C. "Electric vehicle-ready" means the provision of space, conduit banks, conduits and access points allowing for the easy installation of vehicle charging stations in the future.
- B. Energy and Water Data. To the extent there are master electric, gas and water meters for entire buildings, upon request by the County, the Applicants shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for each building and the entire Property.
20. Noise Attenuation. The Applicants have submitted to Fairfax County a Traffic Noise Impact Analysis for Building C prepared by Polysonics Acoustics and Technology Consulting, dated January 17, 2013. The analysis indicates that projected traffic noise will be greater than a day-night averaged noise level ("Ldn") of 65 decibels ("dBA") for some dwelling units but that no dwelling units in Building C will be impacted by Ldn as high as 75 dBA. At building plan submission for Building C, the Applicants shall submit a refined acoustical study prepared by a qualified acoustical consultant (the "Refined Acoustical Analysis") addressing indoor noise levels and proposing noise attenuation measures to reduce interior Ldn to no more 45 dBA for the residential component of Building C. The Applicants shall submit the Refined Acoustical Analysis to DPWES for information only and to the Chief of EDRB for approval and will additionally notify the Chief of EDRB by letter that such submission has been made. Failure by the Chief of EDRB to review and respond to the Applicants within 60 days of receipt of a Refined Acoustical Analysis shall be deemed approval of such analysis.
- A. Prior to FDP approval for Buildings A and B, the Applicants shall provide an indoor noise impact analysis to determine if those specific buildings will be affected by transportation generated noise. If the specific noise impact analysis concludes that office Building A or residential Building B will be affected by noise levels that require mitigation, then at building plan submission for the applicable building, the Applicants shall submit a Refined Acoustical Analysis addressing indoor noise levels and proposing noise attenuation measures to reduce interior Ldn to no more than 45 dBA for the residential component of Buildings B and to no more than 50 dBA for office Building A. The Applicants shall submit the Refined Acoustical Analysis to the Chief of EDRB for approval, and to DPWES for information only. Failure by the Chief of EDRB to review and respond to the Applicants within 60 days of receipt of a Refined Acoustical Analysis shall be deemed approval of such study.
- B. Based on the findings of the Refined Acoustical Analyses, the Applicants shall identify dwelling units on the building plan(s) that are impacted by noise at 65 dBA Ldn or greater and portions of Building A that are impacted by noise at 70 dBA Ldn or greater and shall provide the following noise attenuation measures, unless otherwise modified by the findings of the Refined Acoustical Analyses.

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

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

- (ii) In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units anticipated by the study to be impacted by traffic noise through windows and walls having levels projected to be between 70 and 75 dBA Ldn shall employ the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any residential façade exposed to noise levels of up to 75 dBA Ldn. If glazing constitutes more than 20% of an exposed residential façade, then the glazing shall have a STC rating of up to 45 as dictated by the percent of glass. All surfaces shall be sealed and caulked in accordance with methods approved by ASTM to minimize sound transmission.

- (iii) In order to reduce interior noise to a level of approximately of 50 dBA Ldn for portions of Building A anticipated by the analyses to be impacted by traffic noise levels projected to fall between 70 – 75 dBA Ldn shall employ the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28. If windows function as walls they should have the same laboratory STC rating as walls or the STC of 39. All surfaces shall be sealed and caulked in accordance with methods approved by the ASTM to minimize sound transmission.

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

SITE DESIGN AND AMENITIES

22. Conceptual Landscape Plan. The CDP includes a conceptual landscape plan for the Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas, courtyards and private amenity areas. As part of subsequent FDP approvals, more detailed landscape plans for each building phase shall be provided in general conformance with the concepts included on Sheets L-2.0 through L-2.7 with adjustments permitted provided the quality of the landscaping remains consistent with that shown on the CDP. Such plan shall include the location of all known utilities and sight distance requirements overlaid on the planting plan.
23. Detailed Landscape Plan. As part of the first and all subsequent site plan submission for each building phase, the Applicants shall submit to the Urban Forestry Management Division ("UFMD") of the DPWES for review and approval a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and materials landscaping shown on the approved FDP, and shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets, as well as tree canopy calculations of all property subject to RZ 2011-HM-032. These details shall include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures and along streets. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations.
24. Streetscaping. Streetscaping shall be installed throughout the Property as conceptually illustrated on Sheets L-2.0 through L-2.7. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to Retail/Service uses. Streetscaping elements may be adjusted at the time of FDP and/or site plan approval, provided the quality and dimensions of the streetscape are consistent with that shown on the CDP.
 - A. Street Trees. Tree planting sites are depicted on the CDP but remain subject to revision as may be approved by the UFMD at the time of FDP or at site plan review. The Applicants shall retain the services of a certified arborist or Registered Consulting Arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection. Where minimum planting widths of eight (8) feet cannot be provided, alternative measures either as identified in the "Tysons Urban Design Guidelines" (endorsed by the Board of Supervisors on January 25, 2012) or as approved by the UFMD, shall be used to satisfy the following specifications for all planting sites:

- (i) A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area;
- (ii) A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below pavement), with no barrier to root growth within four feet of the base of the tree;
- (iii) A minimum soil depth of four (4) feet as measured to the shallow most point of the tree pit;
- (iv) Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where necessary, such as where utility locations preclude greater soil volume. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area.
- (v) Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions;
- (vi) All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting;
- (vii) Tree zones shall be installed with a fully automatic, drip irrigation system; and,
- (viii) It is expected that some street trees proposed over existing underground garages may have to be planted in planter boxes that may not accommodate the soil volume specifications above, and thus will not be able to be counted toward required tree canopy, and that some street trees may have to be planted within existing utility easements and that the Applicants shall replace any street trees that are removed to facilitate repairs of utilities in these easements.

B. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, shall not be used on the Property.

C. Utility Locations. Utilities, including, but not limited to water, sanitary sewer and storm sewer utility lines, shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP and/or subsequent FDP as determined by DPWES. If there is

no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as outlined in these proffers, as determined by the UFMD. A conceptual utility plan shall be overlaid on the landscape plan submitted in the FDP. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations.

Maintenance access points to SWM Facilities and electric vaults beneath the streetscape should be located outside clear pedestrian walkway zone of the streetscape when feasible. If the access points must be located in the walkway zone, they shall be designed as a lift out panel with the same paving materials as the walkway (subject to ADA requirements), be flush with the walkway, and meet ADA accessibility requirements.

- D. Sight Distance Considerations. If determined at the time of site plan approval that street tree locations conflict with sight distance requirements, the Applicants shall investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the changes anticipated above the Applicants shall be permitted to relocate the affected street tree without the need for confirmation from DPZ, subject to approval by the UFMD. If a tree that is deleted due to VDOT requirements would result in a tree canopy below 10% on the Property, the tree(s) shall be accommodated in another location on the Property, as approved by DPZ in consultation with UFMD so as to ensure the 10% tree canopy is met.

- E. Streetscape Furnishings and Materials and Lighting. Unified and high quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash and recycling receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan shall be provided as part of all FDPs. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces. Materials, furnishings, and lighting shall be compatible with those already identified in the Tysons Urban Design Guidelines for the Tysons West area, dated January 14, 2012, as may be amended and or modified and shall be coordinated with any streetscape design efforts put forth by the Tysons Partnership, but shall not be subject to approval by the Tysons Partnership.

All streetscape lighting shall be energy efficient. All on-site, outdoor and parking garage lighting shall not exceed that permitted under the Outdoor Lighting Standards of Section 14-900 of the Ordinance. The same or similar street lights shall be used consistently throughout the Proposed Development and be selected from those listed in the Tysons Urban Design Guidelines, or other lights as may be approved by DPZ, in consultation with OCR and DPWES. All parking lot and new building mounted security lighting shall utilize full cut-off fixtures.

Recessed lighting shall be directionally shielded to mitigate the impact on the adjacent properties.

- F. Signage. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Ordinance and approved Special Exception 2012-HM-006 until such time as a Comprehensive Sign Plan ("CSP") for the Property is approved. The Applicants shall submit an application for a CSP within 24 months of approval of this Rezoning and shall diligently pursue its approval.

The placement of traffic control signage on public streets shall be coordinated with VDOT. Wayfinding signage and elements may be provided as part of the CSP for the Property or as part of a larger CSP for the Tysons area. Such wayfinding signage shall be coordinated with the Tysons Partnership so to facilitate a consistent wayfinding and signage system throughout the district, but shall not be subject to approval by the Tysons Partnership. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, bicycle trails, and other public amenities.

- G. Maintenance. The Applicants shall maintain and replace in-kind all pedestrian realm elements within the Proposed Development. The pedestrian realm includes all areas between the back of curb and the building zone whether located within the public right-of-way or on private land with public access easements. The Applicants shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other public entity, as needed) to permit the Applicants to perform such maintenance. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicants without the requirement for a PCA. Maintenance commitments include, but are not limited to:

- (i) All plantings including trees, shrubs, perennials, and annuals;
- (ii) All associated irrigation elements;
- (iii) All hard surfaces;
- (iv) All streetscape furnishings including trash and recycling receptacles, benches, bike racks and non-standard structures;
- (v) All lighting fixtures, brackets and poles;
- (vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;
- (vii) Snow removal;
- (viii) Leaf removal;
- (ix) Trash, recycling and litter removal;

- (x) Decorative retaining walls;
- (xi) Special drainage features, such a Low Impact Design facilities; and
- (xii) All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

Phasing of streetscaping is discussed within the context of individual phases in Proffer 9. As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicants shall provide interim streetscape improvements as described in Proffer 25A and B.

25. Interim Conditions and Standards. Due to the size of the Proposed Development and the time anticipated for its build-out, phased redevelopment may result in various interim conditions on the Property. At the time of FDP approval, the Applicants shall identify the specific proposed interim conditions within the FDP area and outside the FDP area and shall ensure such conditions provide reasonable pedestrian connections, vehicular circulation, temporary streetscaping and landscaping, public park treatments, and screening/treatment of exposed/partially complete above grade parking structures.

Interim conditions shall generally comply with the following standards however, they may be modified and adjusted with FDP approval.

- A. Construction of interim sidewalks a minimum of a five (5) feet in width and installation of interim street lights along the interim sidewalks, as needed to ensure a safe, convenient pedestrian path to the Metro Station
- B. Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, to the extent feasible as determined by UFM based on existing conditions and utility easements. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees.
- C. Provision of interim designs for publicly accessible open spaces will include interim landscaping, pedestrian pathways, seating, signage, lighting and recreational facilities as determined at FDP.
- D. Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Ordinance and Tysons standard lighting for interim surface parking lots.
- E. Application of a screening system (which may be removable) where above grade garage structures that will be interior when later phases are complete are exposed at phase lines. The specific screening system to be utilized for each building shall be determined at the time of FDP approval.
- F. Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within 18 months.

TRANSPORTATION IMPROVEMENTS

26. Grid of Streets. The Applicants shall construct and place into operation a grid of streets throughout the Property as generally located and depicted on Sheets C-4 and C-7 of the CDP. The functional classification of the streets on and adjacent to the Property is provided below:

Street	Classification
Leesburg Pike	Boulevard
Westwood Center Drive	Collector
Sheraton Tysons Drive	Avenue
Cornerside Boulevard	Local (partially private)
Ashgrove Lane	Local (partially private)
Future Street	Local (private)

- A. Public Streets. Those streets constructed within the limits of the Property and identified on the CDP as Westwood Center Drive, Sheraton Tysons Drive, the portion of Cornerside Boulevard between Westwood Center Drive and Ashgrove Lane, and the portion of Ashgrove Lane between Cornerside Boulevard and Sheraton Tysons Drive shall be designed and constructed as public streets. Public street improvements proposed herein shall be subject to VDOT approval and be in general conformance with the *Transportation Design Standards for Tysons Corner Urban Center* (the "Design Standards") of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the "MOA"), subject to modifications/waivers as may be granted. The Applicants shall design and construct these streets to meet the Design Standards and shall work diligently with VDOT and the County during the FDP and site plan approval processes to ensure that the improvements proposed to existing and new public streets will be accepted into the VDOT system for maintenance. Right-of-way necessary for the existing and new public streets, as may be further qualified by these Proffers, shall be dedicated and conveyed to the Board of Supervisors in fee simple, as applicable, at the time of site plan approval.

The Applicants shall diligently pursue VDOT acceptance of improvements to existing streets and new public streets, for secondary street maintenance in accordance with the process outlined in VDOT's Secondary Street Acceptance Requirements (the "SSAR"), as amended, including VDOT's written certification that such streets and/or improvements have been constructed in a manner consistent with the VDOT approved plans and compliant with all applicable regulations ("VDOT's Written Certification"). In the event the Board of Supervisors has not requested that VDOT accept the dedicated new public streets or improvements into the secondary street network for maintenance within five (5) years of VDOT's Written Certification, such street(s) may be retained by the Applicants upon notification to, and the concurrence of FCDOT, as a private street subject to a public access and maintenance agreement in a form acceptable

to the County Attorney. In such event, a PCA, CDPA and/or FDPA will not be required.

- B. Rights-of-Way. The Applicants shall dedicate and convey in fee simple to the Board of Supervisors rights-of-way for each of the public streets listed in Paragraph A above. Further, the Applicants shall reserve for future right-of-way dedication the portion of Ashgrove Lane west of Sheraton Tysons Drive; with such dedication to be provided upon demand by Fairfax County.

Dedication shall include the area of the adjacent landscape amenity panel and sidewalk and shall occur at the time of site plan approval, with the following exceptions:

- (i) If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicants shall provide dedication measuring 18 inches from the proposed face of curb line and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as they are dedicated. This reservation area shall include easements for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicants shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas continue to be unacceptable to VDOT and/or Fairfax County for inclusion in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and the Applicants shall grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, in keeping with Proffer 40, the Applicants shall provide easements for bus shelters as determined at the time of FDP or site plan.

- (ii) If at the time of site plan approval it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be

acceptable to VDOT and/or Fairfax County, the Applicants shall provide dedication measuring 18 inches from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. The reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, in keeping with Proffer 40, the Applicants shall provide easements for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

- (iii) Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or the County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, shall be granted in its place. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicants shall provide easements within any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP or any subsequent FDP, as determined at the time of site plan.

- C. Naming. The Applicants reserve the right to provide different names for the streets than those shown on the CDP.

27. Westwood Center Drive.

- A. The Applicants shall design and construct improvements to Westwood Center Drive along the Property's frontage as generally depicted on Sheet C-4 of the CDP. A one-half section of Westwood Center Drive shall be constructed in general accordance with the typical section depicted on Sheet C-7A, as an undivided four-lane Collector, with two travel lanes in each direction, one bicycle lane in each direction, and variable pavement provided to accommodate optional curbside parking between Cornerside Boulevard and Sheraton Tysons Drive as shown on Sheet C-4 and pavement transitions as may be required by VDOT.
- B. Improvements to Westwood Center Drive along the Property's frontages shall include a pavement section designed to accommodate bicycle lanes on both sides of the street. Striping of a bicycle lane shall be subject to the approval of the County and VDOT.

- C. The final design of the improvements to Westwood Center Drive as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Westwood Center Drive. The construction of Westwood Center Drive shall be phased in accordance with the Phasing Sheet.
- D. Street improvements to Westwood Center Drive shall be undertaken and completed for the entire length of block between two planned streets, however streetscape improvements may be completed on a building frontage basis, unless otherwise determined at FDP. Striping of bicycle lanes along both sides of Westwood Center Drive shall be provided commensurate with the development of Building A, or earlier at the Applicants' discretion.

28. Sheraton Tysons Drive.

- A. The Applicants shall design and construct improvements to Sheraton Tysons Drive along the Property's frontage as generally depicted on Sheet C-4 of the CDP. Sheraton Tysons Drive shall be restriped in general accordance with the typical interim section depicted on Sheet C-7A, as a three-lane Local Street with bicycle lanes in each direction, as may be approved by VDOT.
- B. The final design of the improvements to Sheraton Tysons Drive as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Sheraton Tysons Drive. The construction of Sheraton Tysons Drive shall be phased in accordance with the Phasing Sheet.

29. Cornerside Boulevard.

- A. The Applicants shall design and construct Cornerside Boulevard through the Property as generally depicted on Sheet C-4 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-7A as a Local Street consisting of two (2) travel lanes (one in each direction) and two parking lanes. South of Ashgrove Lane, Cornerside Boulevard shall be provided as a public street and north of Ashgrove Lane, Cornerside Boulevard shall be provided as a private street. The Applicants shall grant a public access easement over the private street portion of Cornerside Boulevard, in a form acceptable to the Office of the County Attorney.
- B. The final design of the improvements to Cornerside Boulevard as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Cornerside Boulevard. The construction of Cornerside Boulevard shall be phased in accordance with the Phasing Sheet.

30. Future Street.

- A. The Applicants shall design and construct Future Street through the Property as generally depicted on Sheet C-4 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-7A as a Local Street consisting of two (2) travel lanes (one in each direction) with a parking lane on the south side of the street. East of the parking garage entrance to Building C, Future Street shall become one-way eastbound, with right turn out only movements permitted at Future Street's intersection with Leesburg Pike. Future Street shall be a private street. The Applicants shall grant a public access easement over Future Street, in a form acceptable to the Office of the County Attorney.
- B. The final design of the improvements to Future Street as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Future Street. The construction of Future Street shall be phased in accordance with the Phasing Sheet.

31. Ashgrove Lane.

- A. The Applicants shall design and construct Ashgrove Lane through the Property as generally depicted on Sheet C-4 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-7A as a Local Street consisting of two (2) travel lanes (one in each direction) and two curbside parking lanes. East of Sheraton Tysons Drive, Ashgrove Lane shall be provided as a public street and west of Sheraton Drive, Ashgrove Lane shall be provided as a private street. The Applicants shall grant a public access easement over the private street portion of Ashgrove Lane, in a form acceptable to the Office of the County Attorney.
- B. The final design of the improvements to Ashgrove Lane as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Ashgrove Lane and Cornerside Boulevard. The construction of Ashgrove Lane shall be phased in accordance with the Phasing Sheet.

32. Public Street Standards. All public street improvements proposed herein shall be subject to VDOT approval, and shall be in general conformance with standards included in Attachment D (*Transportation Design Standards for Tysons Corner Urban Center*) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended, subject to any permitted modifications and/or waivers that may be granted.

33. Vacations and Abandonments. In the event any public street right-of-way that abuts the Property is vacated and/or abandoned subsequent to approval of this rezoning, such right-of-way area will become zoned to the PTC District pursuant to Sect. 2-203 of the Zoning

30. Future Street.

- A. The Applicants shall design and construct Future Street through the Property as generally depicted on Sheet C-4 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-7A as a Local Street consisting of two (2) travel lanes (one in each direction) with a parking lane on the south side of the street. East of the parking garage entrance to Building C, Future Street shall become one-way eastbound, with right turn out only movements permitted at Future Street's intersection with Leesburg Pike. Future Street shall be a private street. The Applicants shall grant a public access easement over Future Street, in a form acceptable to the Office of the County Attorney.
- B. The final design of the improvements to Future Street as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Future Street. The construction of Future Street shall be phased in accordance with the Phasing Sheet.

31. Ashgrove Lane.

- A. The Applicants shall design and construct Ashgrove Lane through the Property as generally depicted on Sheet C-4 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-7A as a Local Street consisting of two (2) travel lanes (one in each direction) and two curbside parking lanes. East of Sheraton Tysons Drive, Ashgrove Lane shall be provided as a public street and west of Sheraton Drive, Ashgrove Lane shall be provided as a private street. The Applicants shall grant a public access easement over the private street portion of Ashgrove Lane, in a form acceptable to the Office of the County Attorney.
- B. The final design of the improvements to Ashgrove Lane as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Ashgrove Lane and Cornerside Boulevard. The construction of Ashgrove Lane shall be phased in accordance with the Phasing Sheet.

32. Public Street Standards. All public street improvements proposed herein shall be subject to VDOT approval, and shall be in general conformance with standards included in Attachment D (*Transportation Design Standards for Tysons Corner Urban Center*) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended, subject to any permitted modifications and/or waivers that may be granted.

33. Vacations and Abandonments. In the event any public street right-of-way that abuts the Property is vacated and/or abandoned subsequent to approval of this rezoning, such right-of-way area will become zoned to the PTC District pursuant to Sect. 2-203 of the Zoning

Ordinance and such right-of-way area may be used, without requiring a PCA, CDPA or FDPA, for utilities and to accommodate sidewalks and streetscape elements consistent with the street sections shown on the CDP and/or with the Tysons Urban Design Guidelines endorsed by the Board of Supervisors on January 24, 2012.

34. Traffic Signal.

- A. The Applicants shall conduct a warrant study within twelve (12) months after the issuance of the initial RUP or Non-RUP for each of Buildings A, B and C for the intersection of Westwood Center Drive and Cornerside Boulevard.
- B. If a traffic signal is deemed warranted by VDOT after having reviewed the warrant study and approving the same for installation, then the Applicants shall design, equip and install the signal along with installation of pedestrian enhancements as may be permitted and approved by VDOT no later than eighteen (18) months following approval of the warrant, utilizing any escrowed contributions for the signal received by the County.
- C. If the signal is warranted by VDOT, the Applicants shall provide VDOT with the requisite traffic signal plans for review and approval. All right-of-way associated with signal equipment (poles, equipment boxes, etc.) on the Property not already dedicated shall be reserved for dedication in fee simple to the Board of Supervisors in accordance with Proffer 26B.
- D. If the County, determines that deferral of the signal installation as proffered is appropriate, the Zoning Administrator may i) agree to a later date for completion of the traffic signal installation or ii) permit the Applicants to proceed without the signal installation.
- E. In the event a traffic signal is not deemed warranted at that time, then the Applicants shall complete a second warrant study within twenty-four (24) months after the issuance of the initial RUP or Non-RUP for the last new building to be constructed on the Property. In the event the signal is warranted then the Applicants shall design, equip and install said signal, including those pedestrian enhancements as may be required by VDOT no later than eighteen (18) months after approval of the warrant. If the signal is deemed not warranted by VDOT at that time, the Applicants' obligation to install the signal shall be deemed null and void and the Applicants shall instead escrow their pro-rata share of a future signal to be provided by others. The Applicants' pro-rata impact of new site traffic at the Westwood Center Drive and Cornerside Boulevard intersection is approximately 33% and thus the Applicants shall escrow the sum of \$84,000.00 with DPWES, which represents 33% of the cost of the new traffic signal installation.

35. Future Ramp Connection to Dulles Airport Access and Toll Road. To accommodate a future vehicular ramp connecting Sheraton Tysons Drive with the Dulles Airport Access and Toll Road:

- A. The Applicants shall dedicate in fee simple to Fairfax County an area located west of Building E and identified as the "Initial Ramp Dedication Area" on Sheet C-4A of the CDP. Such dedication shall occur within two (2) years after written demand by Fairfax County and evidence of approval of construction of such ramp by all requisite governing bodies and agencies including, but not limited to, the Board of Supervisors, VDOT, the Metropolitan Washington Airports Authority ("MWAA") and the Federal Highway Administration ("FHWA"), but no sooner than ten (10) years from the approval of this Rezoning. The Applicants shall be eligible for compensation for existing appurtenances to Existing Building E, including but not limited to parking, loading and vehicular circulation, whether such appurtenances are located in or required to be relocated or replaced by the Initial Ramp Dedication Area as provided for in the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, ("URA"). In the event Park Space A, as identified in Proffer 54A, is constructed prior to the dedication of the Initial Ramp Dedication Area, and to the extent that the Applicant receives separate compensation for existing park facilities in Park Space A and the same are specifically enumerated in the URA award, the Applicant shall assign such compensation to the FCPA. FCPA shall use its best efforts to utilize such compensation to improve other park space within the Property (which shall include any relocated area for Park Space A or another of the parks within the Property), before utilizing such compensation for parks not within the Property.

With the dedication of the Initial Ramp Dedication Area, Sheraton Tysons Drive is to be upgraded from an interim "Local" street to "Avenue". As a result, the Applicants shall relocate the vehicular access for Existing Building D located on Sheraton Tysons Drive to Ashgrove Lane as shown on Sheet C-4A of the CDP and re-construct the streetscape along the Building D frontage to its ultimate "Avenue" streetscape as generally depicted on Sheet L-5-3 of the CDP. Nothing shall prevent the Applicants from opting to relocate the vehicular access for Existing Building D from Sheraton Tysons Drive to Ashgrove Lane in advance of the Initial Ramp dedication. Loading access for Existing Building D may remain on Sheraton Tysons Drive.

- B. In the event, all of Existing Building E is demolished for redevelopment in accordance with a future RZ/PCA/CDP/FDP for the Property, or part thereof, the Applicants shall agree to dedicate an area identified as the "Future Ramp Dedication Area" on Sheet C-4A of the CDP for the ramp alignment. Should the Future Ramp Dedication Area be dedicated, any portion of the Initial Ramp Dedication Area not included in the Future Ramp Area shall be vacated to the benefit of the Applicants without the requirement for any payment by the Applicants and any further obligation to dedicate the Initial Ramp Dedication Area shall be null and void. If a ramp has been constructed in the Initial Ramp Dedication Area, it is understood that the vacation and return of the excess Initial Ramp Dedication Area may be delayed until the new ramp is constructed in the Future Ramp Dedication Area. The Applicants shall not be eligible to receive compensation under the URA, for appurtenances to Existing Building E located in

the Initial Ramp Dedication Area, if Existing Building E is no longer in use or is demolished for redevelopment.

- C. The Applicants shall be entitled to a credit for the value of the Initial Ramp Dedication Area or Future Ramp Dedication Area against the Tysons-wide Transportation Fund as set forth in Proffer 37. Should the Initial Ramp Dedication Area be requested for dedication, any contributions previously made by the Applicants to the Tysons-wide Transportation Fund shall be returned to the Applicants with accrued interest to help fund the relocation/replacement of existing facilities located in the Initial Ramp Dedication Area.
 - D. The Applicants' obligation to provide the Initial Ramp Dedication Area or the Future Ramp Dedication Area shall cease if the future ramp is removed from the Comprehensive Plan or Fairfax County otherwise determines the future ramp will not be constructed in this location.
 - E. The Applicants shall provide a contribution toward the construction of the future vehicular ramp equal to \$0.125 for each square foot of space constructed in Buildings A, B and C. Said contribution to Fairfax County shall be made upon site plan approval for each of the three buildings and shall be based on the site plan approved GFA for each building. This contribution shall not apply to any public-use facilities constructed on the Property, including the public arts office or alternate public use described in Proffer 57.
36. Tysons Grid of Streets Transportation Fund. The Applicants shall provide a contribution of \$1,000.00 for each market rate residential unit and \$6.44 for each square foot of new non-residential space in Buildings A, B and C to Fairfax County for the Tysons Grid of Streets Transportation Fund. The contribution associated with each building shall be paid on or before the issuance of each initial RUP or Non-RUP for the subject building based on the actual GFA of non-residential space and/or the actual number of market rate residential units in the building. This contribution shall not apply to any public-use facilities constructed on the Property, including the public arts office or alternate public use described in Proffer 57. The Applicants shall be eligible to receive and deduct credits against the contributions that would otherwise be due County for the Tysons Grid of Streets Transportation Fund in keeping with the Guidelines for the Tysons Grid of Streets Transportation Fund endorsed by the Board of Supervisors on January 8, 2013.
37. Tysons-wide Transportation Fund. The Applicants shall contribute the sum of \$5.63 per square foot of new non-residential space in Buildings A, B, and C and \$1,000.00 for each market rate residential unit constructed on the Property to Fairfax County for the Tysons-wide Transportation Fund. The contribution associated with each building shall be paid on or before the issuance of each initial RUP or Non-RUP for the subject building based on the actual GFA of non-residential space and/or the actual number of market rate residential units in the building. This contribution shall not apply to any public-use facilities constructed on the Property, including the public arts office or alternate public use described in Proffer 57.

The Applicants shall receive and deduct such credits against the contributions that would otherwise be due County for the Tysons-wide Transportation Fund in keeping with the Guidelines for the Tysons-wide Transportation Fund endorsed by the Board of Supervisors on January 8 , 2013. Specifically, the Applicants shall receive credit for the value of the dedication of the Initial Ramp Dedication Area, or in the alternative, the value of the Future Ramp Dedication Area both as described in Proffer 35.

BICYCLE FACILITIES AND BUS SHELTERS

38. Bicycle Circulation. In combination with the street and streetscape improvements identified in these Proffers, the Applicants shall provide on-street bicycle lanes on both sides of the street on Westwood Center Drive between Leesburg Pike and Sheraton Tysons Drive, on Sheraton Tysons Drive, and on Ashgrove Lane west of Sheraton Tysons Drive as shown on the CDP and as may be adjusted with approval of FDPs. Such striping shall be subject to approval by VDOT.
39. Bicycle Parking. Bicycle racks, bike lockers, and/or bike storage areas shall be provided on the Building A/B block and the Building C block, with the specific amounts and locations determined at the time of FDP and finalized with site plan approval in consultation with the FCDOT Bicycle Coordinator. Bicycle racks located outside of buildings and parking garages shall be inverted U-style racks or other design consistent with the Tysons Urban Design Guidelines and approved by FCDOT. The total number of bike parking/storage spaces provided for all Blocks shall be generally consistent with the Fairfax County Policy and Guidelines for Bicycle Parking for each building or group of buildings, as determined at the time of FDP approval. Signage shall be posted on the exterior side of buildings closest to entrances to bike parking/storage space to indicate bike parking/storage.
40. Bus Shelters. Bus shelter locations shall be evaluated for feasibility at the time site plan approval in consultation with FCDOT. The Applicants shall provide up to two bus shelters on the Property. If at the time of site plan approval of a building, Fairfax County requests provision of a bus shelter, the Applicants shall construct the requested bus shelter prior to the issuance of the first RUP for the applicable building. Identified bus shelter locations shall be within the landscape amenity panel of the streetscape to the extent feasible. The design of bus shelters shall be coordinated with Fairfax County and may include provision for electrical conduit for the purpose of providing real-time bus arrival information. Bus shelter locations may necessitate adjustments to street tree locations and other street furnishings from that shown on the CDP which shall be accommodated without the requirement for a CDPA or FDPA.

PARKING

41. Zoning Ordinance Requirements. Parking on the Property shall be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Fairfax County Ordinance, and as shown on the CDP. Tandem and valet parking, shall be permitted and, subject to Board approval, shall count toward parking requirements. Tandem parking spaces may be used for residential units with two

cars and in office and hotel buildings where spaces are assigned by building management. The exact number of spaces to be provided shall be refined with approval of FDPs and determined at the time of site plan approval based on the specific uses, number of residential units and bedroom mix.

42. Phasing of Parking. Parking shall be provided in phases commensurate with development of the Property. Parking spaces in excess of the maximum parking rates set forth in the Ordinance may be provided in the early phases of development of the Property, provided that at the build-out of the Property, the maximum parking rates are not exceeded. Required parking spaces for an individual building need not be provided on the parcel on which the building is located, but shall be provided within the Property.

43. Parking Spaces along Streets.

- A. Subject to VDOT approval, the Applicants shall provide surface parking spaces along the streets as generally as shown on the CDP and as may be adjusted with the FDP for each building. The spaces may be part of or in addition to the total number of required parking spaces to be provided. If requested by the County and/or VDOT, signs shall be installed that restrict the use of on-street parking spaces on the Public Streets.
- B. The Applicants reserves the right to restrict the use of spaces along any private streets, through appropriate signage or such other means as the Applicants determines, that otherwise are not required to satisfy the parking requirements for use as temporary or short term parking, zip car parking and/or similar use.
- C. Parking on the private portion of Ashgrove Lane west of Sheraton Tysons Drive shall be reserved for the exclusive use of residents and guests of the Westwood Village residential community including both The Townhomes at Westwood Village Owners Association, Inc. ("Westwood Village HOA") and The Unit Owners Association for Westwood Village Condominiums ("Westwood Village UOA"), for as long as that portion of Sheraton Tysons Drive remains a private street. The Westwood Village HOA and Westwood Village UOA shall have the right to (i) stripe the parking spaces; (ii) post signage indicating that such parking spaces are reserved; and (iii) enforce the reserved parking by whatever legal means are available. The Applicants shall maintain the area of reserved parking in conformance with generally accepted private street maintenance standards. Should the portion of Ashgrove Lane west of Sheraton Tysons Drive become a public street, the reservation of the exclusive use of the on-street parking for the exclusive use of residents and guests of the Westwood Village residential community shall cease.

44. Parking Stipulations.

- A. The Applicants shall be permitted to install and maintain parking controls on their existing surface parking lots, without the requirement for a FDP, in order to control Metro-related parking by the general public.

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

45. Future Parking Revisions.

- A. Ordinance Revisions. The Applicants reserve the right to provide parking at revised rates as may be permitted by a future amendment to the Fairfax County Ordinance. Optional use of revised rates shall not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.
- B. Increases. The Applicants reserve the right to seek a special exception for an increase in parking for the Property; such special exception application shall not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.

TRANSPORTATION DEMAND MANAGEMENT

46. Tysons Transportation Management Association. The Applicants shall contribute towards the establishment of a future transportation management association (the "TMA"), which may be established for the Tysons Corner Urban Center and to which all other Tysons property owners will also contribute.

- A. The Applicants shall make a one-time contribution for the establishment of this future TMA based on a participation rate of \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses to be constructed on the Property.
- B. The TMA shall be paid in installments equal to that of the required contribution per building upon prior to the issuance of the first RUP or Non-RUP for each of the three (3) new buildings, but in any event no later than ten (10) years from the date of rezoning approval.
- C. If subsequent to the approval of this Rezoning, a Tysons Corner Urban Center-wide TMA is approved by FCDOT and established for the purpose of administering TDM programs in the Tysons Corner Urban Center, then the Applicants may, in its sole discretion, join or otherwise become associated with such entity and transfer some or all marketing and/or monitoring functions of this TDM Program to the new entity, whereupon this Proffer in whole or in part shall be void and of no further force or effect. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this Proffer may be rendered null and void in whole or in part without the need for a PCA.

D. If the TMA has not been established within three (3) years after the approval of this Rezoning, this Proffer shall be null and void with no further effect on the Property. Further, any funds contributed to the formation of a TMA would then be returned to the Applicants that paid such funds.

47. TDM Administrative Group. The Applicants shall establish a TDM Administrative Group (the "AG") to fund, implement and administer the transportation demand management program (the "TDM Program") for the Property as described more fully below. Prior to approval of the first site plan for new development on the Property, evidence shall be provided to FCDOT that the terms and conditions associated with the AG have been established

48. Transportation Demand Management Plan. The proffered elements of the TDM Program as set forth below are more fully described in the Tysons West Transportation Demand Management Plan prepared by Wells + Associates, Inc. dated March 20, 2013 (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.

A. Definitions. For purposes of this Proffer, "Stabilization" shall be deemed to occur one (1) year following issuance of the last initial RUP or Non-RUP for the final new building to be constructed on the Property. "Pre-stabilization" shall be deemed to occur any time prior to Stabilization.

B. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents and office tenants of the Property (i.e., not including trips from existing/planned hotel and retail uses), during weekday peak hours associated with the adjacent streets as more fully described in the TDM Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of residential and office vehicle trips that would be expected to be generated by the uses developed on the Property as determined by the application of the Institute of Traffic Engineers, 8th Edition, Trip Generation rates and/or equations (the "ITE Trip Generation"), and the number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction."

For purposes of this calculation, the maximum number of dwelling units or the total gross square footage of office uses proposed to be constructed in each building on the Property as determined at the time of site plan approval for each building shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

<u>Development Levels</u>	<u>Percentage Vehicle Trip Reduction</u>
Up to 65 million sq. ft. of GFA	30%
65 million sq. ft. of GFA	35%
84 million sq. ft. of GFA	40%
90 million sq. ft. of GFA	43%
96 million sq. ft. of GFA	45%
105 million sq. ft. of GFA	48%
113 million sq. ft. of GFA	50%

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

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

C. TDM Program Components – Site-Wide. The TDM Program shall include, but not necessarily be limited to, the following site-wide components, each of which are more fully described in the TDM Plan:

- (i) TDM Program Management.
- (ii) TDM Program Branding.
- (iii) Program Web Site.
- (iv) Promotion of Real Time Transit Information.
- (v) Transportation Access Guide.
- (vi) Pedestrian/Bicycle Accommodations.
- (vii) Transportation Fair
- (viii) Live/work/play marketing
- (ix) Carsharing Placement and Services
- (x) Parking Management.

- D. TDM Program Components – Office. The TDM Program shall include, but not necessarily be limited to the following office components, each of which is more fully described in the TDM Plan.
- (i) Office Transportation Coordinators.
 - (ii) Try Transit Campaign for Office Employees.
 - (iii) Pretax Metrorail, Vanpool, and Bicycle Benefit Programs
 - (iv) Guaranteed Ride Home Program
 - (v) Carpool Matching Program
 - (vi) Telework and Variable Work Hours
- E. TDM Program Components – Residential. The TDM Program shall include, but not necessarily be limited to the following residential components, each of which is more fully described in the TDM Plan.
- (i) Residential Transportation Coordinators.
 - (ii) Business Center
 - (iii) Try Transit Campaign
- F. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.
- (i) TDM Program Manager. If not previously appointed, the Applicants shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for Tysons West. The TPM shall be appointed by the Applicants no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Property. The TPM duties may be part of other duties associated with the appointee. The Applicants shall notify FCDOT and the District Supervisor in writing within 10 days of the initial appointment of the TPM. Thereafter the Applicants shall do the same within ten (10) days of any change in such appointment.
 - (ii) Annual Report and Budget. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and Annual Budget no later than 180 days after issuance of the first building permit for the first new building on the Property. Every calendar year thereafter but no later than August 1st, the TPM shall submit an Annual Report, which may revise the

Annual Budget in order to incorporate any new construction on the Property. The Annual Report shall include, at a minimum:

- a. Details as to the components of the TDM program that will be put into action that year;
- b. Any revisions to the budget needed to implement the program for the coming calendar year;
- c. A summary of existing development levels in the Tysons Corner Urban Center, as well as those specific to the Tysons West South District;
- d. A determination of the applicable Maximum Trips After Reduction for the Property;
- e. Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan; and
- f. Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Property in conjunction with each year's Annual Report.

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

- G. TDM Account. The Applicants through the AG, shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within 30 days after approval of the initial TDMWP and TDM Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the AG for TDM purposes. The TDM Account shall be funded by the Applicant, through the AG. The TDM Account

shall not be eliminated as a line item in the governing budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in the following year. In no event shall the TDM Budget exceed \$83,500.00 (this amount shall be adjusted annually in accordance with Proffer 65). The AG shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the AG.

- H. TDM Remedy Fund. At the same time the AG creates and funds the TDM Account, the AG shall establish a separate interest bearing account (referred to as the "TDM Remedy Fund) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time on a building by building basis at the rate of \$0.40 per gross square foot of new office uses and \$0.30 per gross square foot of new residential uses on the Property. Funding shall be provided by the building owners prior to the issuance of the first initial RUP or Non-RUP for each applicable new building. This amount shall be adjusted annually in accordance with Proffer 65. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.
- I. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the building owners, through the AG, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the Property. Such contributions shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office or residential uses to be constructed on the Property and provided prior to the issuance of the first RUP or Non-RUP for each individual building.
- J. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the AG shall deposit penalty payments as may be required to be paid pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management associated with Tysons West, or for other TDM-related improvements or programs within Tysons Corner. To secure the Applicant's obligations to make payments into the TDM Penalty Fund, the TPM shall provide the County with a letter of credit or a cash escrow as further described below. Prior to the issuance of the first RUP or Non-RUP for each new building on the Property, the AG shall:

- (i) Establish the TDM Penalty Fund, if not previously established by the AG, and/or
- (ii) Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the Applicant's obligations to make payments into the TDM Penalty Fund (the "Letter(s) of Credit or Cash Escrow(s)"). The Letter(s) of Credit or Cash Escrow(s) shall be issued in an amount equal to \$0.10 for each square foot of new office GFA or \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new building on the Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figures in the preceding sentence shall be adjusted annually in accordance with Proffer 65. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the AG into the TDM Penalty Fund as provided below.

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

(i) Remedies and Penalties.

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

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

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

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

Up to 65,000,000 Square Feet of GFA in Tysons		65-84,000,000 Square Feet of GFA in Tysons		84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0% - 4.9%	30%	0.0% - 4.9%	50%	0.0% - 4.9%	65%
5% - 10%	50%	5% - 10%	65%	5% - 8%	80%
10.1% - 15%	65%	10.1% - 13%	80%	8.1% - 10%	90%
15.1% - 18%	80%	13.1% - 15%	90%	>10%	100%
18.1 - 20%	90%	>15%	100%		
>20%	100%				

90-96,000,000 Square Feet of GFA in Tysons		96-113,000,000 Square Feet of GFA in Tysons		113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	80%	0.0% - 4.9%	90%	> 0.0%	100%
5% - 8%	90%	5%	100%		
>8%	100%				

2) There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the AG for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization show that the trip reduction goals have been met.

b. Stabilization. If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.

1) If the results of the traffic counts conducted upon and subsequent to Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds shall be released back to the building owner(s) through the AG.

2) If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing development levels in the Tysons Corner Urban Center) are still exceeded after three (3) consecutive years, then, in addition to addressing further remedial measures as

set forth in this Proffer, the AG shall be assessed a penalty according to the following:

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

- 3) The AG shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the AG fails to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).

- 4) The maximum amount of penalties associated with the Property, and the maximum amount the AG shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of the above Proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) shall be released to the AG once three (3) consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.

- L. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Vehicular Traffic Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.

- M. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the AG may request that FCDOT review the vehicle trip reduction goals established for the Property and set a revised lower goal for the Property consistent with the results

of such surveys and vehicular traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.

- N. Continuing Implementation. The AG shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
 - O. Notice to Owners. All owners of the Property shall be advised of the TDM Program set forth in this Proffer. The then current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.
 - P. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the AG shall be subject to a penalty of \$100.00 per day not to exceed \$36,500.00 for any one incident. Such penalty shall be payable to Fairfax County to be used for multimodal, transit, transportation, or congestion management improvements within the vicinity of the Property, or in consultation with the TPM, for other TDM-related improvements or programs within Tysons Corner.
49. Transportation Demand Management for Retail/Hotel/Existing Office Uses. As provided in this Proffer, certain components of the TDM Plan are applicable to and will benefit the retail and hotel uses on the Property as well as the existing office uses in Building D. The TPM shall make available information on those components to any retail and hotel uses on the Property and existing office uses in Building D. Such uses shall not be subject to monitoring nor will remedies and penalties be assessed against those uses.
50. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicants shall incorporate and maintain a system that provides pertinent traffic and transit information that allows users to make informed travel decisions. This information shall be provided at initial occupancy of each new building. The delivery of this information shall be made convenient for building occupants and visitors, such as via computer, cell phone, monitors, or similar technology. Such devices shall provide, but not be limited to, information on the following:
- A. Traffic conditions, road hazards, construction work zones, and road detours.
 - B. Arrival times and delays on Metrorail, the Tysons Circulator, and area bus routes.
 - C. Bus stops pre-wired for real-time arrival/departures information.

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

AFFORDABLE/WORKFORCE HOUSING

51. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Ordinance, Affordable Dwelling Units ("ADUs") shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.
52. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to this Proffer, the Applicants shall also provide for-sale and/or rental housing units on the Property in accordance with the Board of Supervisors' Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units ("WDUs") shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development. For those dwelling units constructed within ¼ mile of the Metro station, the 20% applies to the total number of dwelling units to be constructed in that portion of the proposed development. Beyond ¼ mile from the Metro station, any units created with bonus floor area shall be excluded from the 20% WDU calculation. In either case, if ADUs are provided in the development, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

The WDUs generated by each residential building on the Property shall be provided within said building. A minimum of ten percent (10%) of the dwelling units designated as ADUs and WDUs shall be designed and constructed with Universal Design features, as determined by the Applicants. The WDUs shall have a bedroom mix similar to that provided in the market rate units. Additionally, in the event that parking spaces are guaranteed to be made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU in the development.

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

53. Commercial Contribution for Workforce Housing. For new office and other non-residential uses in Buildings A, B, and C, the Applicants shall select, within its sole discretion, one of the following two options for contributing toward the provision of

affordable and/or workforce housing within Tysons Corner. The options shall consist of either (i) a one-time contribution of \$3.00 for each square foot of GFA of new office or other non-residential use, or (ii) an annual contribution of \$0.25 for each square foot of GFA of new office or other non-residential use continuing for a total of 16 years. Under either option, GFA associated with public uses and ground floor retail uses are excluded from the contribution. These contributions shall be made to the Board of Supervisors, be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable at the time of issuance of the first Non-RUP for each of Buildings A, B and C.

PARKS AND RECREATIONAL FACILITIES

54. Publicly Accessible Parks. The Applicants shall provide a variety of park space on the Property that will be open and accessible to the public as depicted on the CDP. While these park spaces are retained in private ownership, the Applicants shall record public access easement(s) ensuring that the park space(s) are open to the public for periods of time consistent with traditional Fairfax County parks and providing for perpetual private maintenance. The public access easements shall also reserve to the Applicants the right to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes. The Applicants shall coordinate with FCPA to plan activities and events within the publicly accessible park areas. A wayfinding and signage system shall be developed in coordination with the County at the time of site plan approval and installed by the Applicants to ensure the public can easily identify and access all publicly accessible park spaces. The construction of the publicly accessible parks shall occur in phases commensurate with the phasing of development of the Property. Publicly accessible parks shall be provided as generally shown on Sheets L-2.0 through L-2.7 of the CDP, with adjustments to the designs and specific details with regard to recreational facilities, park furnishings and finishes to be provided at the time of FDP and/or final site plan approvals, provided such adjustments and details are in substantial conformance with the quality and character of that shown on the CDP.

A. Park Space A is a recreation focused park of approximately 22,303 square feet designed to promote social interaction and function for users of different ages and mobility. It includes active recreational facilities such as a playground, a multi-purpose half court and an open lawn panel but also includes landscaping, paths, benches and art in the landscape. A school bus stop area shall also be incorporated into this park space until such time as the future ramp described in Proffer 35 is constructed; the specific location of the school bus stop shall be determined at the time of site plan. Park Space A shall be substantially complete prior to issuance of the 300th RUP for Building C.

In the event that the interim ramp described in Proffer 35 is constructed prior to the development of Park Space A, the Applicants shall provide a cash contribution to the FCPA in an amount to be determined based on the estimated value of the land and proffered facilities in Park A. Such contribution shall be made prior to issuance of the 300th RUP for Building C. FCPA shall utilize these funds to obtain and construct park facilities elsewhere in Tysons. In the event that

the interim ramp is constructed after development of Park Space A, necessitating dedication of park area for construction purposes, the Applicants shall not be required to provide alternate compensation for the loss of on-site park space. However, as specified in Proffer 35A, to the extent that the Applicant receives separate compensation for the loss of park facilities in Park Space A and the same is specifically enumerated in the URA award, the Applicant shall assign such compensation to the FCPA. FCPA shall use its best efforts to utilize such compensation to improve other park space within the Property (which shall include any relocated area for Park Space A or another of the parks within the Property), before utilizing such compensation for parks not within the Property.

- B. Park Space B is a pocket park of approximately 8,132 square feet. It is designed as an off-leash dog park and will promote interaction between neighbors and pet owners. Park Space B will include fencing, varied topographic elements, synthetic turf, a dog oriented water feature as well benches and landscaping. Park Space B shall be substantially complete prior to issuance of first RUP for Building C.
- C. Park Space C is an urban plaza of approximately 8,603 square feet that will offer opportunities for reading, eating and reflecting. The space will include specialty landscaping, a variety of seating, and movable planters that provide an opportunity for a small performance space and/or potentially an ice rink. It shall be substantially complete prior to issuance of first RUP for Building C.
- D. Park Space D is a pocket park of approximately 8,141 square feet designed as intimate space for residents, visitors, hotel guests and retail patrons. It will include hardscaping, a tree grove and other landscaping, a bocce court, and a variety of seating including an oversized bench, seat walls and movable tables and chairs. Park Space D shall be substantially complete prior issuance for first RUP for Building C
- E. Park Space E is an urban plaza of approximately 7,431 square feet. It is designed as a central gathering space for the community and will be the most animated and lively. With hardscaping, landscaping, outdoor seating, vertical sculptural element(s) and an interactive water feature, it will be a potential location for special events such as outdoor performances, crafts fair and farmers' markets as well as people watching. Park Space E shall be substantially complete prior to first RUP for Building C.
- F. Park Space F is a pocket park of approximately 7,558 square feet designed for studying, reading and relaxing with a mixture of hardscaping, landscaping and outdoor seating. Park Space F shall be substantially complete prior to first RUP for Building C.
- G. Park Space G is a pocket park of approximately 2,200 square feet. It will relate to Urban Plaza C across Ashgrove Lane and provide additional seating and gathering space for performances in Urban Plaza C. Park Space G will include

shade structures, benches, tables and chairs. It shall be substantially complete prior to first RUP for Building C

H. Park Space H is a pocket park of approximately 1,238 square feet designed for social interaction and will relate to the activities taking place in Park Space E. It will feature hardscaping, landscaping, and outdoor seating with wireless fidelity (Wi-Fi) capability as an activation element. Park Space H shall be substantially complete prior to first RUP for Building C.

I. Park Space I is an urban plaza of approximately 3,853 square feet designed to animate the Cornerside Boulevard frontage and provide convenient space for seating and people watching. It will include public art, hardscaping, landscaping and seating for passive use. Park Space I shall be substantially complete prior to first Non-RUP for Building B.

55. Amenities and Facilities for Residents. The Applicants shall provide on-site recreational facilities for the future residents of the Property. Pursuant to Paragraph 2 of Section 6-508 and Paragraph 2 of Section 16-404 of the Ordinance regarding developed recreational facilities, the Applicants shall expend a minimum of \$1700.00 per market-rate and workforce residential unit on such recreation facilities. Prior to final bond release for the Property, the balance of any funds not expended on-site, as determined by DPWES shall be contributed to the Fairfax County Park Authority for the provision of recreation facilities serving Tysons Corner.

56. Off-Site Park Enhancements.

A. The Applicants shall make a good faith effort to diligently pursue, acquire and record public access easements to the benefit of the FCPA across properties identified on the Fairfax County 2013 tax maps as 29-3 ((20)) 8, 9A and 9B (the "Off-Site Parcels") through a cooperative agreement with the owners of the Off-Site Parcels. The easement area shall be a minimum of 20 feet in width to accommodate an eight foot wide asphalt trail. The form of the easement shall be reviewed and approved by the County Attorney. If the Applicants are unable to obtain one or more of the easements from the owners at a commercially reasonable rate, the Applicants shall: 1) provide documentation to FCPA of its efforts to obtain the easements including an appraisal, prepared by a MAI (Member of the Appraisal Institute) independent appraiser approved by the County, of the value of the easement(s) to be acquired and a copy of written offers and counteroffers (if any) and evidence of owners refusal or failure to respond affirmatively within 90 days to such offers and counteroffers; and 2) make a one-time contribution of \$10,000.00 for each unobtainable easement to the FCPA and thereby be released of any further obligation to obtain said easements. The easements, if available, shall be recorded prior to the issuance of a RUP or Non-RUP for the first of Buildings A, B or C to be constructed, or earlier at the Applicants' sole discretion.

- B. The Applicants shall provide a one-time \$50,000.00 contribution to the FCPA for improvements to the Old Courthouse Spring Branch stream valley park which may include, but not be limited to, improvements to existing trails, construction of new trails, enhancements to the Ashgrove Plantation site/facilities, and park planning efforts. Said contribution shall be made prior to the issuance of a RUP or Non-RUP for the second of Buildings A, B or C to be constructed.
57. Athletic Field Contribution. The Applicants shall provide a contribution of \$2.38 for each square foot of new space constructed in Buildings A, B and C to the FCPA for the development of athletic fields on the Westgate Park or acquisition and development of athletic fields elsewhere serving the Tysons area. The contribution associated with each building shall be based on the actual GFA in each building. This contribution shall not apply to any public use facilities constructed on the Property including the public arts office for alternate public use described in Proffer 57. The contribution associated with the first of Buildings A, B, or C to be constructed on the Property shall be paid in three equal installments; the first installment due at the issuance of the first RUP or Non-RUP for the building; the second installment due upon the issuance of the 100th RUP or the issuance of a Non-RUP for more than 100,000 square feet of non-residential space; and the third and final installment due prior to the issuance of the 300th RUP or issuance of a Non-RUP for more than 200,000 square feet of non-residential space. The contribution for the second and third buildings shall be made prior to the issuance of a RUP or Non-RUP for the applicable building.

PUBLIC FACILITIES

58. Public Space. The Applicants shall design, permit, construct and make available for use by Fairfax County or its designee for a period of thirty (30) years, space consisting of approximately 3,500 square feet of GFA within Building A or B. Said space shall be provided, at no cost to the County other than for utilities and char services, for office space to serve a public art agency (the "Agency Space"). Parking for the Agency Space shall be made available based on prevailing market lease rates for parking spaces. Should it be determined at FDP that the Agency Space is no longer needed in this location, the space shall be provided for another public/community use. Public/community use of this space shall be limited to museums, art galleries/studios, theatres, educational facilities, cultural centers, indoor recreational activities, County or State offices or other uses mutually agreed upon by the Applicants and the County. Said space shall be made available to the County prior to the issuance of a RUP or Non-RUP for more than 50,000 square feet of other uses in Buildings A or B, as may be applicable, or as may otherwise be determined at FDP. Following conclusion of the initial 30 year lease, the Applicants shall offer the County four-5 year lease renewal options at then prevailing market rates.
59. Master Plan for the Arts. The Applicants shall contribute \$350,000.00 to Fairfax County to fund a Master Plan for the Arts, or should the Master Plan be already complete, for other arts related activities mutually agreed upon by the Applicants and the County. The contribution shall be provided prior to the issuance of the first RUP or Non-RUP for Buildings A, B or C, whichever shall occur first.

- 60. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicants shall contribute \$9,378.00 per expected student (based on a ratio of 0.087 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements to schools that any students generated by the Property will attend. Such contribution shall be made prior to the issuance of the first RUP for each residential building and shall be based on the actual number of dwelling units built in each building.

STORMWATER MANAGEMENT

- 61. Stormwater Management.
 - A. Stormwater Management ("SWM") measures for the Property shall be designed to protect receiving waters downstream of Tysons Corner by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, subject to the determination of the Department of Public Works and Environmental Services (DPWES), retain on-site and/or reuse the first inch of rainfall. Proposed SWM and Best Management Practice ("BMP") facilities shall follow a tiered approach as identified by the County which may include infiltration facilities (where applicable), rainwater harvesting/detention vaults, runoff reducing and other innovative BMPs.

Plans submitted subsequent to this rezoning shall identify the use of certain Low Impact Development ("LID") techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicants shall provide green roofs both intensive and/or extensive, bio-retention (traditional and urban) areas, soil amendments, dry swales, pervious hardscapes/streetscapes, and infiltration.

Additionally, the SWM facilities shall be designed to accommodate not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes and reduce pollutant runoff as contemplated within the stormwater management-related credits of the project's registered version, or the most current version, of the U.S. Green Building Council's applicable Leadership in Environmental Education and Design (LEED®) rating system (e.g., for LEED-NC 2009, the Stormwater Design-Quantity Control and Stormwater Design-Quality Control credits [Sustainable Sites 6.1 and 6.2]). The above noted SWM Facilities shall be designed, to the maximum extent practicable, to meet the requirements of the stormwater management-related credits of the project's registered version or the most current version of the U. S. Green Building Council's applicable LEED rating system for each building/phase of the development based upon the LEED Boundary identified with each building/phase.

- B. At the time of each FDP, the Applicants shall provide calculations for that phase showing the proposed volume reductions and shall work cooperatively with

DPWES and DPZ to ensure that the stormwater management measures that would be sufficient to meet the requirements of the aforementioned LEED credits will be provided and that the first inch of rainfall will be retained or reused to the maximum extent practicable. Supporting information shall be included, as part of each FDP submission, that is of sufficient detail, subject to DPWES's determination in coordination with the Environment and Development Review Branch of DPZ, to demonstrate the viability of the proposed stormwater management strategy for the area subject to the FDP. This information shall include the following:

- (i) For any BMP involving infiltration of water into the ground, soil testing information documenting that the soil will be able to support the proposed infiltration measure(s).
 - (ii) For any measure involving storage and reuse of stormwater runoff, documentation supporting assumed levels of water usage.
- C. The requirements of Paragraph B may be met on an individual building basis (to include consideration of any associated parking, roadway and/or courtyard areas) or be based upon the total area of the Property. Extended detention facilities and extended release techniques may be used to augment the proposed volume reductions. It is further understood that interim or temporary SWM and BMP measures may be required during any interim phase of the Proposed Development.

Each FDP shall include the location and preliminary design of the SWM facilities including the access points to underground vaults. Access points, detailed at the time of FDP, shall be located outside of the landscape amenity panel and sidewalk zone of the streetscape.

- D. With each subsequent site plan, the Applicants shall provide refined calculations illustrating conformance with the proposed volume reductions shown on the FDP. The specific SWM facilities shall be determined at the time of site plan, and as may be approved by the DPWES. While it is anticipated that compliance with the goal of retaining and/or reusing the first inch of rainfall and meeting the requirements of the aforementioned LEED credits will be confirmed at site plan by utilizing the proposed retention credits identified by the County as part of its stormwater spreadsheet, the Applicants reserve the right to utilize any combination of LID measures (existing and future) to meet this goal, subject to the review and approval of DPWES. Similarly, if all other County suggested stormwater alternatives have been attempted, the Applicants reserve the right to over detain the runoff from a one-inch rainfall to a release rate that mimics that of a "good" forested condition.

Where it is the Applicants' intent to use a rainwater harvesting system ("RWHS") for stormwater credit, variations in reuse water demand may create fluctuations in draw down of the RWHS tank(s). If storage time will exceed 10 days, due to

seasonal variation in demand, the Applicants shall have the right to discharge excess volumes off site during non-rainfall periods in a manner and at release rates as allowed by the PFM or as approved by the Director of DPWES. To the extent practicable, such discharges shall mimic release rates from a good forested condition for a significant majority of rainfall events, and/or excess volume shall be directed to other facilities using a "treatment train" approach, if possible, as approved by the Director of DPWES. If for any reason the designed dedicated end use(s) becomes unavailable because of some change, the Applicants shall provide an approved alternative end use or install a properly designed BMP treatment system to achieve runoff reduction and treatment of the runoff.

- E. The Applicants shall retrofit Building E to include green roofs, courtyard rain gardens and stormwater management planters as conceptually shown on Sheet C-9 of the CDP or, alternatively, provide equivalent stormwater retention technique(s) to treat Building E as may be approved by DPWES. Installation of the green roofs, courtyard rain gardens and stormwater management planters or equivalent techniques shall be complete prior to issuance of more than 200 RUPs for the second residential building to be constructed on the Property or prior to the issuance of Non-RUPS for more than 200,000 square feet of GFA in Building A, whichever shall occur last.

62. Tree Replacement. As shown on the CDP, the Applicants are requesting a modification of PFM Section 12-0505.6B to allow for trees located above any proposed percolation trench or bio-retention area to count toward the 10-year tree canopy requirement. In the event that any of the said trees may need to be removed for maintenance or repair of those facilities, the Applicants shall replace removed trees as determined by the UFMD to sustain the 10-year canopy.
63. Stream Valley Restoration Contribution. The Applicants shall contribute \$10,000.00 to Fairfax County for the preparation of a stream valley restoration plan, or alternatively improvements to the Old Courthouse Spring Branch stream valley. Said contribution shall be made prior to the issuance of a RUP or Non-RUP for the second new building to be constructed on the Property.

MISCELLANEOUS

64. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording any residential condominium documents that would change the use of all or any portion of the Property that either i) is zoned to permit multi-family residential use but is not yet used for that purpose or ii) from use as a multi-family residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business, in either case therefore taxable for purposes of the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District") to a use that is not subject to the Phase I District tax, the Applicants shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicants intends to record such condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicants shall pay to Fairfax County a sum equal to the

then-present value of Phase I District taxes estimated by the County to be lost as a result of that change in use.

65. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration that, despite diligent efforts or due to factors beyond the Applicants' control, proffered improvements such as, but not limited to, transportation, publicly-accessible park areas, athletic fields, trail connections, and offsite easements, have been delayed (due to, but not limited to, an inability to secure necessary permission for utility relocations, VDOT approval for traffic signals, necessary easements and/or site plan approval) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these transportation improvement(s).
66. Adjustment in Contribution Amounts. Except for contributions to the Tysons Grid of Streets Transportation Fund and the Tysons-wide Transportation Fund, all monetary contributions specified in these Proffers shall adjust on a yearly basis from the base year of 2014 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.
67. Advanced Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
68. Severability. Pursuant to Section 18-204 of the 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.
69. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicants and their successors and assigns. Each reference to "Applicants" in this proffer statement shall include within its meaning and shall be binding upon Applicants' successor(s) in interest and/or the owners from time to time of any portion of the Property during the period of their ownership. Once portions of the Property are sold or otherwise transferred, the associated proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferee. With respect to any portion of the Property subject to a COA, the COA shall have liability for performance of any applicable proffers, but not the individual condominium owners.
70. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON NEXT PAGE]

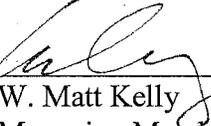
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Co-Applicant/Title Owner of Tax Map
29-3 ((20)) C2, C3

TYSONS WEST RESIDENTIAL, L.L.C.

By: Tysons West Holdings, L.L.C., its Managing Member

By: JBG/Company Manager IV, L.L.C., its Managing
Member

By: 
W. Matt Kelly
Its: Managing Member

[SIGNATURES CONTINUE ON NEXT PAGE]

Co-Applicant/Title Owner of Tax Map
29-1 ((1)) 10D

JBG/TYSONS HOTEL, L.L.C.

By: JBG/Company Manager III, L.L.C., its Managing
Member

By: 
W. Matt Kelly
Its: Managing Member

[SIGNATURES END]