

September 24, 2007

4:00 P.M

FAIRFAX CORNER RETAIL L.C.
PCA 87-S-039-6
PROFFER STATEMENT

March 12, 2007
April 26, 2007
May 17, 2007
June 11, 2007
June 28, 2007
July 6, 2007
July 12, 2007
August 7, 2007
September 10, 2007
September 18, 2007
September 19, 2007
September 21, 2007
September 24, 2007

Pursuant to Section 15.2-2303A of the Code of Virginia, as amended, and subject to the Board of Supervisors approval of PCA 87-S-039-6, Fairfax Corner Retail L.C. (the "Applicant") owner of the approximately 30.2411 acres (known as Fairfax County Tax Map Parcels 56-1-((1))-47G1, 47H, 47J, 47K, 47L, 47P, 47Q, 47R, 47S and 47T and identified as Fairfax Corner Land Bays 2 and 3), included in this application (the "Property"), proffers for itself, its successors and assigns that development of the Property shall be in conformance with the previous proffers approved in PCA 87-S-039-5 and dated June 26, 2002, which proffers remain in full force and effect except as qualified by and subject to the following terms and conditions. In the event this application is denied, these revised proffers shall immediately be null and void and the proffers dated June 26, 2002 shall remain in full force and effect.

1. **Conceptual and Final Development Plan.** The Property shall be developed in substantial conformance with the Conceptual Development Plan Amendment and Final Development Plan Amendment ("CDPA/FDPA") prepared by Land Design, Inc. and last dated September 10, 2007 (the "Development Plan"), as further modified by these proffered conditions. Notwithstanding that the CDPA/FDPA is combined onto sixteen (16) sheets, it shall be understood that (i) the proffered portion, i.e. the CDPA portion, shall consist of the plan shown on Sheets 2 and 3 relative to the points of access, the maximum amount of square footage, the total square footage devoted to non-residential uses, the total square footage devoted to residential uses, maximum number of dwelling units, minimum and maximum building heights, location and types of uses, limits of clearing and grading, streets and major open space areas, and (ii) the Applicant has the option to request a Final Development Plan Amendment from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements.

2. **Paragraph 2 shall be revised to read as follows:**

Maximum Density. The maximum floor area ratio ("FAR") for the entire 114.5 acre Fairfax Corner assemblage ("Fairfax Corner") shall not exceed 0.49 FAR, prior to the application of Affordable Dwelling Unit ("ADU") density calculations. The total gross floor area on Fairfax

Corner shall not exceed 2,462,947 square feet. Parking structures and garages, whether freestanding, under or within buildings, shall not be counted as FAR square feet.

3. **Paragraph 3 shall be revised to read as follows:**

Principal Uses. All principal uses allowed in the PDC zoning district shall be permitted as depicted and/or listed on the CDPA/FDPA. The gross square footage of non-residential uses in Fairfax Corner shall not exceed two-thirds of the total, or 1,641,964 square feet. Of that amount, up to 700,000 gross square feet may be in office use, up to 400,000 gross square feet may be in retail use (inclusive of retail space located within Land Bay 5), up to 135,000 gross square feet may be in movie theater use, and up to 200,000 gross square feet may be in hotel/motel use. Except for the street level retail in the residential buildings and the movie theater, non-office principal and secondary non-residential uses shall be permitted only as shown on the CDPA/FDPA, located within the building enclosure of the office structures and within the retail center structures/buildings. The maximum size of any one retail establishment, except for a movie theater, grocery store or health club, shall not exceed 50,000 feet.

4. **Paragraph 4 shall be revised to read as follows:**

Residential Uses. The Applicant may develop up to 400,000 square feet of residential uses on the Property, and the total maximum residential square footage within Fairfax Corner shall not exceed 1,447,062 gross square feet. The maximum number of multi-family dwelling units constructed on the Property shall not exceed 350 units, inclusive of ADUs and Workforce Dwelling Units.

5. **Paragraph 5 shall be revised to read as follows:**

Open Space. No less than 27 percent of the Property shall be maintained as open space areas. A minimum of 39 percent open space shall be provided within Fairfax Corner; however, individual site plans for portions of the Fairfax Corner project may have less than 39 percent open space. The Applicant reserves the right to have utility easements, trails, sidewalks, and stormwater management facilities located within or pass through said open space areas.

6. **Paragraph 8 shall be revised to read as follows**

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 and workforce dwelling unit, the Applicant shall provide a cash contribution, at the time of issuance of the first building permit for the final residential building, to the Fairfax County Park Authority for the remainder of the recreational facility contribution, to be used solely for recreational improvements serving the Government Center area of the Springfield District.
- B. In addition to the commons and public plazas shown on the CDPA/FDPA, the Applicant shall provide interior amenities for the residents of Buildings F-3, I and N to

utilize. These amenities may include, but not be limited to, a fitness center and community room. These amenities shall be made available to all residents of Buildings F-3, I and N, and may be located in one building, or in any or all of Buildings F-3, I and N.

- C. Prior to the issuance of the first RUP for dwelling units in Buildings F-3, I or N, the Applicant shall construct the deck overlooking the stormwater facility in the southern portion of the property as generally shown on Sheet 10 the CDPA/FDPA. The Applicant shall provide amenities on this deck generally as shown on the deck exhibit. This gathering feature shall be a private facility for use by residents of Buildings F-3, I and N.
- D. Prior to the issuance of RUPs for dwelling units in Buildings F-3, I or N, the Applicant shall contribute \$500 per market rate dwelling unit approved on each applicable site plan to the Fairfax County Park Authority ("FCPA") for use at Patriot Park for park development activities.

7. **Paragraph 9 shall be revised to read as follows:**

Mix of Uses. Within buildings B, C, E, G-1, H, I, J, L, M, N, O and P, at least 70% of the cumulative net floor area (excluding the area occupied by mail room(s), building management office(s) and lobby areas) of the combined ground floors of these buildings shall be occupied by hotel, retail and/or restaurant uses. A minimum of 25% of the net floor area (excluding the areas occupied by mail room(s), building management office(s) and lobby areas) of the ground floor of each building shall be occupied with hotel, retail and/or restaurant uses.

8. **Paragraph 10 shall be revised to read as follows:**

Affordable Dwelling Units/Workforce Dwelling Units.

A. **Affordable Dwelling Units ("ADUs").**

- 1. Depending upon the type of building construction, the Applicant shall either a) provide five percent (5%) of the total number of dwelling units approved on an individual site plan for Buildings F-3, I and/or N as Affordable Dwelling Units (ADUs) in accordance with Article 2 Part 8 of the Zoning Ordinance, or b) provide zero (0) ADUs as to the respective Buildings F-3, I and/or N if the type of construction proposed on an individual site plan for Buildings F-3, I and/or N exempts the Applicant from the requirement to provide ADUs in accordance with Article 2 Part 8 of the Zoning Ordinance, but in such instance the Applicant shall increase the number of Workforce Dwelling Units it shall provide consistent with Paragraph 8(B) below.
- 2. ADUs shall consist of the same unit type (rental apartments or for sale condominiums) as the market rate units contained within the building housing the ADUs.

B. **Workforce Dwelling Units.** In addition to the provision of ADUs pursuant to Paragraph 8(A)(1)(a) above, the Applicant also shall provide seven percent (7%) of all residential units approved on individual site plans for Buildings F-3, I and/or N as Workforce Dwelling Units, which will be affordable to future residents who have a household income of up to 120% (consistent with the tiers set out immediately below) of the Area Median Income ("AMI") for the Washington Metropolitan Statistical Area, as determined periodically by the U.S. Department of Housing and Urban Development. To the extent the Applicant shall be exempt from providing ADUs for Buildings F-3, I and/or N, as stated in Paragraph 8(A)(1)(b) above, the Applicant shall provide as Workforce Dwelling Units twelve (12%) of all residential units approved on individual site plans for Buildings F-3, I and/or N. Said Workforce Dwelling Units shall be provided to persons in either a) for-sale units, or for-rent units constructed of steel and concrete (Building Construction Types 1, 2, 3 and 4 as specified in the Virginia Uniform Statewide Building Code) whose household income (i) for at least thirty four percent (34%) of the units, is between sixty percent (60%) and eighty percent (80%) of the AMI; (ii) for at least thirty three percent (33%) of the units, is between seventy percent (70%) and one hundred percent (100%) of the AMI; and (iii) for up to thirty three percent (33%) of the units, is between seventy percent (70%) and one hundred twenty percent (120%) of the AMI, or b) for-rent units constructed of wood and masonry (Building Construction Type 5, as specified in the Virginia Uniform Statewide Building Code) whose household income (i) for fifty percent (50%) of the units, is between sixty percent (60%) and eighty percent (80%) of the AMI; and (ii) for fifty percent (50%) of the units, is between seventy percent (70%) and one hundred percent (100%) of the AMI.

1. **Definitions.** The following terms used in these Proffered Conditions shall be defined as follows, unless specifically modified:
 - a) **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 Proffers; and
 - b) **Workforce Dwelling Units.** Dwelling units on the Property subject to the price/rental restrictions of this Proffer, but not subject to those of Paragraph 8(A) and Part 8 of Article 2 of the Zoning Ordinance.
2. **Designation on Approved Site Plan.** The approved site plan(s) for Buildings F-3, I and N shall designate the number of Workforce Dwelling Units and the number of market rate units to be provided in the respective building. The Applicant shall determine the interior amenities, including the number of bedrooms, for each Workforce Dwelling Unit provided. The approved site plan(s) for the respective buildings shall also contain tabulations of the total number of Workforce Dwelling Units, by bedroom count and unit size, on the Property. Whenever the calculation of the required Workforce Dwelling Units results in a fractional unit less than 0.5, then the number shall be rounded down to the next whole number, and any fractional unit of 0.5 or greater shall be rounded up to the next whole number, provided that 12% of the total number

of dwelling units located in Buildings F-3, I and N are either ADUS or Workforce Dwelling Units.

Approved site plans, record plats and building plans for Buildings F-3, I and/or N shall designate the specific units that are the Workforce Dwelling Units. If there is to be any change in the location of Workforce Dwelling Units after the original approval of a site plan for Buildings F-3, I and/or N, the Applicant shall be responsible for amending the approved plans and plats to reflect the designation of the alternate Workforce Dwelling Units prior to the issuance of a Residential Use Permit for the new Workforce Dwelling Units. However, in the case of a multiple family rental development that is under single ownership, the Workforce Dwelling Units need not be specifically identified. In such rental developments, the site plans, record plats and building plans for Buildings F-3, I and/or N shall identify the development as a rental project and shall note the total number of Workforce Dwelling Units and the number of market rate units provided. For all for-sale developments, the floor area of each Workforce Dwelling Unit shall be noted on the approved site plan, record plat and building plan for Buildings F-3, I and/or N.

Workforce Dwelling Units that are included on approved site plans for Buildings F-3, I and N shall be deemed features shown for purposes of Section 15.2-2232 of Va. Code Ann. and, as such, shall not require further approvals pursuant thereto in the event the Board of Supervisors and/or the Fairfax County Redevelopment and Housing Authority shall acquire or lease such units.

3. Workforce Dwelling Units - Size. The size of the Workforce Dwelling Units shall be not less than 450 square feet for an efficiency unit, 600 square feet for a one-bedroom unit, and 750 square feet for a two-bedroom unit.
4. Workforce Dwelling Units - Rental Rates. Notwithstanding any reference elsewhere in this Paragraph 8(B) to Section 2-811 or other provisions of the Zoning Ordinance, the maximum monthly rental, initially and for each year thereafter, at which each rental Workforce Dwelling Unit may be offered shall be the rental rate for the Washington Standard Metropolitan Statistical Area published by the Virginia Housing Development Authority ("VHDA") and/or the U.S. Department of Housing and Urban Development ("HUD") for the respective percentage of the AMI designated for such unit.

The initial AMI to determine such initial maximum monthly rent shall be determined from the date of the issuance of the first RUP for each respective Workforce Dwelling Unit. The AMI and the maximum monthly rent, as calculated above, may be adjusted once a year, as published by HUD and/or VHDA. A copy of such annual calculation shall be provided to the Fairfax County Department of Housing and Community Development ("HCD") or such other agency as may be designated by the County to oversee implementation of a Workforce Housing Program.

5. Workforce Dwelling Units - Control Period. The price for subsequent re-rental Workforce Dwelling Units shall be controlled for a period of fifty (50) years from the date of issuance of the first Residential Use Permit for any Workforce Dwelling Unit located within Buildings F-3, I or N. For for-sale Workforce Dwelling Units, the price for the subsequent resales shall be controlled for a period of thirty (30) years after the initial sale. However, upon any resale, conveyance, and/or transfer to a new owner of such Workforce Dwelling Unit within the initial thirty (30) year period of control, the prices for each subsequent resale and/or transfer to a new owner shall be controlled for a new thirty (30) year period commencing on the date of such resale, conveyance, and/or transfer of the Workforce Dwelling unit. For any Workforce Dwelling Units that is owned for an entire thirty (30) year control period by the same individual(s), the price control term shall expire and the first sale of the Workforce Dwelling Unit after such expiration shall be in accordance with Sect. 2-812(5) of the Fairfax County Zoning Ordinance.

6. Provisions of the ADU Ordinance. The Applicant intends that the Workforce Dwelling Units shall be administered in a fashion similar to ADU Units pursuant to the below-specified provisions of Section 2-800 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 Workforce Dwelling Units: Sections 2-805, 2-807, 2-808, 2-810, 2-811, 2-812 (with a control period of 50 years for rental units and recording covenants committing to the abovementioned control periods), 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. Occupants of Workforce Dwelling Units purchased or leased by the Board and/or HCD shall qualify for the household income tiers set forth in Paragraph 8(B) above. There shall be no requirement that the Workforce Dwelling Units provided shall be of proportional bedroom count to the market rate units within this development. To the extent any of these Workforce Dwelling Unit (Paragraph 8(B) et seq.) provisions conflict with any provision of the Zoning Ordinance, these Proffers shall control.

7. Alternative Administration. The Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the Workforce Dwelling Units. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the Workforce Dwelling Units shall be administered solely in accordance with such an agreement, and the administrative requirements of this Paragraph 8(B) shall become null and void. Such an agreement and any modifications thereto, shall be recorded in the land records of Fairfax County. In addition, if, prior to site plan approval for Buildings F-3, I and/or N, the Fairfax County Zoning Ordinance is amended to provide

specific requirements regarding Workforce Dwelling Units, the Applicant reserves the right, in its sole discretion, to opt into the new Zoning Ordinance provisions regarding Workforce Dwelling Units, and the administrative requirements of this Paragraph 8(B) shall be null and void. In any event, if this proffer conflicts with the administrative sections of the Workforce Dwelling Unit provisions of the Zoning Ordinance, this proffer shall control.

9. **Demonstration of Square Footage Compliance.** At the time of filing of any site plan for development of the Property, the Applicant shall submit to the Department of Public Works and Environmental Services "DPWES" a running square footage tabulation which clearly presents proposed and approved square footage as follows: (i) total overall site development within Fairfax Corner; (ii) total non-residential use versus residential use; (iii) total non-residential use by category proposed and residual amount available; and (iv) total number of ADUs and Workforce Dwelling Units and remaining number of such units required subject to Paragraph 8. Said tabulations shall demonstrate compliance with the square footage and dwelling unit limitations set forth in these proffers and with the tabulations provided on Sheet 2 of the CDPA/FDPA.

10. **Transportation Demand Management.** The Applicant shall implement a Transportation Demand Management ("TDM") program to reduce office employee and residential vehicle trips during peak periods. Residents, office employees and retail employees shall be advised of all TDM strategies by the TDM Coordinator, as described below. TDM coordination duties shall be carried-out by a designated agent/employer or transportation management coordinator(s) (collectively "TDM Coordinator"). The TDM Coordinator position may be a part of other duties assigned to the individual(s). This TDM Program shall only apply to the office space located within Buildings B, C, E, G-1, I, N and P (if containing greater than 130,000 square feet of office use) and the multi-family residential units located within Buildings F-3, I and N.
 - A. **Components of the TDM Program:** The TDM Program shall include the following components:
 1. **TDM Goal:** The TDM Program shall be implemented to reduce the A.M. and P.M. weekday peak hour vehicular trips, defined as the peak hour of travel between 6:00 A.M.-9:00 A.M. and 4:00 P.M.-7:00 P.M. respectively, derived from trip generation rates and/or equations applicable to office and multi-family residential uses as set forth in the Institute of Transportation Engineers, Trip Generation, 7th Edition. The TDM Program shall be designed to provide minimum trip reductions during the peak hours, as defined above, of fifteen percent (15%) for the multi-family residential component of the TDM Program, and ten percent (10%) for the office component of the TDM Program (the "TDM Goal").
 2. **TDM Program:** In order to meet the TDM Goal set forth in this Proffer, the Applicant shall implement this TDM Program, which may be amended, subject to approval of FCDOT, without the necessity of a PCA. Strategies shall include, but not limited to, the following initiatives that shall be implemented by the Applicant as buildings are completed:

- a) Within three (3) months following issuance of the initial RUP for residential use in Buildings F-3, I or N, or within three (3) months following issuance of the initial Non-RUP for office use in Buildings B, C, E, G-1, I, N or P (if containing greater than 130,000 square feet of office use), the Applicant shall designate an individual to act as the TDM Coordinator for the Property whose responsibility shall be to implement the TDM Strategies with on-going coordination with FCDOT. The TDM Coordinator shall be responsible for coordination and communication with FCDOT and the Umbrella Owners Association for the Property. Upon designation of a TDM Coordinator, the contact information of the TDM Coordinator shall be provided to FCDOT within 10 days of such designation and updated within 10 days after changes occur in said designation;
- b) Participation in the Fairfax County Ride Share Program and other trip reduction programs sponsored by FCDOT;
- c) Dissemination of materials regarding Metrorail, Metrobus, Fairfax Connector, ride-sharing, teleworking and other relevant transit options in sale/leasing packages and to retail employees;
- d) Provision of information of potential carpool and vanpool options that may be available to residents, tenants and employees. Designated carpool and vanpool parking spaces shall be provided within the office building parking garages should this be allowed subject to the Parking Reduction Agreement referenced in Paragraph 16 below;
- e) Provision of two (2) on-street parking spaces designated for shared car service use such as Flex Car, Zip Car, or other similar programs should this be allowed subject to the Parking Reduction Agreement referenced in Paragraph 16 below;
- f) Provision of transit maps, schedules and other relevant transit option information to residents, tenants and employees through posting in the common-areas of each residential, office and hotel building, a newsletter or use of a community website;
- g) Residential buildings shall be hardwired with broadband, high capacity data/network connections, or equivalent wireless access;
- h) Each resident of Buildings F-3, I and N shall be provided access to a common area that shall be provided with business facilities, which may include, but not be limited to a fax machine, photocopier, and desktop computers with internet access;
- i) If a community web site is developed, it shall include information on the TDM program and on multi-modal transportation options;

- j) The TDM Coordinator shall offer to meet annually with office, retail and hotel lessees and/or owners of developed space on the Property to discuss TDM programs available to tenants and employees at Fairfax Corner;
 - k) Provision of bicycle parking in each non-residential structured parking area. Accessible shower and locker room facilities for employee usage shall be located in each building containing greater than 130,000 square feet of office space;
 - l) Provision of bicycle parking in each structured parking area that serves individual residential buildings;
 - m) Within 120 days of zoning approval, the Applicant shall provide bicycle parking facilities in the vicinity of the existing loading area located in the northeast corner of Building E or an equivalent location for convenient employee usage; and
 - n) Prior to issuance of the non-RUP for Buildings B, C, F-3, G-1, I or N, whichever occurs first, the Applicant shall provide a bus shelter for the bus stop located on the north side of Monument Drive near its intersection with Fairfax Corner Avenue. The location of this bus shelter shall be subject to the approval of FCDOT. The bus shelter installation shall be limited to the concrete pad, an all-weather pedestrian connection to the adjacent trail, the shelter itself, and a trash can.
3. **TDM Budget:** Upon designation of the TDM Coordinator, the Applicant shall establish a TDM Account for the purpose of funding the implementation of the TDM Strategies stated in this proffer. The Applicant shall initiate the TDM fund with a \$10,000 contribution. The TDM Account shall be managed by the TDM Coordinator. A line item for further funding of the TDM Account shall be included in the respective Umbrella, Residential, and Office Owners Association documents, which shall provide that that the TDM Account will not be eliminated and that TDM funds will not be utilized to pay the salary of the TDM Coordinator or for any other non-TDM related purpose. The TDM Account shall be funded by the Umbrella Owners Association with a minimum annual contribution of \$10,000 per year in addition to any TDM Remedy which may be contributed to the TDM Account pursuant to Paragraph 10(A)(5) below. The Applicant shall fund the TDM Account until operation of the TDM Program is transferred to the Umbrella Owners Association.
4. **Monitoring:** Twelve (12) months following issuance of the initial RUP for residential use in Buildings F-3, I or N, or twelve (12) months following issuance of the initial Non-RUP for Buildings B, C, E, G-1, I, N or P (if containing greater than 130,000 square feet of office use), the effectiveness of the TDM program shall be evaluated using surveys and/or traffic counts prepared by the TDM Coordinator in cooperation with, and as approved by

FCDOT. The TDM Coordinator shall submit an Annual Report to FCDOT based upon said surveys or traffic counts, in order to facilitate determination by FCDOT of what trip reduction has been achieved. The Applicant shall conduct such surveys and/or traffic counts for three (3) years following the initial survey. After build-out of the multi-family residential buildings (F-3, I and N) and Buildings B, C, E, G-1, I, N and P (if containing greater than 130,000 square feet of office use) approved pursuant to this subject PCA, the Applicant shall then conduct surveys and/or traffic counts annually until it is demonstrated through two (2) consecutive annual surveys and/or traffic counts following build-out of the aforesaid office and residential components on the Property that the TDM Goal has been achieved. Once the Applicant demonstrates through two (2) consecutive annual surveys and/or traffic counts that the TDM Goal has been achieved, then the Applicant shall continue the TDM Program as stated in this paragraph with the exception of the Monitoring and Remedy requirements of this paragraph.

5. TDM Remedy: In the event that the TDM Goal has not been achieved pursuant to the aforesaid two consecutive surveys and/or traffic counts, then the Applicant shall meet with FCDOT to review the TDM Program for the purpose of identifying additional strategies and programs that may be implemented to assist in achieving the TDM Goal. Until the TDM Goal has been met for two consecutive annual surveys and/or traffic counts, the Applicant shall contribute annually to the TDM account \$50 per residential unit for which a RUP has been issued in Buildings F-3, I and N and \$0.05 per gross square feet of office use in Buildings B, C, E, G-1, I, N and P (if containing greater than 130,000 square feet of office use), which remedy amounts shall be utilized on additional TDM strategies as approved by FCDOT.

11. Landscaping.

- A. Landscape Plan. Landscaping shall be generally consistent with the quality, quantity and the locations shown, respectively, on the "Landscape Plan" included as Sheet 5 of the CDPA/FDPA. At the time of planting, the minimum caliper for trees shall be as follows: non-flowering deciduous trees shall be at least three (3) inch caliper, and large evergreen trees shall be at least eight (8) feet in height. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of all site plans, for review and approval by Urban Forest Management ("UFM"), 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 UFM.
- B. Location of Utilities. Utility lines shall be generally located so as to not interfere with the landscaping concepts shown on the CDPA/FDPA. 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 CDPA/FDPA. For all other areas of the Property, in the event that during the process of site plan review any landscaping shown on the CDPA/FDPA 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 UFM.

- C. **Parking Deck Landscaping.** The Applicant shall provide planting areas on the top level of any exposed parking garage in accordance with the requirements of the PFM. Such landscaping shall be planted in adequately sized planters, as determined by UFM, with such landscaping to be irrigated.
12. **Streetscape Concepts.** Streetscape elements (lighting fixtures, benches, trash receptacles and similar site features) shall be unified conceptually throughout the development, both in terms of materials and color.
13. **Signage.** Signage shall be provided in conformance with the Comprehensive Sign Plan for Fairfax Corner, as may be amended.
14. **Public School Contribution.** Prior to the issuance of the building permit for each respective residential building, the Applicant shall contribute \$897 per dwelling unit (based upon a projected student yield of .076 students per dwelling unit, at \$11,630 per student) for each dwelling unit approved on the final site plan for that respective building to the Board of Supervisors for capital improvements to schools serving the Property.
15. **Energy Efficiency.** All dwelling units 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.
16. **Parking.** Parking shall be provided in accordance with the requirements of Article 11 Part 1 of the Zoning Ordinance and the Fairfax Corner Parking Reduction Agreement as it may be amended by the Applicant. The Applicant reserves the right to provide more parking spaces than required by the Zoning Ordinance, so long as the resulting number of parking spaces do not diminish the amount of open space and the minimum distances to the peripheral lot lines depicted on the CDPA/FDPA. Fewer parking spaces than required by the Zoning Ordinance may be provided subject to an approved amendment of the Parking Reduction Agreement.
17. **Parking Structure Design.**
- A. **Private Street Frontage.** The parking structure elevations fronting on Palace Way and Summit Corner Drive shall be treated with individual design elements that may include, but not to be limited to, storefront appearance, false fenestration, glass, colored concrete panels, stamped concrete panels, or any combination thereof, or other architectural treatment for the purpose of blending the parking structure architecture with that of nearby buildings. This commitment shall apply to the first thirty-five (35) feet of the structure measured from the finished grade. As some of the garages may be constructed in phases, no parking structure elevation fronting on Palace Way or Summit Corner Drive shall remain devoid of architectural treatment, as described above, for a period greater than two years from the date of issuance of the initial Non-RUP for the parking structure.

- B. **Public Street Frontage.** The parking structure elevations fronting on Random Hills Road, Monument Drive, and Government Center Parkway for Buildings B, C, F-3 and G-1 shall be treated with individual design elements that may include, but not to be limited to, colored concrete panels, stamped concrete panels, glass, or other architectural treatment for the purpose of softening the visual impact of the parking structure from view from Random Hills Road, Monument Drive, and Government Center Parkway.
- C. **Lighting.** The Applicant shall utilize full cut-off, low-intensity or recessed lighting directionally shielded to mitigate the potential impact of light glare emanating from any of the parking structures beyond the limits of the property. Such lighting shall meet the requirements of Article 14 of the Zoning Ordinance.
- D. **Access.** The access points to each parking structure shall be designed in a manner to ensure that vehicles waiting to access the garages will not back-up onto any public road.
18. **Rooftop Screening.** All rooftop mechanical equipment shall be so located, or if necessary, screened to limit the visibility of such mechanical equipment from street level. Such screening elements shall be compatible and/or complimentary with the façade of the building.
19. **Minimum Building Heights.** The Applicant shall construct Buildings B, C and G-1 at a minimum height of three stories above the Palace Way finished grade.
20. **Trash Receptacles.** The Applicant shall relocate the trash receptacles for Building E into an enclosed facility, either within Building C or in an addition to Building E, within 120 days of the issuance of the initial Non-RUP for Building C.
21. **Right-of Way Reservation.** Prior to site plan approval for Building B or C, whichever comes first, an additional 15 feet of land along Government Center Parkway between Monument Corner Drive and Random Hills Road, and an additional 12 feet of land along Random Hills Road between Government Center Parkway and the right turn deceleration lane onto Random Wall Way, shall be reserved by the Applicant for future dedication in fee simple to the Board of Supervisors for future transit use. The Applicant shall dedicate said lands, in fee simple, to the Board of Supervisors (i) upon a Board of Supervisors approved funding mechanism or other such Board of Supervisors adopted program to finance an extension of Metro beyond the Vienna/Fairfax-GMU Metro station that includes a Metro train station and platform located within the Interstate 66 median adjacent to the Property; or (ii) upon a Board of Supervisors approved funding mechanism or other such Board of Supervisors adopted program to provide a Bus Rapid Transit ("BRT") service or other similar express bus service to the Property or the adjacent Government Center area; or (iii) upon demand by the County for implementation of a Board of Supervisors approved transportation program that includes the use of said areas for transit or other public transportation improvements. Prior to dedication, the Applicant shall be permitted to locate landscaping and signage within said lands until construction, by others, of transit facilities within said lands, which shall be removed by the Applicant prior to dedication. Should a Board of Supervisors approved funding mechanism or other such Board of Supervisors adopted program for financing the extension of Metro, initiation of a BRT, and/or other similar express bus service not include

the requirement for said lands reserved by the Applicant, and upon written notice by the County, then the requirements of this Paragraph shall become null and void and the reservation may be vacated.

22. **Bus Service Improvements.** If the Board of Supervisors has approved a funding mechanism or other such program to finance the extension of Metro beyond the Vienna/Fairfax-GMU Metro station or initiation of a BRT or other similar express bus service to the Property or the adjacent Government Center area, and if the Board of Supervisors has approved a transportation program that includes the use of the reservation areas referenced in Paragraph 21 for transit or transportation needs prior to site plan approval for Building B, then as part of Building B site plan approval the Applicant shall dedicate said rights-of-way, subject to Paragraph 21, and shall (i) construct the bus pull-off lanes and up to three (3) bus shelters along Random Hills Road as depicted on the CDPA/FDPA within said dedication areas adjacent to Building B to provide convenient bus access to the Metro station, BRT or express bus service; (ii) relocate the Random Hills Road trail to the south side of the bus pull-off lanes and reconstruct as a ten (10) foot wide trail; and (iii) construct the plaza and pedestrian amenities depicted on the CDPA/FDPA. The Applicant shall construct the bus pull-off lanes, the bus shelters, the trail relocation, and the plaza to the satisfaction of DPWES and FCDOT. If a funding mechanism for the extension of Metro or initiation of a BRT or other similar express bus service, or a transportation program that includes the use of the reservation areas referenced in Paragraph 21 for transit or transportation needs, is not approved by the Board of Supervisors prior to site plan approval for Building B, then the Applicant shall only be required to construct the plaza and pedestrian amenities depicted on the CDPA/FDPA prior to issuance of the initial Non-RUP for Building B.
23. **Bus Canopy Easement.** The Applicant shall grant an easement to the Board of Supervisors to accommodate construction, by others, of a canopy attached to the north elevation of Building B and C, along the full length of the parking garage, to provide cover for the future bus pull-off lanes on Random Hills Road provided pursuant to Paragraph 22 above.
24. **Metro Entry Pavilion.** Within four months after zoning approval, the Applicant shall coordinate, and fund, a study group consisting of representatives from FCDOT, Washington Metropolitan Area Transit Authority ("WMATA"), VDOT, Fairfax County Department of Planning and Zoning ("FCDPZ"), Fair Oaks Mall, an American's with Disabilities Act (ADA) Compliance Consultant, the Applicant, and such other members as may be deemed necessary by the Springfield District Supervisor. The purpose of the study group shall be to determine the appropriate location of the Metro Entry Pavilion (shown as "Metro Head House" on the CDPA/FDPA) on or off the Property. The study group shall determine whether one of the potential Metro Entry Pavilion locations depicted on the CDPA/FDPA, or an alternate location not on the Property, is best suited for a Metro Entry Pavilion connection to a future Metro station located within the Interstate 66 median adjacent to the Property. The study group shall select one of the Metro Entry Pavilion locations depicted on the CDPA/FDPA, or an alternate location not on the Property, and deliver their recommendation to the Board of Supervisors within twenty-two (22) months after zoning approval. After consideration of the study group's recommendation, the Board of Supervisors shall then determine the ultimate location of the Metro Entry Pavilion at a formal meeting of the Board. If the Metro Entry Pavilion location selected by the Board of Supervisors is one of those depicted on the

CDPA/FDPA, it shall not exceed a building footprint of 6,000 square feet and shall be reserved by the Applicant for future construction by others of the Metro Entry Pavilion in the selected location. The area shall be dedicated to the appropriate public agency upon approval of a Board of Supervisors funding mechanism or other such Board of Supervisors adopted program for financing the extension of Metro beyond the Vienna/Fairfax-GMU Metro station, or upon demand by the County subject to Board of Supervisors approval of a transportation program that includes the use of said area for transit or other public transportation improvements. The Applicant reserves the right to build, at its sole cost and expense, levels of parking and/or office space above the said Entry Pavilion, which Entry Pavilion shall be constructed by others, with and only with the approval of FCDOT that the levels of parking and/or office space will not prohibit the construction of the Metro Entry Pavilion within the dedicated area. If the Board of Supervisors determines that the preferred Metro Entry Pavilion should be located in an area not on the Property, then there shall be no further obligation by the Applicant to reserve an area for a Metro Entry Pavilion on the Property. If the Board of Supervisors does not make a location decision within twenty-four (24) months after zoning approval, then the Entry Pavilion location in the northwest corner of Building B shall be reserved for such use.

25. **Metro Entry Pavilion Area Usage.** Prior to dedication of the Metro Entry Pavilion location selected by the Board of Supervisors, the Applicant reserves the right to use this area as a plaza or as open space. Additionally, the Applicant reserves the right to provide structured parking within the area selected for the Metro Entry Pavilion, subject to the restrictions of the previous proffer as to parking above the Metro Entry Pavilion. If the Applicant desires to construct structured parking within the selected Metro Entry Pavilion area, then the Applicant shall be responsible for removing such structured parking from within the Metro Entry Pavilion area prior to construction of the Metro Entry Pavilion by others.
26. **Metro Entry Pavilion Easements.** At the time of dedication of a Metro Entry Pavilion location pursuant to Paragraph 24, the Applicant shall grant the necessary construction and ancillary easements to the Board of Supervisors to accommodate construction, by others, of the Metro Entry Pavilion in the Building B or Building C location determined pursuant to Paragraph 24. These easements shall permit construction of the Metro Entry Pavilion as a free standing structure or as a structure attached to the Building B and/or C garage.
27. **Government Center Parkway.** Prior to the issuance of a Non-RUP for Building B or Building C, whichever comes first, and subject to approval by VDOT and DPWES, the Applicant shall construct a left turn lane on southbound Government Center Parkway at its intersection with Monument Corner Drive, and shall improve the median break, as approved by VDOT.
28. **Random Wall Way.** Prior to issuance of a Non-RUP for Building C, and subject to approval by DPWES, the Applicant shall improve Random Wall Way between Buildings C and G as shown on the CDPA/FDPA. The Random Wall Way treatment to be installed by the Applicant shall be as shown on Sheets 15 and 16, depending upon which Metro Entry Pavilion location is selected by the Board of Supervisors. The Applicant shall have the ability, without requiring a PCA or proffer interpretation, to revise the Random Wall Way lane configuration in relation to the location of the median near the intersection of Random Wall Way and Palace Way.

29. **Fairfax Center Area Road Fund Contribution.** The Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors on November 22, 1982, as amended as of the time of each such payment, subject to credits for all creditable expenses, as determined by FCDOT and DPWES.
30. **Plaza Improvements.** The Applicant shall provide the following plaza improvements:
- A. Prior to issuance of the first RUP for dwelling units in Buildings F-3, I or N, the Applicant shall improve the "Fountain Square" plaza located between Buildings H and O, as well as the plaza in front of Building D as shown on Sheet 12 of the CDPA/FDPA;
 - B. Prior to the issuance of the initial Non-RUP for Building B, the Applicant shall construct the "Corner Plaza" as shown on Sheet 10 of the CDPA/FDPA; and
 - C. Prior to issuance of the initial Non-RUP for Building G-1, the Applicant shall construct the "G-1 Pocket Park" and paved crosswalk as shown on Sheet 13 of the CDPA/FDPA.
 - D. Whichever Metro Entry Pavilion location is chosen by the Board of Supervisors pursuant to Paragraph 24 above may be utilized by the Applicant as an interim plaza or decorative feature until the area is dedicated to the appropriate public agency pursuant to these proffers. If this plaza is constructed by the Applicant pursuant to Paragraph 22, then a public access easement shall be provided for this plaza.
 - E. Prior to issuance of the initial RUP or Non-RUP for Building I Building N, whichever comes first, the Applicant shall improve Garden Square Plaza as depicted on Sheet 3 of the CDPA/FDPA.
31. **Movable Carts.** The Applicant shall be permitted to operate movable carts in plaza areas on the Property. Movable carts shall be defined as transportable kiosks that serve a retail purpose, but shall not be counted towards the maximum amount of retail or non-residential FAR permitted on the Property, and are provided on an impermanent basis. The location of movable carts shall be provided in a manner that will not interfere with pedestrian movements or safety. No more than five (5) movable carts shall be located on the Property at any one time, though the Applicant shall be permitted to locate up to fifteen (15) movable carts on the Property in association with Special Events. In no case shall more than five (5) movable carts be located on the Property in association with a Special Event for a time period to exceed 72 hours.
32. **ATMs.** The Applicant shall be permitted to install Automated Teller Machines ("ATMs") on the Property, which shall not be counted towards the maximum amount of retail or non-residential FAR permitted on the Property. ATMs shall be located in kiosks or building façades in a manner that does not interfere with pedestrian movements or safety.
33. **Hotel Noise Attenuation.** In the event that hotel is developed in Buildings, B, C, E, F-3, or P, the following shall be applicable:

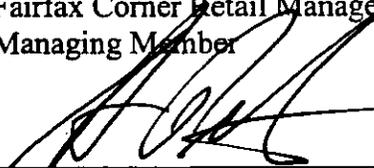
- A. For hotel rooms that are demonstrated by an acoustical analysis as described in Paragraph 33(B) below, to be impacted by highway noise from Interstate 66 having levels projected to be above 65 dBA Ldn, these rooms shall be constructed with the following acoustical measures for the purpose of reducing interior noise to a level of no more than 45 dBA Ldn:
1. Exterior walls should have a laboratory sound transmission class ("STC") rating of at least 39.
 2. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of 65 dBA Ldn or above.
 3. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39.
 4. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials ("ASTM") to minimize sound transmission.
- B. The Applicant shall submit an acoustical analysis prior to the submission of building plans for hotel use in Buildings B, C, E, F-3 or P in order to determine the affected rooms (if any), and appropriate interior noise attenuation measures necessary based on the noise impact from Interstate 66 on such building. Such analysis shall be submitted to and approved by DPZ, and shall be based on the accepted methodology contained in said refined analysis. Any changes to the hotel use premised on the conclusions of such a refined acoustical analysis shall be in substantial conformance with the CDPA/FDPA and these proffers, as determined by the Zoning Administrator.
- C. Building plans for any hotel building shall depict the final noise contours and all locations of the respective building/rooms, if any, that are subject to noise mitigation as provided herein.
- D. No hotel building shall be constructed if an acoustical analysis demonstrates that exterior noise levels at that site will be in excess of 75 dBA Ldn.
- E. Hotel rooms shall not be located in any area where interior noise levels can not be mitigated to no more than 45 dBA Ldn, as stated in paragraph 33(A).
34. **Sanitary Sewer.** The Applicant shall submit to DPWES a sewer study with the initial submission of each site plan for development of the Property to determine the adequacy of the existing sewer lines located on site. If the sewer study concludes that the existing sewer lines located on site are inadequate to accommodate the proposed development in the respective site plan, and if required by DPWES at the time of construction of each respective building, the Applicant shall upgrade the existing sewer lines on site necessary to serve each respective building to the satisfaction of DPWES to accommodate the additional development depicted on the respective approved site plan.

35. **Planning Commission Review.** Prior to the issuance of the individual building permits for Buildings B and C, the Applicant shall submit architectural details of the buildings and associated parking structures and landscape details of the adjacent plaza and pedestrian amenities surrounding Buildings B and C to the Planning Commission for review and administrative approval to determine whether the designs meet the character of the existing development and these proffers.
36. **Density Credit.** All intensity of use attributable to land areas dedicated and conveyed to the Board of Supervisors at the Applicant's expense pursuant to these proffers 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 subject Property.
37. **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 and/or the developer(s) of the site or any portion of the site.
38. **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 this Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.
39. **Severability.** Any of the sections or individual land bays may be subject to a Proffered Condition Amendment ("PCA"), CDPA, or FDPA without joinder and/or consent of the other sections or land bays, if such PCA or FDPA does not affect any other sections 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, or FDPA shall otherwise remain in full force and effect.

[SIGNATURE ON FOLLOWING PAGE]

FAIRFAX CORNER RETAIL L.C.
Applicant and Title Owner of Parcels
56-1-((1))-47J, 47K, 47L, 47P, 47Q, 47R, 47T

BY: Fairfax Corner Retail Manager, Inc., its
Managing Member

By: 
Name: Steven B. Petersen
Title: Vice President

FAIRFAX CORNER OFFICE L.C.
Title Owner of Parcel 56-1-((1))-47H

BY: Fairfax Corner Office, Inc., its Managing
Member

By: 
Name: Steven B. Petersen
Title: Vice President

FAIRFAX CORNER MIXED USE L.C.
Title Owner of Parcels 56-1-((1))-47G1, 47S

BY: MVP Management LLC, its Manager

By: 
Name: Steven B. Petersen
Title: Manager

FINAL DEVELOPMENT PLAN CONDITIONS

FDPA 87-S-039-10

September 19, 2007

If it is the intent of the Planning Commission to approve Final Development Plan FDPA 87-S-039-10, to permit mixed use development, on property located at Tax Map 56-1 ((1)) 47G1, 47H, 47J, 47K, 47L, 47P, 47Q, 47R, 47S, 47T, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions, which supersede any previous conditions on the subject property. An asterisk (*) denotes a condition carried forward from the previous approval.

1. This Final Development Plan Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this FDPA shall be in substantial conformance with the approved FDPA entitled "Fairfax Corner" consisting of 17 sheets, prepared by Land Design, dated July 10, 2006 as revised through September 10, 2007. Minor modifications to the approved FDPA may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
2. In order to ensure that drainage from the property will not create or aggravate erosion problems in the stream flowing to the south of, and through, the southeastern portion of the Fairfax Corner development, the applicant shall demonstrate, to the satisfaction of DPWES, adequate outfall for this stream between the upstream point of discharge from the property into this stream to the stream's confluence with the main stem of Difficult Run (in the central portion of Land Bay E). Adequate outfall shall be accomplished, as determined by DPWES. Through the provision of one or more stormwater detention facilities on the property, the applicant shall ensure that the post-development two-year peak flow within the stream in the adequate outfall study area will not exceed the predevelopment two-year peak flow, as determined by DPWES.*
3. Swimming pool discharge water shall be routed into the stormwater management system. The discharge process shall follow the guidelines below in order to ensure that pool water is properly neutralized prior to being discharged:
 - a) In order to ensure that high levels of chlorine are not discharged into the surface water system, pool water shall not be chlorinated prior to backwashing and/or discharging.
 - b) All waste water resulting from the cleaning and draining of the pool shall meet the appropriate level of water quality prior to discharge.

- a) In order to reduce interior noise to a level of no more than 45 dBA Ldn, for hotel rooms that are demonstrated by an acoustical analysis as described in Paragraph B below, to be impacted by highway noise from Interstate 66 having levels projected to be above 65 dBA Ldn, these rooms shall be constructed with the following acoustical measures:
 - i. Exterior walls should have a laboratory sound transmission class ("STC") rating of at least 39.
 - ii. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of 65 dBA Ldn or above.
 - iii. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39.
 - iv. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials ("ASTM") to minimize sound transmission.
- b) An acoustical analysis shall be submitted prior to the submission of building plans for hotel use in Building G in order to determine the affected rooms (if any), and appropriate interior noise attenuation measures necessary based on the noise impact from Interstate 66 on such building. Such analysis shall be submitted to and approved by DPZ, and shall be based on the accepted methodology contained in said refined analysis. Any changes to the hotel use premised on the conclusions of such a refined acoustical analysis shall be in substantial conformance with the CDPA/FDPA and these proffers, as determined by the Zoning Administrator.
- c) Building plans for any hotel building shall depict the final noise contours and all locations of the respective building/rooms, if any, that are subject to noise mitigation as provided herein.
- d) No hotel building shall be constructed in any location where the acoustical analysis demonstrates that exterior noise levels will be in excess of 75 dBA Ldn.
- e) No hotel rooms shall be located in any area unless it can be demonstrated that interior noise levels can be mitigated to no more than 45 dBA Ldn, as stated in a).