

**AMENDED AND RESTATED REAL ESTATE EXCHANGE
AGREEMENT**

**INNOVATION CENTER SOUTH AND
THE INNOVATION CENTER STATION GARAGE**

by and between

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

and

NUGGET JOINT VENTURE, L.C.

TABLE OF CONTENTS

	Page
1. <u>Land Conveyance</u>	3
2. <u>Consideration</u>	4
3. <u>Closing</u>	4
4. <u>Title</u>	5
5. <u>Inspections</u>	5
6. <u>Infrastructure Development Agreement</u>	6
7. <u>Proffer Allocation Agreement</u>	6
8. <u>Reciprocal Easement Agreement</u>	6
9. <u>Covenant to Cooperate</u>	6
10. <u>Instruments of Conveyance - Closing</u>	6
11. <u>Post-Closing Requirement</u>	8
12. <u>Representations and Warranties</u>	8
13. <u>Costs; Apportionments</u>	9
14. <u>Maintenance; Repair</u>	10
15. <u>Brokers</u>	10
16. <u>Default; Failure of Conditions Precedent to Closing</u>	10
17. <u>Notices</u>	11
18. <u>Casualty; Condemnation</u>	12
19. <u>Miscellaneous Provisions</u>	12

EXHIBITS

EXHIBIT A
EXHIBIT B-1
EXHIBIT B-2
EXHIBIT B-3
EXHIBIT C
EXHIBIT D
EXHIBIT E
EXHIBIT F
EXHIBIT G
EXHIBIT H
EXHIBIT I
EXHIBIT J
EXHIBIT K
EXHIBIT L

AMENDED AND RESTATED REAL ESTATE EXCHANGE AGREEMENT
Fairfax County Board of Supervisors
Innovation Center South and the Innovation Center Station Garage

Document / Exhibit List:

- **Amended and Restated Real Estate Exchange Agreement**
 - A. Exhibit A: Layout of Proposed Site
 - B. Exhibit B-1: Depiction of Rocks Swap Parcel
Exhibit B-2: Depiction of the County Swap Parcel
Exhibit B-3: Depiction of the Rocks Proffered Parcel
 - C. Exhibit C: Title Commitment
 - D. Exhibit D: Title Commitment
 - E. Exhibit E: Infrastructure Development Agreement
 - Exhibit A: Depiction of Nugget Property
 - Exhibit B: Depiction of County Property
 - Exhibit C: Budget and Total Cost of Common Infrastructure with Percentages
 - Exhibit D: Construction Schedule
 - Exhibit E: Major Decisions
 - Exhibit F: Project Management Fee Payment
 - Exhibit G: Draw Request Requirements
 - Exhibit H: Reserved
 - Exhibit I: Reserved
 - Exhibit J: Required Insurances
 - Exhibit K: Form of Guaranty
 - Exhibit L: Final Completion
 - Exhibit M: Depiction of Common Infrastructure
 - Exhibit N: County Pad Site
 - Exhibit O: Scope of Work
 - F. Exhibit F: Proffer Allocation Agreement
 - Exhibit A: Depiction of Nugget Parcel
 - Exhibit B: Depiction of County Parcel
 - Exhibit C: Allocation Chart
 - Exhibit D: Notices
 - G. Exhibit G: Reserved
 - H. Exhibit H: Form of Swap Deed
 - Exhibit A: Legal Description
 - I. Exhibit I: Form of Rock Proffered Parcel Deed
 - Exhibit A: Legal Description
 - J. Exhibit J: Form of Bargain and Sale Deed without Warranty or English Covenants
 - Exhibit A: Legal Description
 - K. Exhibit K: Wetlands Permit
 - L. Exhibit L: Form of Wetlands Permit Transfer

AMENDED AND RESTATED REAL ESTATE EXCHANGE AGREEMENT

THIS AMENDED AND RESTATED REAL ESTATE EXCHANGE AGREEMENT ("Contract") is made this _____ day of _____, 2014, (the "Effective Date"), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia in its proprietary capacity, and not in its governmental or regulatory capacity (hereinafter, "County") and **NUGGET JOINT VENTURE, L.C.**, a Virginia limited liability company, ("Nugget").

RECITALS:

- R-1. Phase II of the Dulles Corridor Metrorail Project contemplates that a new metrorail station, to be named the Innovation Center Station (the "Metro Station"), shall be constructed and placed in the median road/airport access highway near the intersection of the Dulles International Airport Access Highway/Dulles Toll Road (the "Toll Road") and Route 28.
- R-2. In connection with the construction of the Metro Station, a parking garage containing approximately up to 2108 spaces, kiss and ride spots, bus depots (which are to be located outside of the parking structure), and ancillary transit features for the Metro Station are to be constructed by the County to the south of the Toll Road (the foregoing shall be referred to as, collectively, the "Garage"), and the layout of the proposed site for the Garage is attached hereto as Exhibit A.
- R-3. The County is the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of a 3.03 acres and having a tax assessment number as [0154-05-0005B] (the "Original County Parcel"). The Original County Parcel, along with other parcels, is more particularly shown on Exhibit B-1 attached hereto.
- R-4. Nugget is the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of a 11.65 acres and having a tax assessment number as 1052-01-0013 (the "Original Nugget Parcel"). The Original Nugget Parcel, along with other parcels, is more particularly shown on the attached Exhibit B-1 attached hereto.
- R-5. The Property is subject to those certain Proffers associated with RZ 2009-HM-017 approved by the Fairfax County Board of Supervisors ("Board"), in its governmental capacity, on [_____], 2014 (collectively, as amended and interpreted from time to time, the "Proffers").
- R-6. In connection with the Proffers, Nugget has proffered to convey to the County that certain land consisting of approximately 2.6 acres (the "Rocks Proffered Parcel"). A general outline of the Rocks Proffered Parcel, along with other parcels, is more particularly shown on Exhibit B-1.
- R-7. The County shall convey to Nugget a certain portion of the land currently owned by the County (the "County Swap Parcel"), all as part of the Land Conveyance (as hereinafter

defined). A general outline of the County Swap Parcel is shown on Exhibit B-2 attached hereto.

- R-8. As part of the Land Conveyance, subject to the terms and conditions provided herein, Nugget shall convey to the County a certain portion of the land currently owned by Nugget (the "Rocks Swap Parcel"), a general outline of the Rocks Swap Parcel, along with other parcels, is more particularly shown on Exhibit B-3 attached hereto. The Rocks Proffered Parcel and the Rocks Swap Parcel shall be referred to as, collectively, the "Rocks Collateral Parcel".
- R-9. The Original County Parcel (as adjusted by the County Swap Parcel), as combined with the Rocks Collateral Parcel shall be referred to as, collectively, the "New County Parcel."
- R-10. Nugget intends to redevelop the New Rocks Parcel as contemplated by the Proffers, subject to further amendments from time to time.
- R-11. The Nugget project, once complete as currently envisioned, may consist of approximately 8.646 acres with approximately 1.65 million square feet of commercial, residential and retail uses, and will be placed on the Original Nugget Parcel, as reduced by the Rocks Collateral Parcel (collectively, the "New Rocks Parcel").
- R-12. Nugget has a Boundary Line Adjustment Agreement with Dulles Rockhill Partners, LP for certain real property (referred to as the "Dulles Option Parcel") and Nugget has acquired the Dulles Option Parcel.
- R-13. The New County Parcel, together with the New Rocks Parcel, shall be referred to as, collectively, the "Property."
- R-14. The County and Nugget entered into that certain Real Estate Exchange Agreement, dated July 30, 2013, which set forth the initial terms and conditions for the Land Conveyance ("Initial Agreement")
- R-15. The Initial Agreement contemplated that the County and Nugget would enter into an amended and restated agreement to further define the rights and obligations between the parties with respect to the Property and to move forward with the Land Conveyance as set forth herein.

NOW, THEREFORE, in consideration of the Recitals, which are hereby incorporated into this Contract by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Land Conveyance.

(a) The parties acknowledge and agree that in consummation of the Planned Residential Mixed-Use Plan ("PRM") for the Property, the application of which was filed with the Fairfax County Department of Planning and Zoning and at the time of approval of the PRM by the Board of Supervisors of Fairfax County, subject to the terms and conditions provided

herein and as shall be more fully set forth in Conveyance Documents (as hereinafter defined), the County shall cause the County Swap Parcel to be conveyed to Nugget, Nugget shall cause the Rocks Swap Parcel to be conveyed to the County and Nugget shall cause the Rocks Proffered Parcel to be dedicated to the County (collectively the "Land Conveyance"). The swap of the Rocks Swap Parcel and the County Swap Parcel shall include approximately equal areas of land and shall be defined as the "Land Swap".

(i) At Closing, the County shall convey title to the County Swap Parcel to Nugget which is good in fact, marketable and insurable by a title company licensed to do business in the Commonwealth of Virginia at regular rates ("Title Company"), by a bargain and sale deed without warranty or English Covenants, the form of which is attached hereto as **Exhibit J**, subject to matters of record as of the date hereof and any other easements, covenants, proffers, or other documents to be executed and recorded in connection with this Contract.

(ii) At Closing, Nugget shall convey title to the Rocks Swap Parcel to the County which is good in fact, marketable and insurable by a Title Company, by a special warranty deed with covenants of further assurances, subject to matters of record as of the date hereof and any other easements, covenants, proffers, or other documents to be executed and recorded in connection with this Contract.

(iii) At Closing, Nugget shall dedicate title to the Rocks Proffered Parcel to the County which is good in fact, marketable and insurable by a Title Company, by a special warranty deed with covenants of further assurances, subject to matters of record as of the date hereof and any other easements, covenants, proffers, or other documents to be executed and recorded in connection with this Contract. This dedication is subject to the reservation of density credit, to the maximum extent permissible under Section 2 308 of the Fairfax County Zoning Ordinance or other applicable law.

(b) The Conveyance Documents shall mean the deeds referenced in Section 1(a)(i), (a)(ii) and a(iii) above, boundary line adjustments as necessary between the properties and other real estate conveyance documents reasonably necessary to consummate the Land Conveyance (collectively, the "Conveyance Documents"). The County and Nugget shall not unreasonably withhold their approval to the form of the Conveyance Documents.

The parties acknowledge and agree that the final boundaries of the land that is conveyed and acquired pursuant to this Contract may vary from that described on **Exhibit B-1, Exhibit B-2 and Exhibit B-3**, and the parties agree to cooperate in establishing the final boundaries of such parcels and lot.

2. Consideration. The consideration for this Contract shall be the mutual conveyances of land and improvements and the mutual agreements of the parties herein.

3. Closing. The closing ("Closing") of this transaction will take place on the date that is fifteen (15) days after the later of the following items have been satisfied: (1) selection of the Constructing Party (as defined in the Infrastructure Development Agreement) under the Infrastructure Development Agreement, (2) site plan (or its equivalent, e.g., public improvement plan) approval for the Common Infrastructure (as defined in the Infrastructure Development

Agreement) has been obtained, (3) the Constructing Party has complied with the first sentence of Section 6.c. of the Infrastructure Development Agreement, and (4) approval of the subdivision or boundary line adjustment (along with subdivision plat, if required) for the Land Conveyance. Closing shall occur at the offices of Reed Smith LLP, 3110 Fairview Park Drive, Falls Church, Virginia or at another location acceptable to County and Nugget. The Closing shall be conducted by Shulman, Rogers, Gandal, Pordy & Ecker, P.A., with an address of 12505 Park Potomac Avenue, 6th Floor, Potomac, MD 20854 ("Settlement Agent" or "Escrow Agent").

4. Title.

(a) Nugget agrees that the title commitment, to be attached hereto as **Exhibit C**, indicates that the title to the County Swap Parcel is good in fact, marketable and insurable by a Title Company and that Nugget has no objections to said title commitment.

(b) County agrees that the title commitment, to be attached hereto as **Exhibit D**, indicates that the title to the Rocks Collateral Parcel is good in fact, marketable and insurable by a Title Company and that County has no objections to said title commitment.

5. Inspections.

(a) Between the Effective Date and the Closing, Nugget and its agents may have access to the County Swap Parcel, accompanied by County's designated representative, if requested, subject to the rights of occupants if any, in order to make such inspections and perform such tests as required by it. The parties further agree to reasonably cooperate in the exchange of non-proprietary investigations, plans, reports, studies, surveys and other documents related to the land and improvements subject to this Contract. Nugget has the County's permission to communicate with and engage current and former engineers, consultants and contractors for the land and improvements that are the subject of this Contract. All investigations, studies and surveys conducted by Nugget shall be at Nugget's sole cost and expense except as otherwise set forth in the Infrastructure Development Agreement. County shall have the right to approve any investigations, studies and surveys that may cause damage to County's land or improvements, such approval not to be unreasonably withheld, conditioned or delayed. Nugget shall repair and restore any damage to the County's land or improvements caused by Nugget's activities. The provisions of this section shall survive Closing or termination of this Contract and shall not be subject to any limitations on damages.

(b) Between the Effective Date and the Closing, County and its agents may have access to the Rocks Collateral Parcel, accompanied by Nugget's designated representative, if requested, subject to the rights of occupants if any, in order to make such inspections and perform such tests as required by it. The parties further agree to reasonably cooperate in the exchange of non-proprietary investigations, plans, reports, studies, surveys and other documents related to the land and improvements subject to this Contract. The County has Nugget's permission to communicate with and engage current and former engineers, consultants and contractors for the land and improvements that are the subject of this Contract. All investigations, studies and surveys conducted by County shall be at County's sole cost and expense except as otherwise set forth in the Infrastructure Development Agreement. Nugget shall have the right to approve any investigations, studies and surveys that may cause damage to

Nugget's land or improvements, such approval not to be unreasonably withheld, conditioned or delayed. The County shall repair and restore any damage to Nugget's land or improvements caused by the County's activities. The provisions of this section shall survive Closing or termination of this Contract and shall not be subject to any limitations on damages.

6. Infrastructure Development Agreement. Contemporaneously with execution of this Agreement, County and Nugget agree to execute and deliver to each other the "Infrastructure Development Agreement" in a form as attached hereto as Exhibit E, the summary purpose of which is to provide for the timing for the implementation of, and cost sharing for, certain "Common Infrastructure" as defined therein to serve the Property.

7. Proffer Allocation Agreement. At Closing, County and Nugget agree to execute the "Proffer Allocation Agreement" in a form attached hereto as Exhibit F, the summary purpose of which is to allocate the Proffers for the development of the Property. The Proffer Allocation Agreement shall be recorded at Closing among the land records of Fairfax County, Virginia.

8. Reciprocal Easement Agreement. At Closing, County and Nugget agree to execute a "Reciprocal Easement Agreement" for the Property. The Reciprocal Easement Agreement shall provide for the coordinated operation, use and maintenance of aspects of certain shared areas of Property (e.g., shared maintenance and cost sharing of the roads and bicycle lanes until accepted by VDOT, shared maintenance and cost sharing of public parks and plazas to be identified by the parties, cost sharing of maintenance of certain landscaping to be identified by the parties, cost sharing of maintenance of certain storm water management facilities, etc.), to establish certain arrangements regarding the operation of shared improvements, and to provide for certain other matters with respect to the parties respective parcels. County and Nugget shall agree to the form of the Reciprocal Easement Agreement prior to Closing in form customary for similar types of projects. The Reciprocal Easement Agreement shall be recorded at Closing among the land records of Fairfax County, Virginia.

9. Covenant to Cooperate. As part of the Land Conveyance, County hereby agrees to execute and join in applications and any other documents necessary to obtain Infrastructure Approvals (as that term is defined in the Infrastructure Development Agreement). Further, the parties agree that their representatives will conference on a monthly basis, or at such other interval as circumstances may reasonably warrant, to review the status of the Common Infrastructure.

10. Instruments of Conveyance - Closing.

(a) At Closing, County shall deliver to the Escrow Agent the following:

(i) a bargain and sale deed and boundary line adjustment (the "Deed"), in a form attached hereto as Exhibit H, which shall convey all County's rights, title and interest in and to the County Swap Parcel to Nugget ("County Swap Parcel Deed");

(ii) One (1) counterpart signature page of the Rocks Proffered Parcel Deed (as defined below);

(iii) four (4) counterpart signature pages of the settlement sheet executed by County (the "Settlement Sheet");

(iv) an affidavit, signed by County stating County's United States taxpayer identification number and that County is not (1) a foreign person as defined by the IRS Code, Paragraph 1445(0)(3), or (2) a non-resident payee under the laws of the Commonwealth of Virginia (the "County FIRPTA Affidavit");

(v) an affidavit and Form 1099-S from County containing all information required for compliance with IRS Code Paragraph 6405 in the form required by the Internal Revenue Service for filing thereunder signed by County (the "County Form 1099-S");

(vi) such other documents as are required under this Contract and those reasonably required by the Title Company to consummate the transactions contemplated herein, as customarily provided by County.

(b) At Closing, Nugget shall deliver to the Escrow Agent the following:

(i) One (1) counterpart signature page of the Deed, in a form attached hereto as Exhibit H, which shall convey all Nugget's rights, title and interest in and to the Rocks Swap Parcel to the County ("Rocks Swap Parcel Deed" and, together with the County Swap Parcel Deed, the "Swap Deed");

(ii) One (1) counterpart signature page of the Deed of Dedication, in a form attached hereto as Exhibit I, which shall dedicate all Nugget's rights, title and interest in and to the Rocks Proffered Parcel to the County ("Rocks Proffered Parcel Deed");

(iii) four (4) counterpart signature pages of the Settlement Sheet executed by Nugget;

(iv) an affidavit, signed by Nugget stating Nugget's United States taxpayer identification number and that Nugget is not (1) a foreign person as defined by the IRS Code, Paragraph 1445(0)(3), or (2) a non-resident payee under the laws of the Commonwealth of Virginia (the "Nugget FIRPTA Affidavit");

(v) an affidavit and Form 1099-S from Nugget containing all information required for compliance with IRS Code Paragraph 6405 in the form required by the Internal Revenue Service for filing thereunder signed by Nugget (the "Nugget Form 1099-S");

(vi) such other documents as are required under this Contract and those reasonably required by the Title Company to consummate the transactions contemplated herein,

(c) Upon receipt of the documents and items listed in Section 10 (a) and (b) the Escrow Agent is authorized to:

(i) Record the Rocks Swap Parcel Deed in the Land Records

- (ii) Record the County's Swap Parcel Deed in the Land Records.
 - (iii) Record the Rocks Proffered Parcel Deed in the Land Records.
 - (iv) Record the Reciprocal Easement Agreement in the Land Records.
 - (v) Record the Proffer Allocation Agreement in the Land Records.
 - (vi) attach the counterpart signature pages delivered to the Escrow Agent pursuant to Section 10 (a) and (b) and deliver to Nugget and County two (2) fully executed originals of the Settlement Sheet; and
 - (vii) file with the appropriate governmental authorities the County FIRPTA Affidavit, the Nugget FIRPTA Affidavit, the County Form 1099-S and the Nugget Form 1099-S.
- (d) Delivery to the Escrow Agent of the documents, as applicable, required of Nugget and/or County, as applicable, shall be deemed delivered to Nugget or County, as applicable, for purposes of this Contract.

11. Post-Closing Requirement. Within [thirty (30) days of Closing], Nugget shall transfer that certain DEQ VWP General Permit No. WP4-08-0334, COE State Program General Permit No. 12-SPGP-01 issued by Commonwealth of Virginia, Department of Environmental Quality (a copy of which is attached hereto as Exhibit K) from Nugget to the County and Nugget shall execute a Change in Ownership Agreement Form, in the form attached hereto as Exhibit L and all necessary documentation in connection with such change in ownership.

12. Representations and Warranties.

(a) NUGGET AND THE COUNTY EACH EXPRESSLY ACKNOWLEDGE THAT AT CLOSING HEREUNDER, THE RESPECTIVE PROPERTY IS BEING CONVEYED FROM ONE PARTY AND IS BEING ACCEPTED BY THE OTHER PARTY IN ITS "AS IS, WHERE IS" CONDITION, WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES WHICH ARE EXPRESSLY SET FORTH IN THIS CONTRACT, THE DEED OF CONVEYANCE OR OTHER DOCUMENTS DELIVERED AT CLOSING.

(b) Each of Nugget and the County represent and warrant to the other that each of the following is true and correct with respect to itself on the Effective Date and shall be true and correct on, and restated as of, the date of the Closing:

(i) Each of Nugget and the County has the full and unrestricted power and authority to execute and deliver this Contract and all other documents required or contemplated by the terms of this Contract (the "Closing Documents") and to consummate the transactions contemplated herein. All requisite action has been taken by Nugget and the County to authorize the appropriate agents or representatives of Nugget and the County, as applicable, to execute and deliver the Closing Documents. Upon either party's request, Nugget and the County

shall within five (5) days deliver to the other applicable resolutions authorizing each of Nugget and the County to enter into and perform this Contract.

(ii) The execution and delivery of the Closing Documents by Nugget and the County and compliance with the provisions of such documents by either party will not violate the provisions of (1) Nugget's or the County's respective governing documents or any other such similar document or rule regarding each of Nugget and the County, or (2) any agreement to which either Nugget or the County are subject or by which Nugget or the County or the Property are bound.

(iii) To the best of each of Nugget's and the County's actual knowledge, the execution, delivery and performance of this Contract will not violate any provision of any applicable statute, regulation, rule, court order or judgment or other legal requirements applicable to each of Nugget and the County or the land to be conveyed by either Nugget or the County.

(iv) To the best of each of Nugget's and the County's actual knowledge, there are no lawsuits or legal proceedings pending or threatened regarding or resulting from encumbrances on, or the ownership, use, possession or development of, the land to be conveyed.

(v) To the best of each of Nugget's and the County's actual knowledge, there are no notices, suits or judgments pending relating to violations of any governmental regulations, ordinances or requirements affecting or which may affect the land to be conveyed by either party that have not been corrected. If either Nugget or the County receives such a written notice of violation, that party shall immediately take all actions reasonably required to comply with the terms thereof, and the land to be conveyed by either Nugget or the County will be free and clear of all such violations prior to Closing hereunder.

(vi) To the best of each of Nugget's and the County's actual knowledge, except for this Contract and the Boundary Line Adjustment Agreement with Dulles Rockhill Partners, LP, there are no contracts of sale, options to purchase, reversionary rights, rights of first refusal or similar rights of any kind which are or shall be binding upon the land to be conveyed by either Nugget or the County or any part thereof or which shall become binding upon either Nugget or the County at or subsequent to the time Closing.

Both Nugget and the County agree that it will notify the other party immediately of any state of facts that would constitute a material breach of or render inaccurate any of the foregoing representations and warranties immediately after becoming aware of such state of facts, and will reconfirm in writing at Closing hereunder each of such representations and warranties by execution of a certificate of reconfirmation of representations and warranties in all material respects. Each party shall be entitled to rely upon the representations and warranties of the other as set forth herein and such representations and warranties shall survive Closing hereunder and delivery of each of the deeds for a period of one (1) year from Closing and thereafter be merged into each of the deeds.

13. Costs; Apportionments.

(a) With respect to the County Swap Parcel, the County is exempt from Virginia grantor transfer taxes and Nugget shall pay all title commitment charges and all state grantee's transfer tax. Nugget and the County shall each pay one-half of the recording fees and title closing and escrow charges with respect to the County Swap Parcel;

(b) With respect to the Rocks Collateral Parcel, the County is exempt from Virginia grantee transfer taxes. Nugget shall pay all state grantor's transfer tax. The County shall pay all title commitment charges with respect the Rocks Collateral Parcel and Nugget and the County shall each pay one-half of the recording fees and title closing and escrow charges with respect to the Rocks Collateral Parcel; and

(c) Real estate taxes and any assessments are to be computed and apportioned, as of midnight of the day preceding the Closing.

14. Maintenance; Repair. Until Closing, the current owner of the lands shall maintain such land and improvements in their present condition, subject to acts of nature and reasonable wear and tear.

15. Brokers. Each party represents to the other that no brokers were involved in this Contract. This Section 15 shall survive delivery of the Deeds.

16. Default; Condition on Rezoning Approval.

(a) By Nugget. If Nugget fails to close as provided herein, or defaults in its obligations hereunder, or fails to perform any covenant provided herein, and such default or failure is not cured within fifteen (15) days after written notice of the same from County (except for a failure to settle for which there shall be no notice and cure right), then the County may pursue equitable relief hereunder but shall have no right to damages for Nugget's failure to close. Such limitation on damages for failure to close shall in no way limit County's entitlement to damages for any other injury, damage or loss, other than for, or resulting from, the failure to close, for which Nugget may be responsible pursuant to the terms of this Contract or applicable law.

(b) By County. If County fails to close as provided herein, or defaults in its obligations hereunder, or fails to perform any covenant provided herein, and such default or failure is not cured within fifteen (15) days after written notice of the same from Nugget (except for a failure to settle for which there shall be no notice and cure right), then Nugget may pursue equitable relief hereunder but shall have no right to damages for County's failure to close. Such limitation on damages for failure to close shall in no way limit Nugget's entitlement to damages for any other injury, damage or loss, other than for, or resulting from, the failure to close, for which County may be responsible pursuant to the terms of this Contract or applicable law

(c) Rezoning Approval. This Agreement is contingent on the final non-appealable approval of the rezoning known as RZ 2009-HM-017 by the Board. This contingency under this Section 16(c) shall automatically terminate thirty one days after the approval by the Board if no appeal is filed within thirty days after the approval. If an appeal is filed within such thirty days then this Agreement shall automatically terminate unless otherwise agreed by the parties hereto.

17. Notices. Any notices, requests and other communications under this Contract shall be in writing and shall be hand-delivered with receipt therefor, or shall be sent by facsimile with confirming telephone call, or shall be sent by messenger with receipt therefor, or by Federal Express, Express Mail or similar courier service, with guaranteed next-business-day delivery, with receipt therefor, addressed as follows:

If to County:

Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035
Attention: County Executive

With a copy to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064

And with a copy to:

Department of Public Works and Environmental Services
Building Design and Construction Division
Attention: Carey Needham, Director
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

If to Nugget:

Nugget Joint Venture, L.C.
Attention: Nicholas P. H. Rocks
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Michael Rocks
c/o Rocks Co.
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Attention: James C. Brennan, Esq.

or in each case to such other address as either party may from time to time designate. Regarding the effective dates of notices under this Contract:

(a) If a notice is deemed effective in accordance with Section 17(b) on or before 5:00 PM local time of a given day, then such notice shall be deemed to have been given on that same day. If such notice is deemed effective in accordance with Section 17(b) after 5:00 PM local time of a given day, then such notice shall be deemed to have been given on the next occurring business day.

(b) Subject to Section 17(a) above, notice shall be deemed effective (i) if hand delivered with receipt therefor, upon receipting, (ii) if by facsimile with confirming telephone call, upon the later of the confirming phone call and the machine-generated confirmation of successful fax transmission, and (iii) if by messenger or courier service as described above, upon receipting.

18. Casualty; Condemnation. Risk of all loss, destruction or damage to the land that are subject to this Contract, from any and all causes whatsoever until consummation of the Closing shall be borne by the owner of the land. In the event that a substantial portion of any of the land to be conveyed hereunder is materially damaged casualty or is condemned or taken by eminent domain by any competent authority for any public or quasi-public use or purpose, or preliminary steps in such condemnation for eminent domain proceedings shall have been taken before the Closing, the owner shall give immediate written notice thereof to the other party (the "Condemnation Notice"). In such event, purchasing party, at its option, may terminate this Contract by written notice to the other party ten (10) days after receipt of the Condemnation Notice or Closing, whichever occurs first. In the event that the purchasing party fails to so terminate this Contract as aforesaid, then the Closing shall take place as provided herein without any adjustment to the consideration provided for in this Contract, and the owner shall assign to the purchasing party at Closing any insurance proceeds or condemnation awards attributable solely to the land subject to the loss or condemnation.

19. Miscellaneous Provisions.

(a) Binding Effect. This Contract shall, be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Neither party hereto' may assign its rights or delegate its obligations hereunder. Notwithstanding the foregoing, Nugget may assign this Contract and its rights and obligations hereunder with notice to County, but without obtaining County's prior written consent, so long as the assignment is to one of the following: (a) a corporation, partnership, limited liability company or other entity which controls, is controlled by, or under common control with Nugget, or (b) a partnership, limited liability company or other joint venture company between Nugget and/or one or more of the legal entities described in subparagraph (a).

(b) Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof. This Contract shall not be modified, amended, or altered except by a written agreement signed by each of Nugget and County.

(c) Governing Law. This Contract shall be governed by and construed under the laws of the Commonwealth of Virginia.

(d) Headings. The section headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Contract or the covenants, agreements, representations and warranties herein set forth or the scope of any section.

(e) Counterparts. If this Contract shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Contract.

(f) Partial Invalidity. If any provision of this Contract shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force, and effect; and it is the intention of all the parties hereto that if any provision of this Contract capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(g) Survival. Except as otherwise specifically provided herein, the provisions of this Contract shall not survive Closing hereunder.

(h) Time. With respect to all time periods contained in this Contract, it is expressly understood that time shall be of the essence.

(i) Holidays, etc. Whenever the last day for the performance of any act required by either party under this Contract shall fall upon a Saturday, Sunday, or legal holiday, the date for the performance of any such act shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

(j) Escrow Agent. Nugget hereby indemnifies and holds harmless the Escrow Agent from any and all claims, suits, damages, costs, losses and expenses for any matter resulting from or arising out of its obligations to Nugget hereunder, provided the same shall not arise from any negligence or willful misconduct on the part of Escrow Agent.

(k) Attorney's Fees. In the event there arises any disputes under this Contract and said disputes result in litigation between the parties the parties agree that in any litigation between the parties that the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees incurred by the prevailing party in any such litigation, including the value of legal services, if any, provided by the Office of the County Attorney of Fairfax County.

(l) Appropriations. To the extent so required by the law of the Commonwealth of Virginia, any and all of County's financial obligations under this Contract are subject to appropriations by the Fairfax County Board of Supervisors.

(m) Exhibits. Each of the exhibits attached to this Contract is hereby made a part of this Contract as fully as if set forth in the text of this Contract.

(n) **Waiver of Jury Trial.** Each party hereby knowingly waives trial by jury in any action, proceeding, claim or counterclaim brought by either party in connection with any matter arising out of or in any way connected with this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal as of the day and year first above written.

NUGGET:

NUGGET JOINT VENTURE, L.C., a
Virginia limited liability company

By: **ALLEN & ROCKS, INC.**, its manager

By: _____

Name: _____

Title: _____

Signature Page of Real Estate Exchange Agreement

COUNTY:

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**, acting in its
proprietary capacity and not its governmental or
regulatory capacity.

Date

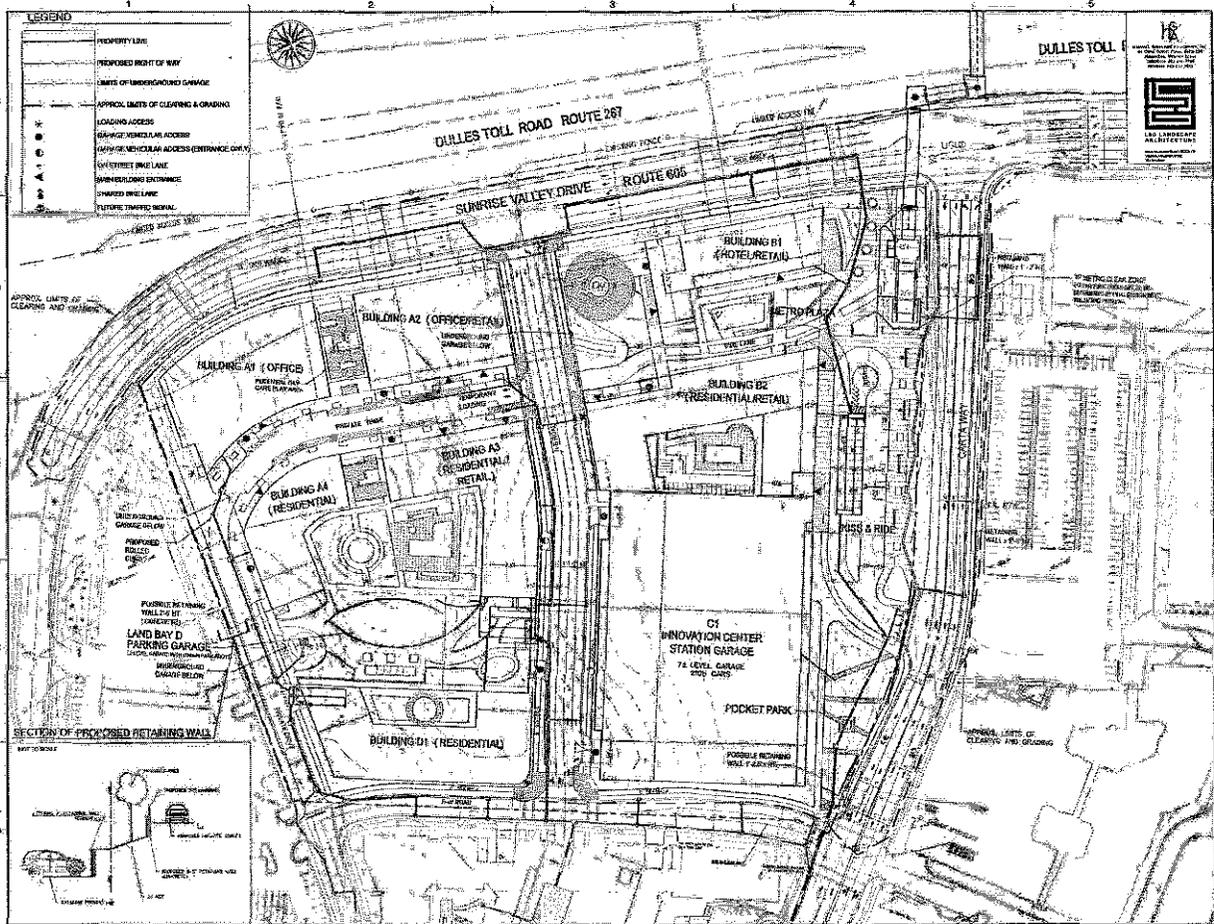
By: _____
Name:
Its:

Signature Page of Real Estate Exchange Agreement

EXHIBIT A

Layout of Proposed Site

[SEE ATTACHED]



Dewberry

Dewberry Consultants LLC
 1000 ...
 ...

dcs
 DESIGN CONSULTANTS
 2 FISHKILL RD
 ...

ROCKS

INNOVATION CENTER SOUTH
 AND THE
 INNOVATION CENTER STATION
 GARAGE
 Conceptual/Final Development Plan
 ...



SCALE: 1" = 50'

NO.	DATE	DESCRIPTION
1
2
3
4
5
6
7
8
9
10

DESIGNED BY: JWC
 CHECKED BY: JWC
 DATE: JUN 1, 2013

CONCEPTUAL / FINAL
 DEVELOPMENT
 PLAN

C-4

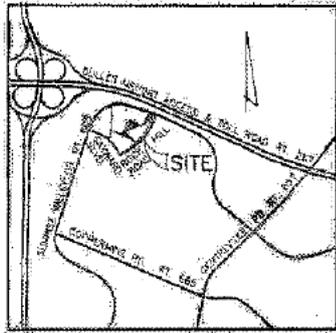
PROJECT NO. M-10931

EXHIBIT B-1

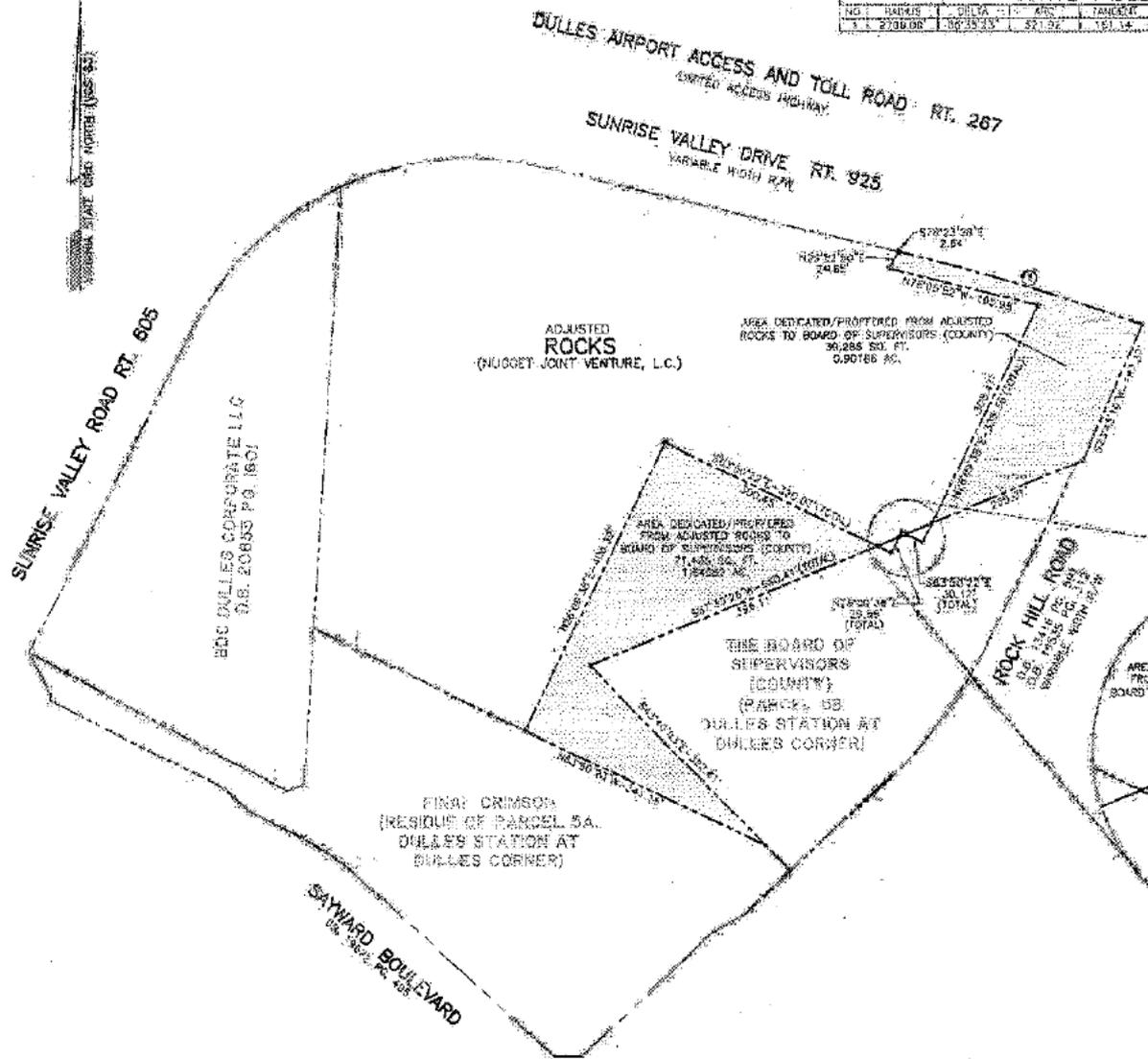
Depiction of Rocks Swap Parcel

[SEE ATTACHED]

CURVE TABLE						
NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	2000.00'	80°35'23"	521.32'	161.14'	391.54'	92.50°47.3'



VICINITY MAP
SCALE: 1" = 2,000'



NOTES:
 1. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 15-2 ((1)) PT. 13 AND 15-4 ((5)) PT. 5A AND IS ZONED PDC.
 2. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY NUGGET JOINT VENTURE (ROCKS) IN D.B. 8529 PG. 1070 AND D.B. PG. 1071 AND BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, IN D.B. 19126 PG. 1812.

EXHIBIT SHOWING PARTS OF THE PROPERTY OF ADJUSTED ROCKS (NUCKET JOINT VENTURE, L.C.) AND PARTS OF THE PROPERTY OF THE BOARD OF SUPERVISORS (COUNTY) (PARCEL 5B, DULLES STATION AT DULLES CORNER D.B. 19126 PG. 1812)

ORANESVILLE DISTRICT
 FAIRFAX COUNTY, VIRGINIA
 SCALE: 1" = 100' MAY, 2014

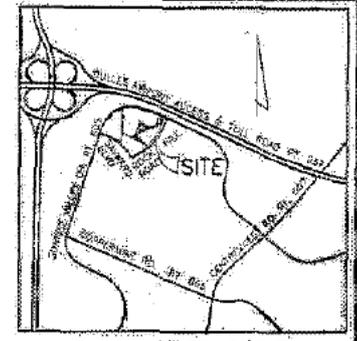
Dewberry
 Dewberry Consultants LLC
 8151 BURNING TREE BLVD
 FARMERS BRANCH, VA 22029
 PHONE: 703.291.0700
 FAX: 703.291.0700

EXHIBIT B-2

Depiction of County Swap Parcel

[SEE ATTACHED]

CURVE TABLE					
NO.	CHORD	DELTA	ARC	ANGULAR CHORD	BEARING
1	3798.65	66.08 21'	121.82	181.14'	3798.65



VICINITY MAP
SCALE: 1" = 2,000'

VIRGINIA STATE GRID NORTH (VGS 83)

DULLES AIRPORT ACCESS AND TOLL ROAD RT. 267
LIMITED ACCESS HIGHWAY

SUNRISE VALLEY DRIVE RT. 925
IMPAVABLE HIGHWAY

SUNRISE VALLEY ROAD RT. 805

300 DULLES CORPORATE LLC
D.B. ZOBBS PG. 1871

ADJUSTED ROCKS
(NUCKET JOINT VENTURE, L.C.)

AREA DEDICATED/PROFFERED FROM ADJUSTED ROCKS TO BOARD OF SUPERVISORS (COUNTY)
36,285 SQ. FT.
0.90186 AC.

AREA DEDICATED/PROFFERED FROM ADJUSTED ROCKS TO BOARD OF SUPERVISORS (COUNTY)
71,486 SQ. FT.
1.64089 AC.

THE BOARD OF SUPERVISORS (COUNTY)
PARCEL 58
DULLES STATION AT DULLES CORNER

ROCK HILL ROAD
D.B. 11-12 PG. 1512
IMPAVABLE HIGHWAY

AREA DEDICATED/PROFFERED FROM ADJUSTED ROCKS TO BOARD OF SUPERVISORS (COUNTY)
24 SQ. FT.
0.00054 AC.

AREA CONVEYED FROM THE BOARD OF SUPERVISORS (COUNTY) TO ROCKS
318 SQ. FT.
0.00732 AC.

AREA CONVEYED FROM THE BOARD OF SUPERVISORS (COUNTY) TO ROCKS
218 SQ. FT.
0.00501 AC.

PINAL CRIMMON
(RESIDUE OF PARCEL 5A,
DULLES STATION AT
DULLES CORNER)

DAYWARD BOULEVARD
D.B. 11-12 PG. 1512

NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON ASSESSMENT MAP 15-2 ((1)) PT. 13 AND 15-4 ((9)) PT. 5A AND IS ZONED RDC.
2. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY NUGGET JOINT VENTURE (ROCKS) IN D.B. 9500 PG. 1070 AND D.B. PG. AND BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA IN D.B. 18125 PG. 1512.

EXHIBIT SHOWING
PARTS OF THE PROPERTY OF ADJUSTED
ROCKS
(NUCKET JOINT VENTURE, L.C.)
AND PARTS OF THE PROPERTY OF
THE BOARD OF SUPERVISORS
(COUNTY)
(PARCEL 58, DULLES STATION AT
DULLES CORNER D.B. 18125 PG. 1512)

DRAINSVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: 1"=100' MAY, 2014

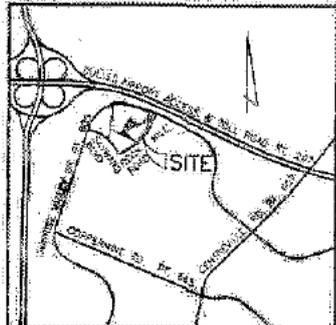
Dewberry
Dewberry Consultants LLC
2000 ARLINGTON BLVD
FAIRFAX, VA 22031
703.241.4000
WWW.DEWBERRY.COM

EXHIBIT B-3

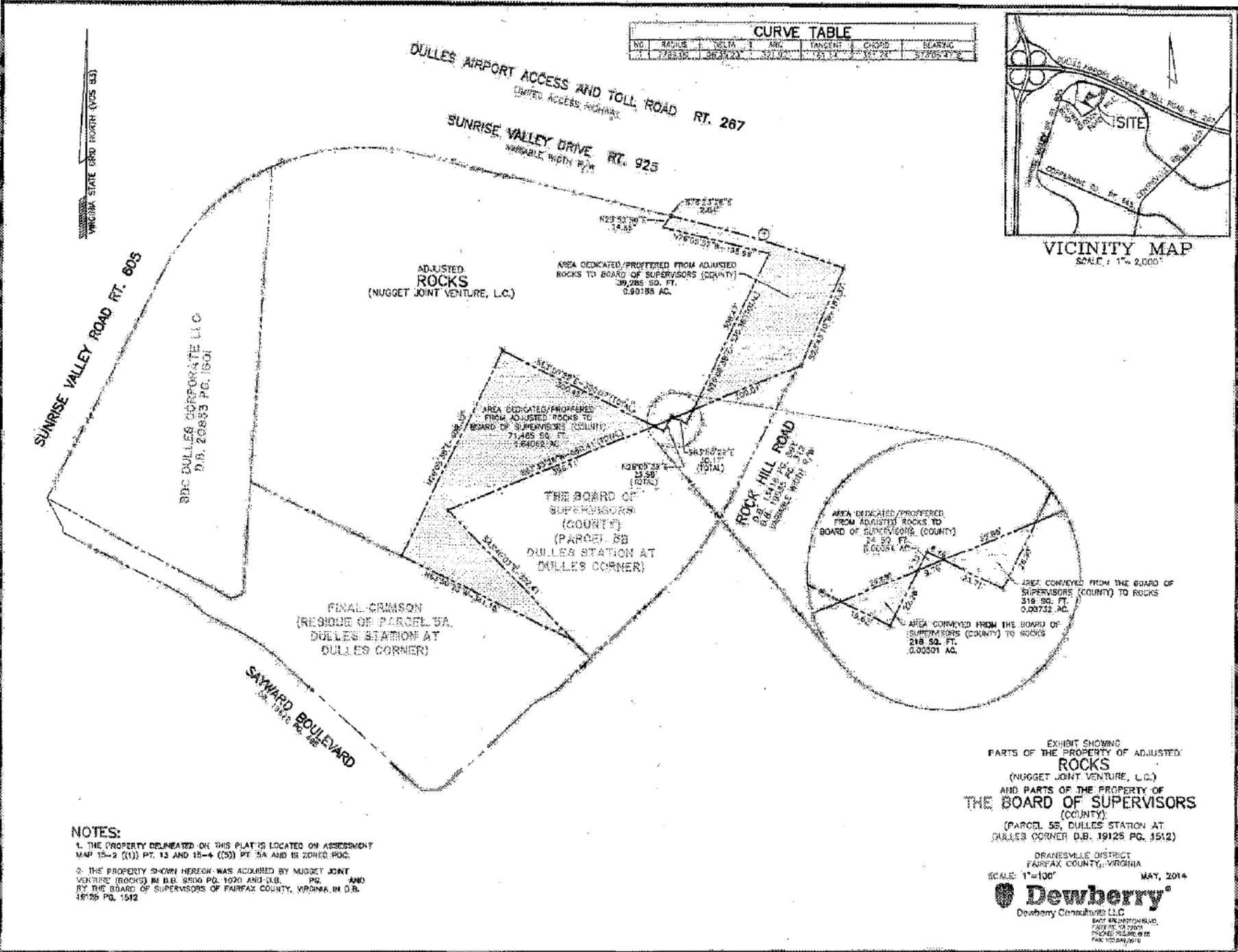
Depiction of Rocks Proffered Parcel

[SEE ATTACHED]

CURVE TABLE						
NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	7283.08	36.3723	517.04	121.14	187.27	S77°05'27"E



VICINITY MAP
SCALE: 1"=2,000'



NOTES:

1. THE PROPERTY DELINEATED ON THIS PLAN IS LOCATED ON ASSESSMENT MAP 15-2 (1) PT. 13 AND 15-4 (5) PT. 5A AND IS ZONED RDC.
2. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY NUGGET JOINT VENTURE (ROCKS) IN D.B. 2050 PG. 1020 AND D.B. PG. AND BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA IN D.B. 1625 PG. 1512.

EXHIBIT SHOWING PARTS OF THE PROPERTY OF ADJUSTED ROCKS (NUGGET JOINT VENTURE, L.C.) AND PARTS OF THE PROPERTY OF THE BOARD OF SUPERVISORS (COUNTY) (PARCEL 55, DULLES STATION AT DULLES CORNER D.B. 19125 PG. 1512)

DRANESVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: 1"=100' MAY, 2014

Dewberry
Dewberry Consultants LLC
8401 BRIDGEMAN ROAD
SUITE 100
FARMERSVILLE, VA 22029
PHONE: 540.886.6600
FAX: 540.886.6601

EXHIBIT C

Title Commitment – County Swap Parcel

[TO BE ATTACHED]

EXHIBIT D

Title Commitment – Rocks Collateral Parcel

[TO BE ATTACHED]

EXHIBIT E

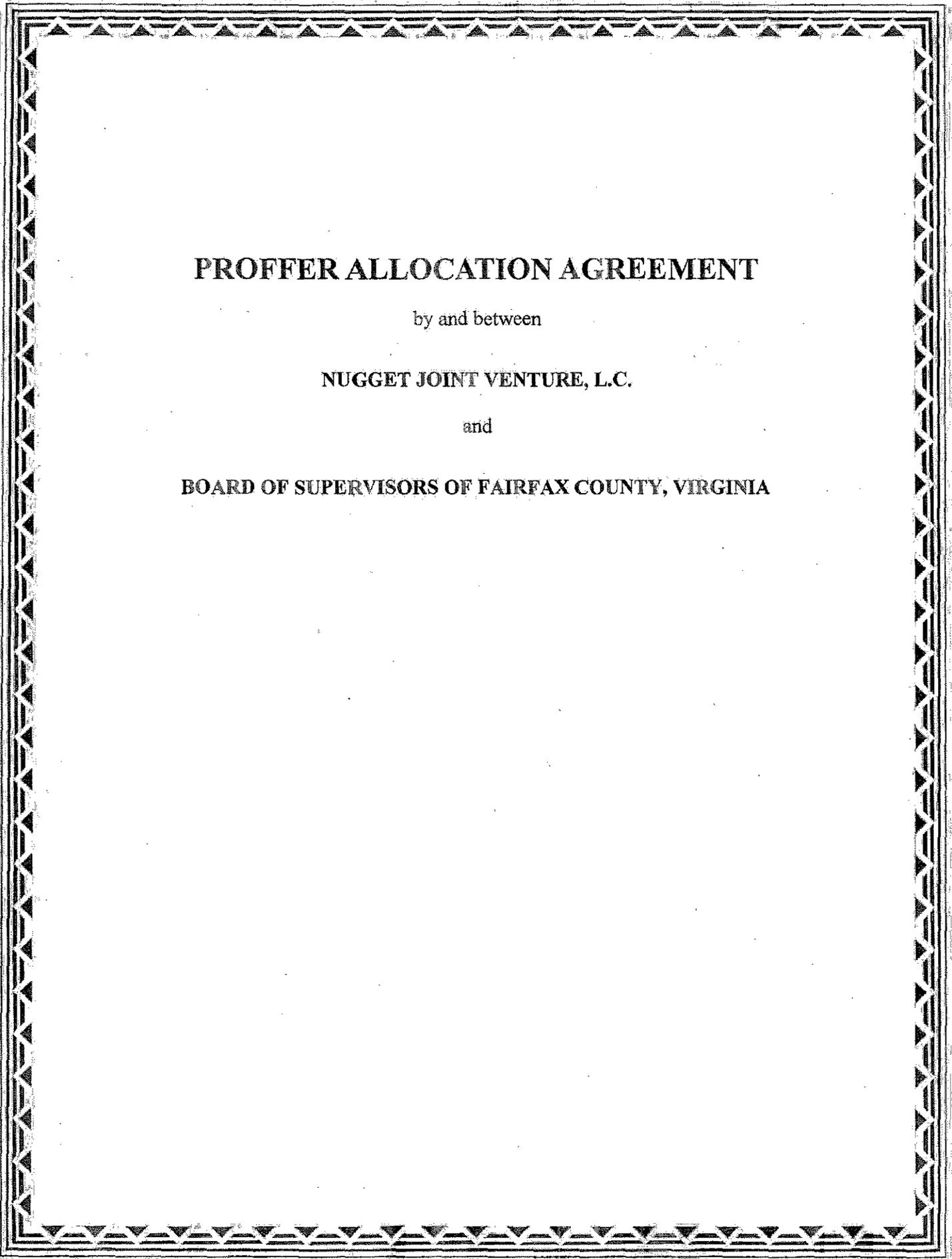
Infrastructure Development Agreement

[SEE ATTACHED]

EXHIBIT F

Proffer Allocation Agreement

[SEE ATTACHED]



PROFFER ALLOCATION AGREEMENT

by and between

NUGGET JOINT VENTURE, L.C.

and

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

TABLE OF CONTENTS

	Page
1. Definitions.....	3
2. Performance of Proffer Obligations.....	5
3. Allocation of Density and Uses	5
4. Division of Land.....	5
5. Cure Rights	6
6. Injunctive Relief.....	7
7. Attorneys' Fees.....	7
8. No Waiver.....	7
9. Lender's Consent	7
10. Governing Law, Severability.....	7
11. Not Partners	8
12. Exhibits	8
13. Covenants Running With the Land.....	8
14. Estoppel Certificates	8
15. Notices	9
16. Amendment.....	9
17. Release and Assumption.....	9
18. Standards and Process for Approvals	9
19. Cooperation.....	10
20. Appropriations	10
21. Entire Agreement and Interpretation	10
22. Execution	10
EXHIBIT A.....	1
EXHIBIT B.....	1
EXHIBIT C ALLOCATION CHART	1
EXHIBIT D ADDRESSES FOR NOTICE	1

This Instrument Was Prepared
By and Return Original To:

James C. Brennan
Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042

PROFFER ALLOCATION AGREEMENT

THIS PROFFER ALLOCATION AGREEMENT (this "Agreement") is made as of the _____ day of _____, 2014, by and between NUGGET JOINT VENTURE, L.C., a Virginia limited liability company, ("Nugget") and BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity, and not in its governmental or regulatory capacity ("County").

WITNESSETH THAT:

WHEREAS, Nugget is the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of approximately 11.646 acres and having tax assessment numbers of [0152-01-0013] and [0154-05-005A] (collectively, the "Nugget Parcel"). The Nugget Parcel, along with other parcels, is more particularly shown on the attached Exhibit A attached hereto.

WHEREAS, the County is the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of 3.03 acres and having a tax assessment number as [0154-05-0005B] (the "County Parcel"). The County Parcel is more particularly shown on Exhibit B attached hereto.

WHEREAS, Phase II of the Dulles Corridor Metrorail Project contemplates that a new metrorail station, to be named the Innovation Center Station (the "Metro Station"), shall be constructed and placed in the median road/airport access highway near the intersection of the Dulles International Airport Access Highway/Dulles Toll Road (the "Toll Road") and Route 28.

WHEREAS, in connection with the overall development of the Metro Station, a Transit Oriented Development project (the "TOD Project"), is jointly sought and desired by Nugget and the County and is desired to be constructed by Nugget.

WHEREAS, the TOD Project, once complete, may consist of approximately 8.646 acres with approximately 1.65 million square feet of commercial, residential and retail uses, and will be placed on the Nugget Parcel.

WHEREAS, the Nugget Parcel and the County Parcel are subject to those certain Proffers associated with RZ 2009-HM-017 approved by the Fairfax County Board of Supervisors ("Board"), in its governmental capacity, on [_____] (collectively, the "Proffers").

WHEREAS, County is constructing a structured public parking garage, including up to 2108 parking spaces (the "Parking Facilities"), a minimum of twenty five (25) space kiss and ride facility (the "Kiss and Ride Facilities"), four (4) bus facilities (the "Bus Facilities") (which are to be located outside of the parking structure), secure bicycle storage facilities (the "Bicycle Storage Facilities") and ancillary transit features for the Metro Station are

to be constructed to the south of the Toll Road (the foregoing shall be referred to as, collectively, the "Garage"). The Garage will serve the Metro Station and will be designed and constructed to meet the space, functional, and operational requirements defined in that certain preliminary engineering design by the Metropolitan Airports Authority ("MWAA"), as adjusted for a Fairfax County owned, maintained, and operated garage.

WHEREAS, the Parking Facilities, Kiss and Ride Facilities, Bus Facilities, Bicycle Storage Facilities, and Garage together with the other elements comprising the Metrostation Facilities to be designed, developed and constructed, are sometimes collectively referred to herein as "Metrostation Facilities".

WHEREAS, Nugget and the County have entered into an Infrastructure Development Agreement dated [] (the "Development Agreement") to jointly develop and share the cost of certain infrastructure improvements.

WHEREAS, Nugget and the County have entered into a Reciprocal Easement Agreement dated [] (the "REA") to jointly share the cost of maintenance certain infrastructure improvements, create a standard of upkeep and character of the project in a first class manner and to facilitate the development of the Property.

WHEREAS, it is the intent of Nugget and the County to enter into this Agreement to provide the allocation of the Proffers for the development of the Property.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties hereto agree as follows:

1. Definitions. The following terms as used herein or in any amendment hereof shall have the following meanings:

"Agreement" shall have the meaning set forth above.

"Allocation Chart" shall mean the Allocation of Proffer Statement attached hereto as Exhibit C and incorporated herein.

"Bicycle Storage Facilities" shall have the meaning set forth in the Recitals.

"Board" shall have the meaning set forth in the Recitals.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday recognized by the Commonwealth of Virginia.

"County" shall have the meaning set forth in the preamble to this Agreement.

"County Parcel" shall have the meaning set forth in the Recitals.

"Development Agreement" shall have the meaning set forth in the Recitals.

"Garage" shall have the meaning set forth in the Recitals.

"Kiss and Ride Facilities" shall have the meaning set forth in the Recitals.

"Metro Station" shall have the meaning set forth in the Recitals.

"Metrostation Facilities" shall have the meaning set forth in the Recitals.

"Mortgage" shall mean any mortgage, deed of trust or other security instrument recorded among the Land Records of Fairfax County, Virginia, creating an interest in or affecting title to all or any part of the Nugget Parcel and the County Parcel, inclusive, and any and all renewals, modifications, consolidations, or extensions of any such instrument.

"Mortgagee" An institutional lender which may be one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities; provided, that each of the above entities, or any combination of such entities, shall qualify as an Mortgagee if (a) each such entity shall be subject to the jurisdiction of the courts of the Commonwealth of Virginia (either state or federal) in any actions relating the project, and (b) each such entity, or combination of such entities, shall have individual or combined assets, as the case may be, of not less than Two Billion Dollars (\$2,000,000,000).

"MWAA" shall have the meaning set forth in the Recitals.

"Nugget" shall have the meaning set forth in the preamble to this Agreement.

"Nugget Parcel" shall have the meaning set forth in the Recitals.

"Parcel Owner" shall mean the Person(s) who from time to time is (are) the owner(s) of fee simple title to a Parcel and a Mortgagee in possession of a Parcel during the period of the Mortgagee's actual possession; provided, however, that the term shall not include a Mortgagee or any other Person who holds only a lien or security interest in a Parcel as security for the performance of an obligation (including a leasehold Mortgagee) unless and until such Mortgagee or other Person shall have either acquired record legal title to the Parcel through foreclosure or any proceeding in lieu thereof or entered into actual possession of the Parcel.

"Parcel" shall mean any parcel which comprises all or a portion of the Nugget Parcel and the County Parcel.

"Parking Facilities" shall have the meaning set forth in the Recital.

"Person" shall mean an individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

"Proffers" shall have the meaning set forth in the Recitals.

"Property" shall the County Parcel and the Nugget Parcel.

"TOD Project" shall have the meaning set forth in the Recitals.

"Toll Road" shall have the meaning set forth in the Recitals.

2. Performance of Proffer Obligations.

(a) The County Parcel Owner shall be responsible, at its sole cost and expense, for the performance of the Proffers allocated to the County Parcel Owner on the Allocation Chart, including the payment and performance of all costs, expenses, assessments and agreements relating thereto so as not to impact or delay the development, the construction and occupancy of the office, residential, retail and hotel uses, as applicable, on the Nugget Parcel and/or bond release by the other Parcel Owners.

(b) The Nugget Parcel Owner shall be responsible, at its sole cost and expense, for the performance of the Proffers allocated to the Nugget Parcel Owner on the Allocation Chart, including the payment and performance of all costs, expenses, assessments and agreements relating thereto so as not to impact or delay the development, the construction and occupancy of Metrostation Facilities and/or bond release by the County.

3. Allocation of Density and Uses. The gross floor area and the uses and densities in the Proffers shall be solely allocated to the Nugget Parcel. In the event of any future division of the Nugget Parcel, Nugget shall have the option of assigning all or any portion of gross floor area and uses and densities to portions of Nugget Parcel. This may be evidenced by executing and recording an amendment to this Agreement which, upon request of Nugget, the County shall promptly join in and execute.

4. Division of Land.

(a) Notwithstanding the allocation in Section 3 above, in the event of any future division of the Nugget Parcel, Nugget Parcel Owner shall have the option of assigning all or any portion of the rights, obligations and benefits under the Proffers, and this Agreement that are attributable or allocated to the Nugget Parcel Owner to the successor owner of any such divided portion and so long as such successor assumes such obligations in writing, the Nugget Parcel Owner shall be released from the assigned and assumed obligations.

(b) The reference in Sections 3 and 4 of this Agreement to "future division" or "divided portions" includes, without limitation, subdivision, re-subdivision, boundary line adjustments, land condominiums, air-rights divisions and ground leases.

(c) Nugget and the County, as applicable, shall join in and execute such documents to implement the provisions of this Section 4; provided such request by Nugget of the County does not materially adversely affect the County Property as a public parking garage.

(d) County acknowledges and agrees that the development of the Nugget Property will be over a long term period and may need to adjust to the market or other economic conditions. Accordingly, Nugget shall have the unilateral right, at its sole expense, to amend, modify or restate from time to time the CDP/FDP and the Proffers with respect to the Nugget Property. When requested by Nugget in Nugget's efforts to plan, re-plan, rezone, design, re-design, engineer, develop, construct, use and/or operate the Nugget Property, the County shall from time to time take the requested action(s) and, provide, join in and/or sign various consents, further assurances, resolutions, applications, association documents, easements, deeds, plats, subdivisions, site plans, proffers, letters of interpretation and any other documents necessary for the planning or re-planning, design or re-design, rezoning, engineering, approval, development, operation, use, bond release and/or any necessary activity of the Nugget Property; provided such request by Nugget of the County does not materially adversely affect the County Property as a public parking garage. The County shall not delay, impede, interfere, or disrupts the planning or re-planning, design or re-design, rezoning, engineering, approval, development, operation, use, and/or any development activity of Nugget Property.

5. Cure Rights. If the County Parcel Owner or the Nugget Parcel Owner fails to timely perform or pay any of its obligations under this Agreement (the "Defaulting Owner"), then the other Parcel Owner (a "Non-Defaulting Owner") shall have the right, but not the obligation, subject to the conditions and the notice provisions set forth below, to pay or perform the Defaulting Owner's obligations. Before the Non-defaulting Owner exercises its rights pursuant to the first sentence, the Non-Defaulting Owner shall deliver written notice to the Defaulting Owner specifying the default with reasonable specificity ("Default Notice"). If the Defaulting Owner fails to cure its default within thirty (30) days after receipt of the Default Notice (or, if the default is capable of being cured, but cannot be cured within such thirty (30) day period, if the Defaulting Owner does not commence to cure the default within said thirty (30) day period and thereafter diligently prosecute a cure of the same to completion within a reasonable time), then the Non-Defaulting Owner shall be entitled to exercise its cure rights hereunder; provided, however, that in the case of an emergency (including, without limitation, if the Defaulting Owner's failure to perform an obligation under this Agreement results in the County, solely in its governmental or regulatory capacity, threatening to withhold or actually withholding building, occupancy or other permits for the Non-Defaulting Owner's Parcel(s) as a result of the Defaulting Owner's failure to perform an obligation under this Agreement then the Non-Defaulting Owner shall be entitled to exercise its cure rights contained herein within five (5) Business Days after delivery of the Default Notice. If the Non-defaulting Owner elects to exercise its cure rights hereunder, then the Defaulting Owner shall pay to the Non-Defaulting Owner all reasonable sums expended by the Non-defaulting Owner in connection with the actions taken by the Non-Defaulting Owner hereunder within fifteen (15) Business Days after receipt by the Defaulting Owner from the Non-Defaulting Owner of a written demand for payment. Any monies not paid by the Defaulting Owner to the Non-Defaulting Owner within the fifteen (15) Business Day period shall thereafter accrue interest at the rate of 12% per annum (prorated on a per diem basis) commencing on the first day following the expiration of fifteen (15) Business Day period and ending on the date that such sum, together with all accrued interest thereon, is received by the Non-Defaulting Owner. The remedies provided herein shall be in addition to any other remedies afforded to the Non-Defaulting Owner in this Agreement or at law or in equity and not in lieu thereof. The Defaulting Owner hereby grants to the Non-Defaulting Owner all necessary temporary and non-exclusive easements and rights of way over

the Defaulting Owner's land to permit the Non-Defaulting Owner to exercise its non-monetary cure rights hereunder including the right to use adjoining property during the periods of actual construction or maintenance. Any action by an Owner taken pursuant to this Section 5 shall be taken at such times and in such manner as to cause the least practical interference with the business or garage operations being conducted by the Defaulting Owner or the owners of other land encumbered by this Agreement. Except for any grossly negligent, willful act or omission, or bad faith, the Non-Defaulting Owner shall not be liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to the Defaulting Owner or anyone holding under the Defaulting Owner for any action taken pursuant to this Section 5.

6. Injunctive Relief. In the event of any violation or threatened violation by the County Parcel Owner, the Nugget Parcel Owner or any Parcel Owner of any of the terms, restrictions, covenants and conditions of this Agreement (whether affirmative or negative in nature), the County Parcel Owner, the Nugget Parcel Owner or any Parcel Owner, as applicable, shall, in addition to such other rights or remedies permitted in this Agreement or at law or in equity, have the right to enjoin such violation or threatened violation by action or suit brought in a court of competent jurisdiction. Except in the case of an emergency, each Parcel Owner shall give at least five (5) Business Days written notice of such violation to the other Parcel Owner responsible therefor before commencing an action or suit to enjoin a violation or threatened violation of this Agreement.

7. Attorneys' Fees. In the event a Parcel Owner shall institute any action or proceeding against any other Parcel Owner relating to the provisions of this Agreement, or any default hereunder, then, and in that event, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for the reasonable expenses of attorneys' fees and disbursements incurred therein by the successful litigant.

8. No Waiver. No act or thing done or performed by a Non-Defaulting Owner pursuant to this Agreement and no omission to act pursuant to this Agreement shall be construed as a waiver of any default by the Defaulting Owner or as a waiver of any covenant, term or condition herein contained or of the performance thereof.

9. Lender's Consent. So long as the land owned by a Defaulting Owner remains encumbered by a Mortgage of which the Non-Defaulting Owner is provided written notice, the Non-Defaulting Owner will mail or deliver to the Defaulting Owner's Mortgagee, at the address provided to the Non-Defaulting Owner and in the manner provided in Section 15, copies of all notices of default permitted or required to be given by the Non-Defaulting Owner under and pursuant to the terms and provisions of this Agreement. At any time before the Non-Defaulting Owner performs construction, maintenance, installation, repair or replacement work pursuant to Section 5 because of any default of the Defaulting Owner, or within the time permitted the Defaulting Owner for curing any default under this Agreement as provided therein, the Defaulting Owner's Mortgagee may, but shall have no obligation to, cure such defaults of the Defaulting Owner. Notwithstanding the foregoing, the Non-Defaulting Owner shall incur no liability for failure to provide copies of such notices to the Defaulting Owner's Mortgagee.

10. Governing Law, Severability. If any term, covenant or condition of this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application

of such term or provision to circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This Agreement and the performance hereof shall be governed by the laws of the Commonwealth of Virginia.

11. Not Partners. Nothing herein is intended nor shall be deemed to create a joint venture or partnership among any of the parties hereto or any mortgagee or the successor-in-interest of any of them.

12. Exhibits. The exhibits mentioned herein (together with all schedules and attachments thereto or referenced therein) are hereby incorporated herein by reference and made a part hereof as fully as if set forth in full herein.

13. Covenants Running With the Land. Subject to the provisions contained in Paragraph 17, all covenants, conditions and agreements contained in this Agreement shall be covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, and any and all present and future Parcel Owners and their respective heirs, successors, administrators and assigns (but *specifically excluding* all Persons that are bona fide third party purchasers of completed individual residential residences and/or condominium units within buildings constructed on the Nugget Parcel or the County Parcel). The rights and privileges established herein shall not be construed to create any right in or for any third party or for the benefit of the general public.

14. Estoppel Certificates. At any time and from time to time upon the request of any Owner or Mortgagee, as the case may be, but no more than twice per year, on or before the date specified in the request therefor, which date shall not be earlier than thirty (30) days from the making of such request, a Parcel Owner(s) shall execute, acknowledge and deliver to the party making such request a certificate evidencing whether or not:

- A. this Agreement is in full force and effect;
- B. this Agreement has been modified or amended in any respect;
- C. there are any existing defaults affecting or arising hereunder, to the knowledge of the party executing the certificate and specifying the nature of such defaults, if any;
- D. there are due with respect to this Agreement any sums due pursuant to Sections 2 or 5 of this Agreement; and
- E. such other information as the requesting party may reasonably request.

Each certificate delivered pursuant to this Paragraph may be relied on by the Owner requesting the same and any prospective purchaser or Mortgagee of the requesting Owner.

15. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be hand delivered (with signed receipts) or sent by a nationally recognized overnight delivery service, postage prepaid, to the applicable party pursuant to the addresses set forth on Exhibit D or such other person or address the Parcel Owner shall have given upon notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof on the date of hand delivery or on the day after the date of delivery thereof to the overnight delivery service.

16. Amendment. This Agreement may be amended by a written agreement signed by all Parcel Owners and recorded among the Land Records of Fairfax County, Virginia. The parties shall cooperate with one another and take such actions of further assurances as may be requested by another party consistent with the terms of this Agreement.

17. Release and Assumption. The obligations and liabilities of a Parcel Owner under this Agreement shall apply only with respect to the period that such Parcel Owner owns fee simple title (or ground leasehold, etc.) to a Parcel. Upon conveyance by an Owner of all of its fee simple interest to a Parcel (other than to a Mortgagee as security for a loan), such Parcel Owner shall be relieved of all obligations and liabilities under this Agreement arising after the date of the conveyance, but such Parcel Owner shall remain liable for all obligations and liabilities which accrued during the period of its ownership. Upon the conveyance, the successor, transferee or assign in ownership or interest of any such party shall automatically become liable for all obligations arising after the date of the conveyance, but only during the period of such successors, transferees or assignees ownership.

18. Standards and Process for Approvals. In connection with any approval under the Allocation Chart the following standards and procedures shall apply unless a more stringent standard is provided therein:

The party requesting approval ("Requesting Party") shall submit to the other party ("Approving Party") the item or items for which approval is being requested ("Requested Item"). If the Approving Party determines that it is acceptable utilizing the Approving Party's reasonable and good faith judgment without any conditions imposed not contemplated by this Agreement or the Allocation Chart, the Approving Party shall so notify the Requesting Party within ten (10) days of the request by the Requesting Party and thereafter promptly (but no later than five (5) days) execute and deliver such Requested Items as appropriate or state in writing that such Requested Item is approved. If the Requesting Party does not receive the Approving Party's response at the end of such 10-day period, the Requesting Party may resubmit its written request to the Approving Party (the "Second Notice"). The Second Notice shall make reference to the first notice regarding the Requested Item and shall bear the following legend in capital letters:

"FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS FOLLOWING RECEIPT SHALL BE DEEMED TO CONSTITUTE CONSENT AND APPROVAL TO THE REQUESTED ITEM DESCRIBED HEREIN."

If the Approving Party does not approve or disapprove the Requested Item within five (5) business days after the Approving Party shall have received the Requesting Party's Second Notice, the Approving Party shall be deemed to have irrevocably consented to and approved the Requested Item, whereupon the Approving Party shall thereafter promptly execute any documents as may be required with respect to the deemed approved Requested Item. If the Approving Party reasonably and in good faith, without any conditions not contemplated by this Agreement or the Allocation Chart, determines the Requested Item is not acceptable, the Approving Party shall so notify the Requesting Party in the time periods required, specifying in detail the specific revisions that need to be made for the Requested Item to be reasonably acceptable to the Approving Party. In such latter event, the Requesting Party shall revise the proposed Requested Item as it deems appropriate in its reasonable discretion and resubmit it to the Approving Party for review. Thereafter, each subsequent review by the Approving Party shall be carried out within three (3) business days of the date of re-submission of the Requested Item (or any revisions thereto). If, at any time, the Approving Party and the Requesting Party are unable to resolve the Requested Item requiring approval within thirty (30) days, either party may take such action at law and in equity to enforce its rights under this Agreement.

19. Cooperation. The parties hereto shall cooperate with the other, at no cost and expense to the cooperating party and at no premium to the requesting party, to facilitate the performance of each party's obligations under this Agreement. Appropriations. To the extent so required by the law of the Commonwealth of Virginia, any and all of County's financial obligations under this Contract are subject to appropriations by the Fairfax County Board of Supervisors.

21. Entire Agreement and Interpretation. This Agreement contains the entire agreement between the parties. There are no promises or other agreements, oral or written, express or implied, between the parties other than as herein set forth. This Agreement may not be amended or modified except by written instrument signed by the party to be charged with such amendment or modification. The section and paragraph headings in this Agreement are inserted for convenience only and in no manner expand, limit or otherwise define the terms hereof. Whenever the singular or plural number, or the masculine, feminine or neuter gender is used in this Agreement, it shall equally include the other as the context may require. Execution. This Agreement may be executed in one or more counterparts, all of which shall be but one Agreement and all of which shall have the same force and effect as if all parties hereto had executed a single copy. Either party may execute a counterpart of this Agreement and deliver the same to the other party by means of facsimile transmission or other electronic means, and any such counterpart so executed shall be binding and enforceable, to the same effect as if an original counterpart had been executed and delivered.

[SIGNATURES FOLLOW ON THE NEXT PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, acting in its proprietary capacity and not its governmental or regulatory capacity

By: _____
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA
City/County of _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2014, by _____ as _____ of Board of Supervisors of Fairfax County, Virginia.

In testimony whereof I have affixed my official seal on the date first above written.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

NUGGET JOINT VENTURE, L.C., a
Virginia limited liability company

By: **ALLEN & ROCKS, INC.**, its
manager

By: _____
Samuel A. Rocks
Vice President and Secretary

COMMONWEALTH OF VIRGINIA
City/County of _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____
2014, by Samuel A. Rocks, Vice President and Secretary of Allen & Rocks, Inc., as the Manager
of Nugget Joint Venture, L.C.

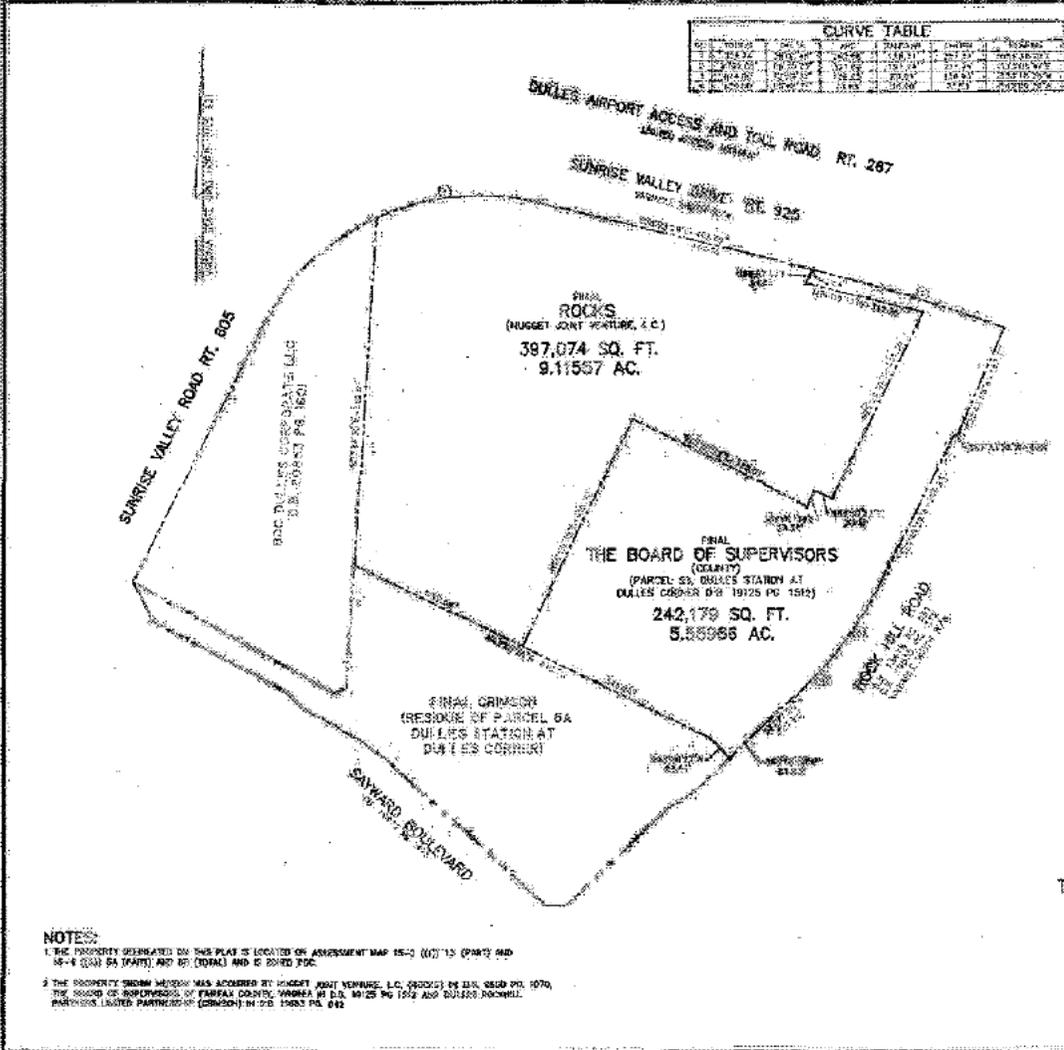
In testimony whereof I have affixed my official seal on the date first above written.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

EXHIBIT A

CURVE TABLE					
STATION	CHORD	ANGLE	CHORD	ANGLE	STATION
1+00.00	100.00	90.00	100.00	90.00	2+00.00
2+00.00	100.00	90.00	100.00	90.00	3+00.00
3+00.00	100.00	90.00	100.00	90.00	4+00.00
4+00.00	100.00	90.00	100.00	90.00	5+00.00



NOTES:

1. THE PROPERTY DEPICTED ON THIS PLAN IS LOCATED ON ASSESSMENT MAP 15-2 (07) 15 (PART) AND 15-4 (04) 54 (PART) AND 67 (DUAL) AND IS ZONED PDC.
2. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY BUCKET JOINT VENTURE, L.C. (00000) PG. 151, 0820 PG. 1070, THE BOARD OF SUPERVISORS OF FARRAS COUNTY, VIRGINIA IN D.S. 10125 PG. 1252 AND DULLES ROOFTOP PARTNERSHIP LIMITED PARTNERSHIP (00000) IN D.S. 10005 PG. 042.

CURRENT SHOWING
ADJUSTED
ROCKS
(BUCKET JOINT VENTURE, L.C.)
AND ADJUSTED
THE BOARD OF SUPERVISORS
(COUNTY)
(PARCEL 56, DULLES STATION AT
DULLES CORNER (DB 19125 PG 1512))

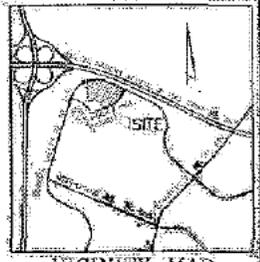
STANFORDVILLE DISTRICT
FARRAS COUNTY, VIRGINIA

SCALE: 1" = 100' APRIL, 2014

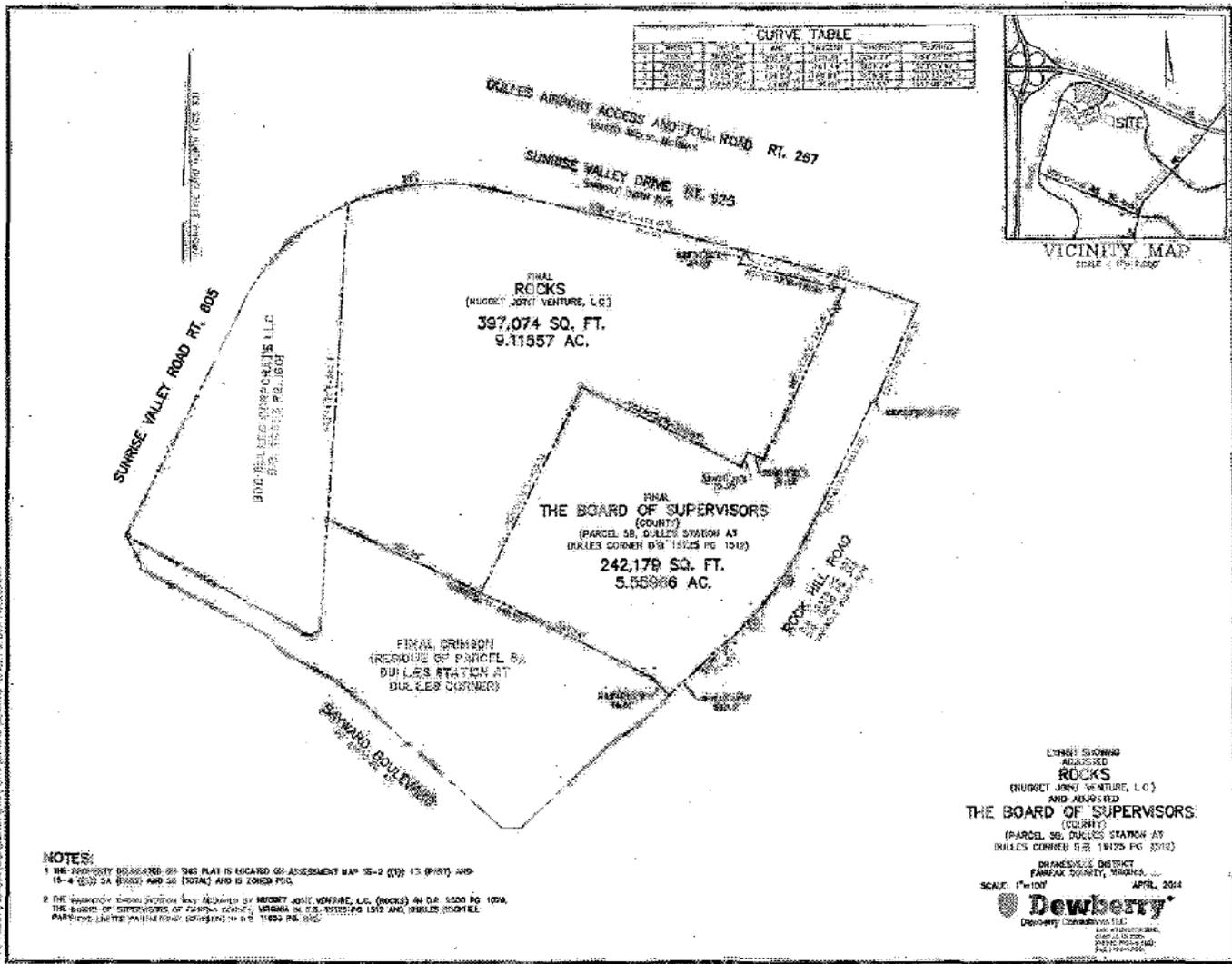
Dowberry
Dowberry CONSULTANTS, L.L.C.
1480 WOODBURN ROAD
SUITE 200
DULLES, VIRGINIA 20146
703.270.0000

EXHIBIT B

CURVE TABLE					
NO.	CHORD	ANGLE	RADIUS	ARC LENGTH	AREA
1	100.00	90.00	70.71	157.08	7854.00
2	100.00	90.00	70.71	157.08	7854.00
3	100.00	90.00	70.71	157.08	7854.00
4	100.00	90.00	70.71	157.08	7854.00
5	100.00	90.00	70.71	157.08	7854.00
6	100.00	90.00	70.71	157.08	7854.00



VICINITY MAP
SCALE: 1" = 100'



FINAL
ROCKS
(MUGGET JORDI VENTURE, L.P.)
397,074 SQ. FT.
9.11857 AC.

FINAL
THE BOARD OF SUPERVISORS
(COUNTY)
(PARCEL 5B, DULLES STATION AT
DULLES CORNER 0'S 18225 PG 1018)
242,179 SQ. FT.
5.56986 AC.

FINAL CRIBBSON
(RESIDUE OF PARCEL 5A
DULLES STATION AT
DULLES CORNER)

LEGALLY SHOWING
ADDRESS
ROCKS
(MUGGET JORDI VENTURE, L.P.)
AND ADDRESS OF
THE BOARD OF SUPERVISORS
(COUNTY)
(PARCEL 5B, DULLES STATION AT
DULLES CORNER 0'S 18225 PG 1018)
DRAFTSMAN'S DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 100' APRIL, 2014
Dewberry
Dewberry & Davis LLP
1000 EAST BROADWAY
SUITE 2000
FALLS CHURCH, VA 22034
TEL: 703.241.1000

- NOTES:**
- 1 THE PROPERTY SHOWN ON THIS PLAN IS LOCATED ON ASSESSMENT MAP 15-2 (02) 13 (PART) AND 15-4 (02) 04 (PART) AND IS ZONED PG-1.
 - 2 THE PROPERTY SHOWN HEREON WAS ACQUIRED BY MUGGET JORDI VENTURE, L.P. (ROCKS) ON 03/03/2014 PG 1004. THE BOARD OF SUPERVISORS AT DULLES STATION, VIRGINIA IN O.S. 18225 PG 1018 AND DULLES CORNER PARKING LOT'S PARTIAL ROAD (SHOWN ON O.S. 18225 PG 1018).

EXHIBIT C
ALLOCATION CHART

EXHIBIT C

ALLOCATION OF PROFFER STATEMENT AND DEVELOPMENT PLAN CONDITIONS¹

PROFFER	ALLOCATION
<p>Overview of Proposed Development. Nugget Joint Venture, L.C. (“Nugget JV”) is the owner of certain land located in Fairfax County, Virginia (“County”), consisting of approximately 11.65 acres and having a tax assessment number as 15-2((1)) Parcel 13 (pt.) (“Parcel 13”) and 15-4((5)) Parcel 5A (pt.) (“Parcel 5A”) (collectively, the “Nugget Parcel”).² Fairfax County is the title owner of certain land located in the County, consisting of 3.03 acres and having a tax assessment number as 15-4((5)) Parcel 5B (“County Parcel”) and has joined this application. The Nugget Parcel and the County Parcel are collectively 14.68 acres and are hereinafter referred to as the “Property.” Nugget JV, Dulles Rockhill Partners and County are hereinafter referred to as the “Applicant.” The Property currently consists of undeveloped land.</p> <p>Phase II of the Dulles Corridor Metrorail Project contemplates that a new Metrorail station, to be named the Innovation Center Station (“Metro Station”), be constructed and placed in the median of the Dulles International Airport Access Highway/Dulles Toll Road (“Toll Road”). In connection with the construction of the Metro Station, a structured public parking garage containing approximately 2,108 spaces (“Parking Facilities”), a minimum of twenty-five (25) kiss and ride facilities (“Kiss and Ride Facilities”), four (4) bus bays (“Bus Bays”), and secure bicycle storage facilities and associated amenities for between 80 to 100 bicycles (“Bicycle Storage Facilities”) will also be constructed. The Parking Facilities Kiss and Ride Facilities, Bus Bays and Bicycle Storage Facilities, together with the other elements comprising the Metro Station’s Facilities are sometimes collectively referred to as the “Metro Station Facilities.” The Metro Station Facilities will be located on the Property to serve the</p>	<p><i>No allocation necessary.</i></p>

¹ The Proffers and this Allocation of Proffer Statement will be updated at the time of the final agreed proffers. Accordingly, the language in the Proffers and reflected herein is preliminary and may change.

² The Nugget Parcel includes a Boundary Line Adjustment Agreement with Dulles Rockhill Partners Limited Partnership (“Dulles Rockhill Partners”) for approximately 0.51 acres of Parcel 5A. Nugget JV does not currently own this portion of the Property, but Dulles Rockhill Partners, as title owner, has joined the application as an applicant and has executed the Proffers.

PROFFER	ALLOCATION
<p>Metro Station and will be owned, maintained and operated by the County.</p> <p>Nugget JV and the County intend to enter into an Infrastructure Development Agreement, including a Proffer Allocation Agreement, after the approval of this Application (the "Development Agreement"), pursuant to which all improvements in the Proffers will be implemented and responsibility allocated and assigned according to the Development Agreement. Whenever herein a proffer establishes an obligation that applies to a specific Land Bay, then the term "Applicant" shall mean the owner undertaking such development according to the Development Agreement.</p>	
CONCEPTUAL DEVELOPMENT PLAN/FINAL DEVELOPMENT PLAN	
<p>1. <u>Substantial Conformance.</u> The Property shall be developed in substantial conformance with the Conceptual Development Plan ("CDP") and Final Development Plan ("FDP") entitled "Innovation Center South and the Innovation Center Station Garage" dated August 1, 2013 and revised through April 21, 2014, prepared by Dewberry Consultants LLC, consisting of 76 sheets. The CDP and the FDP are collectively referred to in the Proffers as "CDP/FDP."</p>	<i>No allocation necessary.</i>
<p>2. <u>Elements of CDP.</u> Notwithstanding the fact that the CDP and FDP are presented on the same plan, the elements that are components of the CDP are limited to the points of perimeter access, the maximum number and type of dwelling units, the maximum square footage of non-residential uses, the minimum and maximum building heights, the minimum percent of open space, the location of the limits of clearing and grading, setbacks from peripheral lot lines and the general location and arrangement of the buildings and parking facilities, and only a future amendment to such elements shall require a subsequent Conceptual Development Plan Amendment ("CDPA") or Proffered Condition Amendment ("PCA"). The Applicant reserves the right to request a Final Development Plan Amendment ("FDPA") for elements other than CDP/FDP elements referenced above from the Planning Commission for all or a portion of the FDP in accordance with Section 16-402 of the Ordinance if such amendment is in accordance with the Proffers, as determined by the Fairfax County Zoning Administrator ("Zoning Administrator").</p>	<i>No allocation necessary.</i>
<p>3. <u>Principal and Secondary Uses.</u> The principal uses on the Property shall be multi-family residential dwellings and public uses, as identified on the CDP/FDP, with secondary office, hotel, retail, service and other uses, including uses listed in the CDP/FDP notes and in Proffers 9 through 14, and may include accessory uses and/or accessory service uses as defined in the Ordinance.</p>	<i>No allocation necessary.</i>
<p>4. <u>Modifications.</u> Minor modifications to the CDP/FDP may be permitted pursuant to Paragraph 4 of Section 16-403 of the Ordinance.</p>	<i>No allocation necessary.</i>

PROFFER	ALLOCATION
<p>5. <u>Maximum Density/Bonus Density.</u> The maximum gross floor area ("GFA") that may be constructed on the Property shall be 1,646,041 square feet, which is inclusive of potential bonus density associated with providing affordable or workforce housing. The Applicant reserves the right to construct a lesser amount of GFA. Any bonus density associated with the provision of affordable or workforce dwelling units in accordance with Proffers Error! Reference source not found. and Error! Reference source not found., may be allocated to any use category, and, may be allocated to any building, subject to the Maximum Zoning Height (as defined in Proffer 0). GFA may be shifted among any of the buildings provided the maximum height shown for each building is not exceeded, the minimum height for each building is not reduced, the overall urban form and building type shown on the CDP/FDP are maintained, and such adjustments are consistent with the Proffers. The minimum and maximum building gross floor areas and building heights (stories) are stated on the Estimated Building Gross Floor Area Chart on Sheet A-100.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>6. <u>Phasing.</u> The proposed development includes seven (7) buildings and the Metro Station Facilities structure (Building C1) in four (4) Land Bays (A, B, C and D), which are identified on the CDP/FDP as Buildings A1, A2, A3, A4, B1, B2 and D1. Development of each building may proceed in any order provided that each such building provides at a minimum the phasing conditions depicted for such building on the CDP and that all proffers that apply to such building are addressed with the development of that building.</p>	<p><i>No allocation necessary.</i></p>
<p>A. The Applicant shall construct the grid of streets and provide pedestrian improvements, public parks, private amenities and public facilities on the Property in conjunction with the development of each individual building in accordance with the phasing sheet contained as Sheet C-8 in the CDP/FDP ("Phasing Plan") and as further described in the Proffers. In addition, interim uses and improvements as outlined in Proffers 10 and 72, and as may be determined at time of site plan approval shall be provided commensurate with the construction of each building in consultation with the Fairfax County Department of Transportation ("FCDOT"). Adjustments to the phasing may be approved with FDPA approvals without the requirement for a PCA or CDPA, provided the adjustments do not materially adversely affect the other phases and are in substantial conformance with the CDP.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided elsewhere to the contrary, the costs of the improvements in this Proffer 6 will be the responsibility of the owner for the costs relating to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>B. For purposes of the Proffers, the term "construct" shall mean (A) in regard to road improvements, that a committed road improvement is substantially complete and is available for use by the public for travel, whether or not such improvement has been accepted for maintenance by the Virginia Department of Transportation ("VDOT"), and (B) in regard to parks and recreation facilities, that a committed publicly accessible park space or recreation facility improvement is substantially complete and open to use by the public for use in accordance with the Urban Parks Framework applied by the Fairfax County Park Authority ("FCPA").</p>	<p><i>No allocation necessary.</i></p>
<p>7. <u>Density Credit</u>. The Applicant reserves intensity/density credit as may be permitted by the provisions of the Ordinance for all eligible dedications described herein or as may be required by the County, VDOT or any other public entity.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>8. <u>Fire Marshal Coordination</u>. The Applicant has coordinated the layouts depicted on the CDP/FDP with the Fire Marshal. Further changes to the CDP and FDP may be permitted without the requirement for a PCA/CDPA or FDPA in response to the review of site plans by the Fire Marshal, including adjustments to the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, provided such modifications are made in consultation with the Fairfax County Department of Planning and Zoning ("DPZ"), FCDOT and the Urban Forest Management Division ("UFMD") of the Department of Public Works and Environmental Services ("DPWES") in substantial conformance with the CDP/FDP and the Proffers with the intent to provide the streetscape shown on the CDP/FDP. The overall tree canopy shown on the CDP/FDP shall not be reduced, but locations and tree types may be modified subject to UFMD review and approval and in accordance with the Design Guidelines, as described in Proffer 54 and attached as Exhibit B to the Proffers.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>PERMITTED USES</p>	
<p>9. <u>Mix of Permitted Uses</u>.</p> <p>A. The principal uses, which shall be permitted on the Property, are multi-family dwellings, public uses (such as the Metro Station Facilities) and all related facilities.</p>	<p><i>No allocation necessary. Other than the Metro Station Facilities, this Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>

PROFFER	ALLOCATION
<p>B. In addition to the principal uses, office, hotel, and retail sales and service establishments shall be permitted as secondary uses. All secondary uses listed in Section 6-403 of the Ordinance, however, may also be permitted. For example, the CDP/FDP (Sheet C-4) includes an option to develop a child care center as part of this Rezoning. Other secondary uses and special exception uses may be permitted if the Applicant processes and obtains approval of a FDPA or Special Exception ("SE"). Notwithstanding the above, no drive-through windows or facilities or any freestanding single occupant retail pad sites or buildings shall be developed.</p>	<p><i>No allocation necessary. Other than the Metro Station Facilities, this Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>C. The permitted principal and secondary uses shall not result in any additional buildings beyond those represented on the CDP/FDP. Notwithstanding, the Applicant reserves the right, however, to construct, place or install temporary or movable structures (including kiosks, carts, shipping containers, etc.) to establish Group 8 Temporary Uses, including the hosting of special events on the Plazas and construction and sales/marketing trailers on an interim basis all without the necessity of an amendment to the CDP/FDP or Proffers if such do not alter the limits of clearing and grading.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>10. <u>PRM "Temporary Uses" Permitted Without a Temporary Special Permit.</u></p> <ul style="list-style-type: none"> A. Festivals, fairs or similar activities, as defined in Proffer 11; B. Farmers' markets; C. Promotional activities of retail merchants, hotel operators and office tenants, both on an individual and collective basis; D. Sales, marketing and rental offices; E. Commercial or construction off-street surface parking spaces, construction staging areas and construction storing areas within Land Bays and building footprints prior to ultimate development; F. Mobile food or retail sales carts, trucks or other vehicles (e.g., District Taco cart or London Fashion Bus) that would visit the Property at specific times during the day but would not park overnight; or G. Pop-up retail uses established on a short term basis offering a variety of creative products or services, including, but not limited to, the retail sale of boutique and vintage clothing, cosmetics, home wares, accessories, flowers, gallery art, sports and team merchandise, seasonal items and other items or services promoting specific branding opportunities. 	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>

PROFFER	ALLOCATION
<p>11. <u>Festivals, Fairs or Similar Activities</u>. The Applicant shall be permitted to provide festivals, fairs, contests, sports events, music, theatrical and other performances, public gathering functions or similar activities on the Property, subject to the limitations below, either in interim surface parking lots, within the Plazas (as defined in Proffer 71) or within other publically accessible privately owned open space as shown on the CDP/FDP. If not a Temporary Use as defined in Proffer 10 or a recurring event, then the Applicant shall coordinate with the Zoning Administrator regarding the issuance or approval of a temporary Special Permit as may be required under the Ordinance. All activities shall occur in accordance with the following provisions::</p> <ul style="list-style-type: none"> A. Maximum of 64 events per year; B. May be provided with or without admission or other fees; C. Sponsored by the Applicant, or their designee, a civic organization, public entity including the FCPA, local chamber of commerce, charitable organization, service club, non-profit or similar entity; D. Complies with all Health Department regulations; E. Shall not block or impede any fire lane or access to the Metro Station and the Metro Station Facilities; and F. Shall conform to the standards contained in the Design Guidelines, as described in Proffer 54. 	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>12. <u>Unmanned Freestanding Automatic Teller Machines</u>. The Applicant shall be permitted to install up to five (5) free-standing, unmanned bank teller ("ATM") or other automated machines such as ticket, parking or Metro card machines on the Property; the footprint of each machine shall not exceed sixteen (16) square feet or any larger industry standard size in the event industry standard sizes change. The ATMs or other machines shall not be counted toward the maximum amount of retail or non-residential GFA permitted on the Property referenced above. ATMs and other machines may be located in kiosks or in a manner that does not interfere with pedestrian movements or safety. This limitation on free standing ATMs and other machines shall not preclude additional ATMs and other machines within buildings or on building facades.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>

PROFFER	ALLOCATION
<p>13. <u>Retail Kiosks/Movable Carts/ Mobile Vendors.</u> The Applicant shall be permitted to operate movable carts, which shall be defined as temporary, transportable kiosks or containers that (a) serve a retail purpose and/or (b) mobile food trucks or other retail sales vendors, provided the first ten (10) kiosks shall not be counted toward the maximum amount of retail or non-residential GFA permitted on the Property referenced below. Except during times that festivals, fairs or similar activities are being conducted, the maximum number of temporary, transportable kiosks shall not exceed fifteen (15) per Plaza at any given time. Each kiosk/cart shall be no more than 120 square feet. In addition, one newsstand shall be permitted to be up to 1,500 square feet maximum size, which, if not portable, shall, notwithstanding the first sentence of this Proffer 13, be counted against the maximum amount of retail or non-residential GFA permitted on the Property. The carts may be located within Plaza areas and parking areas, as determined by the Applicant, provided that, cumulatively, said carts do not negatively impact streetscape, do not interfere with pedestrian movements, safety or fire/emergency access, and conform to the standards set forth in the Design Guidelines, as described in Proffer 54 and attached as Exhibit B to the Proffers.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>
<p>14. <u>Cellar Space.</u> The Applicant reserves the right to utilize Cellar Space constructed as part of the proposed development for all Permitted Uses; provided, however, that the Applicant shall be required to provide parking for the Cellar Space in accordance with the requirements of Article 11 of the Ordinance, as qualified by the Proffers. Any Cellar Space in the buildings shall not contain habitable residential units.</p>	<p><i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i></p>

PROFFER	ALLOCATION														
TRANSPORTATION															
<p>15. <u>Grid of Streets</u>. With the development of each building within a Land Bay, the frontage improvements along the existing and/or proposed public and/or private streets abutting such building, as generally depicted on the CDP/FDP Phasing Plan, shall be constructed and open for use by the public. The functional classification of the roadways comprising the grid of streets on the Property is summarized below:</p> <table border="1" data-bbox="420 438 1050 787"> <thead> <tr> <th>Street</th> <th>Classification</th> </tr> </thead> <tbody> <tr> <td>Sunrise Valley Drive</td> <td>Minor Arterial (Public)</td> </tr> <tr> <td>Sayward Boulevard</td> <td>Collector Street (Public)</td> </tr> <tr> <td>Carta Way</td> <td>Collector Street (Public)</td> </tr> <tr> <td>North-South Road</td> <td>Local Street (Public)</td> </tr> <tr> <td>East-West Road</td> <td>Local Street (Public)</td> </tr> <tr> <td>Private Drive</td> <td>Service Street (Private)</td> </tr> </tbody> </table>	Street	Classification	Sunrise Valley Drive	Minor Arterial (Public)	Sayward Boulevard	Collector Street (Public)	Carta Way	Collector Street (Public)	North-South Road	Local Street (Public)	East-West Road	Local Street (Public)	Private Drive	Service Street (Private)	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
Street	Classification														
Sunrise Valley Drive	Minor Arterial (Public)														
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Carta Way	Collector Street (Public)														
North-South Road	Local Street (Public)														
East-West Road	Local Street (Public)														
Private Drive	Service Street (Private)														
<p>16. <u>Rights of Way</u>. The Applicant shall dedicate and convey in fee simple to the Board of Supervisors rights-of-way for each of the public streets listed in Proffer 15. Dedication shall include the area of the landscape amenity panel and sidewalk and shall occur at the time of site plan approval unless further qualified by the Proffers.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>														
<p>A. The Applicant shall work diligently with VDOT and FCDOT during the site plan approval processes to ensure that all proposed public streets and areas designated as landscape amenity panels/sidewalks can be accepted for public maintenance as part of VDOT's Secondary Street Acceptance Requirements ("SSAR"). The Applicant shall locate all electrical vaults outside any future right-of-way limits. The public maintenance provisions shall be subject to the following exceptions:</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>														

PROFFER	ALLOCATION
<p>i. If at the time of site plan approval, it is determined that stormwater management facilities or other similar facilities are proposed to be located beneath the landscape amenity panel/sidewalk and such facility locations would prevent VDOT and/or the County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant shall then provide dedication 18 inches from the back of curb to 18 inches from the back of the opposing curb for the street section and shall grant a public sidewalk and utility easement in a form acceptable to the Office of the County Attorney over the area of the amenity panel/sidewalk. This easement shall allow for the installation of signage necessary for safety and operation of the street, as well as parking regulation equipment by VDOT and/or the County.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>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 would be acceptable to VDOT and/or the County, then the Applicant shall provide dedication 18 inches from the back of curb to 18 inches from the back of the opposing curb for the street section at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panels and sidewalk areas. A temporary public access easement in a form acceptable to the Office of the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk until such time as those areas are dedicated. Conveyance of the amenity panel/sidewalk areas to the BOS shall then occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>iii. Should it be determined following final street acceptance inspection that the landscape amenity panel/sidewalk areas are not acceptable to VDOT to be included in the right-of-way as evidence by VDOT's written certification, then the reservation of potential future dedication of the landscape amenity panel/sidewalk areas shall be released and the Applicant shall grant a permanent public access and maintenance agreement in a form acceptable to the County Attorney over such areas. These easements shall allow for the installation of signage necessary for the safety and operation of the street, as well as parking regulation equipment by VDOT and/or the County. In such event, a PCA, CDPA and/or FDPA will not be required.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>17. <u>Public Access Easements</u>. The Applicant shall grant public access easements over the travel ways on the Plazas (as defined in Proffer 70) for both vehicular and pedestrian traffic, as applicable, over the Private Drive, and over certain other portions of the Plazas for pedestrian traffic and public access, including access to the bridge connecting to the Metro Station. The easements shall also allow for the installation of signage necessary for safety and operation of the abutting streets.</p> <p>With the development of Buildings A1, A2, A3, A4 and D1, the Private Drive as shown on the CDP/FDP in the Phasing Plan, shall be constructed and open for use by the public. The form of the public access easement shall be acceptable to the County Attorney. The public access easement shall expressly permit (i) the temporary closure of a portion of any of the Plazas in connection with construction and special events and otherwise as permitted or required pursuant to an approved Plaza Access Management Plan in accordance with Proffer 76 and (ii) the uses contemplated on the Plazas pursuant to the Proffers and the CDP/FDP, including such uses as special events, public art, outdoor seating (including outdoor seating associated with restaurants), kiosks, mobile food trucks, etc., provided at all times (including during periods of temporary closure) access to the Metro Station platform, the Metro Station Facilities and fire/emergency access is maintained. Any public access easements for pedestrian access that are underneath a building or garage shall be limited vertically in scope to the actual upper and lower area of such breezeway or similar pass through.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to with respect to this Proffer 17 shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>18. <u>Transportation Phasing</u>. The transportation improvements provided for in the Proffers shall be constructed in phases as set forth in Proffer 6 or as qualified in Proffer 19.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>19. <u>On-Site Road Improvements.</u> All on-site public road improvements, on-site service streets together with appropriate/required pavement transitions shall be constructed with the development of individual buildings and prior to issuance of the first RUP or Non-RUP for the subject new office, hotel, or residential building, or Metro Station Facility as applicable. The Applicant reserves the right, in its sole discretion, to complete such ultimate improvements and any of the other improvements described in this Proffer 19, as a single public improvement project or in other separate segments, as long as at least the frontage improvements for each respective building and/or Metro Station Facility have been constructed prior to issuance of the first RUP or Non-RUP for that same new building and/or facility. The on-site road improvements shall generally consist of the following:</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>A. <u>Sunrise Valley Drive Frontage Improvements.</u> Sunrise Valley Drive shall be improved to provide for two (2) through lanes in each direction (eastbound and westbound), a raised concrete median, a four foot (4') wide on-road bike lane both eastbound and westbound (exclusive of the adjacent two foot (2') gutter pans), an eight foot (8') wide sidewalk on the south side of the alignment and a single exclusive westbound left-turn lane at the North-South Road as generally reflected in the CDP/FDP consistent with the Phasing Plan and based on a 40 mile per hour (mph) design speed. These roadway improvements to Sunrise Valley Drive, as generally described and referenced above, shall be provided prior to issuance of the first Non-RUP for the Metro Station Facilities, as generally shown on the CDP/FDP. Those streetscape improvements along Sunrise Valley Drive associated with Land Bays A and B shall be constructed commensurate with Buildings A1, A2 and B1, as further qualified by Proffer.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>B. <u>Carta Way Improvements</u>. Prior to the Issuance of a Non-RUP for the Metro Station Facilities, Carta Way will be constructed from its current terminus north to intersect Sunrise Valley Drive as a four-lane, undivided roadway with sidewalks along both the east and west sides of Carta Way as generally depicted on the Phasing Plan of the CDP/FDP and based on a design speed of 30 mph. The final design and extent of these ultimate improvements to Carta Way as generally described and referenced below shall be determined prior to the submission of the site plan for the Metro Station Facilities.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>i. The Applicant shall construct streetscape improvements on the east side of proposed Carta Way within the existing right-of-way which shall include a four foot (4') buffer strip and a five foot (5') wide sidewalk. Notwithstanding, at the time of final engineering and site plan approval for the Metro Station Facilities, the Applicant shall consider the feasibility of an alternative design for these streetscape improvements that meets VDOT's sidewalk standard but further minimizes or eliminates the need for a retaining wall (e.g., grade to the face of the existing parking garage).</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>ii. In conjunction with the Carta Way improvements described above, the Applicant shall design and construct a total of four (4) saw tooth Bus Bays with shelters along the west side of Carta Way between the entrance to the planned Kiss and Ride Facilities and Sunrise Valley Drive as shown on the CDP/FDP. The Bus Bay area shall be distinguished from the adjacent travel lanes associated with Carta Way through the use of concrete or other such differing materials. Prior to the submission of the first site plan for the Metro Station Facilities, the Applicant shall coordinate the final design of these bays and shelters with FCDOT.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>C. North-South Road. Prior to the issuance of a Non-RUP for the Metro Station Facilities, a new North-South Road shall be constructed by the Applicant extending south from Sunrise Valley Drive to the new East-West Road. This new local road shall consist at a minimum of two (2) northbound lanes and two (2) southbound lanes, as well as construction of the streetscape along the Land Bay C frontage. The streetscape along the frontages of Land Bays A, B and D shall be constructed as shown on the CDP/FDP, as may be modified and/or as generally described below. The streetscape associated with each of Buildings A2, A3, B1, B2 or D1 building frontage will be constructed in conjunction with the individual building. The streetscape associated with each of Buildings A2, A3, B1, B2 or D1 building frontage will be constructed in conjunction with the individual building.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>D. <u>East-West Road - Carta Way to North-South Road.</u> If not previously constructed by others, then prior to the issuance of a Non-RUP for the Metro Station Facilities, the Applicant shall construct or finish the construction of a new local street referred to as the East-West Road, as shown on the CDP/FDP, extending west from existing Carta Way to the North-South Road. Notwithstanding what is shown on the CDP/FDP, the area of right-of-way dedication along the Land Bay C frontage may be shifted to 18 inches behind the back of curb if needed to meet the tree canopy requirements. In such event, the Applicant shall provide a public access and maintenance easement, in a form acceptable to the County Attorney, over the streetscape (including the landscape amenity panel and sidewalk).</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>The Costs are allocated 25% to County, 25% to Nugget and 50% to Crimson Partners.</i></p>
<p>E. <u>East-West Road - North-South Road to Private Drive.</u> If not previously constructed by others, then prior to the issuance of the first Non-RUP for Building D1, the Applicant shall construct or finish the construction of another portion of a new local street known as the East-West Road from the North-South Road west to the Private Drive and then south to Sayward Boulevard as generally reflected in the CDP/FDP, and specifically in the Phasing Plan. Notwithstanding what is shown on the CDP/FDP, the area of right-of-way dedication along the Land Bay D frontage may be shifted to 18 inches behind the back of curb if needed to meet the tree canopy requirements. In such event, the Applicant shall provide a public access and maintenance easement, in a form acceptable to the County Attorney, over the streetscape (including the landscape amenity panel and sidewalk).</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by Crimson Partners</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by Crimson Partners.</i></p>
<p>F. <u>Construction of East-West Road by Others.</u> In the event the East-West Road has been completely constructed by others prior to the submission of a site plan for the Metro Station Facilities, then the Applicant shall contribute to the County one-half of the hard and soft costs associated with the design and construction of said road as evidenced by invoices. The Applicant's intent for such contribution is that the monies shall be released by the County to the party responsible for the road's design and construction.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p>
<p>G. <u>Intersection Improvements.</u> The Applicant shall construct the following intersection improvements as described below and reflected in the CDP/FDP and on the Phasing Plan.</p>	

PROFFER	ALLOCATION
<p>i. <u>Carta Way/East-West Road</u>. Prior to the issuance of the Non-RUP for the Metro Station Facilities, the Applicant shall construct the following improvements as described more fully below:</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>1. Remove all or a portion of the raised median on Carta Way as may be recommended by VDOT in order to facilitate the connection of the new East-West Road;</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>2. If the installation of a new signal has not been approved by VDOT for this intersection as more fully described in Proffer 20.C or VDOT determines sufficient sight distance is not available for vehicles exiting the East-West Road onto northbound Carta Way, then, in conjunction with the construction of the Metro Station Facilities and only if required by VDOT and FCDOT, the Applicant in the interim may stripe out</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p>

PROFFER	ALLOCATION
<p>a portion of the pavement along the western curb line on Carta Way south of the East-West Road in order to increase the sight distance for vehicles turning onto Carta Way from the East-West Road; and</p>	<p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>3. In the event VDOT and FCDOT require restriping of the pavement referenced in subparagraph (2), then the Applicant shall contribute to the County at the time of issuance of the Non-RUP for the Metro Facilities, the cost to restripe the pavement in the event VDOT approves a signal at this location in the future.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>(B) If such analyses determine that the northbound North-South Road vehicle queues do not block or otherwise impede the intersection, then the Applicant's obligation for further mitigation is null and void and this proffer is of no further force or effect.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>(C) If such analyses determine that the northbound North-South Road vehicle queues do not block or otherwise impede the intersection, then the Applicant's obligation for further mitigation is null and void and this proffer is of no further force or effect.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>H. <u>VDOT Approval</u>. All public street improvements, lane use designations, signal installations, crosswalks and/or other pavement markings proposed herein and reflected on the CDP/FDP are subject to VDOT review and approval at the time of site plan. Any changes to the same identified at time of site plan submission, shall be coordinated with the FCDOT and DPZ and may not require a PCA/CDPA and/or FDPA.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner shall share the costs of the improvements in accordance with Development Agreement.</i></p>
<p>I. <u>Supplemental Traffic Analyses</u>. At the time of site plan submission for each new building located within Land Bays A, B and D and subsequent to approval of this Rezoning, supplemental operational traffic analyses of the points of access to those Land Bays shall be provided if required by VDOT or FCDOT. For purposes of this Proffer, such analyses shall only be required if the building generates more than an additional 100 peak hour directional trips (either inbound or outbound) over that reflected in the <i>Innovation Center South Traffic Impact Analysis</i> prepared by Wells + Associates dated October 21, 2013, as revised through January 3, 2014 (the "Traffic Impact Analysis"). Such supplemental operational analyses shall be limited to an assessment of those driveways and/or intersections directly serving the particular building and Property. The Applicant shall identify such roadway improvements and/or transportation enhancements which may be needed to address the results of the operational analyses and shall discuss those results with FCDOT and VDOT to determine what, if any, additional mitigation measures may be required to those intersections and/or driveways directly serving the Property.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>J. <u>Installation of Streetscape and Pedestrian Improvements</u></p> <p>i. The Applicant agrees, that (i) the Applicant or the Community Association contemplated in Proffer 91 herein shall maintain any of such improvements that are not in the public right-of-way and shall maintain such improvements that are in the public right-of-way that VDOT will not accept for maintenance (see Proffer 16) or (ii) for any improvements to be located in the public right-of-way, the Applicant will use materials acceptable to VDOT if VDOT will not consent to the maintenance of such elements by the Applicant. The Community Association documents shall disclose the existence of such maintenance obligations, if applicable.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>ii. Streetscape and Pedestrian Improvements. Streetscape improvements and plantings shall be installed as indicated on the CDP/FDP prior to the final RUP and/or Non-RUP associated with the public improvement plan or site plan that includes such improvements. In addition to the provisions contained in Proffer 69 for utilities, the Applicant reserves the right, in consultation with the Zoning Administrator, to shift the locations of the various streetscape elements to accommodate final architectural design, VDOT requirements, utilities and layout considerations, and sight distance requirements, provided that the tree canopy on CDP/FDP is maintained as reviewed and approved by UFMD.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p>K. <u>Metro Station Facilities Dedication.</u> The Applicant shall dedicate and convey in fee simple to the Board of Supervisors approximately 2.54 acres of Parcel 13 prior to the first site plan approval for the project, or sooner upon written request by the County. Such dedicated area shall be combined with Parcel 5B and used in conjunction with the development of the Metro Station Facilities, as and to the extent shown on Sheet A-100 of the CDP/FDP.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner shall share the costs of the improvements in accordance with Development Agreement.</i></p>
<p>20. <u>Traffic Signals.</u></p> <p>A. As reflected in the Traffic Impact Analysis, the Applicant anticipates the installation of up to five (5) new traffic signals in the area surrounding and/or proximate to the Property. Towards that end, the Applicant shall complete and submit to VDOT and FCDOT warrant studies for the installation of these new traffic signals at the following locations:</p> <ul style="list-style-type: none"> i. Sunrise Valley Drive/North South Road ii. Sunrise Valley Drive/Carta Way iii. Sunrise Valley Drive/Sayward Boulevard iv. Carta Way/East-West Road v. Carta Way/Sayward Boulevard 	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>B. Warrant studies shall be completed and submitted in accordance with the submission of site plans as follows:</p> <ul style="list-style-type: none"> i. Within six (6) months after the issuance of the Non-RUP for the Metro Station Facilities. ii. Prior to issuance of the first RUP or Non-RUP for the 2nd new building on the Property. iii. Prior to issuance of the first RUP or Non-RUP for the 4th new building on the Property. iv. No earlier than six (6) months after the issuance of the first RUP or Non-RUP for the last new building on the Property but in any event no later than bond release for the last new building. v. The warrant studies shall include an assessment of then-existing traffic conditions associated with the completion of the building trigger (i.e., 2nd, 4th and last new building) as well as full build out. 	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>
<p>C. If any signal location identified in Subparagraph A is deemed warranted by VDOT after having reviewed any warrant study completed in accordance with the timelines established in Subparagraph B and approved it for installation, then such traffic signal, including pedestrian enhancements and uninterrupted power supply systems ("UPS") (as may be required by VDOT,) shall be designed, equipped and installed by the Applicant. In such event, no further warrants shall be required for that individual location and this proffer is of no further force or effect.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>

PROFFER	ALLOCATION
<p>D. If a signal is deemed not warranted by VDOT at any of the locations identified in Subparagraph A after having reviewed the triggered warrant study, then such location shall be reviewed again in accordance with the schedule outlined in Proffer 1.E.i through Error! Reference source not found.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>
<p>E. If a signal is deemed not warranted by VDOT at any of the locations identified in Subparagraph A at the time identified in Proffer Error! Reference source not found., then the Applicant shall contribute to the County, its PM peak hour pro-rata share (as identified below) of the costs associated with the future installation of a signal as these locations by others:</p> <ul style="list-style-type: none"> i. Sunrise Valley Drive/North-South Road (33%); ii. Sunrise Valley Drive/Carta Way (25%); iii. Sunrise Valley Drive/Sayward Boulevard (20%); iv. Carta Way/East-West Road (18%); and v. Carta Way/Sayward Boulevard (21%). <p>The County, in its sole discretion, may use any such signal funds contributed by the Applicant in accordance with this Proffer for other transportation related improvements within close proximity to the Property.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid as set forth herein.</i></p>
<p>21. Sight Lines. All sight lines at building entrances and street intersections shall comply with VDOT's Road Design Manual (Appendix E, Table 2-7) as generally depicted in the CDP/FDP and shall be refined at the time of applicable site plans. Notwithstanding the aforementioned, no building shall be constructed on Building Site A2 until such time as the appropriate intersection sight distance is provided from the North-South Road onto Sunrise Valley Drive as reflected on the CDP/FDP and as long as there are no impacts to the required streetscape, as determined by DPZ.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>22. <u>Route 28 Station Transportation Fund.</u> The Applicant shall make a one-time contribution to a fund established by the County for transportation improvements in the Route 28 Station area. Such contribution shall be paid in conjunction with the issuance of the first RUP or Non-RUP for each new building to be constructed on the Property at a rate to be established by the Board of Supervisors, but in any event no less than \$7.05 per gross square foot of new commercial uses on the Property and \$1,000.00 per new residential unit on the Property. The Applicant shall receive credit against the contributions referenced above for the following in-kind contributions:</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>A. The value of approximately 2.54 acres dedicated to the County for the construction of the Metro Station Facilities, as described more fully in Proffer 19.K based on the PRM zoning district valuation.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>B. Costs incurred by the Applicant to reconstruct Sunrise Valley Drive along the full frontage of the Property which advance the improvement beyond those reasonably expected with Phase I of the project. These improvements are exclusive of streetscape improvements.</p> <p>Notwithstanding the above, the total contribution due from the Applicant to the Route 28 Station Fund shall be deemed satisfied and provided in full by the provisions of those in-kind improvements listed above.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p><u>TRANSPORTATION DEMAND MANAGEMENT (excluding Metrostation Facilities)</u></p>	
<p>Proffers 23 – 39 [See Proffer Statement for Full Text]</p>	
<p><u>BICYCLE FACILITIES</u></p>	
<p>40. <u>Bicycle Parking and Storage.</u> Bicycle racks and/or bike storage areas shall be provided within each Land Bay, with the specific amounts and locations finalized prior to site plan approval in consultation with the FCDOT Bicycle Coordinator or his designee. Bicycle racks located outside of buildings and inside parking garages shall be inverted U style racks or other design approved by FCDOT. The minimum number of bike parking/storage spaces provided for Land Bays A, B and D shall be as stated in the tabulation included as part of Sheet A-100 of the CDP/FDP. Signage shall be posted on the exterior side of buildings closest to entrances to bike parking/storage space and on certain permitted wayfinding signage to indicate bike parking/storage.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>41. <u>Bicycle Lanes.</u> Subject to VDOT approval and in combination with the street and streetscape improvements identified in the Proffers, pavement and striping for an on-street bicycle lane along the Sunrise Valley Drive frontage of Land Bays A and B shall be provided as depicted on the CDP/FDP with the final dimension determined at prior to site plan approval and in consultation with the FCDOT Bicycle Coordinator or his designee. In addition, the Applicant shall designate</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for</i></p>

PROFFER	ALLOCATION
<p>the outside lane along northbound and southbound Carta Way with a sharrow (shared-lane marking) if requested by FCDOT and subject to VDOT approval.</p>	<p><i>County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p>
<p><u>PARKING (EXCLUDING METRO STATION FACILITIES)</u></p>	
<p>42. <u>Parking Requirements.</u> Parking on the Property shall be provided in accordance with the parking requirements for the PRM District as set forth in Article 11 of the Zoning Ordinance, subject to the processing of the parking reduction(s) described in Proffer 50, and as shown on Sheet C-2b of the CDP/FDP. The exact number of parking spaces to be provided for each Land Bay shall be refined and determined at the time of site plan approval based on the specific uses of each Land Bay. If changes in the mix of uses or unit types result in parking greater than that anticipated on the CDP/FDP (e.g., bonus density developed), the additional parking spaces shall be accommodated within the proposed parking garages and other facilities, so long as the maximum height and footprints of the parking garages and other facilities do not increase from that shown on the CDP/FDP. As development and parking construction is phased, the Applicant reserves the right to provide parking in excess of the minimum required per Ordinance, provided that upon the completion of all buildings shown on the CDP/FDP, parking does not exceed the minimum number required by Article 11 of the Ordinance as it exists today.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>43. <u>On-Street Parking Spaces on the Private Drive.</u> On-street parking may be provided along the Private Drive reflected on the CDP/FDP to meet the parking requirements of the Zoning Ordinance, so long as such spaces are striped and meet the dimension requirements of the PFM, subject to receiving approval of any necessary waivers and/or modifications. Parking spaces on the Private Drive that are included as required spaces shall not be restricted at any time. Parking on the Private Drive may be restricted through appropriate signage or such other means as determined appropriate by the Applicant as to respective Land Bays, and on-street parking along future public streets prior to dedication, that otherwise are not required to satisfy the parking requirements may be used as temporary or short term parking, car-sharing parking and/or similar uses.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>44. <u>Parking Restrictions.</u> All Land Bays may provide gated/restricted parking within the parking garages and other facilities within the respective Land Bays. If gates are provided in any of the parking garages or other facilities, then such gates should be located to provide sufficient stacking capacity within the parking garage or facility to prevent vehicles from stacking onto public roads.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>45. <u>Parking for Residential Uses.</u> If parking is to be assigned to specific dwelling units, not less than one space shall be assigned to each unit, including WDUs. Otherwise, dwelling units shall be</p>	<p><i>This Proffer shall be complied with by Nugget Parcel Owner</i></p>

PROFFER	ALLOCATION
offered exclusive of parking such that parking shall be available at a separate cost.	<i>for the Nugget Parcel.</i>
46. <u>Paid Parking for Non-Residential Uses.</u> The Applicant may charge for parking within Land Bays A or B, on a per space basis, at rates that the Applicant deems to be market-competitive.	<i>This Proffer shall be for the benefit of the Nugget Parcel. The County Parcel has no rights or benefits to or in this Proffer.</i>
47. <u>Commercial Off-Street Parking.</u> A. Commercial off-street parking may be provided on an interim basis in new surface lots to be constructed on the Property without approval of an FDPA.	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i>
B. With approval of an FDPA, commercial off-street parking may be provided on an interim basis in new parking structures built to support the new on-site uses, which due to phasing may have excess parking capacity.	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i>
C. Prior to site plan approval or issuance of a Non-RUP for commercial off-street parking in new surface lots or garages (excluding the Metro Station Facilities on Land Bay C), the Applicant shall provide an operational traffic analysis ("Operational Analysis") of points of access to such parking facilities. Such Operational Analysis shall be limited to an assessment of those driveways serving the particular parking facilities (surface or structure) and any proposed access controls. The Applicant shall identify such improvements and/or transportation enhancements needed to address the results of the operational analyses and shall discuss those results with FCDOT and VDOT to determine what if any additional mitigation measures may be required. In no event, shall the Applicant be required to provide additional improvements to any but those intersection and/or driveways directly serving the commercial parking.	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i>
48. <u>Parking Controls.</u> The Applicant shall provide controlled access to the parking garages and other Facilities and shall ensure that the control equipment is capable of counting vehicles entering and exiting the garages (with the exception of the Metro Station Facilities on Land Bay C) and Facilities. Such controls shall direct vehicles to available spaces and shall be located so as to avoid vehicle stacking on the public streets.	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i>
49. <u>Electrical Vehicle Charging.</u> In each parking structure on the Property (excluding the Metro Station Facilities), the Applicant shall provide a minimum of one (1) electric vehicle charging station that serves two (2) parking spaces for electric cars and conduit to facilitate additional recharging stations if demand dictates in the future.	<i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i>
50. <u>Future Parking Reductions.</u> Notwithstanding Proffer 42 above, the Applicant shall submit and pursue approval of a parking reduction from the Board of Supervisors, as generally outlined on Sheet C-2b of the CDP/FDP, prior to site plan approval for the first new office or residential building on the Property. Thereafter, the Applicant may request approval of further parking reductions from the Board of Supervisors as such reductions are permitted by the Ordinance. Any modification to the parking requirement or layout resulting from a reduction approved by	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i>

PROFFER	ALLOCATION
the County shall not require a PCA and/or CDPA/FDPA.	
51. <u>Parking During Construction.</u> At time of each site plan following the establishment of the first use, the Applicant shall demonstrate how the parking requirement for the existing uses will be satisfied during construction, and the Applicant shall be permitted to use valet, stacked and off-site parking arrangements during such periods of construction, as reasonably approved by FCDOT and DPWES. The Applicant shall be permitted to provide parking on the Property to accommodate construction workers during the development of the project.	<i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i>
52. <u>Future Parking Rate Revisions in the Zoning Ordinance.</u> The Applicant reserves the right to provide parking at revised rates as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates shall not require a CDPA, PCA or FDPA, provided there is no increase in the size or height of above-grade parking structures and other facilities beyond minor adjustments to what is shown on the CDP/FDP.	<i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel. This Proffer shall be for the benefit of the Nugget Parcel.</i>
V. STORMWATER MANAGEMENT AND BEST MANAGEMENT PRACTICES	
53. <u>Storm Water Management Plan.</u> The Applicant's stormwater management facilities shall be designed in accordance with the Comprehensive Plan for the Property and with local and state laws. In addition, stormwater runoff associated with the development shall be addressed as shown on the CDP/FDP and consistent with SWM Waiver Request #6848-WPFM-005-1 conditions dated April 10, 2014 (or such conditions as may otherwise be imposed with any related waiver requests). The stormwater design shall seek to minimize the effect of the proposed impervious cover, including application of stormwater reuse, retention, detention, extended filtration and, where soils and infrastructure allow, infiltration to improve downstream waters. The stormwater management measures may be phased with development.	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>With respect to the Storm Water Management Facilities, the costs of construction (other than the facilities in parking garage structures) will be allocated 62% to Nugget and 38% to County.</i></p> <p><i>With respect to the Storm Water Management Facilities, (other than the facilities in parking garage structures) the costs of maintenance will be allocated 62% to Nugget and 38% to County.</i></p>

PROFFER	ALLOCATION
<p>A. The Applicant will incorporate low impact development ("LID") techniques of stormwater management to reduce or delay runoff volumes entering the nearby regional stormwater pond facility and local streams (see Sheet C-9 of the CDP/FDP). These LID practices may include, but are not limited to, bioretention or biofiltration facilities (commonly known as rain gardens), vegetated swales, porous pavement, vegetated roofs, tree box filters and the collection and reuse of stormwater runoff. LID techniques of stormwater management shall be incorporated into the proposed street designs where allowed and practicable. Notwithstanding and in lieu of what is depicted on the CDP/FDP, the Applicant reserves the right to develop the surface of the Metro Plaza substantially in conformance with the conceptual drawing attached as Exhibit A to the Proffers. This drawing proposes to incorporate an alternative stormwater treatment method through the use of biofiltration. This alternative may be implemented as a partial or entire replacement of what is shown on the CDP/FDP for this area. Any alternative treatment methods used shall treat no less than the quantities of stormwater intended to be treated in the original design (as contemplated on the CDP/FDP).</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP and/or Exhibit A.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP and/or Exhibit A.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner may have certain sharing of costs of the improvements in accordance with the Development Agreement (other than the facilities in parking garage structures).</i></p>
<p>B. The Applicant shall coordinate its stormwater management controls among adjacent and nearby developments to achieve stormwater management goals in an efficient manner. Stormwater management may be fulfilled or supplemented through the use of an off-site regional pond facility owned by the County, provided any improvements or upgrades that may be needed to accommodate the stormwater outfall from the Property are made prior to its actual use by the Applicant.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner may have certain sharing of costs of the improvements in accordance with the Development Agreement (other than the facilities in parking garage structures).</i></p>
<p>C. The Applicant shall design the stormwater management facilities in conformance with the recently adopted County Stormwater Management Ordinance and applicable recommendations contained in the Comprehensive Plan text for the Property. Two-year and ten-year 24 hour detention for the site will be provided in the regional pond, H-9. Runoff reduction practices will be used on-site to the maximum extent practical to manage runoff. These types of practices include, but are not limited to, bioretention, permeable pavement, disconnected impervious areas, soil amendments and/or rainwater harvesting from rooftops of proposed buildings.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner may have certain sharing of costs of the improvements in accordance with the Development Agreement (other than the facilities in parking garage structures).</i></p>

PROFFER	ALLOCATION
<p>D. Stormwater runoff associated with the development shall be controlled such that either: (a) the total phosphorus load for the property is no greater than what would be required for new development pursuant to State stormwater regulations or the County's stormwater management ordinance; or (b) an equivalent level of water quality control is provided.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner may have certain sharing of costs of the improvements in accordance with the Development Agreement (other than the facilities in parking garage structures).</i></p>
<p>E. The Applicant shall provide a stormwater management plan that will attain the Rainwater Management credit of the most current version of LEED-NC or LEED-CS rating system (or equivalent of this/these credit(s)) and as reviewed and approved by the EDRB during site plan review.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner may have certain sharing of costs of the improvements in accordance with the Development Agreement (other than the facilities in parking garage structures).</i></p>
<p>F. As an alternative to the minimum guidelines above, the Applicant may pursue stormwater management measures and/or downstream improvements to optimize site-specific stormwater management and stream protection/restoration needs, consistent with any adopted watershed management plan(s) that is/are applicable to the Property.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner shall share the costs of the improvements in accordance with the Development Agreement.</i></p>

PROFFER	ALLOCATION
<p>G. 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 reserves the right to accommodate necessary changes to its stormwater facility designs without the requirement to amend the CDP/FDP or the Proffers, provided the facility design is substantially in conformance with the CDP/FDP</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner shall share the costs of the improvements in accordance with the Development Agreement.</i></p>
DESIGN	
<p>54. <u>Design Guidelines.</u> The architectural guidelines for the Property with respect to building scale and massing, building siting, screening of parking structures, the design of the Plazas, and streetscape are set forth in the design guidelines attached as Exhibit A to the Proffers ("Design Guidelines"). The Design Guidelines are intended to be illustrative of the general quality and character of the development. Modifications to these elements as shown in the Design Guidelines shall not require an amendment to the Proffers or CDP/FDP, and are permitted provided the changes are in substantial conformance with the CDP elements and the general character and quality of the Design Guidelines, as determined by the Zoning Administrator, and provided that such changes are uniform throughout the Property so that the buildings and improvements within a block have a complimentary design theme. The foregoing is not intended to prohibit each building having its own distinctive architectural character.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>55. <u>Environmental Design Practices for Multi-Family Residential.</u></p> <p>[See Proffer Statement For Full Text]</p>	<p><i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>56. <u>Environmental Design Practices for Non-Residential (including Office and Hotel but excluding Metro Station Facilities).</u></p> <p>[See Proffer Statement For Full Text]</p>	<p><i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>57. <u>Environmental Design – General (Residential and Non Residential).</u></p> <p>[See Proffer Statement For Full Text]</p>	<p><i>This Proffer shall be complied with by Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<p>58. <u>Additional Design.</u> All buildings and parking structures and the Metro Station Facilities where they front on the new North-South Road and the new East-West Road shall be architecturally finished (all four (4) sides) with compatible materials, detailing and features, provided such facades (including the facades of garages associated with a building) need not be identical. Garage facades shall be designed to screen the view of vehicles from the surrounding area and shall include materials consistent with those materials shown on the CDP/FDP and used on the associated building and/or incorporate innovative design techniques such as incorporation of public art, vegetative screens or other screening techniques, provided such facade treatments are consistent with the standards set forth in the Design Guidelines, and need not have facades identical to the associated building.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>59. <u>Signage.</u> All signage provided on the Property shall comply with Article 12 of the Ordinance. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the development. The Applicant reserves the right to obtain approval of a Comprehensive Sign Plan ("CSP") at any time that would permit modifications to the provisions of Article 12 of the Ordinance without obtaining a PCA, CDPA or FDPA. The Applicant shall cooperate with the Washington Metropolitan Area Transit Authority ("WMATA") to identify locations for directional signage to the Metro Station platform and the Metro Station Facilities.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>60. <u>Lighting.</u> All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Ordinance. Fixtures used to illuminate streets, parking areas and walkways shall not exceed thirty (30) feet in height, measured from their base to the top of the light standard, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Property. All upper level parking deck lighting fixtures shall not exceed a height of seventeen (17) feet measured from their base to the top of the light standard and shall be uniform in design, whether temporary or permanent. Lighting within the private parking decks shall be installed between the ceiling beams to reduce glare unless such lighting is otherwise screened by the parking structure design. Notwithstanding the restrictions provided in the previous paragraph, the Applicant reserves the right to provide architectural lighting and up lighting associated with the buildings and Plazas consistent with the Design Guidelines, provided as Exhibit A attached to the Proffers.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>61. <u>Telecommunications Equipment.</u> 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 streets, forming the boundary of the Property, 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. Telecommunications equipment may also be architecturally integrated onto the facades of the buildings where necessary to ensure on-street and/or open space coverage.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the benefit of the Nugget Parcel and the County Parcel Owner for the benefit of the County Parcel, as it relates to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>62. <u>Building Heights.</u> Building heights for each building shall not exceed the maximum or be less than the minimum building heights shown on Sheet A-100 of the CDP/FDP as "Maximum Height," "Minimum Height" and "Stories", except in connection with the use of residential bonus density which would permit additional building height to accommodate such residential bonus units. Building heights shall be exclusive of those structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Ordinance. All building penthouses/rooftop structures shall be integrated into the architecture of the building below and shall be consistent with the Design Guidelines, provided as Exhibit B attached to the Proffers.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
LANDSCAPING	
<p>63. <u>Limits of Clearing and Grading.</u> The Applicant shall conform to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances provided in the Proffers and for the installation of fences, utilities (including storm water management and BMP facilities), public improvements (i.e. roads, streetscapes, entrances, sidewalks, degraded soil and slope conditions) and/or trails, which shall be located in the least disruptive manner necessary as determined by UFMD. A replanting plan shall be developed and implemented, subject to approval by UFMD, for any areas protected by the limits of clearing and grading that must be disturbed for such trails, utilities, roads or similar uses, if any such areas are identified at the time of site plan, as described herein.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>
<p>64. <u>Landscaping.</u> The CDP/FDP includes a conceptual Landscape Plan commencing on Sheet L-1 of the CDP/FDP, consisting of overall plans and concepts for the Property. Actual types, quantities and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of the first and all subsequent CDP/FDP, CDPA, FDPA and site plans. Landscaping may be modified during site plan review to allow for final engineering and design considerations, including, but not limited to, final utility locations, LID facilities, sight distance requirements and other applicable requirements, provided that such modifications are in substantial conformance with the CDP/FDP and subject to UFMD approval and are consistent with the Design Guidelines, provided as Exhibit B attached to the Proffers.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs of complying (including any construction costs) with this Proffer shall be paid 62% by Nugget Parcel Owner and 38% by the County Parcel Owner.</i></p>
<p>65. <u>Detailed Landscape Plans.</u> As part of the site plan submission for each building on the Property, a detailed landscape plan shall be submitted to the UFMD for review and approval. The planting and landscaping materials shown on each detailed landscaping plan shall be in substantial conformance with those shown on the approved CDP/FDP, and shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets, 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. Adjustments to the type and location of vegetation and the design of landscaped areas and streetscape improvements/plantings may be permitted in consultation with DPZ, and as approved by UFMD. The Applicant shall not plant any known invasive plant species at the Property.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>66. <u>Alternative Planting Width Details.</u> Site plans submitted for the respective phases of development shall include a landscape plan for that phase of development in conformance with the CDP/FDP. Tree species and planting sites are set forth on the CDP/FDP, subject to revision as may be approved by the UFMD. Where minimum planting widths of 8-feet cannot be provided, the Applicant shall use structural cell technology, or other measures acceptable to and approved by UFMD, to satisfy the following specifications for all planting sites:</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>A. A minimum of four (4) feet open surface width and sixteen (16) square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area;</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>B. A minimum rooting area eight (8) feet wide (may be achieved with techniques to provide un-compacted soil below pavement), with no barrier to root growth within four (4) feet of the base of the tree;</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>C. Soil volume for Category III and Category IV trees shall be a minimum of 700 cubic feet for a single tree. For two (2) trees planted in a contiguous planting area, a total soil volume of at least 1,200 cubic feet shall be provided. For three (3) 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;</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>D. Soil specifications in planting sites shall be provided in the planting notes to be included in all subsequent site plan submissions. and</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>E. It is expected that some street tree planting sites will be designed to accommodate bio-retention functions.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>67. <u>Tree Replacement.</u> The Applicant shall replace any new tree that is planted on the Property and is counted toward meeting the overall tree canopy requirement, that is damaged, such that thirty percent (30%) or more of the crown is no longer viable, as a result of maintenance to the stormwater management facilities, or related underground infrastructure, with a tree of equal or greater size. The size of the replacement tree shall be based on the caliper size of the tree to be replaced as shown on the final site plan.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>68. <u>Open Space</u>. Provision of publicly-accessible Plazas, park and open space areas shall be in substantial conformance with the concepts, locations and minimum acreages depicted on the CDP/FDP and as further defined in the Proffers and the Design Guidelines, and may be adjusted at the time of CDP/FDP and site plan approval to allow for final engineering and design considerations.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>69. <u>Utility Locations</u>. Utilities, including, but not limited to water, electric, 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/FDP. 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 shown on the CDP/FDP, as determined by the UFMD. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations. If at the time of site plan approval, street trees shown on the CDP/FDP are in conflict with existing or proposed utilities and alternative locations for the street trees satisfactory to UFMD cannot be accommodated, the Applicant shall modify the location of utilities to ensure that the trees shown on the CDP/FDP can be provided.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>70. <u>Parking Deck Landscaping and Amenities</u>. The Applicant shall provide planting areas, landscaping and amenities on the top level of any parking garages (where no additional structures are to be built above) as shown on the CDP/FDP in accordance with requirements of the Public Facilities Manual.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>PARKS AND RECREATION FACILITIES</p>	
<p>71. <u>Plazas</u>. The Applicant shall provide plazas, urban parks and other publicly accessible areas (collectively referred to as the "Plazas") and associated amenities generally as depicted on Sheets L-1 and L-4 of the CDP/FDP and as described in the Design Guidelines. The exact elements that comprise such amenities shall be determined at time of site plan review for the first building adjacent to such amenities and such amenities shall be constructed in accordance with the Phasing Plan included in the CDP/FDP. Such amenities may include such furniture, fixtures and finishes consistent with the creation of a hardscape public park or gathering space and consistent with the Design Guidelines including, but not limited to, paving, furniture, screening walls, pedestrian ways, focal points, landscaping/planters, public art, and performance/demonstration space consistent with an urban park. Additional site amenities may be provided at time of site plan review provided they are consistent with the Design Guidelines. Access and use of the Plazas by the public shall be authorized and regulated by the Plaza Access Management Plan described in Proffer 76. The Plazas shall be privately maintained.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>72. <u>Metro Plaza</u>. The Applicant shall provide a street-level park of approximately 1.14 acres located adjacent to the Metro Station Facilities and consistent with the Design Guidelines.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>

PROFFER	ALLOCATION
<p>A. The Applicant shall initially provide interim improvements (Phase 1) to the Metro Plaza, as shown on Sheet L-4A of the CDP/FDP to activate the Metro Plaza upon opening of the Metro Station. These interim improvements shall include an extensive walkway system and/or careful integration of paving surfaces and includes benches, seat walls, bike racks, picnic lawn areas, landscaping, garbage containers and mobile restrooms, and may also include provision of interim "place making" uses, such as pop-up retail or service uses (collectively, "Temporary Retail Use Establishments"), on the Property immediately adjacent to at the Metro Plaza. Said Temporary Retail Use Establishments may be housed in temporary buildings such as storage/shipping containers, movable carts, kiosks or food trucks or similar retail sales or service vehicles, or a combination thereof. Any Temporary Retail Use Establishment shall be installed in conformance with the Design Guidelines and in the general location depicted on Sheet L-4A of the CDP/FDP. The minimum interim improvements shall consist of 5,000 square feet of land area and up to eight (8) different Temporary Retail Use Establishments.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>B. Ultimately, the Applicant shall also provide permanent improvements to the Metro Plaza, including hardscaping, landscaping, bike racks and bench seating, a terraced lawn panel with stepped seating for people watching and viewing events and public art as a focal element, as conceptually shown on Sheet L-6A-1 of the CDP/FDP, contingent on agreements with WMATA and the County. Space and requisite utility connections in accordance with FCDOT specifications (electric and telecommunications) shall also be provided for a multi-modal commuter information kiosk; said kiosk to be provided by others. The Metro Plaza shall be constructed prior to the issuance of the initial RUP or Non-RUP for the Metro Station Facilities or Building B2, whichever shall occur first.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>C. If approved as part of a Comprehensive Sign Plan for the Property, the Applicant may install a video display or provide a moveable screen on the façade of Building B2 facing the park or located in the plaza area animating the Metro Plaza. Details of the video wall or flexible screen (including size, content, lighting and sound) shall be provided in the Comprehensive Sign Plan application.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>D. As noted in Proffer 53, Exhibit A to the Proffers provides an alternative stormwater treatment method for the Metro Plaza.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>E. As depicted on Sheet C-4 of the CDP/FDP, there is an area in the Metro Plaza on the west, south and east sides of the Metro Station's pavilion that is marked as the "15' Metro Clear Zone." This area will be subject to additional engineering and improvement through a future Special Exception, FDP or other zoning application for the Metro Station. The Special Exception design shall be coordinated and consistent with the design shown on the CDP/FDP. The use of the 15' Metro Clear Zone is established by this Application.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>

PROFFER	ALLOCATION
<p>73. <u>Urban Park</u>. The Applicant shall provide an Urban Park at street level from the west and accessible from the east of approximately 0.85 acres to be located adjacent and between Buildings A3, A4 and D1. The Urban Park shall include features such as, but not limited to, lawn panels, hardscape and landscape areas, bench seating, a bocce ball court, seating with engraved game boards (e.g., chess), children's play area, decorative screen wall and dog park as conceptually shown on Sheets L-6B-1 and L-6B-2 of the CDP/FDP and consistent with the Design Guidelines. More specific details shall be determined at time of site plan approval for the first of the buildings referenced in the first sentence above. The Urban Park shall be constructed prior to the issuance of the first RUP for such buildings. The Urban Park shall be privately maintained and shall be designed to coordinate with or connect to the private courtyards of the residential buildings.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>74. <u>Pocket Park</u>. The Applicant shall provide a Pocket Park of approximately 0.32 acres designed for casual use by transit users and as a neighborhood park for demonstrating protection, preservation and sustainability of natural resources. The design shall include native planting, a wooden deck and boardwalk system over a bio-retention area, benches, educational and information kiosk, and an art feature display, as conceptually shown on Sheets L-4, L-6C-1, and L-9 (Views 3 and 4) of the CDP/FDP and consistent with the Design Guidelines. Further, an interpretative sign may be added subject to Article 12 of the Ordinance or a CSP. More specific details shall be determined at time of site plan approval for the Metro Station Facilities and construction of the Pocket Park shall occur prior to the issuance of the Non-RUP for the Metro Station Facilities. The Pocket Park shall be privately maintained.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to construction of the improvements shall be paid 50% by Nugget Parcel Owner and 50% by the County Parcel Owner.</i></p> <p><i>Except as otherwise expressly provided to the contrary herein, the costs to maintenance of the improvements shall be paid 100% by Nugget Parcel Owner.</i></p>
<p>75. <u>Plaza Phasing</u>. The Plazas shall be constructed in phases and as generally shown on the CDP/FDP and in conformance with the Design Guidelines attached as Exhibit B to the Proffers. The applicable phased portion shall be substantially completed, i.e., open to the public and available for its intended purpose, prior to the issuance of the Non-RUP for the Metro Station Facilities for the improvements shown to be constructed with the Metro Station Facilities. The general location of the pedestrian connections to each Plaza associated with a particular phase/building is as set forth in the CDP/FDP.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>

PROFFER	ALLOCATION
<p>76. <u>Plaza Access Management Plan.</u> Prior to the issuance of the Non-RUP for the Metro Station Facilities, the Applicant will implement a Plaza Access Management Plan to grant public access and to provide safe access and use of each Plaza to all persons by seeking to minimize the number of vehicles on the Plazas while preserving vehicular access. The plan shall be submitted to FCDOT and the Zoning Administrator for approval consistent with the parameters set forth in this Proffer. The plan will be provided as a supplement to office and retail leases and to residential/rental materials and will be posted on the project's or property manager's website. The Plaza Access Management Plan will be included in the packages of informational materials referenced in the TDM Plan.</p>	<p><i>This Proffer shall be complied with by the County Parcel Owner for the County Parcel.</i></p>
<p>77. <u>Means of Enforcing Restrictions.</u> Restrictions on accessing the Plazas are to be enforced by the deployment of physical barriers and/or on-site personnel.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>A. Physical barriers will consist of any combination of the following (or new technology as it becomes available): removable bollards, retractable bollards, temporary barriers, stanchions and gates, as discussed and illustrated in the Design Guidelines.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>B. On-site personnel will be deployed when access to any Plaza is restricted, except during times when it completely closed through the use of physical barriers (as described above). When deployed, the on-site personnel will be readily visible to those trying to access the particular Plaza. The on-site personnel will be provided heat/shelter, during times of inclement weather, to ensure that they are able to remain in appropriate position to manage traffic accessing the Plaza.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>78. <u>Other Means of Minimizing Vehicular Use of the Plazas.</u> In addition to the foregoing restrictions on access, the Applicant may employ other means to minimize the number of vehicles on each Plaza, but such means shall be consistent with the Design Guidelines.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>79. <u>Signage.</u> Signage will address Plaza access, as appropriate, will be easily seen and informative and will be consistent with the design in any subsequently-approved Comprehensive Sign Plan and the Design Guidelines.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>80. <u>Communications.</u> Regular communications to residents and tenants regarding upcoming events and temporary closures will be provided via temporary signage, fliers, website postings, social media tools and other messaging tools.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel and the County Parcel Owner for the County Parcel, as it relates to their respective parcels.</i></p>
<p>81. <u>Deliveries.</u></p> <p>A. The Applicant shall endeavor to have all regularly scheduled deliveries directed to the designated service loading and receiving locations elsewhere on the project, and not in the Plazas.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<p>B. Notwithstanding the above, the Applicant shall work with tenants, to the maximum extent practicable; to seek to ensure that the number of delivery trucks on any Plaza at any time shall be no more than three (3) and that deliveries shall not occur on the Metro Plaza during peak hour times for the Metrorail.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>C. All office move-ins will be done through the garage loading docks.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>82. <u>Plaza Management Exceptions</u></p> <p>A. This will not preclude the Applicant from operating small service vehicles or passenger jitneys which would be appropriate on a sidewalk or surface other than a travel way in the ordinary course of property management, including without limitation to ferry users around the Plazas.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>B. Subject to the requirements of any public access easement granted pursuant to Proffer 17, nothing in this Proffer, or the Plaza Access Management Plan will prohibit the Applicant from providing greater access restrictions or from closing all or any portion of the Plaza on a temporary or periodic basis, provided that access to the Metro Station and the Metro Station Facilities shall not be closed.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>83. <u>Amenities and Facilities for Residents.</u></p> <p>A. The Applicant shall provide, as part of any residential building, facilities designed to meet the onsite recreational needs of the future residents of such building, including, but not limited to exercise rooms, swimming pools, activity courts, club rooms, meeting rooms, media centers and cyber cafes.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>B. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,700.00 per market-rate residential unit on such recreation facilities. In the event the total cost of the recreational improvements constructed on the Property is demonstrated to be less than \$1,700.00 per unit for a particular residential building, the Applicant shall provide the remainder in a cash contribution to the FCPA for the development of active recreational facilities in the vicinity of the Property prior to the issuance of the final RUP for the particular building.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>84. <u>Parks Contribution.</u> Prior to the issuance of the first RUP or Non-RUP for a building in the development, the Applicant shall contribute \$500,000.00 to the Fairfax County Park Authority for public parks in the vicinity of the Property. The public parks monetary contribution shall escalate from the date of the approval of this Application to the date of payment in accordance with Proffer 94.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<u>SCHOOLS</u>	
<p>85. <u>Public School Contribution.</u> Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and Criterion effective January 7, 2003, as adjusted, the Applicant shall contribute \$10,825.00 per expected new student (assuming a ratio of 0.106 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements 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.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>86. <u>Adjustments to School Contribution.</u> If, prior to site plan approval for the respective residential buildings, the County should modify the accepted ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution shall be modified for that building to reflect the current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the amount of the contribution shall be decreased to reflect the current ratio and/or contribution.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<u>WORKFORCE HOUSING</u>	
<p>87. <u>ADUs.</u> 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.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>88. <u>Workforce Dwelling Units ("WDUs").</u> The number of WDUs to be provided on the Property shall be equal to 15.6% of all dwelling units to be constructed on the Property. The WDUs shall be administered as set forth in the Board of Supervisors Workforce Dwelling Unit Administrative Guidelines adopted October 15, 2007.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<p>89. <u>Non-Residential Contribution for Workforce Housing.</u> For all non-residential development, excluding commercial retail/services and public uses, the Applicant shall select, within its sole discretion, one of the following two options for contributing toward the provision of affordable and/or workforce housing within the greater Herndon and Dulles areas. These contributions shall be made to the Board of Supervisors, be deposited in a specific fund to be used solely for this purpose within the greater Herndon and Dulles areas, and shall be payable at the time of issuance of the initial Non-RUPs for office buildings or the hotel on the Property, excluding any ground floor retail/service uses and public uses; provided that if any ground floor retail/service use utilizes space above the ground floor (e.g., a two-level eating establishment), then such upper floor space shall also be excluded. The options shall consist of either (i) a one-time contribution of \$3.00 for each square foot of GFA of office or hotel use, or (ii) an annual contribution of \$0.25 for each square foot of GFA of new office or hotel use continuing for a total of sixteen (16) years. Should the Board of Supervisors adopt new policies for affordable housing contributions by non-residential developments in the greater Herndon and Dulles areas, the Applicant may, within its discretion, elect to comply with these policies in lieu of the contributions described herein without the necessity of a CDDA, PCA or FDPA.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p><u>NOISE ATTENUATION FOR RESIDENTIAL USES</u></p>	
<p>90. <u>Noise Study.</u> The Applicant commits to meeting the Comprehensive Plan guidance which ensures that no new residential use shall be exposed to transportation generated noise levels in excess of 45 decibels for interior areas and 65 decibels for outdoor recreation areas. The Applicant shall provide an acoustical analysis which evaluates existing and future traffic and transit conditions and noise sources at least twenty-five (25) years into the future. If the noise study concludes that the new residential building will be affected by noise levels that require mitigation, then at the time of site plan submission, the Applicant shall submit a refined acoustical analysis. The refined acoustical analysis will incorporate findings from a building shell analysis based on the building plans to determine the appropriate noise attenuation measures. Such acoustical analysis shall be submitted to EDRB and DPWES for review. Based on the findings of that report, the Applicant shall show any noise impacted units on the site plan and shall provide the following noise attenuation measures, unless otherwise modified by the findings of the analysis.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>A. In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units anticipated by the study to be impacted by traffic noise through windows and walls having levels projected to be greater than 70 dBA Ldn shall employ the following acoustical measures:</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<p>i. Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels above 70 dBA Ldn. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 45 as dictated by the percent of glass.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>ii. 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.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>B. In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units anticipated by the study to be impacted by highway noise having levels projected to be between 65 and 70 dBA Ldn, shall be constructed with the following acoustical measures:</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>i. Exterior walls should have a laboratory STC rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of 65 to 70 dBA Ldn. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 39 as dictated by the percent of glass.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>ii. All surfaces should be sealed and caulked in accordance with methods approved by the ASTM) to minimize sound transmission.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>C. The Applicant shall provide noise attenuation measures as determined necessary from the acoustical analysis to ensure that traffic and transit related noise shall not exceed 65 decibels in the outdoor recreation areas.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>
<p>D. Future residential tenants shall be provided full disclosure of the proximity to Dulles Airport and the potential of hearing airplane flyovers at this site even though the airplane noise levels do not exceed the noise threshold recommended by the FAA and the County.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
COMMUNITY ASSOCIATION	
<p>91. <u>Establishment of COA.</u> Prior to issuance of the first RUP or Non-RUP for a new permanent building (excluding the Metro Station Facilities), the Applicant shall establish a "Community Association" in accordance with Virginia law. Such Community Association may consist of an umbrella owners association for the entire Property, as well as individual sub-associations or condominium owners' associations ("COAs") formed for specific buildings or groups of buildings. At a minimum, each COA, all owners of residential units (unless represented by and included in a COA) and the owners of each multi family, office and/or hotel building shall be members of the Community Association. The Community Association shall be responsible for the obligations specifically identified as its obligations in the Proffers, including, but not limited to, implementation of the TDM program, maintenance of the private streets (including the Private Drive) and pedestrian areas, maintenance of the publicly-accessible park areas, and notification obligations. 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 the County or VDOT.</p>	<p><i>This Proffer shall be complied with by the Nugget Parcel Owner for the Nugget Parcel.</i></p>

PROFFER	ALLOCATION
<p>MISCELLANEOUS</p>	
<p>92. <u>Tax District Buyouts for Certain Residential Uses.</u> Within sixty (60) days after the approval of the Rezoning application, the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration requesting a lump sum payment amount that represents the County's estimate of the present value of the future special improvements taxes that would have been payable to the Route 28 Highway Transportation Improvement Tax District ("Route 28 Tax District") attributable to the portion of the Property under the current PDC zoning classification and hereby rezoned to the PRM district to be developed for residential rental or condominium use. Such amount shall be determined in accordance with the formula and provisions as adopted by the Board of Supervisors for optional residential development within the Route 28 Tax District pursuant to Section 15.2-4608 of the Code of Virginia. After such payment, the portion of the Property used for residential uses shall not be subject to the applicable special improvement taxes for the Route 28 Tax District until and unless such land is thereafter developed with non-residential uses. Any special improvement taxes previously paid in the year the application is approved shall be credited towards the one-time payment on a prorated basis.</p> <p>Further, at least sixty (60) days prior to recording any final residential condominium documents for portions of the Property located within the now existing Phase II Dulles Rail Transportation Improvement District (the "Phase II District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to the County a sum equal to the then-present value of Phase II District taxes based on the use of that portion of the Property subject to the condominium prior to this Rezoning that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.</p>	<p><i>Nugget Parcel Owner shall comply with the requirements for Nugget Parcel as shown on the CDP/FDP.</i></p> <p><i>County Parcel Owner shall comply with the requirements for County Parcel as shown on the CDP/FDP.</i></p> <p><i>Nugget Parcel Owner and County Parcel Owner shall share the costs of the improvements in accordance with the Development Agreement.</i></p>
<p>93. <u>Severability.</u> Pursuant to Section 18-204 of the Ordinance, any portion of the Property may be the subject of a PCA, SE, Special Permit ("SP"), CSP or FDPA without joinder and/or consent of the title owner of the other portions of the Property, provided that such PCA, SE, SP, CSP 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, CSP or FDPA shall otherwise remain in full force and effect.</p>	<p><i>No allocation necessary.</i></p>
<p>94. <u>Adjustment in Contribution Amounts.</u> All proffers specifying monetary contributions 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") in effect in January of each year, as permitted by Section 15.2-2303.3 of the Code of Virginia.</p>	<p><i>No allocation necessary.</i></p>

PROFFER	ALLOCATION
<p>95. <u>Site Excavation and Blasting.</u> If blasting is required on-site, the Applicant shall ensure that blasting is done pursuant to Fairfax County Fire Marshal requirements and all safety recommendations of the same, including without limitation, the use of blasting mats. In addition, the Applicant shall:</p>	<p><i>No allocation necessary.</i></p>
<p>A. Retain a professional consultant to perform a pre-blast survey of each on-site and off-site building, to the extent that any of these buildings are located on the properties within two hundred and fifty (250) feet of blast site;</p>	<p><i>No allocation necessary.</i></p>
<p>B. Prior to any blasting being done, the Applicant shall provide written confirmation to DPWES that the pre-blast survey has been completed and provide a copy of the survey to Fairfax County upon request;</p>	<p><i>No allocation necessary.</i></p>
<p>C. Require the blasting consultant to request access to any houses, wells, buildings, or swimming pools, by notification to the owners within two hundred and fifty (250) feet of the blast site. If permitted by the owner, determine the pre-blast conditions of these structures. The Applicant's consultant will be required to give a minimum of fourteen (14) days' notice of the scheduling of the pre-blast survey. The Applicant shall provide any property owners entitled to pre-blast inspections, the name, address and phone number of the blasting contractor's insurance carrier;</p>	<p><i>No allocation necessary.</i></p>
<p>D. Require its consultant to place seismographic instruments prior to blasting to monitor shock waves. The Applicant shall provide seismographic monitoring records to County agencies upon their request;</p>	<p><i>No allocation necessary.</i></p>
<p>E. Notify property owners within two hundred and fifty (250) feet of the blast site at least ten (10) days prior to blasting; no blasting shall occur until such notice has been given;</p>	<p><i>No allocation necessary.</i></p>
<p>F. Upon receipt of a claim of actual damage resulting from said blasting, the Applicant shall cause its consultant to respond within five (5) days of meeting at the site of the alleged damage to confer with the property owner;</p>	<p><i>No allocation necessary.</i></p>
<p>G. The Applicant will require blasting subcontractors to maintain necessary liability insurance to cover the costs of repairing any damages to structures, which are directly attributable to the blasting activity and shall take necessary action to resolve any valid claims in an expeditious matter; and</p>	<p><i>No allocation necessary.</i></p>

PROFFER	ALLOCATION
<p>H. The consultant shall be required to provide an analysis of the potential for gas migration from the site to the Fire Marshal for review and approval prior to blasting. Appropriate gas migration mitigation and/or notification pursuant to County regulations shall be implemented.</p>	<p><i>No allocation necessary.</i></p>
<p>96. <u>Construction Management</u>. The Applicant shall prepare and implement a construction management plan during construction of each phase, as appropriate, to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways adjoining the Property. The management plan shall identify anticipated construction entrances, construction staging areas (including one for the Metro Station), construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane or street closures, or other construction related activities to minimize disturbance on the surrounding road network. Construction staging areas shall be screened and landscaped as depicted on Sheet L-4A of the CDP/FDP, provided that any interim screening shall not be located within any sight distance triangle. The management plan shall be prepared by a qualified professional and submitted for review and comment to VDOT, FCDOT and DPWES upon submission of the initial site plan for each building.</p>	<p><i>No allocation necessary.</i></p>
<p>97. <u>Universal Design</u>. A minimum of one percent (1%) of the total multifamily dwelling units shall be designed and constructed to include a selection of universal design features and options, as determined by the Applicant, which may include, but shall not be limited to, seat areas in master bath showers, lever type door handles, slip resistant flooring, optional hand held shower heads, and optional front load washers and dryers.</p>	<p><i>No allocation necessary.</i></p>
<p>98. <u>Zoning Administrator Consideration</u>. Notwithstanding the foregoing, upon demonstration that despite diligent efforts or due to factors beyond the Applicant's 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, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these Proffered improvement(s).</p>	<p><i>No allocation necessary.</i></p>
<p>99. <u>Successors and Assigns</u>. The Proffers will bind and inure to the benefit of the Applicant and their successors and assigns. Each reference to "Applicant" in this Proffer statement shall include within its meaning and shall be binding upon Applicant' 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.</p>	<p><i>No allocation necessary.</i></p>

PROFFER	ALLOCATION
100. <u>Counterparts</u> . The Proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original and all of which when taken together shall constitute but one and the same instrument.	<i>No allocation necessary.</i>

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