

PROFFER STATEMENT

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Pursuant to Section 15.2-2303A of the Code of Virginia, 1950, as amended, and Section 18-204 of the Zoning Ordinance of the County of Fairfax (1978, as amended) ("Ordinance"), subject to the Board of Supervisors' approval of the requested Rezoning Application ("Rezoning") and Conceptual Development Plan ("CDP"), the applicant and owners, for themselves and their successors and assigns ("Applicant") hereby proffer the following conditions ("Proffers"). The Property that is the subject of these Proffers is identified on the Fairfax County Tax Maps as 24-4((1))-6B (portion) and 6C. Any future modifications to the Proffers and/or CDPA which affect only a specific parcel or parcels may be approved by the Board of Supervisors upon application for a proffered conditioned amendment and/or conceptual development plan amendment, as applicable, by the individual owner of a specific parcel or parcels without amending the entire proffer statement, and/or the entire CDP, provided such amendment does not affect the remainder of the Property as provided for pursuant to Paragraph 6 of Section 18-204 of the Zoning Ordinance. These Proffers, if accepted by the Board of Supervisors, supersede all prior proffers applicable to the Property, including the Proffers last amended by the Board of Supervisors on September 19, 1998 (PCA 75-2-016-2) (the "1998 Proffers"). Nothing contained herein shall affect the parcels subject to the 1988 Proffers that are not part of the Property and that are not part of these applications.

# 1. CONCEPTUAL DEVELOPMENT PLAN/FINAL DEVELOPMENT PLAN

1. Substantial Conformance. Development of the Property shall be in substantial conformance with the Conceptual/Final Development Plan entitled "Conceptual Development Plan/Final Development Plan EDS/Lincoln Property" prepared by William H. Gordon Associates, Inc. dated September, 2005, last revised October 24, 2006 ("CDP/FDP"), except as otherwise provided herein. Sheets 4 and 5 and Sheets 7 and 8 of the CDP/FDP present alternative layouts and building programs for certain of the (i) commercial/retail development and (ii) office development. The Applicant may initially develop such commercial/retail and office areas consistent with the building footprints and parking layouts shown on Sheets 4 and 5 and later add gross floor area and parking up to the maximums shown on Sheets 7 and 8, provided such additional gross floor area and parking are in substantial conformance with Sheets 7 and 8, all without an amendment to the CDP/FDP. The first floor space in Buildings F and G fronting along Rotary Drive may convert between office, retail and residential, regardless of how such space is initially used. Irrespective of the notes on the CDP/FDP, the multiple family dwellings shall be located in buildings of at least 4 stories (provided the first story of such buildings may have non residential uses as otherwise permitted) and such buildings or the associated parking structures shall have an elevator.

2. Elements of CDP. Notwithstanding the fact that the Conceptual Development Plan and Final Development Plan are presented on the same plan, the elements that are components of the Conceptual Development Plan are limited to the points of access, the general location of the buildings, uses, building heights, parking garages and open space areas, limits of clearing and grading, and setbacks from peripheral lot lines and only a future amendment to such elements shall require a subsequent CDPA or Proffered Condition Amendment.

### 3. Modifications.

A. Minor modifications to the CDP/FDP may be permitted pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, including the right to (i) alter building footprint sizes within the building envelopes set forth on the CDP/FDP, (ii) modify plazas and active/passive recreation areas provided the overall character and general location of such areas are generally as set forth on Sheets 11 and 12 of the CDP/FDP, and (iii) adjust pedestrian and vehicular circulation areas provided the overall character and general location of such areas are generally as shown on Sheets 11 and 12 of the CDP/FDP.

B. The Applicant reserves the right to adjust residential gross square footage between any building in Blocks 3, 4, 5, 6 and 7; adjust office gross square footage between any buildings Blocks 8, 9 and 10, and adjust retail square footage between any buildings in Blocks 1 and 2, provided that the total gross floor area for a particular use does not exceed the amounts set forth on Sheet 2 of the CDP/FDP, and as limited in C. below; the building heights as shown on the CDP/FDP are not exceeded; the minimum landscaped open space, level of amenities, and peripheral dimensions to lot lines are not

reduced, as such elements are shown on Sheets 4 and 5 of the CDP/FDP or Sheets 7 and 8 of the CDP/FDP; as applicable, and provided such adjustments are otherwise in substantial conformance with the CDP/FDP.

C. Notwithstanding that the CDP/FDP depicts maximum gross floor area for each of the (i) residential, (ii) commercial/retail and (iii) office uses, the Applicant shall be permitted to transfer up to 10% of the gross floor area in any of the three (3) designated uses to any other use provided that no new buildings are created, maximum building heights are not exceeded and the cap on residential units is not exceeded, the total percentage of residential gross floor area is no more than 71% of total gross floor area and such transfers are otherwise in substantial conformance with the CDP/FDP.

4. Maximum Density. The maximum floor area ratio ("FAR") permitted on the Property shall be 0.69 inclusive of Affordable Dwelling Units (ADUs). Based on this maximum FAR, the maximum gross floor area ("GFA") that may be constructed shall be 2,015,050 square feet for all of the Property. The Applicant reserves the right to construct a lesser amount of GFA provided that the buildings and Property remain in substantial conformance with that shown on the CDP/FDP as determined by the Zoning Administrator. The maximum number of dwelling units shall not exceed 1159 units, inclusive of ADUs and associated bonus units. The Applicant shall provide 5% of the units as ADUs.

5. Phasing. Build-out of the Property may proceed in phases as set forth in the Proffers. The FAR and/or number of dwelling units per acre constructed within a respective phase of the project may exceed the maximum density limitations set forth in Proffer 4 above so long as such maximum density limitations are not exceeded over the entirety of the Property that is the subject of the rezoning. Except as qualified herein, the creation of the landscaped open space areas and associated improvements may occur in phases, concurrent with the phasing of development/construction of the Property. As such, the total area of landscaped open space provided at any given phase of development shall not be required to be equivalent to the 37% overall landscaped open space required at project completion; provided that the total combined open space at the completion of all development shall satisfy the overall landscaped open space requirement as shown on the CDP/FDP. Proffer 37 shall establish the timeframe for the development of the replacement athletic fields shown on Sheet 13 of the CDP/FDP.

6. Non-Residential Phasing/Construction of Plaza/Convertible Retail Space.

A. Prior to the issuance of more than 514 RUPs, 30,750 square feet of non-residential development shall be constructed to include all exterior walls and roof structures. The Plaza between Blocks 1 and 3 shall be included on the Site Plan for the first building to be constructed in Blocks 1, 2, 3 or 4, and shall be substantially completed, i.e., open to the public and available for its intended purpose, prior to the issuance of the final RUP or Non RUP for the first building shown on such site plan. The ground floors of the buildings within Block 3 and Block 4 that fronts on the Plaza shall be used for non-residential uses only.

B. The Applicant shall design and construct the ground floors of the buildings along Rotary Drive in Blocks 3 and 4 as shown on Sheets 4 and 7 to accommodate non-residential uses including having a floor to floor height of thirteen feet and satisfying the building code requirements for buildings with residential and non residential uses. Consistent with the alternative layout provisions of Proffer I.A, this ground floor space along Rotary Drive may be either retail/commercial or residential and may be converted from one use to the other as market and other forces dictate (the "Convertible Space"). In the event that the Applicant is unsuccessful in leasing or selling more than fifteen thousand square feet of the Convertible Space for non residential uses over a period of twelve (12) months (the "Marketing Period"), then the Applicant shall demonstrate its marketing efforts to the Department of Planning & Zoning, and thereafter, the Applicant may lease or sell such units for multi-family residential uses. The Marketing Period shall be deemed to have commenced at such time as (i) Applicant, and/or Applicant's broker, has commenced distributing marketing materials to the non residential market with respect to such space and (ii) has distributed a copy of such materials to the Zoning Administrator, but in no event shall such 12 month period expire earlier than six months following site plan submission for the first site plan for Blocks 3 and 4. The Applicant shall provide written notice in the community association documents, as well as to initial purchasers/tenants of such ground floor units of the provisions of this Proffer. This commitment to marketing such space shall not require that such space remain vacant beyond the Marketing Period.

7. Streetscape and Landscape Phasing.

A. The streetscape and associated landscaping shown on Sheet 21 of the CDP/FDP entitled "Pedestrian Enhancements and Streetscapes" shall be installed at the same time as the North South Collector Road (as defined in Proffer 10 hereof), except the Applicant need not install those elements such streetscape or landscaping to be installed more than ten (10) feet from the right-of-way line, as set forth on Sheet 21 of the CDP/FDP. The Applicant shall install the berms and shade and evergreen trees along the Property's full Centreville Road frontage with the first site plan approval for a building within Blocks 1, 3 and 5 (depicted on Sheets 19 and 20 of the CDP/FDP as the Phase 1 Centreville Road Landscaping). The Phase 2 Centreville Road Landscaping, as depicted on Sheets 19 and 20 of the CDP/FDP, if not sooner installed, shall be installed prior to the first RUP for the final building in Blocks 1, 3 and 5.

B. The landscaping and pedestrian improvements associated with the private streets shown on Sheets 14 and 15 of 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 property owner or successor COA as defined in Section XIII hereof.

C. The streetscape and landscaping along the North South Collector Road as shown on Sheet 21 of the CDP/FDP shall be installed as follows: The landscaping/streetscape depicted as Phase 1 Collector Road Landscaping on the

CDP/FDP shall be installed at the same time as the adjacent road improvements and the landscaping/streetscape depicted as Phase 2 Collector Road Landscaping for the entire length of the North South Collector Road shall be installed with the last to occur of construction of Phases A or B of the North South Collector Road, as such Phases are shown on Exhibit B attached hereto.

8. Density Credit. Density credit shall be reserved for the Property as provided by Section 2-308 of the Zoning Ordinance for all dedications described herein and/or as shown on the CDP/FDP or as may reasonably be required by Fairfax County, VDOT or others at the time of site plan approval.

## II.

### PERMITTED USES

9. Permitted Uses.

A. The principal and secondary uses which shall be permitted are the following: dwelling, multiple family; public uses; accessory uses and home occupations as permitted by Article 10 of the Zoning Ordinance, bank teller machines, unmanned; business service and supply service establishments; commercial and industrial uses of special impact (Category 5), limited to: fast food restaurants, quick-service food stores, vehicle sale, rental and ancillary service establishments (provided there shall be no site storage of more than ten (10) vehicles), limited by the provision of Sect. 9-518 of the Zoning Ordinance; commercial recreation uses (Group 5), limited to: billiard and pool halls, health clubs, indoor archery ranges, fencing and other similar indoor recreational uses, any other similar commercial recreation use; eating establishments; financial institutions; garment cleaning establishments (only if all dry cleaning processes are conducted off-site); institutional uses (Group 3), limited to: churches, chapels, temples, synagogues and other such places of worship and private school of special education, provided such institutional uses are located entirely within a non residential building shown on the CDP/FDP; light public utility uses (Category 1); offices; quasi-public uses (Category 3), limited to: churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education; colleges, universities; cultural centers, museums and similar facilities; independent living facilities; medical care facilities; private clubs and public benefit associations; private schools of special education; repair service establishments; and retail sales establishments.

B. The following uses shall not be permitted: (i) commercial swimming pools, tennis courts and similar courts, (ii) skating facilities, (iii) single family attached dwellings, (iv) parking, commercial off street, as a principle use, (iv) congregate living facilities, (v) theatres, (vi) transportation facilities and (vii) vehicle transportation service establishments. The following uses shall not be permitted unless an FDPA is obtained: hotels, child care centers and nursery schools, private schools of general education and churches, chapels, temples, synagogues and other such places of worship with a child care center or nursery school. The following uses shall not be permitted unless an FDPA

or Special Exception is obtained: drive in banks and fast food restaurants with drive throughs.

C. The permitted principal and secondary uses shall not result in any additional buildings beyond those represented on the CDP/FDP. However, the Applicant reserves the right to (i) establish Group 8 Temporary Uses, including construction and sales trailers, in Blocks 1, 2, 8, 9 and 10 of the CDP/FDP and (ii) to establish construction and sales trailers on any of the Blocks, all on an interim basis as may be approved by the Zoning Administrator or Board of Zoning Appeals, as applicable, all without the necessity of an amendment to the CDP/FDP or Proffers if such are in substantial conformance with the CDP/FDP, are located within building envelopes and do not alter the limits of clearing and grading.

### III. TRANSPORTATION

10. Transportation. All transportation improvements to be made pursuant to this Section III shall be subject to Virginia Department of Transportation ("VDOT"), Fairfax County Department of Transportation and DPWES approval. Substantially complete in this Section III shall mean such road is base paved and open and available for use by the public, but not necessarily accepted by VDOT into the State secondary road system for maintenance. Upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provisions of the road or signal improvements to be made under this Section III have been unreasonably delayed by others, the Zoning Administrator may agree to a later date for the completion of the improvement in question. Further, all escrows provided in this Section III shall be escalated on an annual basis based on increases in the Consumer Price Index from the date of approval of this Application in conformance with inflationary adjustment criteria outlined in Section 15.2-2303.3 of the Code of Virginia.

11. North South Collector.

A. Applicant shall, prior to the issuance of residential use permits ("RUPs") and/or non-residential use permits ("Non RUPs") for more than 800,000 total square feet of gross floor area (the "North South Collector Road Completion Date"), dedicate right-of-way for construction and substantially complete (i) the "North South Collector Road" connecting EDS Drive (Route 8105) to Wall Road (Route 648) as a four (4) lane, median divided, public right of way with a design speed of 40 MPH, unless VDOT approves a lesser design speed, (ii) improvements to EDS Drive at the intersection of EDS Drive and the North South Collector Road and (iii) certain improvements to Wall Road at the intersection of Wall Road and the North South Collector Road (exclusive of those referenced in Proffer 13) as the improvements set forth in items (ii) and (iii) are shown on the CDP/FDP. For purposes of this 800,000 square feet calculation each residential unit shall have the square footage shown on

the approved site plans. The North South Collector Road and the associated improvements to EDS Drive and Wall Road intersection are depicted on Sheets 7 and 8 of the CDP/FDP.

- B. Notwithstanding the trigger in Proffer II.A. above, the Applicant shall (i) bond and construct the four (4) lane section of the North South Collector Road shown on the CDP/FDP as Phase B (including the associated EDS Drive improvements) with the first site plan for a building in Blocks 6, 7, 9 or 10 and (ii) bond and construct the four lane section of such road shown on the CDP/FDP as Phase A with the first site plan for a building in Blocks 2, 4 or 8, with substantial completion to occur prior to the issuance of RUPs or Non RUPs, as applicable, for any building depicted on such site plan.
- C. The Applicant shall install along and adjacent to the North South Collector Road, pedestrian enhancement consisting of pedestrian signage, special pavement treatments, oversized crosswalk striping, median refuges and landscaping generally as shown on Sheet 21 of the CDP/FDP. Applicant agrees, that (i) the COA contemplated in Proffer 58 herein shall maintain such elements that VDOT will not accept for maintenance and will, if required, enter into a maintenance agreement with VDOT, or (ii) the Applicant will use materials acceptable to VDOT if VDOT is to maintain such elements. The COA documents shall disclose the existence of such maintenance obligation. The Applicant shall not be prevented or delayed in obtaining any other approvals or permits if VDOT or the County does not permit any or all of such pedestrian enhancements, nor shall the Applicant be required to escrow for such improvements provided the Applicant demonstrates that diligent efforts have been made to obtain VDOT and County approval for such enhancements. Such enhancements shall be shown on the initial site plan for the North South Collector Road or applicable portion thereof. At time of site plan approval for the North South Collector Road, or applicable portion thereof, if VDOT and/or the County have not consented to such pedestrian enhancements within the right of way, this proffer to provide the pedestrian enhancements which were not approved, shall be deemed null and void.
- D. In the event that VDOT does not approve the design of the North South Collector as proposed and reflected on sheets 7 and 8 of the CDP/FDP, then the applicant shall design and construct the North South Collector as shown on Sheet 26 of the CDP/FDP.

12. Centreville Road.

- A. To the extent not previously acquired by VDOT, the Applicant shall dedicate and convey (with construction by others) to the Fairfax County Board of Supervisors in fee simple (i) at the time of site plan approvals for

the adjacent development that includes any portion of Blocks 1, 3 or 5 or (ii) when requested by VDOT or the County, whichever first occurs, the land areas adjacent to Centreville Road (Route 657) as shown on the CDP/FDP consisting of approximately 3.1 acres as shown on Sheets 5 and 7 of the CDP/FDP.

- B. At the time of Site Plan approval for portions of the Property adjacent to Centreville Road, the Applicant shall provide additional dedication area to the Board of Supervisors in fee simple and construct right turn deceleration lanes along Centreville Road as shown on the CDP/FDP to serve each of the site entrances. These deceleration lanes shall be constructed when the associated private street to which they tie in is constructed i.e., intersections with Parkland Drive and Main Street.
- C. The Applicant shall, at the time of site plan approval for the site plan that includes Main Street, extend the northbound left turn lane on Centreville Road at Main Street.

13. Wall Road

Applicant shall, as part of the site plans for the adjacent improvements, i.e., Blocks 1 and/or 8, bond, construct and thereafter substantially complete those improvements to Wall Road as depicted on Sheet 7 of the CDP/FDP, with substantial completion to occur prior to the issuance of the first RUP or Non RUP for any building depicted on such Site Plan.

14. McLearen Road.

- A. Applicant shall, prior to issuance of RUPs or Non RUPs for more than 800,000 square feet of gross floor area, bond, construct and thereafter substantially complete those improvements to the McLearen Road/Centreville Road intersection and the McLearen Road/EDS West Drive intersection, both as depicted on Sheet 2 of the CDP/FDP.
- B. Notwithstanding the foregoing, Applicant shall not be required to design, bond or construct the McLearen Road/EDS West Drive improvements until the installation of a traffic signal at such intersection by others, at which point such improvements shall be designed, bonded and constructed. If at time of bond release for the final site plan for the Property, such traffic signal has not been installed, Applicant shall escrow with DPWES the estimated cost of the McLearen Road/EDS West Drive improvements in an amount determined by DPWES in full satisfaction of this Proffer.

15. Traffic Signals.

A. Centreville Road/Kinross Circle South.

- i. Prior to approval of the first site plan for any building in Blocks 1 and 3, the Applicant will submit to VDOT plans for the modification of any signal existing at the Centreville Road/Kinross Circle South intersection to accommodate a fourth approach at this location (Main Street). Such signal will include pedestrian count down heads, and "chirping devices" to aid the visually impaired if approved by VDOT.
- ii. The Applicant will complete the signal modifications, subject to VDOT approvals, prior to the first RUP or non RUP for the first site plan in Blocks 1 or 3.
- iii. If the signal has not been previously installed (or committed to be installed) by others prior to the approval of the first site plan for any building in Blocks 1 or 3, the Applicant shall submit to VDOT a warrant study based on build out of the Property and nearby development, and design, equip and install such signal, including pedestrian count down heads and "chirping devices" at such time as VDOT determines them to be warranted based on the submitted warrant study referenced in this Proffer 15.A.iii above.
- iv. If based on the warrant studies, VDOT determines the signal will not be warranted until a time subsequent to bond release for the final site plan for the Property, then the Applicant shall provide an escrow for the cost of such signal prior to such final bond release in lieu of construction in an amount as determined by DPWES, less any funds committed to by others for the same signal.

B. North South Collector Road/Wall Road.

- i. Prior to approval of the first site plan for the first building in Blocks 1,2, 3,4, and/or 8 the Applicant shall submit to VDOT a warrant study based on build out of the Property and nearby development.
- ii. The Applicant shall design, equip and install such signal, including pedestrian count down heads and "chirping devices" at such time as VDOT determines it to be warranted based on the submitted warrant study. The Applicant shall be entitled to use any monies escrowed, and/or posted by others for such signal if available.

- iii. If based on the warrant studies, VDOT determines the signal will not be warranted until a time subsequent to bond release for the final site plan for the Property, then the Applicant shall provide an escrow for the cost of such signal prior to such final bond release in lieu of construction in an amount as determined by DPWES, less any funds committed to by others for the same signal.

C. Wall Road/Centreville Road

- i. The Applicant on request of the County or at first site plan including the impacted property, whichever occurs first, shall provide right-of-way dedication and/or easements along the property's Centreville Road and Wall Road frontages necessary for the installation of a traffic signal by others at this location.
- ii. If not already proffered for construction or constructed by others, prior to approval of the first site plan for any building in Blocks 1, 2, 3, 4 and/or 8, the Applicant shall submit to VDOT a warrant study based on build out of the Property and nearby development.
- iii. If deemed warranted, then the Applicant shall design, equip and install such signal, including pedestrian count down heads and "chirping devices" at such time as VDOT determines them to be warranted based on the submitted warrant study. The Applicant shall be entitled to use any monies escrowed, and/or posted by others for said signal or to be reimbursed for any contribution to be made by others for such signal subsequent to the signal installation.
- iv. If based on the warrant studies, VDOT determines the signal will not be warranted until a time subsequent to bond release for the final site plan for the Property, then the Applicant shall provide an escrow for the cost of such signal prior to such final bond release in lieu of construction in an amount as determined by DPWES, less any funds committed to by others for the same signal.

D. EDS Drive/North South Collector Roadway.

- i. Prior to approval of the first site plan for the first building in Blocks 6, 7, 9 and/or 10 the Applicant shall submit to VDOT a warrant study based on build out of the Property and nearby development.
- ii. The Applicant shall design, equip and install such signal, including pedestrian count down heads and "chirping devices" at such time as VDOT determines it to be warranted based on the submitted

warrant study. The Applicant shall be entitled to use any monies escrowed, and/or posted by others for such signal if available.

- iii. If based on the warrant studies, VDOT determines the signal will not be warranted until a time subsequent to bond release for the final site plan for the Property, then the Applicant shall provide an escrow for the cost of such signal prior to such final bond release in lieu of construction in an amount as determined by DPWES, less any funds committed to by others for the same signal.

E. North South Collector Roadway/Parkland Drive.

- i. Prior to approval of the first site plan for any building in Blocks 1, 2, 4, 6, 7, 8, 9 and/or 10 the Applicant shall submit to VDOT a warrant study for the intersection of the North South Collector and Parkland Drive based on full build out of the Property and those background developments referenced in the TIA for the subject intersection.
- ii. The applicant shall design, equip and install said signal, including pedestrian count down heads and "chirping devices" at such time as VDOT determines them to be warranted based on the submitted warrant study.
- iii. If based on the warrant studies, VDOT determines the signal will not be warranted until a time subsequent to bond release for the final site plan for the Property, then the Applicant shall provide an escrow for the cost of such signal prior to such final bond release in lieu of construction in an amount as determined by DPWES, less any funds committed to by others for the same signal.

F. Signal Timing Modifications to Centreville Road.

Within 180 days after substantial completion of the North South Collector Roadway, but in no event later than release of the bond for the North South Collector Roadway, the Applicant shall make signal timing modifications to the following signals subject to VDOT approval: Centreville Road and McLearen Road, Centreville Road and Kinross South and Centreville Road and Wall Road.

- G. In all circumstances in this Proffer 15 where the Applicant is to design, bond and construct a signal, when warranted by VDOT, the Applicant shall diligently pursue such design, bonding and construction following VDOT's agreement that such signal is warranted.

16. Right-of-Way Acquisition/Condemnation. For any of the improvements listed above for which off-site right of way and/or easements are required, if, six (6) months subsequent to the initial request by the Applicant to obtain the necessary right-of-way and easements, the Applicant is unable to bring about the dedication by others and the necessary right-of-way and easements, or to acquire by purchase the right-of-way or easements at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, the Applicant shall request the Board to condemn the necessary land and/or easements. It is understood that the Applicant's request to the Board for condemnation will not be considered until the Applicant has demonstrated to the satisfaction of the County their failed attempts to acquire the right-of-way and easements and the Applicant has forwarded the request in writing to the Division of Land Acquisition or other appropriate County official, accompanied by (1) plans, plats and profiles showing the necessary right-of-way or grading easements to be acquired, including all associated easements and details of the proposed transportation improvements to be located on said right-of-way property; (2) an independent appraisal of the value of the right-of-way property to be acquired and all damages to the residue of the affected property; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) an escrow in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by the County. It is also understood that in the event the property owner of the property to be acquired it is awarded with more than the appraised value of the property and to the damages to the residue in a condemnation suit, the amount of the award in excess of the escrow amount shall be paid to the County by the Applicant within forty-five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented third party sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within sixty (60) days of written demand.

In the event the County is successful in acquiring the off-site right-of-way, then the Applicant shall construct the improvement(s) for which right-of-way is available. It is expressly understood that in the event the County abandons efforts or does not acquire the aforesaid right-of-way and/or easements by means of its condemnation powers within thirty-six (36) months from the Applicant's written request to the Division of Land Acquisition, the Applicant is relieved of any responsibility under this proffer to construct any off-site portion of the aforesaid transportation improvements specifically affected by the unavailability of the easements or right-of-way (with all associated bonds released) and the Applicant shall escrow in an amount determined by DPWES, as appropriate, for any uncompleted portions of the transportation improvements, with such escrow to be refunded to the Applicant along with the escrow previously paid to the County for the right-of-way acquisition at the expiration of ten (10) years if the County has not acquired such right-of-way and constructed such improvements.

17. Transportation Demand Management. The Applicant shall implement and operate a transportation demand management ("TDM") program for the development within the Property consisting of three (3) major components as follows:

- A. The designation of an Employee/Resident Transportation Coordinator ("TC"). The Applicant shall appoint a TC from its management staff, or from the property owner's association for the Property prior to the issuance of the first RUPs or Non RUPs for the Property.
- B. The TC will be available to FCDOT staff to work cooperatively to promote opportunities to enhance participation in TDM programs.
- C. Commencing with the appointment of the TC, implementation of specific programs as follows:
  - (i) The Applicant, through the TC, shall promote ride sharing on an ongoing basis by displaying information on ride sharing in areas utilized by residents, tenants and their employees, such as residential common areas and building lobbies. The TC shall: (a) maintain a tenant database that can be used by the TC and/or FCDOT to distribute transit/rideshare information and promote transit use, (b) coordinate with FCDOT to ensure appropriate, up-to-date materials are distributed for promotion of transit and ridesharing, (c) continuously pursue participation in TDM programs by employers located within the development; and (d) provide an annual report to FCDOT summarizing the outreach efforts, including a listing of participants, and the initiatives participants are engaged in providing.
  - (ii) Guaranteed Ride Home. The Applicant shall encourage retail and office tenants and their employees to participate in the Washington Council of Government's "guaranteed ride home" program and to provide financial incentives to their employees to travel other than by single occupancy vehicles.
  - (iii) The Applicant shall, as part of the execution of each lease, advise each tenant that a private TDM program exists and a public TDM program exists and encourage them to participate and contact the TC or FCDOT for participation opportunities.
  - (iv) Preferential Parking for Car and Vanpools. In any office building, the Applicant shall reserve three parking spaces per building convenient to parking garage entrance and exit points for car and vanpools and such spaces will be clearly identified as so reserved.

- (v) Each new office or residential building with an associated parking garage shall provide secure, weather protected bicycle storage for 6 bicycles. Each new office building without an associated parking garage shall provide at least one bicycle locker. At least one bicycle rack or locker shall be provided in Block 1 to serve the retail development.
- (vi) Tenants/Employer occupants in the office buildings shall be encouraged to offer employee benefit options including pre-tax/payroll subsidies for transit and van pool fares, flex time and alternative work schedule programs, live-near work incentives and telework programs.
- (vii) Residential buildings shall be hardwired to provide high capacity, high bandwidth communications lines, or the equivalent wireless access. The Applicant shall further provide a common area in one of the residential buildings with business facilities, which may include, but not be limited to, wireless internet access, fax machine, photocopier and desktop computers private space for phone calls and access to a wash room. Such common area shall be accessible by all residents on the Property.

18. Bus Shelters. Prior to the issuance of more than 350 RUPs or Non-RUPs for more than 200,000 square feet whichever is first to occur, the Applicant shall construct bus shelters (but not bus pull outs) at two (2) to three (3) locations within the Property or on Centreville Road adjacent to the Property as mutually agreed upon by the Applicant and FCDOT, and if no such agreement on locations can be reached by the issuance of the 600<sup>th</sup> RUP, the Applicant shall donate \$20,000 per unconstructed bus stop to FCDOT for up to a maximum of two unconstructed bus shelters to be used for bus shelters in the vicinity of the Property, with such sum to escalate on an annual basis based on increases in the Consumer Price Index from the date of approval of this Application in conformance with inflationary criteria outlined in Section 15.2-2303.3 of the Code of Virginia. The COA shall be responsible for providing and emptying trash receptacles at such bus shelters on a routine basis and such obligation shall be disclosed in the applicable property owner's association documents.

19. Pedestrian and Maintenance Vehicle Access to Park. The pedestrian access (and associated landscaping and hardscape) to the athletic fields as shown on Sheet 13 of the CDP/FDP shall be constructed prior to the issuance of the first RUP or Non RUP for any building in Blocks 6, 7, 9 or 10 as shown on the CDP/FDP. Additionally, the Applicant shall provide an access easement for Park Authority maintenance vehicles from the intersection of the North South Collector Road and Court Street across the drive aisles on Blocks 9 and 10 and thence across the pedestrian access shown on Sheet 13 to connect to the Park. The portion of the pedestrian access shown on Sheet 13 of the CDP/FDP between the westernmost drive aisle on Block 9 and the Park shall be 12' in width to accommodate maintenance vehicles provided 4' of such 12' access way may be

constructed using grasscrete or similar pavers. Upon the completion of Phase B of the North South Collector Road, Applicant shall grant the Fairfax County Park Authority a temporary easement from the intersection of the North South Collector and Court Street to the diamond fields constructed in the Park (as defined in Proffer 38) for maintenance vehicles. Such temporary easement shall be null and void at such time as the access easement described in the second sentence of this Proffer 19 is granted. At the time of construction of the Park, the Applicant shall construct a pedestrian access with associated amenities along Wall Road from the North South Collector Road to the Park as shown on Sheets 4 and 7 of the CDP/FDP.

#### IV. STORM WATER MANAGEMENT AND BEST MANAGEMENT PRACTICES

20. Existing Overall Storm Water Management Plan. Storm Water Management ("SWM") and Best Management Practices (BMPs) has been and, subject to any required approval of DPWES contemplated in Proffer IV.B. below, will continue to be provided as set forth in the Site Plan No. 5810-SP-05-1 approved by Fairfax County on June 22, 1987. The CDP/FDP does not depict any additional SWM or BMP facilities on the Property.

21. Additional Facilities. If deemed necessary by the Director of DPWES prior to site plan approval(s), an exception to the performance criteria shall be requested in accordance with the provisions set forth in Section 118-6-9 of the Chesapeake Bay Preservation Ordinance and/or the Public Facilities Manual for any increase, if any, in impervious surface over that contemplated by Site Plan No. 5810-SP-05-1. If the exception is not requested or, if requested, not approved, SWM or BMPs will be provided for any incremental increase in the total impervious area over that contemplated in Site Plan No. 5810-SP-05-1 in accordance with a plan approved by the Director of DPWES, and said plan may require minor modifications to the existing facilities or the construction of additional facilities (or underground vaults, provided such vaults will only be permitted in areas to be developed with non residential uses and shall be maintained by the owners of such non-residential property) in areas that are planned for land disturbance activities, all without the necessity of amending the CDP/FDP. Additionally, regardless if additional water quality measures are required, Applicant shall install at least one Low Impact Design (LID) device such as filterstrips, rain gardens or infiltration trenches in each of Blocks 8, 9, 10 and may install additional LID devices that are not required. The location of such potential additional measures is as set forth on Sheets 4, 5, 7 and 8 of the CDP/FDP. The maintenance responsibility for any LID devices that are installed shall be the obligation of a commercial owner or a property owners association of commercial owners and shall not be the responsibility of a residential property owner or a property owners association that includes residential property owners.

#### V. PARKING

22. Minimum Parking Spaces. Applicant reserves the right to provide parking in excess of the minimum required per Ordinance so long as such parking is in substantial conformance with the CDP/FDP.

23. Non Required Parking Spaces. The parking spaces shown as Proposed on Sheets 3 and 4 of the CDP/FDP that are in excess of the number of spaces required by the Ordinance may be provided at the option of Applicant, but shall not be required.

## VI. DESIGN

24. Design Concepts. The architectural guidelines for the Property with respect to building facades, building scale and massing, building site and streetscape and building signage and lighting are set forth in Sheets 14 and 15 of the CDP/FDP (the "Design Concepts"). These Design Concepts and the perspectives set forth on Sheets 21, 22 and 23 of the CDP/FDP are intended to be illustrative of the general quality and character of the development. Modifications to these elements as shown on the CDP/FDP shall not require an amendment to the Proffers or CDP/FDP and are permitted provided the changes are in substantial conformance with these design concepts.

25. Additional Retail Design. Retail buildings A, B, C, D and E shall be architecturally finished (all four (4) sides) with similar materials, detailing and features. Additionally, such buildings shall be permitted to have outdoor seating areas to promote pedestrian activity in the areas depicted on Sheet 7 of the CDP/FDP.

26. Additional Office Design. The office buildings located in Blocks 8, 9 and 10 shall be designed to front on the North South Collector with landscaped entry plazas oriented toward the street. The parking (other than limited visitor parking) for such buildings shall be located to the rear of the buildings.

27. Additional Residential Design. The residential buildings along the North South Collector shall have their front facade oriented toward such road. Such front facades shall be of similar quality and character to the front facades along Centreville Road as the quality and character of such facades are depicted on Sheet 25 of the CDP/FDP.

28. Unifying Elements. All signs and street furniture, including garbage cans, benches and lamp posts, shall be consistent, both in terms of materials and design, throughout the development.

29. Signage.

A. Project Signage. All signage provided on the Property shall comply with Article 12 of the Zoning Ordinance. Any permanent freestanding signs shall be monument type with a maximum height of 10 feet (except as otherwise provided in any Comprehensive Sign Plan that may be approved) and shall be generally located as shown on the CDP/FDP. Pole signs shall not be permitted on the Property. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the development. The Applicant reserves the right to obtain approval of a Comprehensive Sign Plan at any time that would permit modifications to the provisions of Article 12 without obtaining a PCA or CDPA/FDPA.

B. Temporary Signs. No temporary signs (including "popsicle" 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 builder's direction, to assist in the initial and future marketing, sales and/or rental of dwelling units on the subject Property. This same restriction shall apply to the marketing of and sales by all retail establishments located on the Property. The Applicant, any builders and any retail tenants shall direct their agents and employees involved in marketing the Property to adhere to this Proffer.

30. Lighting. All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Fixtures used to illuminate streets, parking areas and walkways shall not exceed twenty-two (22) feet in height, measured from the ground to the top of the light standard, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Property. All upper level parking deck lighting fixtures shall not exceed a height of seventeen (17) feet measured from the ground to the top of the light standard. Lighting on the top level of the residential parking garages shall not extend above the roof line of the residential buildings. Lighting within the parking decks shall be installed between the ceiling beams to reduce glare.

31. Screening. All rooftop mechanical equipment shall be screened so to limit the visibility of such equipment from the surrounding street level with such screening to be compatible with the façade of the building.

## VII. LANDSCAPING

32. Landscaping and Open Space. Site plans submitted for the respective phases of development shall include a landscape plan for that phase of development as generally shown on Sheets 9 and 10 of the CDP/FDP unless the timing of the installation of such landscaping is otherwise required by these Proffers. The Applicant shall maintain such landscaping. The species and initial planting site of such landscaping is set forth on Sheets 9, 10, 18, 19 and 21 of the CDP/FDP, subject to revision as may be approved by Urban Forest Management ("UFM").

33. Location of Utilities. Utility lines shall be generally located so as to not interfere with the landscaping concepts shown on the CDP/FDP. The landscaping set forth on the CDP/FDP has and shall be designed to accommodate the extension of the Colonial Pipeline facilities through the Property generally in the location shown on Sheet 5 of the CDP/FDP and the Dominion Power/Verizon facilities along Centreville Road generally in the location shown on Sheets 4 and 5 of 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 continues 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.

34. Parking Deck Landscaping. The Applicant shall provide planting areas and landscaping on the top level of any parking garages shown on the CDP/FDP in accordance with requirements of the Public Facilities Manual (PFM). Such landscaping shall be of a similar type and quality to that depicted on Sheets 9 and 10 of the CDP/FDP, but at minimum shall include medium shade trees in adequately sized planters, as determined by UFM, with such landscaping to be irrigated.

35. Maintenance of Cleared, but Undeveloped Areas. Following the approval of the first site plan for residential development on the Property, any disturbed areas of the Property shall be seeded and maintained on a regular basis in accordance with the PFM standards.

#### VIII. PRIVATE STREETS/PEDESTRIAN IMPROVEMENTS

36. Private Streets. All streets and travel ways on the Property other than the North South Collector shall be private and shall be maintained by the Community Association as contemplated in Proffer 57 and such maintenance obligation shall be disclosed in the Community Association documents. All such private streets shall be subject to a public access easement, in a form acceptable to the County Attorney. The quality and character of such private streets are set forth on Sheets 14 and 15 of the CDP/FDP. Main Street, Rotary Drive and Parkland Drive will be constructed with materials and depths of pavement consistent with public street standards in accordance with the Fairfax County Public Facilities Manual ("PFM"), as determined by DPWES. Such sheets also depict the sidewalk widths and landscaping to be provided adjacent to such private streets. Modifications to such private street layouts shall be permitted provided the Zoning Administrator determines that any alternative layouts are consistent with the quality and character depicted on Sheets 12 and 13. Sidewalks adjacent to retail development shall include special paving, brick, brick accents or ribbons, or other similar elements, as shown on the CDP/FDP.

37. Pedestrian Improvements. The Applicant shall, concurrent with the development of adjacent areas, construct the pedestrian network consisting of an interconnected network of sidewalks and trails set forth on Sheets 11 and 12 of the CDP/FDP, except the connections to the Park, which are to be constructed when required by Proffer 19. Concurrent with site plan approval for each respective building the Applicant shall place all sidewalks and trails shown on the CDP/FDP on such a site plan in public access easements, in a form acceptable to the County Attorney. The Community Association shall maintain such sidewalks and/or trails located outside the public right-of-way. Additionally, the Community Association shall maintain such sidewalks and/or trails within the public right-of-way that are constructed with specialty paving as identified on

the CDP/FDP or any sidewalks and/or trails within the public right-of-way that VDOT will not agree to maintain. The maintenance responsibilities for such sidewalks shall be disclosed in the Community Association documents.

## IX. PUBLIC FACILITIES CONTRIBUTION

### 38. Park.

A. The Applicant shall dedicate in fee simple to the Fairfax County Park Authority (FCPA) approximately 17.0 acres of land as shown on Sheet 13 of the CDP/FDP, for the development of public parkland (the "Park"), provided the Applicant receives density credit for the land area so dedicated, as provided for in Section 2-308 of the Zoning Ordinance. Such density credit shall be reserved to the I-5 zoned property not being rezoned by this application that comprises a portion of Tax Map Parcel 24-4 ((11)) 6B from which the Park land will be subdivided and is located to the north and west of the fields. The CDP/FDP illustrates the use of the proposed Park land as a five (5) field Athletic Field Complex.

B. In addition to dedication, the Applicant shall provide the following services and improvements:

i. Preparation and pursuit of requisite site plans and obtain necessary Site Plan approval and construction and VDOT entrance permits;

ii. Site utility work shall include:

a. relocation of existing sewer main and manhole out of field of play areas as shown on Sheet 13 of the CDP/FDP;

b. provision of electric power of sufficient capacity to light two rectangle fields and three diamond fields according to the specification attached hereto as Exhibit C (the "Field Specifications") and to supply necessary power for a future restroom and concession building, field irrigation, and parking lot lighting in accordance with the Field Specifications.

c. provision of wired conduit to light pole locations for field lighting at the two rectangle fields. Lights will be located as required to achieve the details in the Field Specifications.

d. provision of non-wired conduit stubbed at each diamond field to allow for future lighting of the three diamond fields. Conduit will be stubbed to permit lights to be located to achieve the photometrics detailed in the Field Specifications.

e. provision of an irrigation pump house according to the Field Specifications and water service connection including water meter at the location of the irrigation pump house as shown on Sheet 13 of the CDP/FDP and of sufficient capacity to irrigate all three diamond fields and service a future restroom and concession building and possible future hydration of the rectangle fields; and

f. stubbing water, sewer and electric service to the area designated on Sheet 13 of the CDP/FDP for restrooms and concessions;

iii. Site preparation work shall conform to Chapter 104 of The Code of Fairfax County, Virginia, and shall include:

a. obtaining any necessary wetlands permits;

b. clearing and grubbing of existing vegetation;

c. stripping and stockpiling of topsoil;

d. provide dust prevention measures;

e. installing silt fencing;

f. finished grading of five athletic fields in accordance with the Field Specifications.

g. grading of parking lot and secondary facility areas (playground, warm-up areas, restroom/concession area); and

h. installing of site drainage with storm water management to be provided at the pond located to the west on EDS property.

iv. Construction of the following facilities on the Park:

a. two (2) rectangle fields with minimum playing dimensions of 195' by 360' suitable for both adult and youth play and improved with a synthetic all-weather turf surface, including at least 5' of the overrun area (the remainder of the overrun area shall be sod turf) and with field lighting in accordance with the Field Specifications, a synthetic turf sub grade profile and subsurface drainage system shall be used on the rectangle fields and shall be in accordance with the Field Specifications for synthetic turf fields; lighting shall be provided in accordance with the Field Specifications;

b. two (2) 60' diamond baseball fields with fences and backstops, containment netting, concrete bleacher pads to meet all ADA

accessibility standards and to accommodate the bleachers shown on Sheet 13 of the CDP/FDP, sodded turf and irrigation all in accordance with the Field Specifications; Rootzone Mix shall be used at a minimum depth of 6" in the turf area and shall be in accordance with the Field Specifications.

c. one (1) 90' diamond baseball field with fences and backstops, containment netting, concrete bleacher pads to meet all ADA accessibility standards and to accommodate the bleachers shown on Sheet 13 of the CDP/FDP, sodded turf and irrigation all in accordance with the Field Specifications; Rootzone Mix shall be used at a minimum depth of 6" in the turf area and shall be in accordance with the Field Specifications.

d. sidewalks and access trails as depicted on Sheet 13 of the CDP/FDP, including off-site pedestrian access to the Park; all trails shall meet the standards set by the Americans with Disabilities Act Accessibility Guidelines;

e. a finished asphalt parking lot built to PFM standards containing 270 parking spaces, with lighting;

f. seeding of the area of the portion of the Park intended for recreational use, but not improved with the athletic fields or other facilities such as parking, according to Field Specifications for general grounds;

g. landscaping in the parking lot and at the peripheral areas of the Park to PFM and Zoning Ordinance standards.

v. The dedication of the Park to FCPA shall occur within thirty (30) days following substantial completion of the improvements listed in subparagraph B. above and acceptance of such improvements by the Park Authority for maintenance. For the rectangular fields, this shall occur, subject to delays outside of the Applicant's reasonable control not later than fourteen (14) months from the time that play is permanently ceased on any of the existing fields located in the area previously leased to the CYA (as such cessation is determined by CYA with a certified letter sent to the Director of the Zoning Evaluation Department, the Sully District Supervisor and FCPA executed by CYA and the Applicant and specifying such date of cessation). With respect to the diamond fields, this shall occur one growing season beyond the 14 months to allow sod on the diamond fields to take root prior to those fields.

Applicant shall obtain a bond as security for the public improvements necessary to construct the Park shown on Sheet 13 of the CDP/FDP and referenced herein. Such bond shall comply with all the rating requirements set forth in Section 2-0600 of the PFM. Should applicant not substantially complete the parks within the timeframes noted above, then

no bond extension shall be granted by Fairfax County nor shall any RUPs or Non RUPS be issued on Blocks 1, 2, 3 and 4 until such completion. However, upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of the fields have been unreasonably delayed by others or matters outside the Applicant's control as determined by the Zoning Administrator, the Zoning Administrator may agree to the issuance of 50% of RUPs or Non RUPs for such Blocks 1, 2, 3 and 4 and a later date for the completion of the fields at which time the remainder of the RUPs or Non RUPs may be issued. Additionally, prior to substantial completion of the fields, the Applicant shall not be entitled to RUPs and Non RUPs for more than 50% of the maximum permitted square footage in Blocks 1, 2, 3 and 4 in the aggregate. Substantial completion shall be defined as the date determined by an independent certified landscape architect or professional engineer paid for by the Applicant, but reporting to the County, that the improvements to be provided pursuant to this Proffer are available for their intended purpose and substantially complete (except for growing season permitted for sod for the diamond fields) in accordance with the site plans therefore and the Field Specifications. Failure to substantially complete the fields within the timeframes above shall not impact the issuance of RUPs or Non RUPs for Blocks 5, 6, 7, 9 and 10.

vi. Any debris or waste on the Park parcel shall be removed prior to dedication as determined by FCPA. Prior to dedication the Applicant shall arrange a walk-through inspection with the Park Authority Land Acquisition Manager, Area 5 Operations Manager, and Resource Management Division representative to demonstrate successful completion of this requirement.

vii. Applicant shall involve FCPA in various stages of the site design process (including at (i) schematic, (ii) design, development and (iii) final permit drawings) and incorporate comments of FCPA that are consistent with the Field Specifications. FCPA Project Management staff shall be provided access during the construction process if they desire to monitor that the Park is built according to the Field Specifications.

### 39. Schools Contribution

A. The Applicant shall contribute \$247,500 to DPWES for transfer to the Fairfax County School Board as its public school contribution for this rezoning application, with such sum to escalate from the date of rezoning approval to the date of payment by the increase in the Consumer Price Index for all urban consumers (CPI-U), 1982-1984 = 100 (not seasonably adjusted).

B. The contribution shall be paid in four (4) equal installments as a prerequisite to the issuance of a building permit for the 200<sup>th</sup>, 400<sup>th</sup>, 600<sup>th</sup> and 800<sup>th</sup> unit, respectively, for any residential building on the Property.

**X. COMMUNITY SITE AMENITIES AND RECREATIONAL FACILITIES CONTRIBUTION**

40. Community Site Amenities. The Applicant shall provide the community amenities and active and passive recreation areas and plaza areas generally as depicted on Sheets 11 and 12 of the CDP/FDP. The general quality and character of such areas are set forth on Sheet 18 of the CDP/FDP. The exact elements that comprise such amenities shall be determined at time of site plan for the buildings adjacent to such amenities and such amenities shall be constructed at the same time as the adjacent buildings. Additional site amenities may be provided at time of site plan provided they are of the quality and character of those set forth on Sheet 18 of the CDP/FDP. At a minimum such active site amenities shall include two (2) sport courts, one or more pools, and a clubhouse and/or fitness center.

41. Recreational Facilities Contribution. The Applicant shall contribute \$955 per Non ADU residential unit for the total number of Non ADU residential units to be constructed on the Property with such payment to be made in accordance with Section 16-404 of the Ordinance. Credited against said contribution shall be the cost of any recreational improvements located on the Property for residents or guests only, whether located inside or outside, such as swimming pools, health clubs and related facilities.

**XI. AFFORDABLE DWELLING UNITS/WORKFORCE HOUSING**

42. ADUs. The Applicant shall provide Affordable Dwelling Units within the residential buildings to be constructed on the Property consistent with the provisions of Section 2-800 of the Ordinance, unless modified by the ADU Advisory Board. Prior to site plan approval for any building required to provide ADUs, the Applicant shall provide calculations for the required number of ADUs in such building to DPZ for review and approval. Nothing contained in these proffers shall be deemed to alter the administration of the ADUs or the number of ADUs required to be provided pursuant to Part 8 of Article 2. Five percent (5%) of the total number of residential units shall be ADUs.

43. Intent. Proffers 44 through 55 set forth the elements of a work-force housing program that is intended to provide housing units on the Property that will be affordable to future residents who have a median household income of 70% to 90% of the Washington D.C. metropolitan statistical area median household income ("MHI"), in order to preserve and expand the housing options available in the County, as set forth below.

44. Definitions: The following terms used in these Proffered Conditions shall be defined as follows, unless specifically modified:

*Market-Rate Units.* Dwelling units approved on the Property that are not subject to either the price/rental restrictions of Part 8 of Article 2 of the Zoning Ordinance or these proffered conditions.

*Work-Force Units.* Dwelling units approved on the Property subject to the price/rental restrictions of these proffered conditions, but not required pursuant to Part 8 of Article 2 of the Zoning Ordinance.

45. Work-Force Units. A total of three percent (3%) of the dwelling units built on the Property shall be Work-Force Units. The creation of Work-Force Units may occur in phases, concurrent with the phasing of development/construction of the Property and may be located entirely within any single residential building on the Property. As such, Work-Force Units provided at any given phase of development shall not be required to be equivalent to the three percent (3%); provided that the total number of Work-Force Units at the completion of all development shall satisfy the three percent (3%) overall requirement. If the Applicant, at its option, elects to increase the percentage of ADUs provided on the Property above five percent (5%) of the total number of dwelling units, then the Work Force Units required may be reduced on a unit by unit basis for each ADU in excess of 5% of the total number of units.

*Sale.* The Work-Force Units approved on such site plans, if offered as for-sale units, shall be provided to owner(s) whose MHI is up to seventy percent (70%) of MHI for a studio, eighty percent (80%) for a one bedroom and ninety percent (90%) for a two bedroom. ("Work-Force Sale Units")

*Rental.* The Work-Force Units approved on such site plans, if offered as rental units, shall be provided to renter(s) whose MHI is up to seventy percent (70%) of MHI for an efficiency, eighty percent (80%) for a one bedroom and ninety percent (90%) for a two bedroom. ("Work-Force Rental Units")

When the required Work-Force Units that are calculated in accordance with the above paragraphs result in a fractional unit less than 0.5, the number shall be rounded down to the next whole number and any fractional unit greater than or equal to 0.5 shall be rounded up to next whole number.

46. Designation on Approved Site Plan. The approved site plan for the respective residential buildings shall designate the number of Work-Force Units, ADUs, and Market-Rate Units by bedroom count. The Applicant shall determine the interior amenities, including the number of bedrooms, for each Work-Force Unit provided. Not more than one-third of the Work-Force Units shall be studios and not more than two-thirds of the Work-Force Units shall be studios and one bedroom units. The interior amenities, at a minimum, shall be equivalent to the interior amenities provided for ADUs. If the development of the residential buildings is phased or developed in sections, then the approved site plan for the respective residential buildings shall also contain tabulations of the total number of Work-Force Units, ADUs and Market-Rate Units by bedroom count on the Property.

47. Timing of Provision of the Work-Force Units. RUPs shall not be issued for more than eighty percent (80%) of all of the total dwellings units approved on the Property, until RUPs have been issued for the required Work-Force Units required pursuant to this Proffer. Furthermore, the development agreement and its security (bond, letter of credit etc.), shall not be released until all of the Work-Force Units approved on the respective site plan have been issued RUPs.

48. Subject to the Administrative Provisions of the ADU Ordinance. It is intended that the Work-Force Units shall be administered in a like-fashion as ADU Units pursuant to Part 8 of Article 2 of the Zoning Ordinance in effect at the time of the execution of these proffered conditions. The following specific provisions of the Zoning Ordinance shall apply to administration of the Work-Force Units: Sections 2-805, 2-806, 2-807, 2-810, 2-811, 2-812, 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 Proffered Conditions. When these Proffered Conditions conflict with the administrative section(s) of the Zoning Ordinance, these Proffered Conditions shall control, including, but not limited to, the calculation of the sale/resale price and rental rates of Work-Force Units.

49. Administrative Contribution. Prior to the issuance of any RUP for a Work-Force Sale Unit, the Applicant shall contribute \$100 per Work-Force Unit shown on the approve site plan to FCRHA. Such funds shall be utilized by FCRHA for administration of the Work-Force Sale Units.

50. Alternative Administration. Notwithstanding Proffer 48 above, the Applicant reserves the right to negotiate with the appropriate Fairfax 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 Proffered Conditions 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 Fairfax 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 Proffered Conditions. Fairfax County shall be 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 Proffer 48 above may become null and void.

51. Intentionally Deleted.

52. Work-Force Sale Units - Initial Sales Price. The initial sales price for each Work-Force Sale Unit shall be determined in accordance with the following formulas and as approved by FCRHA:

- A. For Work-Force Sale Units
  - 100% of MHI times the following adjustment factors
  - Two Bedroom = 90%
  - One Bedroom = 80%
  - Studio = 70%
  
- B. Multiply the result by thirty-eight percent (38%) and divide by twelve (12) to determine the monthly shelter payment. Then subtract the following:
  - i. Estimated monthly property tax. Such tax shall be based on the Fairfax County property tax rate in effect at the time of the sale, and to include any future or additional property taxes for such property, whether imposed by the County, Commonwealth or Federal Government;
  - ii. Estimated monthly homeowners insurance. Such insurance shall be based on the estimated insurance required by a lending institution to secure a loan on a similar dwelling unit;
  - iii. Estimated monthly community association fees. Such fees shall be based on the actual average association monthly fees assessed against the unit for the prior calendar year. Community association fees shall not be included for formula for the initial sale of any Work-Force Unit;
  - iv. Estimated monthly utilities. Such utilities shall be based on the actual average monthly utilities used by the unit for the prior calendar year. Utility fees shall not be included for formula for the initial sale of any Work-Force Unit;

C. Convert the resulting estimated monthly payment, utilizing the interest-rate on a 30-year fixed-rate loan (assuming a loan of 90% of the Purchase Price) as published by Freddie Mac thirty (30) days prior to any closing and round the result to the nearest whole number, to establish maximum sales price for the unit. The actual sales price may be less than the calculated maximum at the discretion of the Applicant. The Applicant or any subsequent seller shall provide a copy the sale price calculation to FCRHA prior to closing on the sale of any Work-Force Sale Unit. The initial MHI to determine such initial maximum sale price shall be based upon the date of the issuance of the first RUP for any Work-Force Sale Unit. At a minimum, the MHI and the maximum sale price, as calculated above, shall be adjusted once a year, starting on January 1 of the next calendar year, and annually thereafter. The Applicant reserves the right to make more frequent adjustments. A copy of such annual calculation or any permitted adjustments shall be provided to FCRHA. The MHI shall be the most recent published

MHI as contained in the American Community Survey of the U.S. Census, or other applicable publication as determined by FCRHA in consultation with the Applicant.

53. Work-Force Rental Units - Rental Rates. The maximum monthly rental each Work-Force Unit may be offered at shall be determined as follows:

Work-Force Rental Units

100% of MHI times the following adjustment factors

Two Bedroom = 90%

One Bedroom = 80%

Efficiency = 70%

Divide the result by twelve (12), then multiply by 25% and round to the nearest whole number to establish the maximum monthly rent for the 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, shall be adjusted once a year, starting on January 1 of the next calendar year, and annually thereafter. A copy of such annual calculation shall be provided to FCRHA. The MHI shall be the most recent published MHI as contained in the American Community Survey of the U.S. Census, or other applicable publication as determined by FCRHA in consultation with the Applicant. Following the expiration of ten (10) years from the issuance of the first RUP for a building containing a workforce rental unit, Housing and Community Development may, in conjunction with the then owner of such unit, reset the rental formula to ensure that the rents are still affordable to individuals within the targeted income levels.

54. 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 violate any Federal, State or other local law, then the offending portion of the proffer shall be deemed null and void and no longer in effect. All remaining conditions of these Proffered Conditions shall remain in full force and effect.

55. Condominium Conversion. If a residential building was initially built as a rental project, then is subsequently converted to a condominium project, any existing Work-Force Units shall be maintained as Work-Force Units and shall be administered as Work-Force Sale Units. The restrictions on the Work-Force Sale Units shall be disclosed in the condominium declaration.

56. Disclosure. The requirements for administration and price of all for sale Work-Force Units shall be disclosed to all prospective purchasers and be recorded among the land records as a restrictive covenant. The form of such covenant shall be approved by the County Attorney.

## **XII. NOISE ATTENUATION MEASURES**

57. Prior to site plan submission for the first residential building fronting along Centreville Road, the Applicant shall provide to DPWES and DPZ an acoustical study ("Study") for review and approval in accordance with DPZ established guidelines for studies, to assess the impact of transportation noise from Centreville Road on the proposed development based on final residential building locations. The Study shall utilize standard measures to evaluate noise, and shall confirm existing mapped noise contour intervals and as a condition of site plan approval shall demonstrate that exterior wall construction techniques that are to be provided will ensure that a maximum interior noise level of approximately DNL 45 dBA shall be achieved for any dwelling unit and that the Study shows will be exposed to noise levels in excess of DNL 65 dBA. All units that require interior or exterior structural noise alteration shall be identified on the site plan.

## **XIII. COMMUNITY ASSOCIATION**

58. Prior to issuance of the first RUP or Non-RUP for the Property, the Applicant shall establish a "Community Association" in accordance with Virginia law. Such Community Association may consist of an umbrella owners association for the entire Property (or the existing Bristol Owners Association, which is the master association to which the Property is presently subject), as well as individual sub associations or condominium owners' associations ("COAs") formed for specific buildings or groups of buildings. At a minimum, each COA, all residential units (unless represented by and included in a COA) and the owners of each office and/or retail building shall be members of the Community Association. The Community Association shall be responsible for the obligations specifically identified in these proffers, including all maintenance, TDM, and notification obligations. The Community Association documents or any residential lease of the units shall disclose the Property's proximity to Dulles Airport and the potential for expansion of airport operations and resultant potential noise impact.

## **XIV. WETLANDS PERMIT.**

59. The Applicant shall contact with the US Army Corps of Engineers in writing prior to the final site plan approval to determine whether or not any action is required to ensure compliance with § 404 of the Clean Water Act. If any action is required, the applicant shall complete such action as may be required by Section 404 prior to grading the impacted area prior to site plan approval.

## **XIV. ROUTE 28 TAX DISTRICT**

60. The Applicant shall provide prepayment of taxes that would be lost to the Route 28 Transportation Improvements Tax District by reason of the rezoning of a portion of the Property for residential uses 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 portion of the Property for which the Applicant shall prepay the Route 28 taxes shall be the land areas that include residential development, being

generally those areas east of the North/South Connector Road and north of the Community Plaza. Applicant agrees to promptly subdivide such residential area so that it is a separate tax parcel. The prepayment of taxes shall be made within sixty (60) days following the date on which an ordinance approving the Applicant's requested rezoning and these associated proffers is enacted. The Applicant recognizes that failure to provide payment to the County in the full amount determined by the Board's formula within 60 days of the Board of Supervisors approval of the rezoning and final development plan shall mean that this rezoning and final development plan approval as requested by the Applicant shall not become effective and that this rezoning and final development plan decision shall be void in accordance with Virginia Code Section 15.2-4608(C).

**XV. COUNTERPARTS**

These Proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original and all of which when taken together shall constitute but one and the same instrument.

**OWNER:**

EDS INFORMATION SERVICES L.L.C.

By: Ronald P. Vargo

Ronald P. Vargo  
Executive Vice President and ~~TREASURER~~  
Chief Financial Officer ~~\_\_\_\_\_~~

R.P.V.  
11/29/06

**APPLICANT:**

LPC COMMERCIAL SERVICES, INC

By: \_\_\_\_\_

Its: \_\_\_\_\_

**XV. COUNTERPARTS**

These Proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original and all of which when taken together shall constitute but one and the same instrument.

**OWNER:**

EDS INFORMATION SERVICES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPLICANT:**

LPC COMMERCIAL SERVICES, INC

By: Bill Hickey

William M. Hickey, Jr.

Its: Senior Executive Vice President