PROFFERS

PCA/CDPA 80-P-039-5
PCA/CDPA 95-P-020-1

March 9, 1998

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 edition as amended, subject to the Board of Supervisors approval of the requested Proffered Condition Amendment/Conceptual Development Plan Amendments (PCA/CDPA) and Planning Commission approval of the Final Development Plan Amendments/Final Development Plans (FDPA/FDP) for the subject applications, the development of the application property identified as Tax Map 48-4 ((1)) 1E, 1G, 1K1, 1L and 1M (the "Property"), shall be subject to the following proffers. These proffers supersede and replace all previously approved proffers affecting the Property.

1. a. Pursuant to Section 18-204 of the Fairfax County Zoning Ordinance, development of (Land Bay A) (Tax Map 48-4 ((1)) 1E and 1G) shall be in substantial conformance with the CDPA/FDPA prepared by William H. Gordon & Associates, Inc., dated October 6, 1989 and revised by Land Design Inc. dated October 28, 1997, with approved transitional screening waiver.

   b. Development of (Land Bay B) (Tax Map 48-4 ((1)) 1K1) shall be in substantial conformance with the CDPA prepared by William H. Gordon & Associates, Inc., dated December 1, 1994, and revised by Land Design Inc. dated October 28, 1997, and the FDP/FDPA prepared by William H. Gordon & Associates dated March 6, 1995, and revised by Land Design, Inc. dated October 28, 1997.

   c. Development of the remainder of the Property (Tax Map 48-4((1))1L and 1M) shall be in substantial conformance with the CDPAs prepared by William H. Gordon & Associates, dated October 6, 1989, as revised by Land Design Inc., dated October 28, 1997, and the FDP prepared by Land Design, Inc., dated February 14, 1997, revised through October 28, 1997.

   Two alternative CDPAs and FDPs are included. Option A separates Tax Map 48-4 ((1))1L and 1M into Land Bay C and D. Land Bay C includes a residential component while Land Bay D is a commercial office component. Option B includes only residential uses and is identified as Land Bay C. The Applicant may pursue either Option A or B at his sole discretion.

d. The Applicant shall have the option to request a Final Development Plan Amendment from the Planning Commission for the entire plan or portions thereof in accordance with the provisions set forth in Section 16-204 of the Zoning Ordinance.

e. Pursuant to Paragraph 4 of 16-403 of the Zoning Ordinance, minor modifications from the Land Bay B, C and/or D FDPA's may be permitted as determined by Fairfax County. The Applicant shall have the flexibility to modify the layout shown on the Plan without requiring approval of an amended FDPA provided such changes are in substantial conformance with the FDPA as determined by the Office of Comprehensive Planning (OCP) and do not increase the square footage/dwelling units, increase building heights, decrease the amount of open space, or decrease buffer area along the western property line.

2. A maximum of 712,500 square feet of office and principal uses shall be permitted on the Property under Option A. A maximum of 407,000 square feet of office and principal uses shall be permitted on the Property under Option B. In addition to office use, the following uses shall be permitted within the buildings shown on the CDPA/FDPA but in the event any or all of following principal or secondary uses are not provided, the commercial portion of the Property may be developed with all office use.

Principal Uses:

One or more financial institutions with the total not to exceed 15,000 gross square feet.

One or more retail sales or personal service establishments with the total not to exceed 30,000 gross square feet.

One or more eating establishments with the total not to exceed 30,000 gross square feet with a maximum of 1,300 seats allowed.

Secondary Uses:

One or more health clubs with the total not to exceed 15,000 gross square feet.

A delicatessen consisting of maximum 2,000 square feet.

In addition, residential dwelling units shall be provided as shown on the CDPA/FDPA.

3. All the secondary uses will be designed to serve primarily the needs of the residents and occupants of the development.

4. Recreational amenities for Land Bay B and the rental component of Land Bay C shall include one tot lot and a community center with swimming pool as shown on the FDP/FDPA. Within this community center shall be either a weight room or a racquetball court. Recreational amenities for the remainder of Land Bay C shall include a tot lot, a community bathhouse with swimming pool, a trail through the stream valley, and passive pocket parks, as shown on the FDPA.

5. Both prior to and during the development of the property, the applicant/owner will permit the on-site research of archaeological site, if any, by members of the Fairfax County Archaeological Survey Staff, provided however, that such on-site research shall not interfere with the planned development of the property and shall not restrict the timing of the development of the property. Applicant shall give the Fairfax County Archaeological Survey Staff ninety (90) days notice prior to commencement of construction.

6. Emergency access will be provided in accordance with the Fairfax County Public Facilities Manual.

7. Transitional screening (1) shall be provided along the Route 29 frontage of the subject property as approved by the Director of DEM. Transitional screening (2) shall be waived along Nutley Street. Evergreen plantings shall be provided around service areas of future buildings, between the buildings, and the floodplain, as approved by the County Arborist, as a supplemental buffer to the existing vegetation along Nutley Street.

8. The applicant/owner, at the time of final site plan submission will submit a landscape plan for approval by the Director of the Department of Environmental Management (DEM), so as to achieve a visual buffer between the residential development and the commercial parking structure. Said plan shall include effective treatment of the exposed portions of the parking structure deck.

9. A six (6) foot wooden fence shall be provided between Land Bay B and the boundary line of the adjoining Fairlee subdivision. This fence shall be located along the common property line with Fairlee and shall be field located so as to minimize disturbance to existing trees. The fence shall be constructed so as to avoid any impoundment of water. A 25-foot area east of the common property line shall be maintained as an undisturbed buffer area. The only disturbance permitted in this area shall be the installation of fences, necessary retaining walls, necessary utilities, the clearing of dead, dying or diseased vegetation and the planting of supplemental vegetation to provide a year round screen. Such disturbance shall be restricted to the minimum necessary to achieve their permitted purpose in accordance with sound engineering principles. Any area disturbed shall be revegetated to the extent feasible, subject to the approval of the Urban Forester.

10. Stormwater detention has been provided as approved and constructed with Site Plan 4818-SP-2, approved by the Department of Environmental Management (DEM) on March 24, 1988.

In addition, stormwater management including Best Management Practices, shall be provided on Land Bay B as shown on the CDPA, unless otherwise waived by DEM or the Board of Supervisors. If a waiver is approved by DEM, the area of the stormwater management pond shall be utilized as open space, existing trees shall be preserved where feasible in the opinion of the Urban Forester, and if necessary supplemental vegetation shall be provided as determined by the Applicant in coordination with the Urban Forester.

11. The internal intersection on the commercial loop road immediately north of Lee Highway was designed and approved by the DEM and the Office of Transportation with Site Plan 4818-SP-01, approved by DEM on December 18, 1996.

12. a. Applicant has contributed Seventy One Thousand Eleven Dollars and 65/100 ($71,011.65) to Virginia Department of Transportation (VDOT), sufficient to pay the cost of the improvement of the intersection of Nutley Street and Lee Highway so as to provide two (2) through lanes on Lee Highway in each direction and a left turn land to northbound Nutley street from eastbound Lee Highway. Sufficient right-of-way for these improvements has been previously acquired and dedicated by the applicant. This intersection improvement will be undertaken by VDOT as part of Project Number 0066-029-103, RW-204, PE-102, C-506 and the applicant's payment obligation shall be as described in the June 8, 1988, agreement among the applicant, VDOT and Fairfax County for this improvement.

b. The applicant will be responsible for providing appropriate signalization of the site's entrances with Nutley Street and Lee Highway in an amount not to exceed One Hundred Thousand Dollars and No/100 ($100,000.00) to be CPI adjusted at such time as the signalization needs have been determined by VDOT. The applicant will further provide for the interconnection of these signals with that at the Lee Highway and Nutley Street intersection.

c. The applicant commits to participate in the cost of the signalization of the Nutley Street/Interstate 66 interchange access ramps by the contribution of the sum of Thirty Five Thousand Dollars and No/100 ($35,000.00) if the need for such signalization is determined by VDOT during the period of development and construction of this project.

d. The applicant shall provide Fairfax County with all necessary temporary grading easements for the commercial component along the site's Lee Highway frontage.

13. To the extent permitted in an agreement between WMATA and the applicant which is reasonably satisfactory to the applicant, a vehicular access shall be provided to connect to the adjacent metro facility, as shown on the CDPA/FDPA. The connector road to the metro station shall intersect the station loop road at an existing intersection with the final alignment subject to review. The applicant commits to the use of Transportation Management Strategies to serve the transporation needs of the tenants on the site. The principal technique to be used by the applicant will be shuttle bus service between the site and the Vienna Metro station. The applicant may elect to substitute another technique (e.g.: car pools, van pools, preferential parking, public bus service, etc.) at the applicant's choice, to provide Transportation Management Strategies to the tenants of the site.

14. Development of Land Bays B and C shall comply with the Affordable Dwelling Unit (ADU) Programs as set forth in Section 2-801 of the Zoning Ordinance.

15. The applicant has submitted a "Landscape Plan Revegetation Plan per Special Exception" which was approved by DEM on August 3, 1988, as a condition of SE 85-P-090. Once this landscaping has been planted and accepted by the County Arborist, this revegetation requirement will be satisfied.

16. The eight (8) foot trail shown along the stream on the CDPA/FDPA will be designed to meander around the existing trees as approved by the County Arborist so as to minimize the amount of clearing necessary for the trail and to preserve a maximum amount of existing vegetation.

17. A twelve (12) foot wide public access easement shall be recorded among the land records of Fairfax County for the provision of TX-2, Type I eight (8) foot wide asphalt trails noted as "Pedestrian Pathway" to be constructed in the location shown on the CDPA/FDPA. All presently existing and future trails shall be maintained by the property owners to ensure pedestrian access. A pedestrian path from the office buildings to the asphalt trails shall be provided to encourage and facilitate pedestrian use. Bike racks will be provided at the ground level of the parking structure for the use of office tenants.

18. All signage shall be in conformance with the approved Comprehensive Sign Plan.

19. The applicant has recorded among the land records of Fairfax County at Deed Book 6834 at Page 1352 flood plain easement to the Board of Supervisors as approved by the County Attorney as shown on attached Exhibit "B". This existing flood plain easement has included that land which is defined by the Comprehensive Plan as Environmental Quality Corridor associated with Hunters Branch which runs through the site. No clearing of any vegetation in the area defined to be within the existing flood plain easement shall take place except for that listed on the attached Exhibit "C". Revegetation of this area shall be coordinated and approved by the County Arborist. Applicant will not fill within the flood plain easement nor construct any permanent structure within the flood plain easement nor construct any

permanent structure within the flood plain easement as recorded in Deed Book 6834 at Page 1352, (or such subsequent flood plain easement as approved by Fairfax County and recorded in the land records) other than pedestrian amenities such as pedestrian bridges, gazebos and furniture to the extent that such amenities are permitted in the flood plain by right under the zoning ordinance.

20. Temporary metro parking may be provided within the commercial portion of the property, both in parking structures and/or on temporary at grade spaces within areas shown on the CDPA/FDPA for parking structures as approved by DEM. A maximum of 400 temporary, surface spaces shall be allowed within areas of footprints of future parking structures.

21. A fifty (50) foot natural or landscaped buffer area which includes a 35 foot transitional screening area consisting primarily of existing vegetation, shall be provided along the western boundary of Land Bay C as shown on the FDP. A six (6) foot tall wooden fence shall be installed within this buffer area, fifteen (15) feet to the east of the common property line with the adjoining Fairlee subdivision with the exception that adjacent to Lots identified as Tax Map 48-2 ((24)) 38B, 39, 40 and 41, the fence shall be located twenty-five (25) feet to the east of the common property line with Fairlee. The fence shall be field located to minimize disturbance to existing trees, as approved by the Urban Forester.

22. Applicant will employ construction techniques for that property fronting the western buffer area to minimize impact on existing trees within the buffer as approved by the County Arborist. These techniques shall include establishing limits of clearing and grading to be clearly marked by construction fencing and the designation of specific mature trees within the limits of clearing and grading to be marked and individually fenced.

23. Applicant will employ all necessary means to restrict access to the metro station connector road to shuttle buses and vans, which may include the use of a carded gate as approved by the Office of Transportation.

24. Applicant shall complete the sidewalk as a part of the trails system as the Nutely Street entrance into the project.

25. Density credit is reserved in accordance with the provisions of Section 2-308 of the Fairfax County Zoning Ordinance for all street dedication from Land Bay B, C or D, as may be required by Fairfax County or the Virginia Department of Transportation (VDOT) at the time of site plan approval.

26. Swimming pool water shall be properly neutralized prior to being discharged during annual or semi-annual draining or cleaning operations by adding sufficient amounts of lime or soda ash to the acid cleaning solution, prior to discharge, to achieve a PH approximately equal to that of the receiving stream. All such discharge pool waters will have a minimum dissolved oxygen concentration of 4.0 milligrams per liter; if such discharged pool water is discolored

or contains a high level of suspended solids that could affect the clarity of the receiving stream, it will be allowed to stand so that most of the solids settle out prior to being discharged.

27. Each Land Bay may be subject to a Proffered Condition Amendment without joinder and/or consent of the other Land Bays if such PCA does not affect any of the other sections. Previously approved proffered conditions applicable to the section(s) which is not the subject of such a PCA shall otherwise remain in full force and effect.

28. Noise attenuation measures shall be provided for the residential buildings located in Land Bay B as recommended in the nose analysis prepared by Polysonics, Inc. Entitled "Vienna Metro Apartments, Outdoor/Indoor Noise Analysis," dated April 5, 1995.

29. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale or leasing of any units, and shall run to the benefit of the Homeowner's association, which may be established, and/or the Board. Prospective purchasers or tenants shall be advised in writing of the use restriction prior to entering into a contract of sale or lease.

30. Notwithstanding that the FDPA/FDP indicates that an emergency access shall be provided if required along Land Bay B's northeastern boundary, the Applicant reserves the right to convert this emergency access into a secondary vehicular access subject to DEM approval.

31. a. The architectural design of the office building in Land Bay D shall be harmonious in design and color with the office building in Land Bay A, and shall be constructed of materials typical of first class office structures. Lighting on the top level of the proposed parking deck shall be of a shoe box design similar in character to the lighting on the parking garages on Land Bay A. Such lighting shall be designed to avoid glare into nearby residential dwellings.

    b. The architectural design of the multi-family structures in Land Bay C shall be similar in character to the existing multi-family structures in Land Bay B, and shall be constructed with compatible building materials and colors.

    c. The front facade of the townhouses in Land Bay C shall be constructed predominately of brick or other masonry materials.

32. Development of the Property shall adhere to the limits of clearing and grading shown on the CDPA/FDPA. The limits of clearing and grading shall be clearly marked with snow fencing prior to any land disturbing activities.

33. A minimum expenditure of $500.00 per residential unit in Land Bay C, excluding ADUs, shall be provided for the development of recreational facilities, in accordance with the provisions of Paragraph 2 of Section 6-110. In the event the application is not approved by the Board prior to March 24, 1998, a minimum expenditure of $955.00 per unit, excluding ADUs, shall be provided for recreational facilities, as approved by DEM.

34. Private streets within Land Bay C and D shall be constructed of materials and depth of pavement which conform with standards set forth in Section 7-502 of the Public Facilities Manual (PFM). Purchasers of units shall be advised in writing prior to entering into a contract of sale that the homeowners association shall be responsible for the maintenance of private streets.

SIGNATURES BEGIN ON NEXT PAGE

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First Union National Bank of Virginia, not individually, but soley as Successor Trustee for the benefit of J. Willard Marriott, Jr., Richard E. Marriott and Snell Constuction Corp.

By: _____

J. Timothy Nolte

~~Assistant~~ Vice President

Bozzuto Development Company
(Contract Purchaser)

By: John B. Slidell
John B. Slidell