

WEST*GROUP PROPERTIES LLC

PCA 2002-PR-016

August 2, 2004

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, and subject to the Board of Supervisors' approval of the requested Proffer Condition Amendment ("PCA") and the Planning Commission's approval of the Final Development Plan Amendment ("FDPA") for property identified as Tax Map 29-4 ((7)) A-3 (hereinafter referred to as the "Application Property"), the Applicant and Owner in PCA-2002-PR-016 proffer for themselves, their successors and assigns (the "Applicant") the following conditions. In the event the Board of Supervisors approves PCA 2002-PR-016, these proffers shall supercede all previous proffers for the Application Property and all previous proffers for the Application Property shall be null and void and of no further effect on the Application Property.

1. Development Plan

- A. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan Amendment/Final Development Plan Amendment ("CDPA/FDPA") prepared by VIKA, Incorporated dated March 24, 2004, as revised through July 7, 2004 except as otherwise provided herein. Notwithstanding that the CDPA/FDPA is presented on 17 sheets, it shall be understood that the CDPA shall be only those elements of the plan that depict points of access (except those shown in the Linear Urban Park), the amount and location of open space, peripheral setbacks, limits of clearing and grading, building heights, the total number and general location of buildings (the "CDPA Elements"). The Applicant has the option to request an FDPA for elements other than CDPA Elements from the Planning Commission for all or a portion of the CDPA/FDPA and related development conditions, if any, in accordance

with the provisions set forth in Sect. 16-402 of the ZO if the amendment is in conformance with the approved CDPA and the proffers.

- B. The total site area is 590,033 square feet or 13.5453 acres (“Gross Tract Area”) and the overall maximum density shall not exceed 3.0 floor area ratio (“FAR”) or 1,770,099 square feet of gross floor area (“GFA”).
- C. The development of Buildings 1, 1A, 2, 3, 3A and 4 shall be completed on the common parking structure as depicted on the CDPA/FDPA. The parking structure may be built in a single phase or in multiple phases so long as parking for each phase is provided per the Zoning Ordinance (“ZO”) and is in substantial conformance with the CDPA/FDPA.
- D. The maximum permitted GFA cited above is exclusive of approximately 250,000 square feet of cellar space (as defined by the Zoning Ordinance) to be utilized for multi-family dwelling units or other secondary uses as shown on the CDPA/FDPA. Parking shall be provided for all cellar space in accordance with applicable ZO provisions. No more than 187,500 SF of cellar space shall be used for residential units.
- E. The maximum number of residential units to be developed on the Application Property, whether located within GFA or cellar space (as defined by the Zoning Ordinance), shall be 1354 units.

2. Minor Modifications

Pursuant to Paragraph 4 of Section 16-403 of the ZO, minor modifications from the Final Development Plan Amendment (“FDPA”) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDPA provided such changes are in substantial conformance with the FDPA as determined by the Department of Planning and Zoning (“DPZ”) and do not increase the total amount of square footage, decrease the overall square feet or percentage of open space, decrease the

setback from the peripheries, or substantially change the location of natural open space areas or the streetscaped elements as depicted on Sheet 12 of the CDPA/FDPA. Landscaped open space created with site plan and building design may be re-arranged, relocated or re-shaped as long as the number of trees and foundation plantings do not decrease and it is in substantial conformance with the CDPA/FDPA. Streetscapes shall be designed and constructed in substantial conformance with the Details A-E shown on Sheet 12.

3. Uses

A. Principal Use

The principal use shall be multi-family residential.

B. Secondary Uses

i. Affordable Dwelling Units

ii. Retail/Secondary Uses:

Secondary uses shall include 30,000 - 55,000 square feet of GFA and up to 52,000 square feet of non GFA cellar space in retail sales establishments, eating establishments, and/or other secondary uses as listed in below, up to 40,000 square feet of which are contained in the Health Center and a total of up to 12,000 square feet of which are distributed within the cellars of Buildings 2, 3, 3A and/or 4. The 12,000 square feet of cellar space may be used for retail and secondary support uses within Buildings 2, 3, 3A and 4 and shall primarily serve homeowners, tenants and guests. No one high-rise building shall exceed 6,000 square feet of the 12,000 square feet total of cellar space.

iii. Secondary uses as permitted in PRM 6-403 may include the following:

1. Accessory uses and home occupations as permitted by Article 10.
2. Bank Teller machines, unmanned
3. Business service and supply service establishments

4. Commercial and industrial uses of special impact (Category 5), limited to:
 - A. Fast food restaurants
 - B. Quick-service food stores
5. Commercial recreation uses (Group 5), limited to:
 - A. Billiard and pool halls
 - (a) Health clubs
 - B. Any other similar commercial recreation use
6. Eating establishments
7. Financial institutions
8. Hotels, motels.
9. Institutional uses (Group 3), limited to:
 - A. Home child care facilities
10. Offices
11. Medical Care Facility
12. Personal service establishments
13. Quasi-public uses (Category 3), limited to:
 - A. Child care centers and nursery schools
 - B. Colleges, universities
 - C. Private clubs and public benefit associations
 - D. Private schools of general education
 - E. Private schools of special education
14. Repair service establishments
15. Retail sales establishments

- iv. The project shall be designed to accommodate a 30,000 – 55,000 GFA grocery store within Building 5 on the CDPA/FDPA. The Applicant agrees to negotiate in good faith for at least 12 months, or other such time as may be mutually agreed to by the Director, Zoning Evaluation Division and the Applicant, to lease such space for such use in accordance with commercially viable economic parameters. If a commercially viable lease for a grocery store cannot be negotiated, the Applicant shall demonstrate such failed attempts to the Director. Department of Planning and Zoning and the Applicant may develop alternative secondary uses within those areas designated for “retail” use on the CDPA/FDPA. In the event that the total secondary uses within the Application Property is less than 30,000 square feet, as calculated at the time of issuance of the first Residential Use Permit for the last multifamily building, then the Applicant shall be obligated to pay to Fairfax County Board of Supervisors as a prerequisite to the issuance of the first Residential Use Permit for the last multifamily building an amount equal to \$84 per square foot for any of the thirty thousand (30,000) square feet not developed in such secondary uses. As an example, if the total secondary uses developed was 20,000 square feet, then the payment amount would be equal to $(30,000 - 20,000) \times \84 , or $10,000 \times \$84 = \$840,000$. Any amount paid by the Applicant pursuant to this Proffer shall be used for acquisition, resurfacing or capital maintenance or repair of playing fields within the Tysons Corner area or other areas within the Providence District.
- v. Applicant shall limit retail uses as follows:
1. A 30,000-55,000 square foot grocery store and attached shops in Building 5.
 2. The building labeled “Health Center” may be up to a 27,000 square foot spa, fitness center, wellness center or similar type facility and the balance of the

40,000 square feet may be used for support retail and service uses and medical care facility/medical office. In the event that a public or private health club facility proves uneconomical, the 27,000 square feet may be used for other retail, entertainment, amenity or service uses. As a prerequisite to a change in use, the Applicant shall provide the Director of the Department of Transportation a traffic study analyzing the proposed uses. If the change in use results in any quantifiable or measurable negative impacts to traffic, DOT in association with the Applicant's traffic engineer shall determine appropriate mitigation measures. The improvements shall be bonded or future construction escrow posted with Fairfax County prior to issuance of non-RUP for change in use for the 27,000 square feet from Health Center to other uses.

- vi. Signage for the 12,000 SF of retail primarily for residents, tenants and guests shall be limited to 8 SF per building on a single monument sign not to exceed 4 feet in height, placed in the vicinity of the front entrance to Buildings 2, 3, 3A and 4, identifying the retail use within each building. All reasonable attempts shall be made to make signs obscure from Park Run Drive and entry plaza outside the gate. No signage identifying or inviting the general public shall occur on Park Run Drive or within the plaza area outside the gate as it relates to the 12,000 SF of interior retail within the buildings. One non-residential secondary use in each of Buildings 2, 3, 3A and 4 may have a sign letter up to 4" high with 8" logo not more than 6 feet above grade identifying the name of the establishment. This signage is to serve as directional and identifiable signage for the owners, tenants and guests within the gated area. Otherwise, no signage for non-residential uses shall be placed on the exterior storefront of the

residential Buildings 2, 3, 3A and 4. All of these signage restrictions may be modified by the approval of a Comprehensive Sign Program for the entire project pursuant to the requirements of the ZO.

C. Temporary Signs.

i. No temporary signs (including "popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the advertising, marketing, sale, rental or leasing of residential dwelling units and any commercial, retail, office, or any other secondary use space, on the Property. Furthermore, the Applicant shall direct its agents and employees involved in the advertising, marketing, sale, rental or leasing of residential dwelling units, and any commercial, retail, office, or any other secondary use space, on the property to adhere to this proffer.

ii. For purposes of this proffer, the Applicant shall be considered to include, but not be limited to, any person, company, or other entity involved in the design, building, site planning, site work, and any other development of the Property, and any person, company, or other entity involved in the advertising, marketing, sale, rental or leasing of residential dwelling units and any commercial, retail, office, or any other secondary use space, on the Property, any tenant, lessee, or licensee of such space, whether or not the person or company is related to, affiliated with, or has a contractual relationship with the Applicant.

D. Any Additional Principal and Secondary uses specified in the PRM zone and not specifically listed in Proffer 3B above may be permitted within the buildings with the approval of a Final Development Plan Amendment ("FDPA") and or Special

Exception or Special Permit, as applicable. A Proffered Condition Amendment (“PCA”) application shall not be required so long as the layout is in substantial conformance with the CDPA.

4. Subdivision of the Application Property

A. Building 5 and the Corner Park.

As a prerequisite to the approval of the first site plan for the Application Property, the Applicant shall subdivide the Application Property as schematically depicted on the CDPA/FDPA to create a separate lot for Building 5 and to create the area of the remaining land as the basis for determining average grade, cellar and other elements of the plan. Nothing contained herein shall preclude further subdivision of the Corner Park from Building 5 if so elected by the Applicant, successors or assigns.

B. Buildings 1, 1A, 2, 3, 3A and 4.

- i. The anticipated subdivision lines shown on the CDPA/FDPA for Buildings 1, 1A, 2, 3, 3A and 4 are for illustrative purposes only, and that portion of the Application Property may be subdivided along alternative subdivision lines as determined by the Applicant without requiring a PCA or FDPA.
- ii. The calculation of height for Buildings 1, 1A, 2, 3, 3A and 4 shall be determined on average grade pursuant to “Grade Demonstration for Height” detail on Sheet 16 of the CDPA/FDPA and is contingent upon Proffer 4A being completed and upon Buildings 1, 1A, 2, 3, 3A and 4 being constructed vertically from a single parking structure platform pursuant to Proffer 1C subject to timely approval of the calculations by the Zoning Administrator.

5. Home Owners Association

A. Formation of Umbrella Owners Association and Individual COAs

i. Umbrella Owners Association

Prior to the issuance of the first RUP for any phase of the development of the Application Property, the Applicant shall establish an Umbrella Owners Association (referred to herein as the "UOA") in accordance with Virginia law.

ii. Condominium Owner Association

a) In addition, prior to the issuance of the first RUP for any phase of the development of the Application Property, the Applicant shall cause a Condo Owners Association ("COA") to be formed for that phase in accordance with Virginia law.

b) Each COA for the separate phases of the development of the Application Property shall be a member of the UOA with weighted voting rights based on either the number of dwelling units or the proportion of square footage of residential units within the COA.

B. COA Maintenance Obligations

i. Each COA shall have specific land areas of the Application Property within its boundaries, and shall assume all maintenance obligations required by these Proffers for infrastructure within those boundaries except for those maintenance obligations to be performed by the UOA pursuant to Proffer 5C.

ii. Maintenance obligations may be shared by COAs for various phases of the Application Property pursuant to shared maintenance agreements.

iii. Purchasers shall be advised prior to entering into a contract of sale and in the COA documents that the COA shall be responsible for those obligations listed in these Proffers.

C. UOA Maintenance Obligations

- i. The Applicant and subsequent UOA shall have specific maintenance responsibilities which shall include but not be limited to the following:
 - a) Maintenance of private streets, sidewalks, plazas, open space, stormwater management facilities, recreational facilities, and other common areas within the Application Property, including standard cleaning and lawn/landscaping maintenance,
 - b) Maintenance of the Linear Urban Park in the event that the Board of Supervisors (BOS) does not accept the Linear Urban Park dedication for a public park pursuant to details outlined in Proffer 10C,
 - c) Repair of surfaces and site furnishings, and
 - d) Replacement of dead, dying or diseased trees and landscaping within the Application Property with the same size or larger and similar species as originally approved on the landscape plan.
 - e) Maintenance of trash receptacles in bus shelters as provided in Proffer 6.
- ii. The UOA documents shall specify that the UOA is responsible for the maintenance of the private streets and sidewalks.
- iii. Private Street Reserve Fund
 - a) Subject to review and approval by the County Attorney, the UOA documents shall provide for establishment of a Reserve Fund to be used as funding for maintenance of these private streets.
 - b) At the time of the first Residential Use Permit in the first multifamily building, the Applicant shall deposit Seventy-five Thousand Dollars (\$75,000) into this Reserve Fund.

iv. Shuttle Bus Operation

The UOA shall have the obligation to provide the Shuttle Bus System pursuant to Proffer 21 below.

- v. Purchasers shall be advised prior to entering into a contract of sale and in the UOA documents that the UOA shall be responsible for those obligations listed in these Proffers.

D. UOA and COA Disclosure

Purchasers shall be advised prior to entering into a contract of sale and in the UOA documents and in the COA documents that the UOA and the COA shall be responsible for those obligations listed in these Proffers.

6. Transportation

A. Intersection/Access Improvements

- i. Subject to approval of the applicable permitting authorities, the Applicant shall provide all intersection and access improvements shown on the CDPA/FDPA consistent with each phase of development as indicated on the Phasing Plan as shown on Sheet 17 as approved by DPWES for the applicable site plan for applicable phase.

B. Private Streets

- i. The on-site private streets shall be constructed in conformance with the Public Facilities Manual ("PFM"). Said streets shall be constructed of materials and depth of pavement consistent with Section 7-0502 of the PFM.
- ii. Portions of the project may be a gated community generally closed to the public as shown on the CDPA/FDPA. However, a public ingress-egress easement only for emergency, fire, rescue and public safety shall be granted over the private

streets and sidewalks. Said easements may be provided on a phased basis and shall be recorded as a prerequisite to any site plan approval.

- C. Entrances. All entrances to the site shall be designed and constructed to the satisfaction of the Virginia Department of Transportation ("VDOT").
- D. Bus Shelters.
- i. As a condition to approval of the first multi-family high rise site plan, the Applicant shall provide a payment of Forty Thousand Dollars (\$40,000) to Fairfax County to be applied to the cost of two (2) Metro-quality bus shelters in locations within WEST*PARK and within VDOT right-of-way in a locations mutually acceptable to the Applicant and the Fairfax County Department of Transportation
 - ii. The Applicant shall coordinate with Fairfax County Department of Transportation to designate these locations.
 - iii. The Applicant agrees that the UOA and HOA/COA documents shall require the UOA to provide and maintain trash receptacles at these bus shelters if the shelters are contiguous to the Application Property.
- E. Utility Relocations. The Applicant may request an administrative approval of minor revisions to any Public Street Improvement as shown on Sheets 15 and 17 of the CDPA/FDPA in order to accommodate any existing utility (including telecommunications or fiber optics as shown on Sheets 4 and 15 of the CDPA/FDPA) within current or future VDOT right-of-way.
- F. Traffic Mitigation. Applicant shall contribute a lump sum of (One Hundred Thousand Dollars (\$100,000) to the Tysons Transportation Fund for nonspecific mitigation of traffic generated by this project. The funds may be used for a Tysons Corner traffic study or any other transportation improvements within the Tysons Corner area as deemed appropriate by the Board of Supervisors. Payment shall be

made as a prerequisite to approval of the currently filed site plan, 5166-SP-01-3 (as may be revised), but no later than December 31, 2004.

G. Traffic Signal Warrants Study.

- i. Prior to the first RUP/non-RUP for the last of Buildings 2, 3, 3A, or 4 constructed, the Applicant shall submit a traffic signal warrant study to VDOT for review and approval of the intersection of Park Run Drive and the southern entrance to the project on Park Run Drive. If VDOT determines that the signal is warranted, the Applicant shall design, permit, provide equipment, and construct said traffic signal to a standard as required by VDOT. In the event VDOT does not approve the installation of a signal at this location, no signal shall be required.
 - ii. Any modifications to the signal heads, poles, controllers and/or sensors required to implement the lane configuration and split phase southbound Park Run Drive onto eastbound Westpark Drive as shown on Sheet 15 shall be at the sole expense of the Applicant subject to VDOT approval.
- II. In addition to the funds proffered pursuant to Proffer 6.F, the Applicant shall contribute One Hundred Fifty Thousand Dollars (\$150,000) to the Board of Supervisors to fund a major Tysons Corner traffic study, the scope to be determined by the Board of Supervisors, or any other transportation improvement within the Tysons Corner area as deemed appropriate by the Board. The One Hundred Fifty Thousand Dollars (\$150,000) shall be payable within 30 days of the final, non-appealable approval of this application.
- I. Despite that which is shown on the CDPA/FDPA, the security gate proposed along the southernmost site entrance from Park Run Drive (the main entrance) shall be

relocated or removed so that vehicles can circulate around Building 5 unimpeded in order to access the parking underneath Building 5.

7. Parking

- A. Parking shall be provided at a minimum in accordance with Article 11 of the ZO as determined by DPWES.

However, the Applicant reserves the right to request a parking reduction or shared parking agreement pursuant to Article 11 of the ZO. Any modification to the required parking as approved by such parking reduction or shared parking agreement may be accommodated without requiring a PCA or FDPA provided the layout is in substantial conformance with the CDPA/FDPA. The number of parking spaces represented on the CDPA/FDPA is based on preliminary estimates; the final number of parking spaces provided at the time of site plan submission shall be consistent with any approved parking reduction and number of units developed. The Applicant reserves the right to provide parking in excess of the minimum required per code or approved parking reduction so long as it does not decrease open space and is in substantial conformance with the CDPA/FDPA.

- B. Notwithstanding the eleven (11) parking spaces shown on Sheet 4 of the CDPA/FDPA perpendicular to Westpark Drive and in front of the Retail/Health Center, one of the 11 spaces shall be designed and installed as a handicap space. The additional width of the Handicap space may be accomplished by reducing the width of one of the three landscaped islands, provided there is no reduction in the overall landscaped open space for the project.

8. Landscape Plan

- A. A landscape plan(s) corresponding to each phase of the Application Property shall be submitted as part of each site plan(s) in substantial conformance with the landscape design shown on Sheet 11 of the CDPA/FDPA.
- B. The landscaped plan(s) shall include detailed streetscape, courtyard and open space landscaping, and provide details for landscaping, paving and amenities in the Linear Urban Park located along the west property line as depicted on the CDPA/FDPA. Said plan(s) shall be coordinated with and approved by Urban Forestry Division (UFD), DPWES.
- C. Existing street trees along Park Run Drive, Westpark Drive and in the Linear Urban Park shall be preserved to the extent possible, as determined by UFD, DPWES. Replacement street trees shall be a minimum of three-inch (3") caliper at the time of planting.
- D. Tree Preservation Plan. The Applicant shall submit a tree preservation plan as part of the second and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 12 inches in diameter and greater located 10 feet to either side of the limits of clearing and grading as shown on the CDPA/FDPA for the entire site. The tree survey shall also include areas of clearing and grading not shown on the CDPA/FDPA resulting from engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will

maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

- E. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart, shall be erected at the limits of clearing and grading as shown on the demolition and phase I and II erosion and sediment control sheets for the entire site. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fences, except super silt fence, shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading, or demolition activities, DPWES shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.
- F. Site Monitoring. The developer shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by DPWES.
- G. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading as shown on the CDPA/FDPA subject to necessary encroachment for the installation of utilities, public and private, and or trails as determined necessary by the Director of DPWES. If it is determined necessary encroachments to install utilities, public and private, and/or trails outside the limits of clearing and grading as shown on

the CDPA/FDPA, they shall be located in the least disruptive manner necessary as determined by the Urban Forester, DPWES. A replanting plan shall be developed and implemented, subject to approval by the Urban Forester, for any area outside the limits of clearing and grading that must be disturbed.

- H. Reforestation. A reforestation plan for the Urban Linear Park shall be submitted concurrently with the first and all subsequent site plan submissions associated with this CDPA/FDPA for review and approval by the Urban Forestry Division. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation plan shall include, but not be limited to the following:
- i. plant list detailing species, sizes and stock type of trees and other vegetation to be planted
 - ii. soil treatments and amendments if necessary
 - iii. mulching specifications
 - iv. methods of installation
 - v. maintenance
 - vi. mortality threshold
 - vii. monitoring
 - viii. replacement schedule

The reforestation shall occur prior to the issuance of the first RUP of the last multifamily building and its completion shall be prerequisite to final bond release.

9. Pedestrian Facilities

- A. On-site
- i. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Application Property as generally shown on Sheet 14

of the CDPA/FDPA, including sidewalks along the Application Property frontages with Westpark Drive and Park Run Drive, and a cross walk connection between all retail and residential components constructed on the Application Property.

- ii. The comprehensive pedestrian system shall provide an ADA compliant route between all retail and residential components of the development.
- iii. Construction of sidewalks shall be concurrent with the corresponding phase of a site plan development activity on the Application Property.
- iv. Sidewalks within or contiguous to VDOT right-of-way shall conform to VDOT standards to the satisfaction of the Department of Public Works and Environmental Services (DPWES). Any sidewalk within VDOT right-of-way shall be VDOT's responsibility for purposes of liability, maintenance and repair.
- v. The Applicant shall reserve a public access easement along the entire length of the Linear Urban Park that may be dedicated pursuant to provisions of Proffer 10C.
- vi. Access to Westpark Drive for the residents and guests of Buildings 2, 3, 3A and 4 shall be provided through the freestanding retail Health Center, an exterior stair within the vicinity of the Health Center plaza to the entrance of the retail/health plaza or any other location acceptable to the Director, DPWES at the time of final site plan approval.

B. Off-site

- i. The Applicant shall contribute Fifty Thousand Dollars (\$50,000) designated for the benefit of "Providence Trail Fund."
- ii. The contribution to the Providence Trail Fund shall be made in two (2) equal installments of Twenty-Five Thousand Dollars (\$25,000) payable

- a) As a prerequisite to the issuance of the Building Permit for the first multi-family high rise building on the Application Property, and
- b) as a prerequisite to the issuance of the Building Permit for the second multi-family high rise building on the Application Property.

10. Recreational Facilities.

A. Bicycle Racks. Bicycle racks in secured and covered areas shall be provided in both the residential and retail areas.

B. Recreational Facilities

- i. The Applicant shall comply with Paragraph 2 of Section 6-110 of the ZO regarding developed recreational facilities for the residential uses.
- ii. The Applicant proffers that the minimum expenditure for the recreational facilities shall be \$955 per residential unit per the ZO.
- iii. The Applicant shall receive credit against that ZO minimum expenditure for the cost of recreational facilities (currently \$955 per unit) which credit shall include, but not be limited to, the cost of improvements for swimming pools, sun deck(s), outdoor seating areas, pedestrian trails (except for those trails required by the Comprehensive Plan), plazas, furnishings for the Corner Park, indoor recreational facilities [such as weight training equipment, fitness equipment, billiards room(s), card and game room(s) and indoor multi-purpose court(s)].
- iv. Shared Recreational Facilities
 - a) Recreational facilities developed on the lots for any Building may be for the sole use of that Building.
 - b) Nothing herein shall preclude each building from having a separate HOA/COA in which case those HOA/COAs may share the use and costs of recreational facilities based on a mutually agreed pro-rata share.

- v. The Applicant shall receive credit for ZO minimum expenditure for recreation for all improvements within the Linear Urban Park or the Corner Park as shown on the CDPA/FDPA whether or not the Linear Urban Park and improvements are accepted for dedication by Fairfax County or retained by the Applicant or UOA as private recreation open space pursuant to Proffer 10.C.

C. Linear Urban Park Dedication

- i. As a prerequisite to the approval of the building permit for second multi-family Building, the Applicant shall make a written offer to the Fairfax County Board of Supervisors to dedicate to the Fairfax County Park Authority for park purposes, in fee simple and at no cost, not less than 1.0 acre or more than 1.29 acres of Linear Urban Park along the western most property line of the Application Property and associated improvements therein to be constructed by the Applicant and as generally shown on the CDPA/FDPA.
- ii. Any such dedication shall be subject to density credits pursuant to Article 2-308 of the ZO.
- iii. The proposed dedication of the Linear Urban Park, if accepted by Fairfax County, shall be a prerequisite to approval of bond release for the second multi-family building. If one year passes from the date of the written offer by the Applicant and if the County does not accept dedication of the Linear Urban Park for maintenance and public use, then the proffer to dedicate said park shall be deemed complete. The Applicant reserves the right to use portions of the proposed Linear Urban Park for construction staging prior to such Linear Urban Park dedication and construction of improvements as shown on the CDPA/FDPA. Prior to dedication, the Applicant will stabilize, restore and landscape any area used for construction staging.

- iv. The Applicant reserves the right to establish and record any public or private easements necessary to accomplish the proposed development so long as it does not preclude development/landscaping for the Urban Linear Park as shown on the CDPA/FDPA and the form of easement documents is acceptable to the Office of the County Attorney.
- v. After dedication of the Linear Urban Park in conjunction with the construction of park improvements, the Applicant shall develop and construct a 5 - 6 foot-wide trail within the Linear Urban Park commencing at a point on Westpark Drive and terminating at a point on Park Run Drive as generally shown on the CDPA/FDPA. If the Linear Urban Park is to be dedicated to the County, then the Applicant will coordinate the design of the two plazas within the Linear Urban Park with the FCPA. The trail shall be constructed with a combination of concrete sidewalk, concrete stairs, asphalt or other materials designated by the FCPA. The trail shall be lighted at an illumination level on tread runs of one-foot candle. If trail is public and maintained by Fairfax County and its assigns, any trail lighting shall be determined by the County and/or its assigns, but the degree of lighting shall not be in excess of tread lighting determined by the applicable VUSBC standards. All park amenities shown on the CDPA/FDPA shall be constructed at the cost of the Applicant.
- vi. The potential for the proposed park and trail dedication, or the alternative use by UOA as a private recreation space to be maintained by UOA, shall be disclosed in the UOA and HOA/COA documents.
- vii. Should the Linear Urban Park not be dedicated to the County, then the Park, Trail and other amenities within the Park shall be constructed as a prerequisite to

bond release of the last multi-family building constructed and maintained as a private, active and passive recreation facility generally as shown on the CDPA/FDPA except as set forth in (x) below. The exact type and location of facilities shown on the CDPA/FDPA may be changed subject to compliance with the requirements of these proffered conditions. Except as qualified below, the UOA may fence and gate the Park and Trail to deny access to the public and avoid any associated liability or creation of unintended property interest. The Applicant shall grant an access easement for the purposes of active and passive recreational purposes to the Linear Urban Park to the properties shown as 29-2((18)), 29-1((23)) and 29-3((22))1 (known as the Lincoln and the Fountains of McLean) in a location along the common boundary of those parcels and the Application Property, provided that a reciprocal access easement for the purposes of active and passive recreational purposes is granted to the Applicant or subsequent UOA by the owner(s) of the Properties shown as 29-2((18)), 29-1((23)) and 29-3((22))1 to the Natural Corridor and Storm Drain Easement recorded at Decd Book 6927 Page 1185 in the Fairfax County Clerk's Office and as generally shown on Sheet 4 of the CDPA/FDPA. The Applicant shall also construct a trail connection from the agreed access point with the adjacent property to the trail system within the Linear Urban Park. In the event an agreement for reciprocal easements cannot be reached prior to submission of the site plan for the fourth multi-family building, the Applicant shall demonstrate such failure to the Providence District Supervisor and ZED, and the reciprocal access easement shall not be required.

viii. The number, location and configuration of access points to the Linear Urban Park shall be field located at site plan review for the fourth multi-family high rise Building Permit and depicted on all subsequent site plans for the site.

D. Corner Park.

- i. The Corner Park, developed generally as shown on the CDPA/FDPA, shall be deemed a private park, owned and maintained by initially the Applicant and ultimately the HOA(s) with unrestricted daylight access available to the public. The Applicant or HOA may fence the park in accordance with Sheet 5A of CDPA/FDPA. Fencing for the Corner Park shall be metal, iron or aluminum, in combination of brick or stone pilasters or columns and in concert with the architecture of building architecture as described in Proffer 13.A below. The fence height shall be no greater than six (6) feet height subject to the Board of Supervisors' approval of a waiver of the maximum fence height per Section 16-404, paragraph 8 of the ZO. The exact points of access shall be determined by the Applicant. In the event the Corner Park is secured by fencing, the HOA(s) shall open the Corner Park to the public during the day light hours and may secure the gate(s) during periods of darkness. At least once annually, but for no more than seven (7) consecutive days, access may be denied to the Corner Park to prevent the creation of unintended property interest and for the sole use of the HOA for private HOA events.
- ii. Three-inch caliper shade trees shall be planted with a spacing of 40 to 50 feet on center between the sidewalk and corner park located on Westpark and Park Run Drives, as shown on Streetscape Section A, Sheet 12 of the CDPA/FDPA and as recommended by the Comprehensive Plan's Non-Core Areas Streetscape Design Concept for the Tysons Corner Urban Center.

E. Dedication of Additional Parkland

As a prerequisite to the issuance of building permit for the third multifamily building, the Applicant shall file plats and deeds to DPWES to dedicate in fee simple to the Fairfax County Board of Supervisors the approximately 0.76 acre site on Old Meadow Road, Tax Map 29-4-((6))-107 (the "Dedication Lot"), subject to

- i. the Generalized Development Plan associated with PCA 92-P-001-4 as most recently approved by the Board of Supervisors on December 3, 2001 and as may be amended in the future, is stamped, scaled and signed by Charles J. Huntley, Land Surveyor, and serving as the Preliminary Plan pursuant to 101-2-1 Paragraph 2 of the Subdivision Ordinance, and
- ii. approval of a plat of subdivision and deed, prepared by the Applicant and approved by DPWES and County Attorney and
- iii. the granting of density credit to the Applicant pursuant to Article 2-308 of the Z.O.

Upon approval of (i) and (ii) above, the Applicant shall record the approved dedication plat and deed within 30 days, which shall render this proffer satisfied.

F. Parkland Acquisitions and/or Improvements.

- i. Applicant shall contribute One Hundred-Fifty Thousand Dollars (\$150,000) to the Fairfax County Board of Supervisors to be allocated for Park acquisitions and/or improvements in the Providence District, to be determined in consultation with the Providence District Supervisor.
- ii. The contribution to the Board shall be made within 30 days of written notice by the Board of Supervisors, but no earlier than approval of the first site plan for the Application Property.

11. Stormwater Management.

A. Stormwater and Best Management Practices

Stormwater and Best Management Practices (BMPs) shall be provided for the Application Property as determined by DPWES, which may not preclude one of the following systems, or a combination thereof:

- i. An underground concrete vault system (as currently shown on the CDPA/FDPA) with an innovative storm cartridge filter system, subject to the waiver of underground detention granted by the Board of Supervisors with this application.
- ii. Same underground system as i. above using standard sand filters in lieu of storm cartridges, subject to a waiver of underground detention granted by the Board of Supervisors with this application.
- iii. Use of the existing off-site SWM/BMP wet pond facility north of the subject property at the corner of Jones Branch Drive and Park Run Drive. An off-site easement and letter of permission from the underlying landowner will be required. If used to provide detention for the Application Property, the Applicant agrees to upgrade or reconstruct the existing pond to the current PFM standards subject to the off-site easement and letter of permission mentioned above.
- iv. Design, construction and use of the systems outlined in i, ii and iii above (or combination thereof) may be approved by DPWES without requirement of CDPA/FDPA/PCA as long as the system is in substantial conformance with the CDPA/FDPA.

B. Design and Construction Standards

As approved by DPWES, the design of the facilities outlined in 11.A.i and ii above shall incorporate the following:

- i. The storage vaults, which shall provide BMP/stormwater management, shall be constructed of materials in accordance with requirements of the Public Facilities Manual and as approved by DPWES.
- ii. Safety measures shall be provided for those facilities as may be reasonably requested by DPWES, at time of site plan approval. Safety measures may include, but not limited to, Bilco doors or equivalent, to cover the facility entrance with a double locked keyed entry and/or bolted manhole lids.

C. Maintenance

- i. The proposed facilities outlined in 11.A.i and ii above shall be maintained by the Applicant, its successors and assigns, in accordance with the regulations of DPWES.
- ii. The maintenance responsibility shall be incorporated in an agreement to be reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County land records. The maintenance responsibility shall be included in the UOA and HOA/COA documents provided to each purchaser and disclosed to potential purchasers before entering into a contract of sale.
- iii. The Applicant shall establish reserve funds in amounts to be determined by DPWES for maintenance of the facility and for replacement cost based on the life expectancy of the system.

12. Energy Conservation

All dwelling units constructed on the Application Property shall meet the thermal standards

of the Cabo Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES for either electric or gas energy homes, as applicable.

13. Architectural Design

- A. The architectural design of the buildings shall be in general character with the elevations shown on Sheets 9, 9A, 10, 10A, B, C, and D of the CDPA/FDPA. Modifications may be made with the final architectural designs if such modifications are generally consistent with that shown on the CDPA/FDPA.
- B. Exterior building materials will consist of brick, glass, precast concrete, stucco (but not EIFS) or combinations thereof.
- C. Each building shall utilize similar materials and colors and design features on all of its sides.
- D. Architectural surface treatments which are generally consistent with the associated building architecture shall be used on all parking structures and garage walls. There shall be no increase in height of the exposed garage walls from that shown on the CDPA/FDPA. The height of the exposed garage walls shall vary between 2' and 45' as shown on the CDPA/FDPA.
- E. Retaining Walls. Retaining wall heights shall be in general conformance with top of wall/bottom of wall (TW/BW) elevations as shown on Sheet 4 of the CDPA/FDPA. The exposed surface treatment shall be primarily natural or synthetic stone, brick, rubble, cobble stone, field stone or flag stone form liners. Elevations showing surface treatment options of retaining walls shall be shown on the first and subsequent site plans for this CDPA/FDPA and any revisions thereto that affect retaining walls.
- F. Open Greenscreen. In the event the garage walls cited above are not solid and are open parking structures as defined by the VUSBC and are internally lighted pursuant to Proffer 15.B.ii below, openings shall receive architectural grill work, grates, or other

architectural enhancements to visually occlude the impacts of the garage openings without jeopardizing the ventilation intended by the VUSBC.

- G. The Applicant agrees to maintain a minimum 26 foot set back from the western most property line for Building 4 and that portion of the related parking structure immediately below Building 4 to allow additional landscaping between that portion of the Building 4 parking structure and the existing residential building to the west of Building 4.
- H. No changes shall be permitted to the building elevations as depicted on the CDPA/FDPA which will increase the height of the building or create a larger shadow impact on the abutting properties to the northwest (the Lincoln and Fountains of McLean.)

14. Geotechnical Report

If required by DPWES, geotechnical studies shall be submitted at the time of site plan submissions and the recommendations of said studies shall be implemented, as required.

15. Lighting

- A. Outdoor Lighting.
 - i. All lighting shall meet the requirements of Article 14 of the Zoning Ordinance. Any illuminated signage shall be internally illuminated, unless such signage is located on the sides of a canopy in which case it may be internally illuminated or backlit. The background of any internally illuminated signs shall be opaque with translucent text, or shall be of non-white colors.
 - ii. Notwithstanding the "Typical Light Fixture" shown on page 16 of the CDPA/FDPA, all outdoor lighting fixtures shall be full cut-off, and fully shielded.

B. Neighborhood Lighting Mitigation.

- i. During construction, the Applicant will comply with Article 14-902(2)(G) of the Zoning Ordinance. In addition, the Applicant will attempt to reduce glare from OSHA, VOSHIA, VUSBA and local ordinance required superstructure lighting to the maximum extent possible without violating aforementioned OSHA, VOSHA, and VUSBA laws or regulations, or local ordinances. Such measures as additional cut off shields, lower intensity or reduced number of light bulbs, or dimming or extinguishing lights after 10 PM will be presented to appropriate inspectors for their approval. The Applicant's inability to obtain approvals for diminished lighting beyond the measures required by Article 14-902(2)(G) of the Zoning Ordinance shall not be grounds for a zoning violation, stop work order(s) or cessation of existing or future site plans or building permits. Moreover, the Applicant will not use any high intensity floodlights on the Property during after-construction hours unless mandated by OSHA, VOSHA, or VUSBA laws or regulations
- ii. Any lighting within parking structure(s) that are not constructed of solid walls and along the perimeter of the parking structure(s) shall be full cut-off, of low intensity and recessed design, and shall be directionally shielded, to mitigate the impact on the adjacent residences and shall meet the requirements of Article 14 of the Zoning Ordinance.

16. Telecommunication Equipment.

- A. Telecommunications equipment serving the Application Property associated with the retail and residential uses, may be placed on the proposed residential building(s) rooftop(s); however, any such facilities must (a) comply with the ZO; and (b) be screened and/or setback sufficiently from the perimeter of the roof and penthouse such

that they shall not be visible from the surrounding streets at street level. Other screening measures may be used, such as including the facilities as part of the architecture of the building(s), utilizing compatible colors, or employing telecommunication screening material, and flush-mounted antennas.

- B. License for Public Use Antennas. The Applicant shall provide a no cost, ten-year license agreement to the County for the County's installation, maintenance and operation of a maximum of four (4) whip antennae and a maximum of 200 square feet of roof surface for an equipment cabinet to be located on one of the buildings shown on the CDPA/FDPA. The Applicant shall approve the specific building and rooftop location. The license agreement shall require compliance with all the performance standards set forth in 16A above and stipulate the antennae are for public use purposes only (police, fire, rescue, homeland security). The license agreement shall be renewable for five (5) five-year periods at the specific request of the County at no cost to the County.

17. Affordable Dwelling Units

A. On-Site Affordable Dwelling Units.

- i. While not required to provide any ADU units, the Applicant shall voluntarily provide a total of eight (8) ADU units, which the Applicant may locate in any building(s) shown on the CDPA.

B. Contribution to Fairfax County Affordable Dwelling Unit Project

- i. In addition to providing the on-site ADUs referenced above, the Applicant shall provide One Million Dollars (\$1,000,000) to be paid in two (2) equal payments of Five Hundred Thousand Dollars (\$500,000) to Fairfax County (the "ADU Contribution"). This ADU Contribution shall as a first priority be used toward funding of a homeless shelter as may be approved by the Board of Supervisors.

The monies may also be allocated to other affordable or special housing project(s) approved by the Board of Supervisors.

- ii. The first payment of Five Hundred Thousand Dollars (\$500,000) was paid on January 6, 2004.
- iii. The second payment of Five Hundred Thousand Dollars (\$500,000) shall be paid on the earlier of January 6, 2005 or the issuance of the Building Permit for the second multi-family high-rise building.
- iv. In the event that a beneficiary ADU project has not been designated by the Board of Supervisors at the time when any installment of the ADU Contribution is payable by the Applicant, the Applicant shall pay such installment to Fairfax County to be held by the County for the benefit of such beneficiary ADU project when such project has been designated by the Board of Supervisors.

18. Public Facilities

- A. Office/Meeting Space. Within ninety (90) days of approval of the Proffered Condition Amendment Application or longer if mutually agreed to by the County Executive and the Applicant, the Applicant and the County shall execute a Lease substantially consistent with the terms and conditions set forth in Exhibit A attached for approximately 4,000 square feet of public government office/meeting space/training space within Tysons Corner Urban Plan Land Unit I.. The lease may be for a lesser number of square feet if the County Executive determines that such lesser amount fulfills the County's needs for the space. This proffer has been completed.
- B. Library or Public Building Design. Applicant shall pay Fifty Thousand Dollars (\$50,000) for the planning, civil engineering, soils testing, traffic analysis and/or architectural design of a mini or specialty library, police or fire station or recreation or athletic facility to be built on land owned or acquired by Fairfax County or an

affiliate. These consultant services shall support the preparation of a site plan and associated building permits necessary to construct the facility. This proffer shall be paid within 10 days of identification of the specific project by the Board of Supervisors and written notice to the Applicant requesting payment, but not later than August 2, 2009.

19. Community Arts Contribution

As a prerequisite to the approval of the first site plan (exclusive of rough grading plans or sediment control permits) the Applicant shall contribute Sixty-Thousand Dollars (\$60,000) to the Fairfax County Park Authority to support the Community Arts Program.

20. School Contributions

- A. The Applicant shall pay a total of Eight Hundred Seventy-Five Thousand Dollars (\$875,000) to the Fairfax County Board of Supervisors as its public school contribution for this rezoning application.
- B. The Eight Hundred Seventy-Five Thousand Dollars (\$875,000) shall be paid as follows:
 - i. The Applicant shall donate Seven Hundred Thousand Dollars (\$700,000) to the Fairfax County Board of Supervisors for construction, capital improvements, repair of deferred maintenance, or purchase of modular classrooms for the school pyramid that educates children from the subject property. The Seven Hundred Thousand Dollars (\$700,000) shall be paid in four (4) equal installments of One Hundred Seventy-Five Thousand Dollars (\$175,000) as a prerequisite to the issuance of the first Residential Use Permit for each of the first four (4) high-rise buildings to receive such permits.
 - ii. As a prerequisite to bond release for the fourth (4) multi-family building site plan, the Applicant shall pay to Fairfax County Board of Supervisors One Hundred

Seventy-Five Thousand Dollars (\$175,000) specifically to purchase a modular classroom for any school that receives children originating from the subject property.

21. Transportation Demand Management Programs (TDM)

Applicant shall provide the following TDM measures:

A. Shuttle Bus Service

- i. Prior to the first RUP of the second multifamily building, the Applicant shall contract with a third party (or with another association providing or sponsoring such shuttle services) to operate and maintain a shuttle bus service for use by the residents of the Application Property to provide access to and from the Tysons Westpark Transit Station and to the West Falls Church Metro Station or other Metro platform location as may be designated by Fairfax County Department of Transportation ("DOT") in consultation with the Providence District Supervisor. Said service shall be available on a schedule determined by DOT on an hourly basis and not less than eight trips per day (excluding Saturdays, Sundays, and national holidays). Trips shall operate generally at one-hour intervals. Seating capacity of the shuttle service shall provide a minimum of 10 passengers. Free and prepaid taxis cab rides may be used in lieu of 10 passenger vans subject to DOT.
- ii. In the event comparable shuttle bus service is being provided by another entity in Tysons Corner, the Applicant (or the successor UOA) may elect to participate in that program upon approval of the Fairfax County Department of Transportation in consultation with the Providence District Supervisor in lieu of providing the shuttle bus per Proffer 21.A.i.
- iii. In order to encourage the use of the shuttle bus service, service will be paid for by the developer and free of charge to all residents of the Application Property for

five (5) years from the first RUP for the first multi-family building. After the initial five (5) years, the UOA will then be financially responsible for operating the shuttle bus service for an additional two (2) years and the Applicant shall disclose this obligation to all prospective homebuyers in UOA/COA documents.

- iv. The Applicant shall include provisions in the Declaration of Covenants, Conditions and Restrictions to allow for UOA dues assessments and/or user fees to be allocated to the cost of continued operation and maintenance of the shuttle service for an additional two (2) years beyond the initial five (5) years and shall disclose this obligation to all prospective homebuyers.
- v. The Declaration of Covenants, Conditions and Restrictions for the UOA shall include a provisions specifically authorizing the UOA Board of Directors to act on behalf of the owners of lots within the Application Property to take steps, anytime after the initial seven (7) years of the shuttle operation or after the issuance of the first RUP for the fourth multi-family building, whichever is later, to determine if the members of the UOA want to continue or discontinuc the shuttle service. If a two-third (2/3) majority of the UOA membership agrees to abolish the shuttle service, evidence of same shall be provided to the Providence Supervisor, Department of Transportation and Zoning Evaluation Division and this proffer shall be null and void at the end of the seventh year. In the event the two-thirds (2/3) majority is not obtained, the shuttle service shall continue on a year-to-year basis unless and until a two-third (2/3) majority of the UOA membership agree to abolish the shuttle service and evidence of same shall be provided to the Providence Supervisor, Department of Transportation and Zoning Evaluation Division, DPZ.

- B. The Applicant shall pre-wire all residential units with broadband, high capacity data/network connections in multiple rooms, in addition to standard phone lines. C. The project shall be designed to accommodate two (2) components of a business services center for use by residents and guests.
- i. The first component shall include such minimum features as a copier, one fax, and shipping services. The area of the first component may be leased to a third party commercial operator, in which case it shall count against the 12,000 SF limitation for accessory service uses and support retail.
 - ii. The second component shall be a telecommunications center with four computer stations with printer, 4 laptop plug-in stations, a T-1 or similar secure line location and a small conference room/office. The area of the second component shall not count against the 12,000 SF limitation for accessory service uses and support retail.
- No additional parking shall be required for this facility.

22. Successors and Assigns

These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

23. Density Credit

Advanced density credit shall be reserved as may be permitted by the provisions of Article 2-308 of the Fairfax County ZO for all eligible dedications described herein, or as may be required by Fairfax County, Fairfax County Park Authority or VDOT at time of site plan approval.

24. Site Plan Review and Comment

Site plan(s) and revisions for the Application Property shall be submitted to the Providence Planning Commissioner for review and comment within five (5) business days after acceptance of the site plan by Engineering Surveyor Institute and/or DPWES.

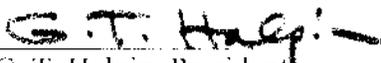
25. Building Permit Definition

When used in these proffers for the purpose of defining when a particular payment must be made or proffer performed, "Building Permit" shall mean the building permit for the vertical construction of an actual multi-family building (i.e., Building 1, 1A, 2, 3, 3A, 4 or 5). "Building Permit" shall not refer to the issuance of any permits for the construction of footings and foundations, sheeting and shoring, parking structures or retaining walls issued in advance of the building permit that approves the vertical construction of the actual multi-family building.

26. Severability

Any of the sections/buildings/phases or subdivided lots within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without requiring joinder or consent of the property owners of the other sections/buildings/phases or subdivided lots within the Application Property if such PCA does not adversely affect those other sections/buildings/phases or subdivided lots. Previously approved proffered conditions applicable to the sections/buildings/phases or subdivided lots that are not the subject of such a PCA shall otherwise remain in full force and effect.

WEST*GROUP PROPERTIES LLC


G. T. Halpin, President