

RZ 2003-SU-035
DULLES DISCOVERY
PROFFER STATEMENT

August 21, 2006
September 15, 2006
September 28, 2006
October 13, 2006
November 16, 2006
December 12, 2006
January 4, 2007

Pursuant to Section 15.2-2303 (A) of the Code of Virginia, as amended, and subject to the Fairfax County Board of Supervisors' (the "Board") approval of rezoning application RZ 2003-SU-035, as proposed, from the I-3, I-5, WS and HD Districts to the PDH-16, PDC, WS, and HD Districts, Sully East L.C. (the "Applicant") and the property owners, for themselves and their successors and assigns, hereby proffer that development of Tax Map Parcels 34-2-((1))-1A, 2, 3A, 10A, 27, 33 (Part) and 35 plus approximately 1.55 acres of right-of-way to be vacated (collectively known as the "Property"), totaling approximately 77.74 acres, shall be in accordance with the following proffered conditions, which shall replace any and all existing proffered conditions pertaining to the Property:

1. **Substantial Conformity.** The Property shall be developed in substantial conformance with the Conceptual Development Plan and Final Development Plan ("CDP/FDP") consisting of Sheets 1 through 14 prepared by Land Design, Inc., entitled "Dulles Discovery Conceptual Development Plan/Final Development Plan," dated June 15, 2006 and revised through January 3, 2007, and further modified by these proffered conditions.
2. **Final Development Plan Amendments.** Notwithstanding that the CDP/FDP consists of Sheets 1 through 14 and said CDP is the subject of Paragraph 1 above, it shall be understood that (i) the CDP shall consist of the entire plan relative to the general layout, points of access to the existing road network, location and types of units, uses, building heights, peripheral setbacks, the maximum number and type of units, limits of clearing and grading and the location and amount of open space on the Property; and (ii) the Applicant has the option to request Final Development Plan Amendment ("FDPA") approvals from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements.
3. **Minor Modifications.** Pursuant to Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDP/FDP provided such changes are in substantial conformance with the CDP/FDP and proffers, and do not increase the total number of units, change the unit mix, increase building heights, or decrease the minimum amount of open space or peripheral setbacks shown to be provided on the Property.
4. **Maximum Residential Density.** A maximum of 1001 residential units at a maximum density of 15.6 dwelling units per acre ("du/ac") shall be permitted on the PDH-16

portion of the Property, inclusive of Affordable Dwelling Units ("ADUs") and ADU bonus units. The Applicant reserves the right to develop fewer than the maximum number of units referenced in this paragraph without the need for a Proffered Condition Amendment ("PCA") application or CDPA/FDPA.

5. **Active-Adult Units.** All residential units (except the Independent Living Facility units referenced below) are deemed, for the purpose of this Proffer, as "active-adult" units and shall be age-restricted, as defined pursuant to the Federal Housing For Older Persons Act of 1995 (as may be amended) providing, generally, that: (i) at least one resident of each unit shall be 55 years of age or older, and (ii) no permanent resident shall be less than 20 years of age.
6. **Independent Living Facility.** The multi-family building located in the southeast corner of the Property, south of Turley Hall Drive and adjacent to Centreville Road, shall be an "Independent Living Facility" which shall consist of the following:
 - A. 120 rental apartments in an accessible building;
 - B. Occupancy limited to households where at least one member is 62 years of age or older and all members are at least 55 years of age or older;
 - C. All units in this facility shall provide complete kitchen facilities, support services and design features such as wider doorways and hallways, accessible bathrooms and lower light switches;
 - D. All required ADUs for the entire PDH-16 development shall be provided in this building; and
 - E. All units in this building which are not required ADUs shall be rented to persons whose incomes are no greater than the percentage of the Washington Standard Metropolitan Statistical Area Median Household Income, as published by HUD, ("MHI"), set forth in Proffer 7(B) below.
7. **Affordable Dwelling Units/Work-Force Housing Units.**
 - A. **Affordable Dwelling Units ("ADUs").**
 - i. Seventy-Two (72) ADUs shall be provided in accordance with Article 2 Part 8 of the Zoning Ordinance, subject to the following terms:
 - ii. All ADUs shall consist of multi-family units that are located within a single building (the Independent Living Facility identified in Proffer 6 above) and shall not be dispersed across the PDH-16 application property;
 - iii. All required ADUs shall consist of rental apartments;
 - iv. All 72 ADUs shall be leased to tenants whose household incomes do not exceed sixty percent (60%) of the MHI; and

- v. Unless otherwise allowed by the ADU Advisory Board, RUPs shall not be issued for more than ninety percent (90%) of the total dwelling units approved for the Property until RUPs have been issued for all of the ADU units.

B. Work-Force Units.

- i. Total Number. A total of forty-eight (48) of the dwelling units within the Independent Living Facility shall be "Work-Force Units," i.e., dwelling units subject to the rental restrictions of these Proffers, but not required pursuant to Part 8 of Article 2 of the Zoning Ordinance. Said Work-Force Units shall be provided to renters whose household income (i) for twenty-four (24) of the units, is up to sixty percent (60%) of the MHI; (ii) for twelve (12) of the units, is up to ninety percent (90%) of the MHI; and (iii) for twelve (12) of the units, is up to one hundred percent (100%) of the MHI.
- ii. Timing of Provision of the Work-Force Units. RUPs shall not be issued for more than ninety percent (90%) of all of the total dwelling units approved for the Property, until RUPs have been issued for all of the Work-Force Units required pursuant to this Proffer.
- iii. Administration. It is intended that the Work-Force Units shall be administered in a fashion similar to ADU Units pursuant to specified provisions of Part 8 of Article 2 of the Zoning Ordinance in effect at the time of the execution of these Proffers. The following specific provisions of the Zoning Ordinance shall apply to administration of the Work-Force Units: Sections 2-805, 2-811(3), 2-812(1)(D), 2-812(6) (only as to recording a covenant committing to a thirty year control period), 2-813, 2-817 and 2-818, including the recordation of the appropriate restrictive covenants in the land records of Fairfax County, except where such provisions directly conflict with these Proffers. When these Proffers conflict with any provisions of the Zoning Ordinance, these Proffers shall control including, but not limited to, the calculation of the rental rates of Work-Force Units.
- iv. Alternative Administration. Notwithstanding Subparagraph (iii) above, the Applicant reserves the right to negotiate with the appropriate County agency, to enter into a separate binding written agreement solely as to the terms and conditions of the administration of the Work-Force Units after the approval of this rezoning. The requisite number and pricing/rents of Work-Force Units provided pursuant to these Proffers shall not be altered in any manner by such an agreement. Such an agreement shall only consider administrative issues on terms mutually acceptable to both the Applicant and the County and may only occur after the approval of this rezoning and when the revisions have been deemed to be in substantial conformance with these Proffers. The County shall in no manner be

obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the Work-Force Units shall be administered in accordance with such an agreement, and Subparagraph (iii) above may become null and void.

- v. Work-Force Units – Rental Rates. The maximum monthly rental at which each Work-Force Unit may be offered shall be the rental rate for the Washington Standard Metropolitan Statistical Area published by the Virginia Housing Development Authority ("VHDA") for the respective percentage of MHI designated for such unit.

The initial MHI to determine such initial maximum monthly rent shall be determined from the date of the issuance of the first RUP for any Work-Force Unit. The MHI and the maximum monthly rent, as calculated above, may be adjusted once a year, as published by HUD and VHDA, respectively. A copy of such annual calculation shall be provided to the Fairfax County Department of Housing and Community Development ("HCD").

- vi. Compliance with Federal, State, and Other Local Laws/Severability. If it is found by a court of competent jurisdiction that any portion of these Proffers related to providing Work-Force Units violates any Federal, State or other local law, then the offending portion of these Proffers shall be deemed null and void and no longer in effect. All remaining conditions of these Proffers shall remain in full force and effect.

- 8. Maximum Building Height. Single-family villas shall not exceed 35 feet in height. Multi-family residential buildings within the outermost 500-feet of the Sully Historic Overlay District ("SHOD"), and as shown on the CDP/FDP, shall not exceed 60 feet in height in accordance with the Zoning Ordinance (65 feet "actual height," which shall be measured from the lowest point of grade to the highest point of the structure). Hotel use shall not exceed 75 feet and shall be located outside the SHOD boundary, as defined by the Zoning Ordinance and as shown on the CDP/FDP. All residential units located within the SHOD shall be limited to 35 feet in height unless the Board approves a Special Exception application for the Property, to allow the height increase of multi-family buildings located within the outermost 500 feet of the SHOD boundary. If approved, the height in that area shall be governed by the Special Exception approval.

- 9. Limitation on Non-Residential Uses within the PDH-16 District. Principal and secondary uses which may be established shall be limited to: single-family attached and multi-family residential; independent living facility; unmanned bank teller machines in multi-family buildings; accessory uses, accessory service uses, and home occupations in accordance with Article 10 of the Zoning Ordinance. Clubhouses may include personal service establishments, support service and retail uses, for the residents and their guests only, such as a coffee shop, sports shop, eating establishment, hairdresser, dry cleaning pickup/delivery, and/or similar uses.

10. **Maximum PDC District FAR and Uses.** Within the approximately 13.54 acres of the Property zoned to the PDC District, up to 147,450 gross square feet at a maximum 0.25 floor area ratio ("FAR") shall be permitted. Permitted uses shall include retail, office, hotel and additional uses as listed on Sheet #2 of the CDP/FDP. No drive-through uses shall be permitted, with the exception of an unmanned bank teller and/or a pharmacy.
11. **Right-of-Way Dedication.** The Applicant shall dedicate all right-of-way ("ROW") referenced below subject to review and approval by the Virginia Department of Transportation ("VDOT"), and the Fairfax County Department of Public Works and Environmental Services ("DPWES"). All road ROW dedicated in conjunction with these proffers and/or as depicted on the CDP/FDP shall be conveyed to the Board in fee simple upon demand by Fairfax County (the "County") or at the time of site plan approval for the contiguous development area, whichever occurs first, and shall be subject to the "Density Credit" proffer below regarding reservation of development intensity to the residue of the Property.
12. **Transportation Improvements.** The following ROW dedication and/or road improvements shall be provided by the Applicant, subject to and as approved by VDOT and DPWES. However, upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of a respective improvement has been unreasonably delayed by others or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement:
 - A. **Historic Sully Way.** Within the right-of-way to be dedicated by the Applicant and conveyed in fee simple to the Board, the Applicant shall construct, or cause to be constructed, a two-lane road beyond the existing traffic circle to the Property's western property line, if not previously built by others, prior to issuance of the first Residential Use Permit ("RUP").
 - B. **Turley Hall Drive and Beale Drive.** In accordance with the CDP/FDP, the Applicant shall dedicate and convey in fee simple to the Board ROW sufficient for, and shall construct on the Property, from Historic Sully Way to Centreville Road, two-lane roads and turn lanes, with parking, as development of the adjacent land area occurs. These roads shall be available for use by the public from Air and Space Museum Parkway to Centreville Road prior to issuance of the 500th RUP.
 - C. **Turn Lanes.** In accordance with those shown on the CDP/FDP, subject to and as approved by VDOT and DPWES, the Applicant shall construct the turn lanes to VDOT standards concurrent with the immediately adjacent roadway improvements.
13. **Traffic Signals.**
 - A. Prior to approval of the first site plan accessing the Air and Space Museum Parkway/Historic Sully Way intersection, the Applicant shall submit a traffic signal warrant study to VDOT, if said signal has not been provided by others. If

warrants have been met, Applicant shall install said signal prior to issuance of the first RUP in the adjoining area, (i) if not funded by the property owner of Tax Map Parcels 34-2-((1))-33 and 34, or (ii) if funded by said owner but not installed, in which event Applicant shall be entitled to receive all such funds so escrowed with DPWES for said signal. However, upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of said signal has been unreasonably delayed by others or by circumstances beyond the Applicant's control, the Zoning Administrator may agree to a later date for the completion of said improvement.

- B. Prior to approval of the first site plan that accesses the Turley Hall Drive/Centreville Road intersection, a traffic signal warrant study shall be submitted to VDOT for that intersection. If the warrants have been met and said signal has not already been provided by others, the Applicant shall design and construct a traffic signal at the Centreville/Turley Hall intersection prior to issuance of the first RUP in said site plan. If said signal has been installed by others, the Applicant shall modify the existing signal in accordance with VDOT standards to convert the then existing signal to a full, four-legged intersection signal.
 - C. Any signal installed or modified by the Applicant shall include pedestrian countdown features.
14. **Private Streets.** All private streets will be constructed with materials and depth of pavement consistent with public street standards in accordance with the Fairfax County Public Facilities Manual ("PFM"), as determined by DPWES. The above standard shall not apply to parking bays or parking lots. The Umbrella Owners' Association ("UOA"), Homeowners' Association ("HOA") and Condominium Owners Association ("COA") shall be responsible, respectively, for the maintenance of all private streets and the UOA, HOA and COA documents shall expressly so state. The Applicant, or its representatives, shall disclose to each initial prospective purchaser of a respective residential unit, prior to or at the time of contract, that the HOA/COA is responsible for the maintenance of private streets within the residential development.
15. **Roads in Use.** All public streets shall be constructed in accordance with the PFM and/or VDOT requirements, as determined by DPWES or VDOT. Acceptance of public roads by VDOT into its roadway system shall be diligently pursued by the Applicant, and shall be accomplished prior to final bond release.
16. **Stub Streets.** Emergency access shall be provided as approved by the Fire Marshal for the private stub streets.
17. **Bus Shelters.** The Applicant shall provide four bus shelters for the Application Property, with the specific location and quantity to be determined by FCDOT. Bus shelter installation shall be limited to the concrete pad, the shelter itself and a trash can. If, by the time of final bond release, FCDOT has not determined the exact quantity and location of said bus shelters, the Applicant shall escrow \$20,000 per shelter whose location has

not been determined, to be used for bus shelters within the Property and adjacent streets. If installed on subject Property internal to the proposed development, the bus shelter and trash can shall be maintained by the Applicant and the UOA/HOA/COA documents shall state such maintenance requirement.

18. **Residential Transportation Demand Management ("TDM")**. Transportation Demand Management ("TDM") strategies shall be utilized to attempt to reduce residential vehicle trips during peak periods. Strategies shall include, but not be limited to, the following and be implemented by the Applicant as buildings are completed:

- A. Owners and tenants shall be advised of this TDM strategy;
- B. TDM coordination duties shall be carried-out by a designated property manager(s) or transportation management coordinator(s) (collectively "TDM Coordinator"). The TDM Coordinator position may be a part of other duties assigned to the individual(s);
- C. TDM-related materials, such as maps, schedules and other transportation information describing available transit options, car/van pooling formation, and alternative work schedules, shall be distributed to building occupants, either through posting in the common-areas of each multi-family building and the community buildings, a newsletter, or use of a website at least once a year;
- D. Broadband, high capacity data/network connections, or equivalent wireless access, provided in all dwellings to facilitate working from home;
- E. A business center containing a fax machine, copier, and at least two computers with internet access shall be provided within the active-adult community for residents' use;
- F. Provision of four bus shelters on the Property, pursuant to Proffer 17 above;
- G. Safe and convenient accessibility by pedestrians to the commercial portions of the planned community, including the provision of cross-walks, lighting and signage;
- H. Provision of conveniently-located bicycle storage for residents' use in each multi-family building except for the Independent Living Facility; and
- I. If a community web site is developed, it shall include information on the TDM program and on multi-modal transportation options.

19. **Trails System**. Trails and sidewalks shall be constructed to PFM standards at the time of development of the respective areas, generally as depicted on the "Pedestrian/Bicycle Circulation Plan" included as Sheet 5 of the CDP/FDP. Trails located along public roadways shall be subject to public access easements, in standard County format, wherever they are located outside of the public ROW or public ownership. Final trail locations shall be subject to the review and approval of DPWES. As depicted on the CDP/FDP, major trails shall be eight feet in width, minor trails shall be six feet in width,

and sidewalks shall be five feet in width. Notwithstanding all of the aforesaid, and with the exception of the off-site trail along Historic Sully Way referenced below, the Applicant shall have no obligation to construct off-site sidewalks or trails.

20. **Off-Site Trail Connection along Historic Sully Way.** Subject to the granting of all necessary easements, the Applicant shall construct off-site, to PFM standards, a six (6)-foot wide trail within the Historic Sully Way right-of-way. As depicted on Sheet 5 of the CDP/FDP, said trail shall provide a connection between the on-site trail and extend from the western property boundary to the future cul-de-sac located on the Sully Historic Site property. Applicant shall diligently and in good faith pursue the acquisition of said easements, and shall, should it fail to acquire said easements, prior to final bond release, demonstrate in writing to DPWES such efforts and escrow with DPWES the cost of constructing said off-site trail connection. Applicant's cost for said off-site trail connection shall be deducted from the off-site recreation contribution in Proffer #43 below.
21. **Vacations/Abandonments.** Prior to final approval of any site plan, and release of the record plat for recordation, for any development section which includes development on an area of ROW to be abandoned/vacated, the Applicant shall obtain vacation and/or abandonment of the relevant portion of Barnsfield Road identified on the CDP/FDP as areas to be vacated/abandoned. Prior to filing any site plan the Applicant shall initiate and diligently pursue such vacation and/or abandonment by the Board. In the event the Board does not approve the vacation and/or abandonment of these portions of public roadway and failure to obtain such approval precludes development in substantial conformance with the CDP/FDP, the Applicant shall obtain a PCA to the extent necessary to develop that portion of the Property, which may result in a loss of density. The Applicant hereby waives any right to claim or assert a taking or any other Cause of Action that otherwise may have arisen out of a Board decision to deny in whole or in part the ROW vacation and/or abandonment request.
22. **Interparcel Access Easements.** The Applicant shall provide vehicular interparcel access easements separately to Tax Map Parcel 34-2-((1))-6 and to Tax Map Parcel 34-2-((1))-7 in the locations depicted on Sheet 4 of the CDP/FDP. The Applicant shall not be responsible for any design or construction of said interparcel access to Parcel 6 or Parcel 7. An interparcel access to Tax Map Parcel 34-2-((1))-10B shall be provided, as depicted generally on Sheet 4 of the CDP/FDP, for which directional signage shall be provided. Said access easements shall be disclosed within the respective HOA/COA documents.
23. **Industrial Buffer and Disclosure.** A minimum 50-foot wide area of landscaping and berming, shall be provided on-site where residential units adjoin industrial uses on adjacent Tax Map Parcels 34-2-((1))-7 and 8, generally as depicted on Sheets 3 and 12 of the CDP/FDP. Prior to entering into a contract of sale, the initial purchasers of residential units directly adjacent to said parcels shall be notified in writing by the Applicant that the adjacent property is zoned to permit industrial use. This disclosure shall also be set forth in the respective HOA/COA documents.

24. **Limits of Clearing and Grading.** The Applicant shall conform to the limits of clearing and grading shown on the CDP/FDP, subject to the installation of utilities and/or trails, if necessary, as approved by DPWES. All limits of clearing and grading shall be protected by temporary fencing, a minimum of four feet in height. The temporary fencing shall be installed prior to any work being conducted on the site, and signage identifying "Keep Out - Do Not Disturb" shall be provided on the temporary fence and made clearly visible to construction personnel. Any necessary disturbance beyond that shown on the CDP/FDP shall be coordinated with the Urban Forester and accomplished in the least disruptive manner reasonably possible given engineering, cost, and site design constraints as determined by the Urban Forester. Any area protected by the limits of clearing and grading that must be disturbed due to the installation of trails and/or utilities shall be replanted with a mix of native vegetation to return the area as nearly as reasonably possible to its condition prior to the disturbance, as determined by the Urban Forester.
25. **Open Space.** A minimum of thirty-six (36) percent of the PDH-16 portion of the Property and a minimum of nineteen (19) percent of the PDC portion of the Property shall be retained in open space. At the time of site plan approval for each relevant development area, the Applicant shall convey all open space parcels and all open space areas outside private lot lines to the relevant HOA/COA for ownership and maintenance.
26. **Landscaping.**
- A. Landscaping shall be generally consistent with the quality, quantity and the locations shown, respectively, on the "Landscape Plans" included as Sheets 3, 9, 10, 11, 12 and 13 of the CDP/FDP. At the time of planting, the minimum caliper for trees shall be as follows: canopy, including street trees, shall be three (3) inches, and ornamental deciduous shall be one and one-half (1 ½) inch. The minimum height for evergreen trees shall be seven (7) feet. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of the first and all subsequent submissions of site plans for each respective section, for review and approval by the Urban Forester, Department of Public Works and Environmental Services ("DPWES"). Such landscape plans shall provide tree coverage and species diversity consistent with the PFM criteria, as determined by the Urban Forester.
- B. The streetscape, berms and associated landscaping shown on the CDP/FDP to be provided adjacent to Historic Sully Way, between Air and Space Museum Parkway and the western property boundary, shall be installed prior to the first RUP or Non-RUP for the first building adjoining Historic Sully Way.
- C. The landscaping and pedestrian improvements associated with the private streets shown on the CDP/FDP shall be installed at generally the same time as the private street with which they are associated. Such landscaping and pedestrian improvements shall be maintained by the UOA/HOA/COA as respectively set forth in the UOA/HOA/COA documents.

- D. **Structural Soil.** For trees, relied upon for satisfaction of tree cover requirements, which are not planted within an 8-foot wide minimum planting area, or that do not meet the minimum planting area required by the Public Facilities Manual ("PFM"), the Applicant shall provide a minimum of 130 square feet of surface area of structural soil for Category 4 shade trees and 90 square feet of surface area of structural soil for Category 3 shade trees, as such trees are identified in the PFM. The structural soil shall have a minimum width of 8-feet and a minimum depth of 36-inches and such planting areas shall be interconnected to the extent feasible, as determined by Urban Forest Management. Geotextile fabric shall be provided between the structural soil and a layer of organic material located on top of the structural soil. At the time of site plan submission, the Applicant shall provide written documentation, including information about the composition of the structural soil, to Urban Forest Management indicating that a qualified and appropriately licensed "company" provided the structural soil. The Applicant shall provide 72-hour notice to Urban Forest Management and the Sully District Supervisor's Office, prior to installation of the soil, to allow verification of the composition of the structural soil and verification that the structural soil is the correct mix and is installed correctly. The Applicant shall provide written confirmation from a certified arborist and/or landscape architect demonstrating and verifying installation of structural soil.
27. **Buffer Treatments.** Landscaped buffers shall be provided generally as depicted on Sheets 3, 11, 12 and 13 of the CDP/FDP along Centreville Road, Route 28 Ramp, Air and Space Museum Parkway, Historic Sully Way, Beale Drive and Turley Hall Drive and in accordance with Proffer #26 above.
28. **Location of Utilities.** Utility lines shall be generally located so as to not interfere with the landscaping concepts shown on the CDP/FDP. The Applicant reserves the right to make minor modifications to such landscaping to reasonably accommodate utility lines provided such relocated landscaping shall retain a generally equivalent number of plantings and shall continue to reflect the concepts illustrated on the CDP/FDP. For all other areas of the Property, in the event that during the process of site plan review any landscaping shown on the CDP/FDP cannot be installed in order to locate utility lines, as determined by DPWES, then an area of additional landscaping generally consistent with that displaced shall be substituted at an alternate location on the Property, subject to approval by Urban Forest Management.
29. **Recreational Facilities.** The Applicant shall comply with Paragraph 2 of Section 6-110 and with Section 16-404 of the Zoning Ordinance as follows:
- A. In the event the total cost of the on-site recreation expenses is less than the required \$955.00 per market rate unit, the Applicant shall provide a cash contribution to the Park Authority for the remainder of the recreational facility contribution ("Park Contribution"), payable at building permit issuance for the 500th residential unit, to be used solely for development of park facilities on the Sully Historic Site.

- B. Construct, in the eastern portion of the Property, a community clubhouse on the north side of Turley Hall Drive with pool and meeting/activity rooms, as generally depicted on Sheet 4 of the CDP/FDP for use by individual residential unit owners (and their guests) within the "active adult" community.
 - C. Construct, in the western portion of the Property, a major community clubhouse and recreation facility to include an outdoor swimming pool, tennis courts, bocci court, fitness room, game rooms, meeting rooms, business center, waterside plaza, croquet and event lawn, overlook and/or similar facilities, as generally depicted on Sheet 11 of the CDP/FDP for use by individual residential unit owners (and their guests) within the "active adult" community.
 - D. Within the Independent Living Facility, construct areas totaling a minimum of one thousand square feet designated for exercise, reading, computer use, billiard, other games and/or similar uses for the use of the residents of this facility.
 - E. Provide formal community parks and informal pocket parks, generally as shown on Sheets 3, 9 and 10 of the CDP/FDP.
 - F. Construct an interconnected trail network on the Property, for use by all residents of this community and their guests, linking the neighborhoods which comprise the development, generally as shown on Sheet 5 of the CDP/FDP.
30. **County Architectural Review Board ("ARB")**. In accordance with Section 7-204 of the Zoning Ordinance, only for those portions of the Property located within the SHOD, the ARB shall review and make a recommendation on site plans, subdivision plats and grading plans. ARB approval shall be required prior to issuance of building permits and sign permits located within the SHOD boundary. Notice of the requirement for ARB approval shall be provided in accordance with Proffer 47(E) below.
31. **Design Amenities**. Development amenities shall be consistent with the design quality shown on Sheets 8, 9, 10 and 11 of the CDP/FDP, and shall consist of series of streetscapes, augmented by active recreation facilities, pocket parks, courtyards and other formal and informal open space areas, to create a built environment that is visually interesting and pedestrian-friendly. The various site details, such as entry signs, light posts, benches, community mailboxes and similar features shall be of a quality consistent with the drawings included on Sheet 8 of the CDP/FDP.
32. **Prohibition of Gates**. These shall not be gated communities.
33. **Streetscape Concepts**. Streetscape design shall be unified conceptually based upon a hierarchy of roads, landscaping and use of similar forms throughout the development, as depicted on Sheet 4 of the CDP/FDP. Lighting fixtures, benches, trash receptacles and similar site features shall be consistent with one another through-out the development. Single family "villas" adjacent to Centreville Road shall be designed so: (i) the fronts or sides of units are oriented toward the road, with vehicular access to the rear of each unit; (ii) front and side facades contain similar architectural treatments; (iii) an attractive landscape buffer is provided generally as depicted on Sheet 3 of the CDP/FDP; and (iv)

any required noise structures are architecturally compatible with the villas and are appropriately screened with landscaping.

34. **Architectural Elevations.** Building elevations of the proposed residential units and PDC non-residential buildings shall be generally consistent in character and materials, as to architectural style and quality, with the conceptual elevations depicted on Sheets 6 and 7 of the CDP/FDP, subject to approval by the ARB of those elevations within ARB jurisdiction, and as determined by DPWES. Within the SHOD, building elevations shall be reviewed and approved by the ARB pursuant to the provisions of Section 7-204 of the Zoning Ordinance.
35. **Hotel Shuttle.** The hotel shall provide an on-demand shuttle for the hotel patrons to and from Dulles Airport and the nearby Air and Space Museum.
36. **Orientation of Commercial Buildings.** Non-residential buildings located between Air & Space Museum Parkway and Sully Historic Way shall be designed to present an attractive visual orientation toward both public roadways by being architecturally finished on all four sides with similar materials, detailing and features on fronts, side and rears of buildings, in general accordance with the architectural elevations depicted on the CDP/FDP, and subject to approval of the ARB as to the office building.
37. **Energy Efficiency.** All homes constructed on the 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 systems.
38. **Illegal Signs.** 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 or any builders' direction, to assist in the initial sale and/or rental of homes on the Property. This same restriction shall apply to the marketing and/or sale of all retail establishments located on the Property. Furthermore, the Applicant, any builders and any retail tenants shall direct their respective agents and employees involved in the marketing and sale of the residential units on the Property to adhere to this Proffer.
39. **Lighting.** All lighting, including of signage, shall be provided in accordance with the requirements of Sections 14-900 and 7-200 (SHOD) of the Zoning Ordinance.
40. **Stormwater Management.** In accordance with County engineering requirements and subject to approval by DPWES of waivers and/or modifications, a stormwater management/Best Management Practice ("SWM/BMPs") facility shall be provided on-site generally in the location depicted on the CDP/FDP. The Applicant may utilize alternative measures, including innovative BMPs, as supplemental designs at time of site plan submission, subject to the approval of DPWES and Urban Forest Management (UFM) and if in substantial conformance with the CDP/FDP.
 - A. Said stormwater management facility shall be a wet pond, subject to County approval. To implement a wet pond design in a residential neighborhood, it is

understood that the Applicant shall request a waiver from the County. If approved, said wet SWM/BMP pond facility shall be maintained by the UOA/HOA/COA in accordance with the County standards. The UOA/HOA/COA documents shall set forth, among other things, the maintenance responsibility for the wet SWM/BMP pond.

- B. Should the wet pond waiver(s) not be approved, the Applicant shall construct a dry pond(s) in accordance with PFM requirements. In the event that dry pond(s) are required in residential portions of the Property, the Applicant shall: (i) grant an easement to Fairfax County, in a location approved by DPWES at the time of final site plan approval, to provide access to the stormwater facility for maintenance by Fairfax County; and (ii) convey the stormwater management facilities to the relevant HOA for SWM/BMP purposes at the time of recordation of the record plat.
- C. In order to restore, as nearly as practicable, a natural appearance to the proposed SWM/BMP pond, the landscape plan submitted as part of the first and all subsequent submissions of the site plan for the SWM/BMP pond, shall show the restrictive planting easement for the pond and the maximum feasible amount of landscaping that reasonably will be allowed in the planting areas of the pond outside of that restrictive planting easement, in keeping with the planting policies of Fairfax County, as determined by UFM. The Applicant shall install said landscaping in accordance with said plan, subject to DPWES and UFM approval.
- D. Said pond shall be constructed in the general location shown on the development plan and in accordance with all applicable PFM design requirements, as determined by DPWES. An increase in the amount of clearing and/or grading for this facility from that shown on the development plan (to include clearing and grading associated with any spillways, outfall pipes, and/or maintenance roads) shall be permitted only if the following conditions are met:
- The increase is required to meet PFM requirements as determined by DPWES;
 - The change is in substantial conformance with the development plan and proffers; and,
 - The additional area needed for the facility is accommodated without any reduction in non-stormwater management open space, tree save and/or landscaping area on the Property.

If it is determined that additional clearing and/or grading is required and such does not meet those criteria, a PCA shall be required.

41. **Low Impact Development ("LID")**. Applicant will provide low impact development features such as, but not limited to, at least four rain gardens, porous pavers and/or infiltration trenches.
42. **Off-Site Parcel 34-2-((1))-12 ("Stout Parcel")**. The Applicant shall either acquire the Stout Parcel or shall pay all costs, including reasonable attorney's fees for outside counsel

(if applicable), necessary to condemn the parcel. The Applicant shall use its good faith efforts to diligently pursue acquisition of said parcel and, if successful, shall dedicate the entire parcel to the Fairfax County Park Authority ("FCPA") upon demand. Applicant shall renew its efforts to obtain the Stout Parcel by making a good faith, fair market value offer in writing within 60 days after zoning approval, and shall diligently pursue said acquisition with reasonably repeated efforts until six months after filing of its initial site plan. If, six months subsequent to submission of the first site plan, the Applicant is unable to bring about the dedication of the Stout Parcel or acquire by purchase the Stout Parcel at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, then the Applicant shall demonstrate its efforts in writing to, and shall request that, the FCPA use its powers of Eminent Domain to condemn the Stout Parcel. The Applicant's request shall be forwarded, in writing, to the Manager, Land Acquisition Branch, Planning and Development Division of the FCPA accompanied by:

- A. Plans and plats showing the necessary property to be acquired;
- B. An independent appraisal, by an MAI appraiser who is not employed by the County, of the value of the land to be acquired and damages, if any, to the residue of the affected property;
- C. A sixty (60) year title search certificate of the land to be acquired;
- D. A Letter of Credit in an amount equal to the appraised value of the property to be acquired which can be drawn upon by FCPA. It is also understood that in the event the property owner of the Stout Parcel is awarded more than the Letter of Credit in a condemnation suit, said excess amount of the award shall be paid to FCPA by the Applicant within forty-five (45) days after said award has become final. It is further understood that all reasonable and documented sums expended by FCPA, as defined above, in acquiring the Stout Parcel shall be paid to FCPA by the Applicant within sixty (60) days of written demand; and
- E. A copy of written offers and counteroffers, and evidence of owner's refusal of such offers and counteroffers.

Should the FCPA not authorize, within 180 days of Applicant's aforesaid request, acquisition of the Stout Parcel by Eminent Domain, Applicant's obligation under this Proffer 42 shall be deemed to have been satisfied and Applicant shall be released therefrom.

- 43. **Sully Plantation.** The Applicant shall contribute \$200 per non-ADU unit, prior to issuance of the 500th building permit, to the FCPA for improvements to the Sully Historic Site facilities.
- 44. **Archaeological Studies.** A "Phase I Archaeological Survey" has been performed at the Applicant's expense for the Property by a certified, professional archaeologist, and has been submitted to DPZ for review. The findings of the above-referenced survey concluded that further study of the site is not warranted. Ninety (90) days prior to the beginning of on-site development activities, the Applicant shall grant permission to the

FCPA Cultural Resource Management and Protection Section Manager and her agents, at their own risk and expense, to enter the Property to perform any necessary tests or studies, to monitor the Property at the time of initial clearing and grading and to recover artifacts, provided that such testing, studies, and removal do not unreasonably interfere with or delay the Applicant's construction schedule.

45. **Historical Marker.** Prior to final bond release for the section in which it is located, the Applicant shall fund the cost and erect an historical marker in close proximity to the historically significant area associated with the former "Turley Hall" plantation house. Location, design and text of said marker shall be determined in consultation with the Sully District Supervisor.
46. **Cemeteries.** To protect, during construction activities, the two cemeteries located along the south side of Barnsfield Road, prior to the initiation of clearing and grading the Applicant shall install temporary fencing defined as follows around the perimeter of each cemetery: 4-foot tall, 14-gauge welded wire attached to 6-foot steel posts driven 18 inches into the ground in cement or concrete "foundations", and placed no further than 10 feet apart. Said temporary fencing shall remain until completion of construction in the immediate area, when the Applicant shall provide around each cemetery a 4-foot tall, decorative metal fence, landscaping around the perimeter and a historical marker commemorating each cemetery. A public access easement shall be provided to the cemeteries and the UOA/HOA/COA shall maintain them. The obligation to maintain the cemeteries shall be provided for in the UOA/HOA/COA documents.
47. **Homeowners/Condo Association.**
 - A. **Umbrella Owners' Association.** Prior to the issuance of the first Non-RUP or RUP for any phase of the development of the Property the Applicant shall establish an Umbrella Owners' Association ("UOA") in accordance with Virginia Law.
 - B. **Homeowner and Condominium Owners' Associations.** Prior to the issuance of the first RUP for any residential phase of the development of the Property, the Applicant shall cause either a Homeowners' Association and/or a Condominium Owners' Association ("HOA/COA") to be formed for that phase in accordance with Virginia law.
 - C. **Membership in UOA.** At a minimum, each HOA/COA and the owners of the PDC/Non-residential buildings shall be members of the UOA.
 - D. The UOA/HOA/COA shall be responsible for the care, operation and maintenance of private streets, parking, sidewalks, pedestrian trails, common open space areas and recreational facilities within such development areas which are not owned and/or maintained by others. Prior to entering into a Contract of Sale, the initial purchasers of each respective residential unit shall be notified in writing by the Applicant of their maintenance responsibility for the private streets, wet stormwater management ponds, cemeteries, bus shelter, recreational and open

space areas. This disclosure shall also be set forth in the respective UOA/HOA/COA documents.

- E. The requirement for review and approval by the County Architectural Review Board of exterior design changes for dwellings and other buildings located within the SHOD shall be included in the respective UOA/HOA/COA documents prepared for those portions Property.

48. **Residential Noise Attenuation.** To address noise impacts from Centreville Road, Route 28, and Air and Space Museum Parkway, the Applicant shall use building materials with the following characteristics pursuant to commonly accepted industry standards to achieve a maximum interior noise level of approximately 45 dBA Ldn and a maximum exterior noise level of 65 dBA Ldn in rear yards and outdoor recreation areas as follows:

- A. All residential units located within 190 feet of the centerline of Centreville Road and all residential units located within 950 feet of the centerline of Route 28 which are impacted by highway noise levels of between the 65 and 70 dBA Ldn and not otherwise shielded by structures or topography shall have the following acoustical attributes: Exterior walls shall have a laboratory STC rating of at least 39; and doors and windows shall have a laboratory STC rating of at least 28. If glazing constitutes more than twenty percent (20%) of any façade exposed to exterior noise levels between 65 and 70 dBA Ldn and not otherwise shielded by structures or topography, such facade shall have the same laboratory STC as walls. Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
- B. To achieve a maximum exterior noise level of (i) 65 dBA Ldn for rear yards and outdoor recreational areas exposed to noise levels in excess of 65 dBA Ldn, and not otherwise shielded by proposed buildings or topography, the Applicant shall construct noise attenuation structures generally as shown on the CDP/FDP. Said noise attenuation structures shall include acoustical walls, earthen berms and/or combinations thereof (the "Noise Structure"). The Noise Structure shall be flush to the ground and architecturally compatible with the adjacent residential units and solid from ground up with no gaps or openings. Neither the Applicant nor the UOA/HOA/COA shall be responsible for restoration, removal, relocation or reconstruction of said noise barriers if such noise barriers are removed or otherwise altered in conjunction with future roadway improvements.
- C. As an alternative to "A" or "B" above, the Applicant may elect to have a refined acoustical analysis performed, subject to approval of DPZ and DPWES, to verify or amend the noise levels and impact areas set forth above and/or to determine which units or portions thereof may have sufficient shielding from vegetation and other structures to permit a

reduction in the mitigation measures prescribed above; or to determine minimum STC ratings for exterior walls, windows, and doors.

D. The applicant shall demonstrate to the satisfaction of DPZ and DPWES, on units located within the contours cited within Proffer A above, that based on final grade and construction of noise attenuation features, rear yards of the noise-impacted SFA units shall not be affected by noise exceeding 65 dBA.

E. Impacted units shall be depicted on the site plans.

49. **Avigation Easement and Airport Noise Notification.** At the time of site plan approval for each development area, Applicant shall provide an avigation easement over the respective site plan area for the benefit of, and in a form acceptable to, the Metropolitan Washington Airports Authority. The UOA/HOA/COA documents and/or leasing agreements for the residential units shall contain a notification that the site is in close proximity to Dulles International Airport, that the dwelling units may experience aircraft noise, and that noise contour lines may change in the future which could result in some increase in aircraft noise.
50. **Garages and Driveways.** The Applicant shall place a covenant on each single family residential lot prohibiting use of the garage for any purpose which would preclude motor vehicle storage. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the UOA/HOA/COA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's Office. The HOA documents shall expressly state this use restriction. Driveways shall be a minimum eighteen (18) feet in length from the back of the sidewalk, if applicable.
51. **Route 28 Prepayment of Taxes.** The Applicant shall provide prepayment of taxes that would have been attributable to the residential (PDH-16) portion of the Property in its current non-residential zoning district, in accordance with the formula and provisions as adopted by the Board of Supervisors for optional residential development within the Route 28 Tax District. The prepayment of taxes shall be made within ninety (90) days after the Board of Supervisors approval of this rezoning application. The Applicant recognizes that failure to provide payment to the County in the full amount determined by the Boards' formula within 90 days of the Board of Supervisors approval of this rezoning, shall mean that this rezoning shall not become effective and that this rezoning decision shall be void in accordance with Virginia Code Section 15.2-4608(C).
52. **Escalation.** All monetary contributions required by these Proffers shall be adjusted for inflation, in conformance with the Consumer Price Index, occurring subsequent to the date of subject rezoning approval and up to the date of payment of the respective contribution.
53. **Density Credit.** All intensity of use attributable to land areas dedicated and/or conveyed to the Board or any other County agency at Applicant's expense pursuant to these proffers

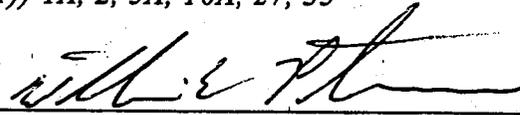
(including, without limitation, the dedications referenced above) shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the Property.

54. **Severability**. Any of the sections or individual land bays may be the subject of a PCA, CDPA and/or FDPA without joinder and/or consent of the other sections or land bays, if such PCA, CDPA, and/or FDPA does not have any material adverse effect on such other section or land bays. Previously approved proffered conditions or development conditions applicable to the section(s) or land bay(s) not the subject of such a PCA, CDPA, and/or FDPA shall otherwise remain in full force and effect.
55. **Counterparts**. To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.
56. **Successors and Assigns**. Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest, assigns, and/or developer(s) of the Property or any portion of the Property.

[SIGNATURES ON FOLLOWING PAGES]

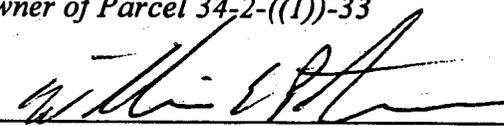
SULLY EAST L.C.

*Applicant and Title Owner of Parcels
34-2-((1))-1A, 2, 3A, 10A, 27, 35*

By: 
Name: William E. Peterson
Title: Manager

SULLY NORTH INVESTMENTS L.C.

Title Owner of Parcel 34-2-((1))-33

By: 
Name: William E. Peterson
Title: Manager

BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA

*Title Owner of approximately 1.5467 acres of
Barnsfield Road Right-of-Way*

By: _____
Name: _____
Title: _____

K. HOVNANIAN DEVELOPMENTS OF
VIRGINIA, INC. (f/k/a K. Hovnanian
Developments of Metro Washington, Inc.)
Contract Purchaser

By: _____
Name: _____
Title: _____

SULLY EAST L.C.

Applicant and Title Owner of Parcels

34-2-((1))-1A, 2, 3A, 10A, 27, 35

By: _____
Name: _____
Title: Manager

SULLY NORTH INVESTMENTS L.C.

Title Owner of Parcel 34-2-((1))-33

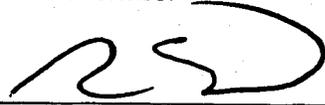
By: _____
Name: _____
Title: _____

BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA

*Title Owner of approximately 1.5467 acres of
Barnsfield Road Right-of-Way*

By: _____
Name: _____
Title: _____

K. HOVNANIAN DEVELOPMENTS OF
VIRGINIA, INC. (f/k/a K. Hovnanian
Developments of Metro Washington, Inc.)
Contract Purchaser

By: 
Name: MARK D. STEMEN
Title: VICE PRESIDENT

SULLY EAST L.C.

*Applicant and Title Owner of Parcels
34-2-((1))-1A, 2, 3A, 10A, 27, 35*

By: _____
Name: _____
Title: Manager

SULLY NORTH INVESTMENTS L.C.

Title Owner of Parcel 34-2-((1))-33

By: _____
Name: _____
Title: _____

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**

*Title Owner of approximately 1.5467 acres of
Barnsfield Road Right-of-Way*

By: AG Griffin
Name: ANTHONY H. GRIFFIN
Title: COUNTY EXECUTIVE

**K. HOVNANIAN DEVELOPMENTS OF
VIRGINIA, INC. (f/k/a K. Hovnanian
Developments of Metro Washington, Inc.)
Contract Purchaser**

By: _____
Name: _____
Title: _____

