PROFFER STATEMENT
PENN DAW PLAZA

RZ/FDP 2013-LE-008

August 8, 2013
Revised September 13, 2013
Revised September 20, 2013
Revised October 17, 2013
Revised October 21, 2013
Revised October 31, 2013
Revised November 7, 2013

Penn-Daw Associates Limited Partnership (the "Applicant"), as owner of the property identified on the Fairfax County Tax Map as Tax Map 83-3 ((1)) 7 (the "Property"), seeks to rezone the Property from the C-8 (Highway Commercial) and R-4 (Residential, Four Dwelling Units/Acre) Districts to the Planned Development Housing, 40-Units per Acre ("PDH-40") District, the Highway Corridor Overlay District ("HCOD") and the Richmond Highway Commercial Revitalization District (collectively, the "Rezoning").

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to approval by the Fairfax County Board of Supervisors of the Rezoning, the Applicant hereby proffers that development of the Property shall be in accordance with the following conditions (the "Proffers"), which, if the Rezoning is approved by the Board of Supervisors, shall replace and supersede any and all existing proffered conditions applicable to the Property. In the event the Rezoning is denied, these Proffers shall immediately be null and void and any previous proffered conditions shall remain in full force and effect.

GENERAL

1. Substantial Conformance. Subject to these Proffers and the provisions of Sections 6-400, 16-400 and 18-204 of the Zoning Ordinance of Fairfax County, as amended (the "Zoning Ordinance"), the Property shall be developed in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP") dated June 2013 and revised through October 31, 2013, and prepared by Urban, Ltd.

2. Proffered CDP/FDP Elements. The proffered elements of the CDP/FDP are limited to the uses, general location of the points of access to the Property, maximum building heights, maximum number of dwelling units, maximum gross floor area, amount and location of open space, the location of the limits of clearing and grading, minimum setbacks from peripheral lot lines, the general location and arrangement of the buildings and parking, and the general quality and character of the streetscape (collectively the "Proffered Elements"). Other elements of the CDP/FDP may be adjusted or modified with approval of a Final Development Plan Amendment ("FDPA") in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance and these Proffers.

3. Minor Modifications to the CDP/FDP. Minor modifications to the CDP/FDP shall be permitted pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site design, and when such modifications are determined to be in substantial conformance with the Proffered Elements and these Proffers, as determined by the Zoning Administrator, and does not increase the total number of dwelling units or non-residential square footage, increase building height, increase surface parking, decrease the amount of open space or reduce landscaping.

    A. Drive Aisle Width. Notwithstanding the dimensions shown on Sheet 4 of the CDP/FDP, the Applicant may reduce the width of the internal drive aisle serving the eastern end of the surface parking lot from twenty feet (20') to a minimum of sixteen feet (16') if such reduction is approved by the Fire Marshal as part of site plan approval for the Proposed Development. Any reduction of the width of the drive aisle shall result in a compatible increase in the width of the adjacent landscape islands.

4. Proposed Development. The Applicant shall be permitted to develop the Property with up to 610,544 gross square feet of development consisting of (a) up to a maximum of 400 multifamily residential units (inclusive of bonus units as permitted under Proffers 13 and 14 below) (the "Multifamily"), (b) up to 41 single family attached dwelling units (inclusive of bonus units as permitted under Proffers 13 and 14 below), and (c) a minimum 35,000 square feet and up to a maximum 45,500 gross square feet of secondary uses (collectively, the "Proposed Development"). The permitted secondary uses shall include commercial uses such as retail sales establishments, eating establishments, personal service establishments and/or other non-residential uses permitted by-right, by Special Exception, or by Special Permit in the PDH District, all as more particularly shown on the CDP/FDP and described in these Proffers. Notwithstanding the foregoing sentence, the Applicant may not establish the following uses on the Property without first obtaining approval of an FDPA and/or Proffered Condition Amendment ("PCA") as determined by the Zoning Administrator: drive through financial institutions, drive-through pharmacy, service stations, golf courses, country clubs, golf driving ranges, marinas, docks and boating facilities, service station/mini-marts, vehicle light service establishments, miniature golf courses, riding or boarding stables, veterinary hospitals, but only ancillary to riding or boarding stables, zoological parks, bus or railroad stations, electrically-powered regional rail transit facilities, heliports, helistops, regional non-rail transit facilities, and light public utility uses.

    A. Grocery Store. The Applicant shall use its "best efforts" to locate on the ground floor of the Proposed Development (a) a grocery store tenant containing a minimum 5,000 gross square feet and designed to provide daily necessities and prepared foods for residents and tenants of the Proposed Development and surrounding neighborhoods (the "Grocery Store") and (b) an eating establishment containing at least 4,000 gross square feet. For purposes of these Proffers, Grocery Store means a retail sales establishment that offers for sale a variety of

foodstuffs and household supplies, but shall not be only convenience retail or quick service food store. The design of the Grocery Store shall include features or characteristics intended to animate the storefront, draw attention to the building and convey a sense of activity for pedestrians.

The Applicant's "best efforts" shall include retaining a qualified retail broker or internal leasing agent and marketing the Proposed Development for a Grocery Store and an eating establishment for at least twenty-four (24) months following submission of a building permit application for the Multifamily building. In connection with such leasing efforts, the Applicant also shall consult with the Southeast Fairfax Development Corporation ("SFDC") and the office of the Lee District Supervisor and shall provide periodic written reports, not fewer than once every six (6) months, to the Lee District Land Use Committee ("LDLUC") and the Supervisor's office outlining the Applicant's leasing activities and the corresponding results. Should the Applicant lease any portion of the Proposed Development to a Grocery Store, then the obligation to provide an eating establishment automatically shall become void, and the Applicant may lease the balance of the ground floor retail space of the Proposed Development for any other permitted secondary use as more particularly set forth in this Proffer.

In the event the Applicant, despite its best efforts, is unable to lease any portion of the ground floor retail space to either a Grocery Store or an eating establishment of at least 4,000 gross square feet, then the Applicant, then the Applicant may lease the balance of the ground floor retail space for any other permitted secondary use as more particularly set forth in this Proffer.

BUILDING DESIGN

5. Architecture. The architectural design of the buildings and dwellings shall be consistent with the conceptual elevations as shown on the CDP/FDP. Exterior building materials for the multifamily residential building and the single family attached dwellings shall be selected by the Applicant from among the following: brick, masonry/stone, aluminum, steel, glass, cementitious paneling and siding, aluminum/vinyl windows, architectural pre-cast concrete headers, sills, and trim details, provided that final architectural details, roofs and accents may include other materials. While design details are provided with the CDP/FDP and these Proffers, the Applicant may adjust or modify the architectural plans, elevations, illustrations, materials, and building heights subsequent to CDP/FDP approval as part of its final design without requiring CDPA, FDPA, PCA or other zoning approval, provided the general quality and characteristics of design remain in substantial conformance with those shown on the CDP/FDP and set forth in these Proffers. Bay windows, balconies, awnings, storefronts and other architectural details may be provided so long as (i) such features do not extend more than eight (8) feet beyond the building footprints shown on the CDP/FDP and (ii) the required streetscape features are maintained.

A. Architectural and Landscaping Coordination with Adjacent Dry Clean Use. The Applicant shall pursue approval for and complete architectural, landscaping and/or façade improvements to the neighboring commercial dry cleaning business located in the southwest corner of the intersection of Poag Street and Kings Highway (Fairfax County Tax Map 83-3 ((1)) 6) (the "Zips Site") designed to achieve aesthetically compatible facades for the Zips Site and the Proposed Development, generally as shown on Sheets A-3 and A-3.1 of the CDP/FDP (the "Zips Improvements"). The Zips Improvements shall be completed prior to the issuance of the first RUP for the Multifamily or Non-RUP for the Proposed Development unless the Zoning Administrator extends the time within which such improvements must be completed per the request of the Applicant, provided that the Applicant's obligation to complete the Zips Improvements is dependent on its obtaining all requisite approvals from the owner of the Zips Site. The Zips Improvements may include, but need not be limited to, the use of complementary building materials and colors, repetition in building façade treatments used in the Proposed Development, awnings, signage, landscaping, lighting or similar articulations or features. Prior to (i) Site Plan approval and (ii) issuance of the first building permit for the Proposed Development, the Applicant shall provide to the Director of the Zoning Evaluation Division of the Department of Planning and Zoning ("ZED") documentation summarizing the Applicant's efforts to implement the Zips Improvements. In the event the Applicant is unable to secure approval from the owner of the Zips Site to make the improvements contemplated by this Proffer, then the Applicant shall, prior to the issuance of the first RUP for the Multifamily or Non-RUP for the Proposed Development, contribute $45,000 to the Board of Supervisors to be used for supplemental streetscape and/or landscaping improvements on the Zips site or within the vicinity of the Property.

B. Façade Treatments on Kings Highway. The ground-floor portions of the Proposed Development fronting Kings Highway shall incorporate architectural features or façade elements to help break up the mass and bulk of the building, as well as provide a pedestrian sense of scale. Examples of the façade treatments to be provided under this Proffer include canopies, awnings, building material or color changes, signage, lighting elements or similar treatments, generally as shown on Sheets A-3 and A-3.1 of the CDP/FDP. The Applicant shall be permitted to vary the façade treatments to match the architectural style of the tenant(s) located in each affected building, provided that the character and quality of treatments are comparable across the Property.

C. Architectural Treatment on Single Family Attached Dwellings. The townhome portion of the Proposed Development shall utilize building architecture, colors and materials designed to complement those of the multifamily buildings so as to create the appearance of a unified development, generally as shown on Sheet A-3.1 of the CDP/FDP.

D. Architectural Treatment and Lighting in Internal Drive Aisle. The Applicant shall install architectural elements and treatments, lighting, signage and/or similar features and techniques designed to animate and improve the visibility in the pedestrian and vehicular drive aisle located between the ground-floor secondary uses and the above-grade parking structure as shown on Sheet A-3 of the CDP/FDP.

6. Building Height. The building height of the Proposed Development shall not exceed the maximum height identified on the CDP/FDP, exclusive of accessory structures and uses outlined in Section 2-506 of the Zoning Ordinance that may be constructed above the roof level of the Proposed Development. Final building height shall be determined at the time of site plan approval, and may be less than the maximum height shown on the CDP/FDP, provided that the Proposed Development retains a compatible urban form to that shown on the CDP/FDP.

7. Universal Design. At time of site plan and building plan approval for the Proposed Development, the Applicant shall designate up to one percent (1%) of the multifamily dwelling units as compliant with the universal design criteria set forth in the ICC/ANSI A117.1 (American National Standard Accessible and Usable Buildings and Facilities as referenced in the current edition of the Virginia Statewide Building Code) and the 1988 Fair Housing Design Manual.

   A. Such residential units shall have the following accessible design features:

      i. At least one accessible route that connects all spaces and elements that are part of the unit as defined by ANSI;

      ii. User passage doorways with a minimum width of 32 inches;

      iii. Threshold beveled changes between ¼ and ½ inch maximum;

      iv. Compliance of lighting controls, electrical switches and receptacle outlets, environmental controls and user controls for security and intercom systems with clear floor spaces and heights as defined by ANSI;

      v. Reinforcement for furniture installation of bath fixtures by ANSI; and

      vi. Levered knobs throughout the unit.

8. Rooftop Telecommunications Equipment and Mechanical Units. Telecommunications equipment, mechanical units and all appurtenant facilities may be placed on the rooftop of the Proposed Development and shall comply with the applicable requirements of the Zoning Ordinance and be screened and/or set back sufficiently from the perimeter of the roof such that they are generally not visible from the surrounding streets at street level when viewed at a reasonable distance from the property line of the Property.

9. Lot Typical, Decks and Similar Appurtenances. Decks, bay windows, patios, chimneys, areaways, stairs and stoops, mechanical equipment and other similar appurtenances may encroach into minimum yards as depicted on the "Typical Lot Layout " for the single family attached portion of the Proposed Development and shown on Sheet 2 of the CDP/FDP (the "Townhome Lots"), as permitted by Section 2-412 and Article 10 of the Zoning Ordinance. Porches (including screened in porches) or sunrooms may be permitted in the rear yard of the Townhome Lots in the area identified as "Possible Building Options" on Sheet 2 of the CDP/FDP. The specifications of this proffer shall be disclosed to future homeowners in the homeowners association documents applicable to the affected Townhome Lots.

10. Noise Study and Mitigation. Concurrent with the submission of the first site plan for the Proposed Development, the Applicant shall submit to the Department of Planning and Zoning (the "DPZ") and the Department of Public Works and Environmental Services ("DPWES") for review and comment a noise study demonstrating that, based on noise mitigation measures the Applicant proposes to include in its building design (if any), all affected interior areas of the residential units constructed on the Property will have noise levels reduced to approximately 45 dBA Ldn or less based on future traffic conditions and final site conditions, as more particularly set forth below.

    A. Noise Levels within Residential Units.

        i. 70 dBA Ldn to 75 dBA Ldn. Except as set forth in paragraph (B) below, in order to reduce interior noise to a level of no more than 45 dBA Ldn for residential units that are projected to be impacted by noise greater than 70 dBA Ldn (but not more than 75 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:

            a. Exterior walls shall have a laboratory STC rating of at least 45;

            b. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than twenty percent (20%) of any façade exposed to noise levels of Ldn 70 dBA or above;

            c. If glazing constitutes more than twenty percent (20%) of an exposed façade, then the glazing shall have a laboratory STC rating of at least 45; and

            d. 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.

        iii. 65 dBA Ldn to 70 dBA Ldn. Except as set forth in paragraph (B) below, in order to reduce interior noise to a level of no more than 45 dBA Ldn for residential units that are projected to be impacted by noise projected

greater than 65 dBA Ldn (but not more than 70 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:

a. Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 39;

b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than twenty percent (20%) of any façade exposed to noise levels of Ldn 70 dBA or above;

c. If glazing constitutes more than twenty percent (20%) of an exposed façade, then the glazing shall have a laboratory STC rating of at least 39; and

d. All surfaces shall be sealed and caulked in accordance with methods approved by the ASTM to minimize sound transmission.

B. As an alternative to the mitigation strategies set forth in subparagraphs A(i) and A(ii) above, the Applicant may submit a certification by an acoustical engineer that the construction practices and/or materials proposed for the Proposed Development structure will provide sufficient noise mitigation to achieve the required interior noise levels. As part of such certification, the acoustical professional shall submit relevant information to permit the Director to verify that the proposed measures will achieve the interior noise level standard.

C. All building permit applications and building plans submitted to the County shall indicate whether such portion of the Proposed Development is required to include noise attenuation measures and, if so, the type of attenuation measure to be implemented. Building plans for the Proposed Development also shall depict the final noise contours as determined by the noise study.

D. For those multifamily dwelling units that the noise study indicates will have exterior balconies affected by noise above 65 dBA, the Applicant shall include in each lease/initial purchase agreement for such units a written disclosure to the prospective tenant/purchaser indicating that such unit's balcony may be impacted by exterior noise at levels described in the Applicant's noise study.

E. Noise Levels at Public Plaza. As applicable, the Applicant shall provide noise attenuation measures to ensure that traffic-related noise in the outdoor plaza identified on Sheet L1.1 of the CDP/FDP do not exceed 65 dBA Ldn. Adjustments to the noise attenuation measures that are in substantial conformance with those indicated on the CDP/FDP may be permitted subject to the approval of the Zoning Evaluation Division (ZED) to ensure that the noise attenuation measures provide the necessary noise attenuation.

11. Sustainable Design. In order to promote energy conservation and green building techniques, the Applicant shall select one or more of the following sustainable design programs to be implemented as part of the Proposed Development. The Applicant may elect to have the townhome portion of the Proposed Development certified under a different program, and on a different timeframe, from the balance of the Proposed Development. In the event that, subsequent to approval of this Application and these Proffers, the Board of Supervisors or its designee adopts new or modified green building policies to permit certification of mixed use developments under a different or revised certification program or rating system than those listed below, then the Applicant may elect to seek certification under such alternate program as determined by the Planning Division of DPZ. As part of the first site plan submission for the portion(s) of the Proposed Development for which a particular certification will be sought, the Applicant will inform the Environment and Development Review Branch of DPZ of its choice(s) for sustainable design.

    A. NGBS. If the Applicant selects the Home Innovations Research Lab's National Green Building Standard ("NGBS"), then the Applicant shall seek NGBS certification using either the ENERGY STAR® Qualified Homes Path or the Performance Path for energy performance as demonstrated through documentation submitted to DPWES and the Environment and Development Review Branch of DPZ from a home energy rater and/or an NGBS Verifier certified through the Home Innovations Research Lab. The Applicant also shall install Energy Star appliances and HVAC systems as part of initial construction of each dwelling unit. Documentation demonstrating certification under the NGBS rating system in accordance with this Proffer shall be submitted to DPWES and the Environment and Development Review Branch of DPZ prior to the issuance of the first RUP for each building for which certification has been obtained.

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

    In addition, the Applicant will designate the Chief of the Environment and Development Review Branch of the DPZ as a team member in the USGBC's LEED Online system (as applicable or available, depending on the form of LEED pursued). This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, as

applicable, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

Prior to building plan approval, the Applicant will submit documentation, to the Environment and Development Review Branch of DPZ, regarding the U.S. Green Building Council's preliminary review of design-oriented credits in the LEED program (as applicable or available, depending on the form of LEED pursued). This documentation will demonstrate that each 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 certification. Prior to release of the bond for the Proposed Development (or applicable portion thereof), the Applicant shall provide documentation to the Environment and Development Review Branch of DPZ demonstrating the status of attainment of LEED certification or a higher level of certification from the U.S. Green Building Council for the building.

If the U.S. Green Building Council's review of design-oriented credits indicates that the Proposed Development (or applicable portion thereof) is not anticipated to attain a sufficient number of design-related credits to support attainment of LEED Silver certification, the Applicant will post a "green building escrow" in the form of cash or a letter of credit from a financial institution authorized to do business in the Commonwealth of Virginia in the amount of $2 per gross square foot of each multifamily residential building. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED certification, or higher level of certification, by the U.S. Green Building Council, under the most current version of the LEED for Homes Multifamily Mid-Rise rating system or the LEED-NC rating system, as applicable. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that the Proposed Development (or applicable portion thereof) has attained LEED certification will be sufficient to satisfy this commitment.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within one year after issuance of the final RUP for the Proposed Development (or applicable portion thereof), documentation demonstrating that LEED certification has not been attained but that the Proposed Development (or applicable portion thereof) has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, fifty percent (50%) of the escrow will be released to the Applicant; the other fifty percent (50%) will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant fails to provide, within one year after issuance of the final RUP for the Proposed Development (or applicable portion thereof), documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the Proposed

Development (or applicable portion thereof) has fallen short of LEED certification by three points or more, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

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

C. EarthCraft. If the Applicant selects EarthCraft, then the Applicant shall provide documentation to DPWES and DPZ that the Proposed Development (or applicable portion thereof) has been awarded certification in accordance with the EarthCraft House Program prior to the issuance of the first RUP for the portion of the Proposed Development for which such certification is sought.

12. Lighting. All on-site, outdoor and parking garage lighting provided with the Proposed Development shall comply with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. All proposed parking lot and building mounted security lighting shall utilize full cut-off fixtures.

A. Parking Structure/Lot Lighting. Light poles in surface parking lots and on the top level of the above-grade parking structures, as well as building-mounted security lighting, shall all use shielded cut-off fixtures and be directed inward and downward such that the lamp surface is not directly visible to adjacent properties.

B. Street Lighting. Subject to VDOT approval, as applicable, street lamps located along Kings Highway, Poag Street and the private streets within the Proposed Development shall be designed to be complementary in design so as to create the appearance of a unified development, despite the different functions such lighting may have within the Proposed Development.

AFFORDABLE HOUSING

13. Affordable Dwelling Units. Affordable Dwelling Units ("ADUs") shall be provided pursuant to the provisions of Part 8 of Article 2 of the Zoning Ordinance for mixed-use developments containing both single family attached units and multifamily buildings using Type 5 construction, generally as represented on the CDP/FDP and regardless of the Applicant's actual building construction type, subject to any modifications approved by the ADU Advisory Board. Pursuant to Section 2-806 of the Zoning Ordinance, the Applicant reserves the right to locate any of the ADUs required as part of the single family attached units within the Multifamily portion of the Proposed Development.

14. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant shall also provide for-sale and/or rental housing units on the Subject Property in accordance with the Board of Supervisors' Workforce Dwelling Unit Administrative Policy Guidelines dated October 15, 2007. 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 15 percent (15%) of the total residential units constructed as part of the Proposed Development. 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 Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application without the need for a proffered condition amendment. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

15. Parking for Affordable Dwelling Units and Workforce Dwelling Units. The terms under which parking spaces are made available for purchase/lease by the owner/lessee of an ADU or WDU unit shall be the same as those offered to purchasers/lessees of the market rate units, such that if market rate units are provided the option to purchase/lease a reserved/designated space, then parking for ADUs and WDUs similarly must be provided on a designated/reserved basis, subject to availability.

LANDSCAPING, OPEN SPACE, AND RECREATION

16. Landscaping. Sheet L-1 of the CDP/FDP includes a conceptual landscape plan for the Proposed Development (the "Conceptual Landscape Plan"), which the Applicant shall update and separately submit to the Urban Forest Management Division ("UFMD") of DPWES for review and approval with its first site plan submission for the Proposed Development. The Applicant may modify the landscaping during site plan review to allow for final engineering and design considerations, provided that such modifications are in substantial conformance with the quality and quantity of plantings and materials shown on the Conceptual Landscape Plan. The Applicant shall install the final landscaping as shown on the approved site plan prior to issuance of the first RUP for the Multifamily or the first Non-Residential Use Permit ("Non-RUP") for the Proposed Development.

17. Planting Width Details. Street tree species and planting sites are depicted on the Conceptual Landscape Plan but may be revised during site plan review. Where minimum planting widths of eight (8) feet cannot be provided, alternative measures as approved by the UFMD shall be used to satisfy the following specifications for all planting sites:

A. A minimum of 5.5 feet open surface width and 50 square feet open surface area for Category III trees (as defined in Table 12.17 of the PFM), with the tree located in the center of such open area.

B. A minimum rooting area of eight (8) feet wide (may be achieved with techniques to provide uncompacted soil below hardscape areas), with no barrier to root growth within four feet of the base of the tree.

C. Soil volume for Category III trees (as defined in Table 12.17 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where paving above root zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. For two (2) trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Minimum soil volumes of 700 cubic feet will be achieved in areas of lower pedestrian volume and where pavement is not required over tree rooting zones. Soil specifications in planting sites shall be provided in the planting notes to be included in all site plans filed subsequent to the approval of this Rezoning.

18. Tree Survey and Preservation Plan.

A. Preservation of Existing Trees. A small portion of the southwestern end of the Property contains a stormwater management facility surrounded by existing trees worthy of preservation, if possible. This area is identified on Sheet L-3 of the CDP/FDP as being approximately 33,275 square feet and is labeled thereon as "Existing Tree Preservation Area." The Applicant shall submit a tree preservation plan and narrative as part of the first site plan submission for the Proposed Development (the "Tree Preservation Plan"). The Tree Preservation Plan shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The Tree Preservation Plan shall include a tree inventory that identifies the general location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead, with trunks 12 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. The Tree Preservation Plan shall include all items specified in PFM 12-0507 and 12-0509 and shall identify individual trees the Applicant proposes for preservation and those trees it plans to remove because they (i) are dead, dying or diseased, (ii) pose or create a hazard, or (iii) negatively impact the viability and survivability of other existing trees. Any tree in the Existing Tree Preservation Area that the Applicant proposes to remove shall be removed using a

chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

B. Tree Preservation Walk-Through. Prior to commencement of construction activity adjacent to the Existing Tree Preservation Area, the Applicant shall mark the limits of clearing and grading with a continuous line of flagging and conduct a pre-construction walk-through with the Applicant's certified arborist or landscape architect and a UFMD representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation.

C. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in these Proffers and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the CDP, they shall be located in the least disruptive manner necessary as determined by the UFMD. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities."

D. Tree Preservation Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by one or more tree protection fence(s). Tree protection fencing may be in the form of (i) four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, (ii) super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities adjacent to the Existing Tree Preservation Area. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

19. Streetscape. Prior to the issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development, the Applicant shall install streetscape improvements along Poag Street and Kings Highway as conceptually illustrated on Sheets L-2.2 and L-2.3 of the CDP/FDP. The Applicant shall be permitted to modify the streetscape elements during site plan review to allow for final engineering and design considerations provided such modifications are in substantial conformance with the CDP/FDP. The Applicant shall be

responsible for maintaining sidewalks and streetscape elements located on the Property and, subject to execution of a maintenance agreement with VDOT, within the public right-of-way abutting the Property along Poag Street and Kings Highway. Maintenance shall include keeping the walking surface in good repair and snow removal in inclement weather.

A. Kings Highway. The streetscape shall include a six foot (6') wide sidewalk and eight foot (8') wide landscaping buffer along Kings Highway as illustrated on Sheet L-2.3 of the CDP/FDP. The Applicant shall coordinate the installation of the sidewalk with VDOT.

B. Poag Street. The streetscape shall include a five foot (5') wide sidewalk and landscaping along the Property's Poag Street frontage, as illustrated on Sheet L-2.2 of the CDP/FDP. The Applicant shall coordinate the installation of the sidewalk with VDOT.

20. Easements.

A. Sidewalk Access. Prior to site plan approval for the Proposed Development, the Applicant shall convey to the Board of Supervisors a sidewalk easement, in a form as reviewed and approved by the County Attorney, over the sidewalks located outside the public right-of-way along the Property's Poag Street and Kings Highway frontage, as well as the sidewalk west of the Multifamily building and linking Poag Street and the Tot Lot/Dog Park.

B. Emergency Access. Prior to site plan approval for the Proposed Development, the Applicant shall convey to the Board of Supervisors an emergency access easement, in a form as reviewed and approved by the County Attorney, over the private streets within the Proposed Development.

21. Poag Street Sidewalk. Prior to the issuance of the first RUP for the single-family attached dwelling units, the Applicant shall construct or extend within the public right-of-way a sidewalk along the southern side of Poag Street to connect with the existing sidewalk at the Poag Street cul de sac, as illustrated on the CDP/FDP. The sidewalk shall be a minimum five feet (5') in width, provided that for those portions located offsite from the Property the Applicant may reduce the sidewalk width where insufficient right-of-way exists to accommodate the full section. The Applicant shall coordinate the installation of the sidewalk with VDOT. Nothing in this Proffer shall require the Applicant to acquire additional off-site right-of-way or construction easements from adjacent properties as a condition of fulfilling this Proffer.

22. Plaza. The Applicant shall install an outdoor plaza (the "Plaza") as shown on Sheets 4 and L-2 of the CDP/FDP to serve as public outdoor space benefitting the Proposed Development. The Applicant shall equip the Plaza with outdoor furniture and amenities intended to create a sense of place and identity for the Proposed Development, which should include, at a minimum, permanent and movable seating/benches, hardscape and landscaping, pedestrian-scale lighting, a focal feature and similar amenities, generally as shown on Sheets L-2 and L-

2.0 of the CDP/FDP, with final amount, style and location to be determined as part of site plan approval for the Proposed Development. The Applicant shall include in the Plaza design a landscaped area for naturalized play, hardscaped markings to indicate hopscotch, a maze or some comparable interactive activity, and game tables shall be provided in the Plaza, generally as shown on Sheet L-2 of the CDP/FDP. The required focal feature shall be of a quality and character comparable to those examples shown on Sheet L-2.0 of the CDP/FDP. Minor modifications to the Plaza design, which may include the addition of noise-attenuating measures, may be permitted at time of site plan approval so long as the character and quality of the Plaza remains in conformance with the CDP/FDP.

A. Plaza Programming. The Applicant or its designee shall develop and implement a plan or programs designed to utilize the Plaza for community gatherings and/or events on a periodic basis, but in no event fewer than four (4) times per calendar year, which events may include, but need not be limited to, farmers markets, food, art or craft festivals, concerts, etc. (collectively, the "Plaza Programs"). The Applicant shall coordinate advertising and marketing for the Plaza Programs with the office of the Lee District Supervisor. No sooner than ten (10) years following the issuance of the first RUP for the Multifamily, the Applicant may petition the Zoning Administrator to modify the frequency of the Plaza Programs based on the success of such programs to date and/or other changes in circumstances that may warrant such a modification.

23. Signage. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance or with a Comprehensive Sign Plan. The Applicant reserves the right to pursue approval of a comprehensive sign plan in accordance with the requirements set forth in the Zoning Ordinance.

A. Directional Signage. The Applicant shall install way finding and directional signage throughout the Proposed Development intended to reduce conflicts among vehicles and pedestrians and to direct drivers to their desired locations. Such signage shall be located generally as shown on Sheet 4 of the CDP/FDP and be installed prior to the issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development.

24. Private Amenities and Recreation Facilities for Residents. Pursuant to Paragraph 2 of Section 6-110 of the Zoning Ordinance, the Applicant shall provide on-site recreational facilities, as shown on the CDP/FDP, for the future residents of the Property and shall expend a minimum of $1,700.00 per residential unit (exclusive of ADUs) in doing so. The outdoor amenity and recreation facilities provided with the Multifamily buildings shall be made available to the residents of the single-family attached dwelling units, subject to reasonable rules and regulations governing such use, which may include a fee or charge. In the event the total cost of recreational improvements constructed on the Property is demonstrated to be less than one thousand seven hundred dollars ($1,700.00) per unit, the Applicant shall provide the remainder in a cash contribution to the Fairfax County Park Authority ("FCPA") for the development of active recreational facilities in the vicinity of the Property prior to bond release for the proposed development.

A. Tot Lot and Dog Walk. Prior to issuance of the first RUP for the Multifamily, the Applicant shall install (i) a tot lot with at least one (1) piece of playground equipment and (ii) a fenced dog walk/park composed of synthetic turf with an underdrain system or stone dust, generally as shown on Sheet L-2.1A of the CDP/FDP. Details concerning the proposed tot lot and dog park amenities shall be shown on the initial site plan submission for the portion of the Property on which such facilities are to be constructed. The Applicant or a successor owners association shall provide ongoing maintenance, repair and/or replacement of the tot lot and dog park.

25. Off-site Recreational Facilities. The Applicant shall contribute $893.00 per resident generated by the Proposed Development up to a maximum total $575,000.00 to the Board of Supervisors for park, trail and athletic field improvements in the Lee District intended to serve the future residents, as determined by FCPA in consultation with the Supervisor for Lee District. The contribution shall be made in two (2) payments as follows: (a) prior to issuance of the first RUP for the first single-family attached dwelling unit and covering all single family attached units in the Proposed Development; and (b) prior to issuance of the first RUP for the Multifamily portion of the Proposed Development and covering all of the multifamily units. The total contribution amount shall be based on the total number of residents generated by the Proposed Development based on the following ratio: (i) studio and one-bedroom multifamily units generating one and one-quarter (1.25) residents per unit, (ii) two-bedroom multifamily units generating two (2) residents per unit, and (iii) single-family attached units generating two and nine-tenths and (2.90) residents per unit. For purposes of this Proffer, the Applicant anticipates an approximate mix of dwelling unit types that includes sixty-percent (60%) studio and one-bedroom multifamily units, forty-percent (40%) two-bedroom multifamily units and forty-one (41) single-family attached units, with the final unit/bedroom mix and total contribution amount to be determined as part of site plan approval for the Proposed Development, provided that the total contribution amount under this Proffer shall not exceed $575,000.00.

PARKING AND LOADING

26. Bicycle Parking. The Applicant shall install bicycle racks, bike lockers, and/or bike storage areas in the Proposed Development providing a minimum of (a) fourteen (14) outdoor bicycle parking spaces for the multifamily residential and secondary uses and (b) forty-two (42) bicycle parking spaces located in a secure storage area within the Proposed Development (collectively "Bicycle Parking"). Specific locations for the outdoor Bicycle Parking shall be determined as part of site plan approval for the Proposed Development and in consultation with the Fairfax County Department of Transportation ("FCDOT") Bicycle Coordinator or his/her designee and be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking. The Bicycle Parking shall be installed prior to the issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development.

27. Townhome Parking. The Applicant shall include in all homeowners association documents (and in all initial and subsequent purchase documents) recorded against the Property that the garages located in each single family attached dwelling unit shall be used for parking

purposes only and shall not be converted to habitable space or used for storage in a way that would preclude parking for automobiles. The Applicant also shall include in such documents information indicating that guest or visitor parking for these same units is available on a temporary basis (no long term parking) in the parking structure serving the retail uses in the Proposed Development, subject to reasonable rules and regulations established by the Applicants or its successor/designee.

28. Parking Reduction. Parking for the Proposed Development shall generally be provided as shown on Sheet 4 of the CDP/FDP. Notwithstanding anything in this Proffer to the contrary, the Applicant reserves the right to seek a parking reduction for the Proposed Development given its proximity to the Huntington Metrorail Station, as the same may be approved by the Board of Supervisors.

29. Construction Parking. The Applicant shall develop, in consultation with its general contractor, a parking management policy for construction workers hired to construct each phase of the Proposed Development (each a "Construction Parking Plan"). As part of each Construction Parking Plan, the Applicant shall identify locations on or off the Property where construction workers are permitted and forbidden to park given the building(s) that are under construction. The Applicant shall include provisions in its construction contracts and a requirement for similar provisions in all subcontracts requiring all construction workers to adhere to the Construction Parking Plan(s). Prior to the commencement of each phase of construction, the Applicant shall also erect signage on the Property in both English and Spanish that lists the permitted parking areas and prohibits parking by construction workers outside the designated areas. The Construction Parking Plan shall prohibit construction parking on any private streets adjacent to the Property unless permission has been expressly granted for construction parking by the owner or designated agent of the private parking area. A copy of the Construction Parking Plan shall be provided to the Lee District Supervisor's Office.

30. Shopping Cart Returns. In the event the Applicant elects to establish the grocery store option shown on Sheet 4 of the CDP/FDP, the Applicant shall, as part of site plan approval for such use, designate a location within the structured parking facility for the storage, capture and return of shopping carts. This location shall be in addition to any cart storage areas the grocery store may provide within its interior space. Additionally, the Applicant shall include a provision in its lease with the grocery store that assigns the grocery store responsibility for ensuring shopping carts are corralled and not left unattended in the surface parking lot.

TRANSPORTATION

31. Transportation Improvements. Subject to VDOT, FCDOT and DPWES approval, as applicable, the Applicant shall make the following transportation improvements/contributions as part of the Proposed Development.

    A. Right-of-Way Dedication. The Applicant shall dedicate at no cost and convey in fee simple to the Board of Supervisors right-of-way (with no encumbrances precluding its intended use for public street purposes) totaling approximately

3,515 square feet along the Property's Kings Highway frontage as shown on Sheet 4 of the CDP/FDP. Such dedication shall be made prior to site plan approval for the Proposed Development.

B. Kings Highway Realignment and Entrance. Prior to issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development, and subject to approval by FCDOT and VDOT, the Applicant shall reconstruct the Property's frontage along Kings Highway as more particularly shown on Sheet 4 of the CDP/FDP and described below (the "Kings Highway Improvements"). Notwithstanding the directional arrows shown on the CDP/FDP, the final lane configurations and striping for the Kings Highway Improvements shall be determined as part of site plan approval in consultation with FCDOT and VDOT. The Kings Highway Improvements include:

i. Two northbound and two southbound through lanes along Kings Highway between Poag Street and the Property's entrance, with transitions to one northbound and one southbound lanes along Kings Highway south of the Property's entrance;

ii. A southbound taper between the Property's entrance on Kings Highway and its southern boundary, as more particularly as shown on Sheet 4 of the CDP/FDP;

iii. A dedicated left turn lane from northbound Kings Highway into the Property and a dedicated right turn lane from Kings Highway toward Richmond Highway in the location and configuration shown on Sheet 4 of the CDP/FDP;

iv. Reconstruction and reconfiguration of the curb and gutter and the removal of the existing asphalt along the outside northbound lane on Kings Highway for the realignment of Kings Highway;

v. Installation of a new or modified traffic signal with pedestrian countdown signal heads at the Property's entrance from Kings Highway (but not the portion at or across Route 1/Richmond Highway), along with pedestrian crosswalks across Kings Highway and the Property's entrance as shown on the CDP/FDP. If not previously installed by others, the pedestrian countdown signals shall be located on all four legs of the intersection at the Property's entrance.

C. Ultimate Kings Highway Alignment and Property Entrance. In recognition of Fairfax County's intent to further align Kings Highway along the Property's frontage in connection with future offsite road improvements, the Applicant acknowledges and commits, subject to VDOT and FCDOT approval, to reconfigure the Property's entrance and associated streetscape elements on Kings Highway as may be necessary or required to accommodate the ultimate section of

Kings Highway. The owner of the Multifamily portion of the Proposed Development, at its own expense, shall complete any such required entrance modifications concurrent with Fairfax County's and/or VDOT's improvements to Kings Highway and may contract directly with the constructing entity's general contractor for the portion of the improvements for which the Applicant is responsible. Nothing in this Proffer shall require the Applicant to dedicate additional right-of-way beyond that shown on the CDP/FDP and set forth in these Proffers, provided that the Applicant shall grant to FCDOT or VDOT temporary construction or grading easements as may be necessary to complete the realignment contemplated by this Proffer.

D. Traffic Signal at Poag Street and Kings Highway. Prior to issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development, the Applicant shall conduct and submit to VDOT a warrant study for a traffic signal at the intersection of Poag Street and Kings Highway. If the traffic signal is warranted and approved by VDOT, then the Applicant shall install the signal, including pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT) and striping for a crosswalk across Poag Street at least ten feet (10') in width (collectively, the "Poag Street Signal") using funds disbursed by FCDOT that were previously proffered by others for the Poag Street Signal (the "Escrowed Funds"). In the event that FCDOT does not release the Escrowed Funds to the Applicant, the Applicant may, at its option, install the Poag Street Signal using funds provided by the Applicant, in which case the Applicant's direct costs to install the Poag Street Signal shall be credited against the Applicant's Regional Road Fund Contributions required under Proffer 31E below. The Applicant, as applicable, shall complete installation of the Poag Street Signal, if approved by VDOT, prior to issuance of the first RUP for the Proposed Development or such later time as may be agreed to by the Zoning Administrator.

E. Regional Road Fund Contributions. The Applicant shall contribute to the Board of Supervisors $1,276.00 per multifamily residential unit and per single family attached dwelling unit constructed in the Proposed Development, up to a maximum total of $563,000.00, to be used for transportation improvements at or near the intersection of Shields Avenue/North Kings Highway or for other transportation improvements in proximity to the Property as determined by FCDOT. The contribution shall be made in two (2) payments as follows: (a) prior to issuance of the first RUP for the first single-family attached dwelling unit and covering all single family attached units in the Proposed Development; and (b) prior to issuance of the first RUP for the Multifamily portion of the Proposed Development and covering all of the multifamily units.

32. Interparcel Access to Adjacent Properties. In connection with the further development/redevelopment of the (a) retail use located northeast of the Property at Poag Street (Tax Map # 083-3-01-6) and/or (b) existing residential development presently known as the Kings Garden Apartments (Tax Map # 083-3-01-7A), the Applicant shall cooperate

with the neighboring owner(s) to accommodate a pedestrian and, if appropriate, vehicular connection between such parcels and the Property in a mutually agreeable location(s). The specific locations of the proposed interpacel connections shall be determined in consultation with FCDOT and/or ZED as part of site plan approval for the adjacent parcels, and the Applicant shall be required to execute offsite easements and/or agreements with the owners of such adjacent parcels to facilitate the proposed connections. The granting of such connections by the Applicant or the construction of the proposed improvements shall not require the approval of a PCA/CDPA/FDPA for the Property.

A. Pedestrian Connection from Kings Garden Apartments. The Applicant shall provide an opening or gate through the fence that is to be constructed along the Property's southern border in order to facilitate pedestrian access between the Kings Garden Apartments and the community serving retail uses and tot lot/dog park to be constructed as part of the Proposed Development. The location of the pedestrian opening shall be determined by the Applicant, in consultation with FCDOT, and identified on the site plan on which the fence is proposed. The Applicant shall maintain the fence and associated pedestrian opening consistent with its ongoing maintenance obligations under Proffer 36 below.

33. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management program (the "TDM Program") that shall be implemented by the Applicant, and subsequently, as appropriate, the property owner or Condominium Owners Association (COA), to encourage the use of transit (Metrorail and bus), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the multifamily dwelling uses constructed on the Property. The proffered elements of the TDM Program are set forth below and will be implemented through a Transportation Demand Management Work Plan (the "TDM Work Plan") developed by the Applicant with input from and approval by FCDOT. It is the intent of this Proffer that the TDM Work Plan will be adapted 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 Work Plan as coordinated with FCDOT can be made without the need for a PCA, provided that the TDM Work Plan continues to reflect the proffered elements set forth below.

A. Transportation Demand Management Work Plan. The Applicant shall submit the TDM Work Plan to FCDOT prior to site plan approval for the Proposed Development.

B. 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.

C. Transportation Management Association. The Applicant shall participate in or otherwise become associated with a larger Transportation Management Association should one be established for this area.

D. Trip Reduction Objective. The objective of the TDM Work Plan shall be to reduce the number of weekday peak hour vehicle trips generated by the dwelling units located on the Property through the use of mass transit, ridesharing and other strategies including but not limited to those outlined in the TDM Strategic Plan. In addition, the implementation of enhanced pedestrian and bicycle connections/facilities will provide safe and convenient access to nearby Metrorail and bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.

(i) Baseline. The baseline number of weekday peak hour residential vehicle trips for the dwelling units against which the TDM Goal (as defined in subparagraph C.ii) will be measured shall be derived upon the number of dwelling units constructed and occupied on the Property as part of the Proposed Development at the time traffic counts are conducted in accordance with subparagraph D.v. and using the trip generation rates/equations applicable to such uses as set forth in the Institute of Transportation Engineers, Trip Generation, 9th Edition for Land Use Code 220. In the event at Stabilization, the Applicant has constructed fewer than 441 dwelling units as part of the Proposed Development, then the Baseline trip generation numbers applicable upon Stabilization shall be calculated as if 441 dwelling units had actually been constructed as reflected in the Traffic Impact Study for the Applicant prepared by Gorove/Slade, dated August 12, 2013.

(ii) TDM Goal. The objective of this TDM Program shall be to reduce by twenty-five percent (25%) the number of vehicle trips generated by residents of the dwelling units in the Proposed Development (i.e., not including trips by customers of the retail uses) during weekday peak hours as compared to the baseline number of vehicle trips that otherwise would have been expected to be generated (the "Maximum Trips After Reduction").

E. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.

(i) TDM Program Manager. The Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for the Property. The TPM shall be appointed no later than sixty (60) days after the issuance of the building permit for the Property. The TPM duties may be part of other duties associated with the appointee. The Applicant shall

notify FCDOT and the District Supervisor in writing within 10 days of the appointment of the TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment.

(ii) Annual Report and Annual Budget. At the beginning of each calendar year after the issuance of the first RUP for the Multifamily or the first Non-RUP for the Proposed Development, but no later than February 1st, the TPM shall submit an Annual Report, based on a report template provided by FCDOT, which may revise the Annual Budget in order to incorporate any new construction on the Property. Any changes to the TDM Work Plan shall be highlighted in this 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 TDM Work Plan shall be implemented. If FCDOT responds with comments on the TDM Work Plan or Annual Report or 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.

(iii) TDM Account. If not previously established, the TPM shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within 30 days after approval of the initial TDM Work Plan and subsequent Annual Report and TDM Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes. The TDM Account shall be funded by the Applicant through the TPM. 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 Work Plan elements to be implemented in each calendar year. The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

(iv) TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the Applicant through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the

Proposed Development. Such contributions shall be made one time at the rate of $0.01 per gross square foot of new multifamily dwelling uses constructed on the Property and provided prior to the issuance of the first RUP. If funds remain after incentives are provided to initial purchasers/lessees, the Applicant shall continue to provide incentives until the fund is depleted.

(v) Monitoring. The Applicant shall verify that the proffered trip reduction goals are being met through the provision of person surveys, trip counts of residential uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such person surveys and vehicular trip 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 for the first new multifamily dwelling building to be constructed on the Property. Person surveys shall be conducted every three (3) years and vehicular traffic counts shall be collected biennially until the results of three (3) consecutive annual traffic counts conducted upon Stabilization show that the applicable trip reduction goals for the Property have been met. Any time the TPM's person survey response rates do not reach twenty percent (20%), FCDOT may request additional surveys be conducted the following year. At such time, and notwithstanding Paragraph E below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the foregoing sentence, at any time prior to or after Stabilization, FCDOT may suspend the requirement to conduct vehicle traffic counts if conditions warrant such action.

F. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the TDM Goal continues to be met, then FCDOT may require the TPM to conduct additional vehicle trip counts (pursuant to the methodology set forth in the TDM Work Plan) within 90 days to determine whether in fact such objectives are being met. If any such trip counts demonstrate that the Maximum Trips After Reduction are being exceeded, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Work Plan to address the surplus of trips.

G. Review of Trip Reduction Goals. The Applicant may request that FCDOT review the TDM Goal established for the Property and set a revised lower goal for the Property consistent with the results of any surveys and/or 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.

H. Continuing Implementation. The Applicant through the TPM shall bear sole responsibility for the implementation of the TDM Program and compliance with this Proffer. The Applicant through the TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.

I. Notice to Owners. The 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.

J. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, Fairfax County will thereafter issue the TPM a written notice stating the TPM has violated the terms of this Proffer and providing the TPM with sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicant shall be subject to a penalty of $50 per day until such time as the report is submitted to FCDOT. Such penalties shall be payable to Fairfax County and shall be used for transit, transportation, or congestion management improvements within the vicinity of the Property.

STORMWATER MANAGEMENT

34. Stormwater Management. In order to protect receiving waters downstream of the Property, the Applicant shall provide stormwater management ("SWM") measures designed in accordance with the Public Facilities Manual ("PFM") in order to control the quantity and quality of stormwater runoff from the Property. Stormwater detention and Best Management Practices (BMPs) facilities shall be provided in an appropriate system per the PFM and may include, but are not limited to, an underground detention vault, LID facilities, and infiltration measures, all as generally set forth on the CDP/FDP (collectively, the "SWM Facilities"). At the time of site plan approval, the Applicant shall demonstrate that the SWM Facilities serving the Proposed Development will exceed the post-development phosphorus removal requirements of the PFM by at least ten percent (10%) when compared to pre-development conditions on the Property. To achieve compliance with this Proffer, the Applicant may utilize Low Impact Development ("LID") techniques such as tree box filters, bio-retention areas, pervious hardscapes/streetscapes, and stormwater reuse for landscape irrigation and air conditioning unit makeup water. The specific SWM Facilities shall be identified at the time of site plan approval and approved by DPWES.

A. Prior to site plan approval for the Proposed Development, the Applicant shall execute an agreement with the County in a form satisfactory to the County Attorney (the "SWM Agreement") providing for the perpetual maintenance of the SWM Facilities. The SWM Agreement shall require the Applicant (or its successors) to perform regular routine maintenance of the SWM Facilities and to provide a maintenance report annually to the Fairfax County Maintenance and

Stormwater Management Division of DPWES, provided DPWES requests such a maintenance report. The SWM Agreement also shall address easements for County inspection and emergency maintenance of the SWM Facilities to ensure that the facilities are maintained by the Applicant in good working order.

B. In the event that, prior to site plan approval for the Proposed Development, the performance standards set forth in the PFM are modified to use a different method for calculating improvements in water quality and the technologies for achieving such improvements, then the Applicant shall provide on its site plan calculations demonstrating that the SWM Facilities satisfy both the performance standards set forth in this Proffer and the new PFM standards, as the same may be amended from time to time.

C. Should the U.S. Environmental Protection Agency, the Commonwealth of Virginia, Fairfax County or their designee, issue new or additional stormwater management requirements or regulations affecting the Property, the Applicant shall have the right to accommodate necessary changes to its stormwater management designs without the requirement to amend the CDP/FDP or these Proffers. Such changes to the stormwater management design shall not materially impact the limits of clearing and grading, building locations or road layouts as determined by the Zoning Administrator.

MISCELLANEOUS

35. Fairfax County Public Schools Contribution. The Applicant shall contribute $10,488 per expected net new student (beyond the current zoning designation) generated by the Proposed Development up to a maximum $576,840.00, as subject to the escalation in Proffer 35 below, to the Fairfax County School Board to be utilized for (a) construction of a new fence at Mount Eagle Elementary School along its frontage on Kings Highway and/or (b) capital construction and capacity enhancements to schools in the area that serve the Proposed Development. The contribution shall be made in two (2) payments as follows: (a) prior to issuance of the first RUP for the first single-family attached dwelling unit and covering all single family attached units in the Proposed Development; and (b) prior to issuance of the first RUP for the Multifamily portion of the Proposed Development and covering all of the multifamily units. Prior to beginning construction of the Proposed Development, the Applicant shall notify the Fairfax County Public Schools of the intended construction and anticipated completion date.

36. Escalation in Contribution Amounts. All monetary contributions specified in these Proffers shall be adjusted on a yearly basis from the base month of January 2014 and change effective each January 1 thereafter, as permitted by Section 15.2-2303.3 of the Code of Virginia, as amended.

37. Ongoing Maintenance Obligations. Prior to the issuance of the first RUP or Non-RUP for the Proposed Development, the Applicant shall record a declaration and/or establish an Umbrella Owners' Association (the "UOA") for the Property to address the general

maintenance and other obligations of the owner(s) (and their successors and assigns), including the fulfillment of these Proffers. The declaration and/or UOA documents shall separately identify those maintenance or proffer obligations that will or are expected to fall principally on owners or residents of single family attached dwelling units and such obligations shall be disclosed to the owners/residents in accordance with the terms of this Proffer. Purchasers of individual dwelling units shall be advised in writing of these proffer conditions and maintenance obligations prior to entering into a contract of sale.

38. Construction Hours. Outdoor construction of the Proposed Development shall take place only during the hours between 7:00 a.m. and 9:00 p.m. Monday through Friday and between the hours of 8:00 a.m. and 6:00 p.m. on Saturday. There will be no outdoor construction on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas Day. The permitted hours of construction shall be posted on-site in both English and Spanish.

39. Transformer Location. The final location of the transformers to serve the Proposed Development shall be decided as part of site plan approval for the buildings each transformer is to serve.

40. Density Credit. All intensity/density attributable to land areas dedicated and/or conveyed at no cost to the Board or any other public entity pursuant to these Proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the parcel of land from which it came.

41. Binding Effect. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. If any portion of the Property is sold or otherwise transferred, the associated Proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferor.

42. 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 ON FOLLOWING PAGES]

TITLE OWNER/APPLICANT:

PENN-DAW ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership

By: PENN-DAW GP, INC., a Delaware corporation

By: _____

Alexis S.C. Iszard, Vice President

CONTRACT PURCHASER:

Penn D LLC, a Virginia limited liability company

By: Craftstar Homes, Inc., its manager

By: _____
Kenneth G. Malm

Its: President