



# County of Fairfax, Virginia

*To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County*

February 2, 2007

Mark C. Looney, Esq.  
Cooley, Godward, and Kronish LLP  
Reston Town Center, One Freedom Square  
11951 Freedom Drive  
Reston, VA 20190

RE: Rezoning Application Number RZ2006-PR-039 (concurrent with PCA 88-P-030)

Dear Mr. Looney:

Enclosed you will find a copy of an Ordinance adopted by the Board of Supervisors at a regular meeting held on December 4, 2006, granting Rezoning Application Number RZ 2006-PR-039 in the name of Dunn Lorning Metro, LLC to rezone certain property in the Providence District from R-1 and I-4 Districts to the PRM District. The subject property is located in the northeast quadrant of the intersection of Prosperity Avenue and Gallows Road on approximately 14.06 acres of land for mixed use up to 2.25 FAR and subject to the proffers dated November 30, 2006, and Conceptual Development Plan conditions dated December 1, 2006. Tax Map 49-1 ((1)) 27A; 49-2 ((1)) 13A and 15A.

The Board also:

- Modified the private street limitations, as depicted on the Conceptual Development Plan/Final Development Plan (CDP/FDP).
- Modified the transitional screening and waiver of the barrier requirements to the north, northeast, and internal to the site in favor of the treatments depicted on the CDP/FDP.
- Waived the 75-foot yard regulations for lots abutting principal arterial highways.
- Modified the interior parking lot landscaping on top of the WMATA parking deck, as depicted on the CDP/FDP.

Sincerely,

Nancy Vehrs  
Clerk to the Board of Supervisors  
Enclosure

Office of Clerk to the Board of Supervisors  
12000 Government Center Parkway, Suite 533  
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903

Email: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)

<http://www.fairfaxcounty.gov/bosclerk>

Cc: Chairman Gerald E. Connolly  
Supervisor Catherine Hudgins, Hunter Mill District  
Janet Coldsmith, Director, Real Estate Division. Dept. of Tax Administration  
Barbara A. Byron, Director, Zoning Evaluation Division, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning  
Thomas Conry, Dept. Manager. – GIS - Mapping/Overlay  
Angela K. Rodeheaver, Section Chief, Transportation. Planning Division  
Ellen Gallagher, Capital Projects and Operations Div., Dept. of Transportation  
Audrey Clark, Director – Building Plan Review, DPWES  
Ken Williams, Plans & Document Control, ESRD, DPWES  
Department of Highways-VDOT  
Sandy Stallman, Park Planning Branch Manager, FCPA  
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division  
Barbara J. Lippa, Executive Director, Planning Commission  
Jose Comayagua, Director, Facilities Management  
Gary Chevalier, Office of Capital Facilities/Fairfax County Public Schools

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at Fairfax, Virginia, on the 4<sup>th</sup> day of December, 2006, the following ordinance was adopted:

AN ORDINANCE AMENDING THE ZONING ORDINANCE  
PROPOSAL NUMBER RZ 2005-PR-039

WHEREAS, Dunn Loring Metro, LLC filed in the proper form an application requesting the zoning of a certain parcel of land herein after described, from the R-1 and I-4 Districts to the PRM District, and

WHEREAS, at a duly called public hearing the Planning Commission considered the application and the propriety of amending the Zoning Ordinance in accordance therewith, and thereafter did submit to this Board its recommendation, and

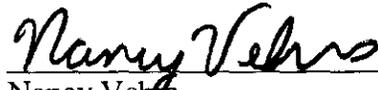
WHEREAS, this Board has today held a duly called public hearing and after due consideration of the reports, recommendation, testimony and facts pertinent to the proposed amendment, the Board is of the opinion that the Ordinance should be amended,

NOW, THEREFORE, BE IT ORDAINED, that that certain parcel of land situated in the Providence District, and more particularly described as follows (see attached legal description):

Be, and hereby is, zoned to the PRM District , and said property is subject to the use regulations of said Providence District, and further restricted by the conditions proffered and accepted pursuant to Va. Code Ann., 15.2-2303(a), which conditions are in addition to the Zoning Ordinance regulations applicable to said parcel, and

BE IT FURTHER ENACTED, that the boundaries of the Zoning Map heretofore adopted as a part of the Zoning Ordinance be, and they hereby are, amended in accordance with this enactment, and that said zoning map shall annotate and incorporate by reference the additional conditions governing said parcel.

GIVEN under my hand this 4<sup>th</sup> day of December, 2006

  
\_\_\_\_\_  
Nancy Velts  
Clerk to the Board of Supervisors

**ZAPS USER GENERATED REPORT**  
**ZONING APPLICATION SUMMARY REPORT**  
**APPLICATION NUMBER: RZ 2005-PR-039**

DECISION DATE: 12/4/2006

HEARING BODY: BOS

CRD: NO

MAGISTERIAL DISTRICT: PROVIDENCE

APPLICANT NAME DUNN LORING METRO, LLC

STAFF COORDINATOR: JPAPP0

ACTION: APPROVE

**DECISION SUMMARY:**

ON DECEMBER 4, 2006, THE BOARD UNANIMOUSLY APPROVED RZ 2005-PR-039 ON A MOTION BY SUPERVISOR SMYTH SUBJECT TO PROFFERS DATED NOVEMBER 30, 2006

**ZONING INFORMATION**

EXISTING ZONING		PROPOSED ZONING		APPROVED ZONING	
<u>DISTRICT</u>	<u>AREA</u>	<u>DISTRICT</u>	<u>AREA</u>	<u>DISTRICT</u>	<u>AREA</u>
I-4	10.51 ACRES	PRM	14.06 ACRES	PRM	14.06 ACRES
R-1	3.55 ACRES	PRM	14.06 ACRES	PRM	14.06 ACRES
<b>TOTAL</b>	<b>14.06 ACRES</b>	<b>TOTAL</b>	<b>14.06 ACRES</b>	<b>TOTAL</b>	<b>14.06 ACRES</b>

**TAX MAP NUMBERS**

049-1- /01/ /0027-A

049-2- /01/ /0013-A

049-2- /01/ /0015-A

**APPROVED ZONING DISTRICT DATA**

ZONING DISTRICT: PRM

**APPROVED RESIDENTIAL DEVELOPMENT**

LAND USE	<u>DWELLING</u>	<u>LAND</u>	<u>UNIT OF</u>	<u>NO.</u>
	<u>UNITS</u>	<u>AREA</u>	<u>MEASURE</u>	<u>OF</u>
MFD	550	14.06	ACRES	31
<b>TOTAL</b>	<b>550</b>	<b>14.06</b>	<b>ACRES</b>	<b>31</b>

**APPROVED NON-RESIDENTIAL DEVELOPMENT**

<u>FLOOR AREA</u>	<u>UNIT OF</u>	<u>LAND</u>	<u>UNIT OF</u>	<u>FAR</u>
	<u>MEASURE</u>	<u>AREA</u>	<u>MEASURE</u>	

**WAIVERS/MODIFICATIONS**

**APPROVED WAIVERS/MODIFICATIONS**

- MODIFY INTERIOR PARKING LOT LANDSCAPING
- MODIFY TRANSITIONAL SCREENING REQUIREMENT
- SEE FILE FOR ALL WAIVERS AND MODIFICATIONS

**SUPPLEMENTAL MOTIONS**

**SUPPLEMENTAL MOTIONS APPROVED**

---

**PROFFER INFORMATION**

PROFFER STATEMENT DATE: 11-30-2006

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
AFFORDABLE DWELLING UNITS	01-01-0001	0	N/A	\$	01-01-0001
ARCHITECTURE / BUILDING MATERIALS	01-01-0001	0	N/A	\$	01-01-0001
BEST MANAGEMENT PRACTICES (BMP)	01-01-0001	0	N/A	\$	01-01-0001
BICYCLE RELATED FACILITIES	01-01-0001	0	N/A	\$	01-01-0001
BONUS DENSITY	01-01-0001	0	N/A	\$	01-01-0001
CONSTRUCTION - HOURS / NOISE	01-01-0001	0	N/A	\$	01-01-0001
CONTRIBUTION - FCPA / RECREATION	01-01-0001	1	RUP	\$35,000	01-01-0001
CONTRIBUTION - SCHOOLS	01-01-0001	0	RUP	\$7,500	01-01-0001
CONTRIBUTION / OTHER LAND USE	01-01-0001	0	N/A	\$	01-01-0001
CONTRIBUTION / OTHER TRANSPORTAT	01-01-0001	0	N/A	\$	01-01-0001
DESIGN AMENITIES	01-01-0001	0	N/A	\$	01-01-0001
EASEMENT / MAINTENANCE - SWM	01-01-0001	0	N/A	\$	01-01-0001
HEIGHT - BUILDING / STRUCTURE	01-01-0001	0	N/A	\$	01-01-0001
HOA NOTIFICATION / DISCLOSURE	01-01-0001	0	N/A	\$	01-01-0001
LANDSCAPING - ENVIRONMENT	01-01-0001	0	N/A	\$	01-01-0001
LIGHTING / GLARE	01-01-0001	0	N/A	\$	01-01-0001
LOW IMPACT DESIGN (LID) / RAINGARDE	01-01-0001	0	N/A	\$	01-01-0001
MINOR MODIFICATION	01-01-0001	0	N/A	\$	01-01-0001
NOISE ATTENUATION (STUDY / WALL)	01-01-0001	0	N/A	\$	01-01-0001
OFF-SITE CONTRIBUTION - RECREATION	01-01-0001	1	RUP	\$25,000	01-01-0001
OTHER - GENERAL	01-01-0001	0	N/A	\$	01-01-0001
OTHER - LAND USE	01-01-0001	0	N/A	\$	01-01-0001
OTHER - TRANSPORTATION	01-01-0001	0	N/A	\$	01-01-0001
PARKING	01-01-0001	0	N/A	\$	01-01-0001
PARTIAL PCA PERMITTED	01-01-0001	0	N/A	\$	01-01-0001
PHASING - LAND USE	01-01-0001	0	N/A	\$	01-01-0001
PROFFERED PLANS	01-01-0001	0	N/A	\$	01-01-0001
PUBLIC AMENITIES	01-01-0001	0	N/A	\$	01-01-0001
ROAD PHASING	01-01-0001	0	N/A	\$	01-01-0001
SANITARY SEWER	01-01-0001	0	N/A	\$	01-01-0001
SECONDARY USES IN P DISTRICT	01-01-0001	0	N/A	\$	01-01-0001
SHUTTLE BUS	01-01-0001	0	N/A	\$	01-01-0001
SIGNAGE	01-01-0001	0	N/A	\$	01-01-0001
STREETSCAPE	01-01-0001	0	N/A	\$	01-01-0001
TRANSIT FACILITIES (RAIL / BUS)	01-01-0001	0	N/A	\$	01-01-0001
TRANSPORTATION DEMAND MANAGEME	01-01-0001	0	N/A	\$	01-01-0001
TREE PRESERVATION / SURVEY	01-01-0001	0	N/A	\$	01-01-0001

PROFFER INFORMATION

PROFFER STATEMENT DATE: 11-30-2006

<u>ITEM</u>	<u>DUE DATE</u>	<u>TRIGGER NO.</u>	<u>TRIGGER EVENT</u>	<u>CONTRIB AMT</u>	<u>EXPIRATION DATE</u>
UNDERGROUND - SWM	01-01-0001	0	N/A	\$	01-01-0001
UTILITIES UNDERGROUND	01-01-0001	0	N/A	\$	01-01-0001
WASTE CONTROL	01-01-0001	0	N/A	\$	01-01-0001
WORKFORCE HOUSING	01-01-0001	0	N/A	\$	01-01-0001
	01-01-0001	0	N/A	\$	01-01-0001
ADDITIONAL APPLICATION APPROVAL R	01-01-0001	0	N/A	\$	01-01-0001

---



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR ZONING MAP AMENDMENT

RECEIVED DEASL TYPE  
Department of Planning & Zoning  
OR PRELIMINARY ZONING  
DEC 12 2005  
Zoning Evaluation Division

APPLICATION NO. RZ/FDP 2005 PR-039 concurrent with RA/FOPA 88-P-030  
(Assigned by Staff)

PETITION

TO: THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA  
I (We), Dunn Loring Metro, LLC, the applicant(s),  
petition you to adopt an ordinance amending the Zoning Map of Fairfax County, Virginia, by  
reclassifying from the I-4, R-1 District to the PRM  
District the property described below and outlined in red on the Zoning Section Sheet(s)  
accompanying and made a part of this application.

1. LEGAL DESCRIPTION:		PROPERTY DESCRIPTION	Deed Book	Page No.
		Merrifield	3746	301
		Merrifield	3915	618
		Merrifield	12236	386
Lot(s)	Block(s)	Subdivision	Deed Book	Page No.

2. TAX MAP DESCRIPTION:

49-1 ((1))	27A	7.8588 AC (342,333 SF)		
49-2 ((1))	13A	2.6532 AC (115,574 SF)		
49-2 ((1))	15A	3.5458 AC (154,455 SF) = 14.0578 AC (612,362 SF)		
Map No.	Double Circle No.	Single Circle No.	Parcel(s)/Lot(s) No.	Total Area(Ac. or Sq.Ft.)

3. POSTAL ADDRESS OF PROPERTY: (If any)  
2407 Gallows Road

4. ADVERTISING DESCRIPTION: (Ex. South of Rt. 236, 1000 feet west of Rt. 274)  
South of I-66, North of Prosperity Avenue, West of Gallows Road

5. PRESENT USE: Metro Facilities  
6. PROPOSED USE: Mixed Use Development

7. SUPERVISOR DISTRICT: Providence

The name(s) and address(es) of owner(s) of record shall be provided on the affidavit form attached and made part of this application.  
The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

**INITIALS** → Mark C. Looney  
Type or Print Name of Applicant or Agent  
[Signature]  
Signature of Applicant or Agent  
Cooley Godward LLP, 11951 Freedom Drive, Reston Town Center  
Address  
Reston, VA 20190  
(703) 456-8652  
Telephone No. Home Work

Please provide name and telephone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Date application received: \_\_\_\_\_ Application Fee Paid: \$15,345.00  
Date application accepted: 12/11/05 [Signature] Form RZ (10/89)

**DUNN LORING/MERRIFIELD METRO CENTER PROFFERS**  
**RZ/FDP 2005-PR-039**  
**PCA/FDPA 88-P-030**

**November 30, 2006**

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner and applicant, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 49-1-13-17A and 18A, Tax Map 49-1-01-27A, and Tax Map 49-2-01-13A and 15A (collectively, the "Property") shall be in accordance with the following conditions if, and only if, Rezoning/Final Development Plan application RZ/FDP 2005-PR-039, and Proffered Condition Amendment/Final Development Plan Amendment 88-P-030 (collectively, the "Application") are granted. If approved, these proffers ("Proffers") supersede all previous proffers applicable to the Property. In the event that this Application is denied, these Proffers shall be immediately null and void and of no further force or effect, and the proffers previously accepted by the Board of Supervisors with RZ 88-P-030 for a portion of the Property will remain in effect.

**GENERAL**

1. Conceptual/Final Development Plan. The Property shall be developed in substantial conformance with the Conceptual Development Plan ("CDP") and Final Development Plan ("FDP") dated November 2005 and revised through November 16, 2006, prepared by Urban Engineering and Associates, Inc. (collectively, the CDP and FDP are the "Development Plan"), consisting of 34 sheets.

A. Removal of a Portion of Property from RZ 88-P-030. The portion of the Property that is the subject of RZ 88-P-030 (Tax Map 49-1-13-17A and 18A) (the "Opus Property") shall be deleted from any and all proffered conditions approved by the Board of Supervisors pursuant to RZ 88-P-030 and the Conceptual/Final Development Plan dated February 3, 1989, as revised through September 19, 1989, and any and all amendments thereto except this PCA/FDPA 88-P-030; provided, however, that the gross floor area ("GFA") or development density available or allocated to the Opus Property shall be retained and may be used by the balance of the property subject to RZ 88-P-030. All proffered conditions and plan obligations applicable to the remainder of the property subject to RZ 88-P-030 shall be unaffected by this Application and shall remain in full force and effect.

2. Minor Modifications. Minor modifications to the Development Plan may be permitted when necessitated by sound engineering or that may become necessary as part of final site design or engineering, pursuant to Section 16-403(4) of the Zoning Ordinance. Building footprints may be decreased and the number of residential units and square footage of Secondary Uses (as defined herein) within each building (and corresponding reductions in required parking and ADUs (as defined herein)) may be adjusted, so long as (a) the minimum number of residential

units and minimum square footage of Secondary Uses are provided; (b) the minimum open space tabulation provided on Sheet 4 of the Development Plan is not reduced; (c) the building heights for each building are not increased beyond the heights identified on the Development Plan and Proffer 9 herein; and (d) the development otherwise is in substantial conformance with these Proffers and the Development Plan.

3. Declaration/Owners Associations.

- A. Establishment. The Applicant shall cause the recordation of a declaration creating an umbrella owners' association and/or homeowners/condominium owners' associations (collectively, the "UOA/HOA/COA") for the Proposed Development. Such association(s) shall be formed prior to the issuance of the first Residential Use Permit ("RUP") or Nonresidential Use Permit ("Non-RUP") for the Proposed Development. The respective UOA/HOA/COA documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations set forth in these Proffers. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a lease/contract of sale for units in the Proposed Development.
- B. TDM Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be advised of the TDM Plan described in Proffer #22. All UOA/HOA/COA members shall be informed of any funding obligations resulting from the application of these Proffers prior to entering into a lease/contract of sale, and all such obligations shall be included in UOA/HOA/COA documents.

PROPOSED DEVELOPMENT AND DEVELOPMENT PLAN

4. Proposed Development.

- A. Overview of Proposed Development. The development proposed with this Application includes (a) above-grade parking structure(s) (the "WMATA Garage"); (b) a surface parking lot with Kiss-and-Ride spaces (the "Kiss-and-Ride Lot"); (c) eight (8) bus bays and shelters ("Bus Shelters") (collectively, the WMATA Garage, the Kiss-and-Ride Lot and the Bus Bays are the "Metro Improvements"); (d) three (3) residential buildings containing a minimum of 550 residential units and a maximum total of 720 residential units (plus 25,000 s.f. cellar) (collectively, the "Residential Buildings"); and (e) community-serving secondary/retail uses containing a minimum of 80,000 s.f and a maximum total of 105,000 s.f. (plus 20,000 s.f. cellar) and located on the ground floor of the Residential Buildings and the WMATA Garage and in stand-alone buildings (the "Secondary Uses") (collectively, the Metro Improvements, Residential Buildings and Secondary Uses are the "Proposed Development"), all as shown on the Development Plan. The Proposed Development is summarized as follows:

Proposed Development

Principal Use - Public/Metro Parking and Bus Bays	Minimum 2,000 structured parking and Kiss-and Ride Lot spaces; 8 bus bays
Principal Use - Multifamily Residential Units:	Minimum 550 units up to 720 units maximum; 25,000 SF of cellar space
Secondary Uses/Retail (other than ADUs):	Minimum 80,000 s.f. up to maximum 105,000 SF; 20,000 SF of cellar space
<b>TOTAL:</b>	<b>Up to 917,373 SF (excluding a maximum of 45,000 s.f. of cellar space)</b>

- B. Cellar Space. The Applicant reserves the right to utilize cellar space constructed as part of the Proposed Development for resident amenities (including, but not limited to, fitness centers and storage) and for Secondary Uses; provided, however, that the Applicant shall be required to provide parking for the Cellar Space in accordance with the requirements of Article 11 of the Zoning Ordinance, as qualified by these Proffers. The Cellar Space in the Residential Buildings shall not contain habitable residential units.

5. Mix of Uses. The Proposed Development may include the following uses, subject to the limitations identified on Sheet 4 of the Development Plan and of Proffer 4:

A. Principal Uses: Multi-family dwellings; Metro parking/facilities; Public Uses limited to the Satellite Police Office (as defined herein) and related facilities.

B. Secondary Uses:

- Accessory uses and home occupations, including business centers inside residential buildings;
- Affordable dwelling units;
- Business service and supply establishments;
- Eating establishments;
- Financial institutions (without drive-through);
- Bank teller machines;
- Fast food restaurants (without drive-through);
- Garment cleaning establishments (drop-off and pick-up only; no onsite processing);

- Quick-service food stores;
- Offices (not to exceed 25,000 s.f.);
- Vehicle rental establishments, provided all rental vehicles are parked/stored at an offsite location other than the Property;
- Retail sales establishments;
- Repair service establishments (not including vehicle light or industrial repair);
- Bus or shuttle services owned by private or quasi-public entities and primarily serving residents or employers/employees of the Proposed Development and the surrounding community, such as a private shuttle service to/from the future Merrifield Town Center;
- Electrically-powered regional rail transit facilities;
- WMATA non-rail transit facilities;
- Telecommunications facilities;
- Health clubs;
- Community clubs, centers, meeting halls;
- Child care centers and nursery with approval of a special exception;
- Colleges and universities with approval of a special exception;
- Personal service establishments;
- Private clubs and public benefit associations;
- Private schools of general education with approval of a special exception; and
- Private schools of special education without approval of a special exception.

6. Residential Units. A minimum of 550 residential units shall be constructed on the Property, with a maximum total number of residential units not to exceed 720 units. Such total shall include all required affordable dwelling units ("ADUs") and all Workforce Units (as defined in Proffers 26 and 27). Multi-family residential units constructed as part of the Proposed Development shall have an average unit size of no greater than 1,000 s.f. of net saleable/leaseable floor area per dwelling unit; provided, however, that nothing shall preclude the Applicant from constructing individual units of lesser or greater size than the average set forth herein. No residential units in the Proposed Development shall have more than two (2) bedrooms (exclusive of living space commonly referred to as "dens").

7. Secondary Uses. Secondary Uses (other than ADUs, as defined herein) may be designed and constructed on the ground-floor levels of Buildings A, B, C and D, and as stand-alone uses in Buildings E and F, all as shown on the Development Plan.

A. Exclusions from Secondary Use Square Footage. Notwithstanding their listing as a Secondary Use under Proffer 5 above, the square footage allocable to the following uses shall be in addition to, not subtracted from, the square footage of Secondary Uses permitted under these Proffers and shown on the Development Plan:

- i. Cellar Space (as defined in the Fairfax County Zoning Ordinance);
- i. ADUs/Workforce Units;
- ii. Home Occupations;
- iii. Telecommunication Facilities; and
- iv. WMATA non-rail transit facilities.

B. Satellite Police Office. The Applicant shall provide to the Board of Supervisors at no charge a license or lease (with an initial term of 20 years) (the "Lease/License") permitting the Fairfax County Police Department to occupy approximately 500 s.f. on the ground-floor of Building D for use as a satellite police office ("Satellite Police Office") in which the Police Department may store police bicycles/equipment, conduct limited interviews and perform other select police/community interactions. The exact location of the Satellite Police Office shall be determined by the Applicant in coordination with the Police Department and shall be constructed with "Base Improvements" to include at least one unisex restroom (handicapped equipped and including a shower), painted drywall, fluorescent lighting, base carpeting, lockers, phone/cable/Internet access and such other reasonable facilities requested by the Police Department. The Police Department shall have responsibility for completing its own betterments and improvements within the Satellite Police Office, such as furniture and fixtures. The Base Improvements shall be completed and the Satellite Police Office made available to the Police Department within sixty (60) days following the Applicant's receipt of the first Non-RUP for the Metro Improvements. Ongoing maintenance of the Satellite Police Office, including monthly condominium fees (as applicable), monthly utility costs, insurance, interior trash removal, etc., shall be the responsibility of the Police Department and/or the County or as otherwise agreed to as part of the Lease/License. The form of the Lease/License shall be prepared by the County Attorney and submitted to the Applicant for review and approval within sixty (60) days following the Applicant's receipt of a building permit for the WMATA Garage and shall include commercially reasonable terms substantially similar to other leases/licenses executed by the Board of Supervisors for leased office space elsewhere in Fairfax County. In the event that the Police Department notifies the Applicant in writing that it does not intend to lease or

occupy the Satellite Police Office, then this Proffer 7(a) automatically shall expire, and the Applicant thereafter shall be permitted to market and lease the Satellite Police Office as part of the Applicant's Secondary Uses.

8. Building Heights. Building heights for each building in the Proposed Development shall not exceed the maximum building heights shown on Sheet 4 of the Development Plan and as set forth below. Building height shall be measured in accordance with the provisions of the Fairfax County Zoning Ordinance and shall be exclusive of those structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Zoning Ordinance, including, for example, penthouses and other rooftop structures used for common amenity space, exercise rooms, meeting rooms and similar facilities. Such penthouses and other rooftop structures permitted under Section 2-506 of the Zoning Ordinance may be constructed to a height twenty (20) feet from the roof level of the top residential floor of the building below to the top of the penthouse/rooftop structure roof. All building penthouses/rooftop structures shall be integrated into the architecture of the residential building below. Notwithstanding the foregoing, however, nothing shall preclude the Applicant from constructing buildings to a lesser building height than that which is represented on the Development Plan, provided the configuration of building footprint remains in substantial conformance with those shown on the Development Plan and the minimum number of residential units and minimum square footage of Secondary Uses are provided.

Building A	135 feet max.
Building B	110 feet max.
Building C	110 feet max.
Building D	80 feet (60 feet within 100' of I-66 ROW) max.
Buildings E & F	40 feet max.

9. Parking.

- A. Zoning Ordinance Requirements. Parking shall be provided in accordance with the parking requirements of Article 11 of the Fairfax County Zoning Ordinance, as determined by the Department of Public Works & Environmental Services ("DPWES"), for the uses within the Proposed Development. The Applicant reserves the right, however, to provide parking spaces in the Proposed Development in addition to the total number of parking spaces shown on Sheet 4 of the Development Plan if (i) such additional spaces result from the final design of the WMATA Garage and/or the parking structures for the Principal and Secondary Uses so as to avoid partial garage floors; or (ii) to the extent necessary to accommodate Secondary Uses established on the Property that result in a higher parking requirement than is shown on the Development Plan (e.g., eating establishments), provided that the Building Heights set forth in Proffer 8 are not exceeded.
- B. Parallel Parking Spaces Along Main Street. The Applicant shall establish surface parking spaces to be located along the north side of the new Main Street (as defined herein) to be constructed on the Property generally as shown on the Development Plan (the "Parallel Spaces"). The Parallel Spaces may be part of or in addition to the total number of required parking spaces to be provided with the Proposed Development. The Applicant reserves the right to restrict the use of those Parallel Spaces along the proposed Main Street (as defined herein), through appropriate signage or such other means as the Applicant determines, that otherwise are not required to satisfy the minimum parking requirements of the Proposed Development for use as a (i) Kiss-and-Ride drop-off area or (ii) temporary loading area for the Secondary Uses. Such signage shall be submitted to the Department of Planning and Zoning ("DPZ") and Fairfax County Department of Transportation ("FCDOT") for review as part of site plan approval for the Metro Improvements unless otherwise approved by the Planning Commission as part of a future Comprehensive Sign Plan.
- C. Future Parking Reductions. Given (i) the proximity to the Dunn Loring/Merrifield Metro Station, (ii) the existing and future Metro Improvements, (iii) the significant cost of constructing underground parking structures, (iv) the character of the Proposed Development as a transit-oriented development, and (v) the TDM Plan detailed in Proffer 22 herein, the Applicant shall in good faith evaluate, and may pursue, a shared parking agreement and/or parking reduction for the Proposed Development, as may be permitted by the Fairfax County Zoning Ordinance and approved by the Board of Supervisors.
- D. Location of Metro and Secondary Use Parking. Primary parking for residents of or visitors to the Residential Buildings (Buildings A, B and C) and the Secondary Uses (Buildings A through F) shall be provided in a combination of below- and above-grade structured parking facilities to be constructed within or beneath Buildings A, B and C, as well as in the surface parking lot to be constructed in the southwest corner of the Property (the "Western Surface Lot"), all as shown on the

Development Plan. The association documents that establish and control the UOA/HOA/COA or, in the event the Residential Buildings contain rental units, the lease packages, shall provide that residents of and visitors to the Residential Buildings shall not be permitted to park overnight in the WMATA Garage (Building D) in contravention of WMATA policy; provided, however, that nothing herein shall preclude the use of the WMATA Garage for parking by non-Metrorail patrons weekdays during non-peak hours (as determined by WMATA), as well as on weekends and Federal holidays, consistent with then-existing WMATA policy. Parking for shared car services (e.g. Flex/Zip cars) to be provided pursuant to Proffer 22 herein shall be provided in the structured parking facilities to be constructed within or beneath Buildings A, B and C or in the Western Surface Lot, but not in the WMATA Garage.

- E. Parking Management Plan. Prior to the issuance of the first building permit for the first residential building, the Applicant shall develop, and have approved by FCDOT, a parking management plan to properly direct Metro patrons, residents, visitors and retail patrons to the appropriate parking facilities for each use (the "Parking Plan"). Subject to Proffer 24 herein, the Metro Improvements shall not be part of, nor made subject to, the Parking Plan, and WMATA shall be permitted to establish such parking policies, procedures and fees within the Metro Improvements as it may, from time to time, determine appropriate or advisable. The Parking Plan may include, but need not be limited to, the following strategies and facilities:
- i. An on-site and offsite directional signage program that directs Metro patrons, residents, visitors and retail patrons to the appropriate parking facilities serving each use;
  - ii. Parking attendants and/or valets;
  - iii. Separation of residential, visitor and retail parking within the parking facilities to be constructed in/beneath Buildings A, B and C to properly segregate parking for each use;
  - iv. Use of paid or gate-controlled parking within the parking facilities to be constructed in/beneath Buildings A, B and C. For example, retail patrons parking in retail spaces to be provided in Building B may be charged an hourly or daily fee to park while visiting retail services, while residents and visitors of residential units in Buildings A, B or C would not be subject to such hourly or daily fee; and
  - v. Variable Message Boards or similar technology located within or beneath Buildings A, B and/or C to direct retail patrons to the location of vacant retail parking spaces; provided, however, that no such signs shall be visible from the exterior of the buildings.

## CONSTRUCTION PHASING AND TRANSPORTATION IMPROVEMENTS

### 10. Road Improvements.

- A. Overview and Phasing. As part of the first site plan approval for the Proposed Development, the Applicant shall reserve for future dedication in fee simple to the Board of Supervisors the right-of-way for the following road improvements on and serving the Property (the "Reservation Areas") as reflected on the Development Plan. Because the Applicant will continue to use some or all of the Reservation Areas on an interim basis during construction of the Proposed Development, the Applicant's obligation to dedicate the Reservation Areas and construct the Road Improvements (as defined in this Proffer 10) shall be governed by the Phasing Plan set forth in Proffer 11 herein. Notwithstanding the foregoing, however, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required dedications or improvement(s) have been delayed (such as the inability to secure necessary permission for utility relocations or VDOT approval for traffic signals) beyond the required times set forth in the Phasing Plan, the Zoning Administrator may agree to a later date for dedication/completion of the improvement(s).
- B. Offsite Road Improvements - Condemnation
- i. The Applicant shall attempt to acquire and, if successful, shall dedicate in fee simple to the Board of Supervisors such off-site right-of-way and easements as are necessary to complete the Road Improvements described in Proffers 10 and 11 herein and shown on the Development Plan. The Applicant shall use its good faith efforts and offer a reasonable fair market value for such rights-of-way and easements. If the Applicant is unable to bring about the dedication by others of the necessary rights-of-way and easements, or to acquire by purchase the rights-of-way or easements at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, then the Applicant shall request the Board of Supervisors to condemn the necessary land and/or easements.
  - ii. It is understood that the Applicant's request to the Board of Supervisors for condemnation will not be considered until it is forwarded 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 of 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) a letter of credit 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 is awarded more than the appraised value of the property in the damages to the residue in a condemnation suit, the amount of the award in excess of the letter of credit 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 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.

- iii. In the event the necessary right-of-way and/or easements cannot be acquired voluntarily, and the County chooses not to exercise its right of eminent domain, the Applicant is then released from any portion of any proffer requiring such acquisition. In the event the County elects to defer its exercise of eminent domain, then Applicant's proffer requiring such acquisition shall likewise be deferred.

C. Gallows Road (collectively, the "Gallows Road Improvements"):

- i. A third southbound through lane along the Property's frontage on Gallows Road to its intersection with existing Prosperity Avenue;
- ii. A five foot (5') bike lane along the Property's frontage on Gallows Road to its intersection with existing Prosperity Avenue;
- iii. A dedicated right-turn lane from southbound Gallows Road onto the proposed Main Street westbound;
- iv. A dedicated right-turn lane along southbound Gallows Road onto westbound Prosperity Avenue;
- v. Extension of a dedicated left-turn lane from northbound Gallows Road onto the proposed Main Street westbound;
- vi. Raised medians shown on the Development Plan as cross-hatched areas;
- vii. Installation of pedestrian crosswalk striping, a pedestrian refuge area and audible pedestrian countdown signals (if not already existing and if approved by VDOT) across Gallows Road at the existing traffic signal at the intersection of Gallows Road and the proposed Main Street, as more particularly shown on the Development Plan; and
- viii. Installation of pedestrian crosswalk striping and audible pedestrian countdown signals (if not already existing and if approved by VDOT) across Gallows Road and Prosperity Avenue at the existing traffic signal at the intersection of Gallows Road and Prosperity Avenue, as well as a pedestrian refuge area on Gallows Road north of Prosperity Avenue, all as more particularly shown on the Development Plan.

- D. Prosperity Avenue (collectively, the "Prosperity Avenue Improvements"):
- i. A second westbound through lane and/or shared right-turn lane along the Property's frontage on Prosperity Avenue;
  - ii. A dedicated right-turn lane from westbound Prosperity Avenue onto the proposed Main Street across from its intersection with Merrilee Drive;
  - iii. A dedicated left-turn lane from eastbound Prosperity Avenue onto the proposed Main Street northbound at its intersection with Merrilee Drive;
  - iv. Raised medians shown on the Development Plan as cross-hatched areas; and
  - v. Installation of pedestrian crosswalk striping, a pedestrian refuge and audible pedestrian countdown signals (if not already existing and if approved by VDOT) across Prosperity Avenue at the intersection of Merrilee Drive and Prosperity Avenue to improve pedestrian access and safety to and from the Property and Metrorail.
- E. Main Street Through Property. The Applicant shall construct and place into operation the proposed Main Street through the Property connecting Prosperity Avenue to Gallows Road in the general location shown on the Development Plan. The Main Street shall be designed and maintained as a private street and constructed in accordance with the sections shown on Sheet 13 of the Development Plan. Subject to approval of FCDOT and WMATA, the Applicant shall install a speed table or similar traffic control mechanism across Main Street near the vehicular entrance to the WMATA Garage along Main Street to facilitate pedestrian crossings of the Main Street. The Applicant also shall provide a location along the Main Street near its intersection with the Proposed Street (as defined in paragraph G immediately below) for the pick-up and drop-off of students by Fairfax County Public School buses. The Applicant reserves the right (but shall not be obligated) to install reinforced concrete or similar material on those portions of the Property on which transit/school buses are expected to travel, including the Main Street and the areas labeled as Bus Loop on Development Plan. Public access easements shall be granted as part of site plan approval for the vehicle travelway of Main Street and for the sidewalks on the north side of the Main Street. Easements for County inspection and emergency vehicles shall be granted as part of site plan approval for the balance of the areas on the proposed Main Street. The Applicant reserves the right to provide a different name for the Main Street as part of site plan approval for the Proposed Development.
- F. Private Northwestern Entrance to WMATA Garage. The Applicant shall construct and place into operation a new, private access road to be constructed along the Property's northwestern boundary and linking existing Prosperity Avenue to the WMATA Garage (the "Transit Street"). The Transit Street shall be

a two-lane undivided roadway as shown on the Development Plan. The Transit Street shall be constructed with materials and depth of pavement consistent with public street standards, as determined by DPWES and WMATA. Easements for County inspection and emergency vehicles shall be granted as part of site plan approval for the proposed Transit Street.

- G. Dedicated Residential Street. The Applicant shall construct a right-in/right-out-only ingress/egress point along the Property's frontage on Prosperity Avenue to be located between Buildings B and C, as generally shown on the Development Plan and labeled thereon as "Proposed Street." The Proposed Street shall be a private street constructed with materials and depth of pavement consistent with public street standards, as determined by DPWES. Easements for County inspection and emergency vehicles shall be granted as part of site plan approval for the Proposed Street. A turning control mechanism, such as a "porkchop" or similar facility, shall be installed, subject to VDOT approval, to preclude left turns from the Proposed Street onto eastbound Prosperity Avenue. The Applicant shall use decorative, removable bollards or similar traffic control mechanisms to restrict direct vehicular access to/from the Proposed Street at its intersection with the proposed Main Street to county emergency and maintenance vehicles only; provided, however, that the Applicant reserves the right, subject to FCDOT approval, to remove such traffic control measures and to permit direct vehicular at that location upon demonstration that providing such access would not unreasonably interfere with traffic circulation through the Property.
- H. Turning Radii at Intersections. Subject to approval by WMATA, VDOT and FCDOT and as permitted by the County's Public Facilities Manual ("PFM"), the Applicant shall design each intersection to/on the Property (except those through which transit buses and loading trucks are expected to travel) to promote pedestrian safety and accessibility by providing the minimum turning radius necessary to ensure safe vehicular turning movements at each such intersection. The proposed dimensions of each such intersection shall be shown on the site plan(s) submitted for the Proposed Development.

11. Phasing and Construction.

- A. Site Plan and Phasing Plan. The Applicant reserves the right to submit a single site plan for the Proposed Development but to develop the Property in phases. To that end, the Applicant shall develop the Property in substantial conformance with the Phasing Plan set forth on Sheets 25, 26 & 26A of the Development Plan (the "Phasing Plan"), which represents the Applicant's best efforts as of the approval date of this Application to project the sequence of construction of the Proposed Development. The Applicant shall be permitted, however, to modify the Phasing Plan as circumstances warrant without the need to secure approval of a PCA or CDPA/FDPA by the Board of Supervisors by submitting a revised Phasing Plan to FCDOT and DPWES for review and approval, provided that the following elements shall be addressed in any Phasing Plan:

- i. Prior to Completion of Metro Improvements. Until such time as a Non-RUP(s) for the Metro Improvements has been issued, the Applicant shall complete or provide/establish the following to ensure continued access to and use of the Metrorail station during construction of the Proposed Development:
- a. Provide a minimum 1,355 parking spaces (inclusive of Kiss-and-Ride spaces) for use by patrons of the Metrorail station (the "Temporary Spaces"). The Temporary Spaces may be accommodated onsite through temporary relocation of some or all of the existing parking spaces elsewhere on the Property or to one or more locations offsite as determined by the Applicant and approved by DPWES and FCDOT without further approval by the Board of Supervisors; provided, however, that (i) a minimum of 500 of the Temporary Spaces shall be located on the Property at all times and (ii) all Temporary Spaces provided offsite shall comply with applicable Zoning Ordinance provisions related to the establishment of parking as a principal use on such offsite locations;
  - b. Provide a minimum of six (6) temporary bus shelters, designed to meet Americans With Disabilities (ADA) standards, to serve the Property, which may be accomplished through temporary relocation of the existing WMATA bus shelters to locations along Gallows Road and Prosperity Avenue or to such other location(s) as determined by the Applicant and approved by DPWES and FCDOT without further approval by the Board of Supervisors (the "Temporary Bus Shelters"). As part of providing any Temporary Bus Shelters along Gallows Road and Prosperity Avenue, the Applicant shall complete interim road improvements, including relocated curbs and base paving, to establish one or more "sawtooth" curb lines at each Temporary Bus Shelter to permit the safe ingress and egress of transit buses along the public street. One or more trash receptacles shall be centrally located to each group of Temporary Bus Shelters. The Applicant shall be responsible for the general maintenance and upkeep of the Temporary Bus Shelters, including trash removal, while such facilities are in use;
  - c. Provide temporary bike racks in one or more locations reasonably convenient to the Dunn Loring Metrorail Station platform entrance to be used during construction of the Proposed Development. To determine the appropriate number of temporary bike racks to be provided, the Applicant shall, as part of site plan approval, survey the number of bike racks currently provided on the Property and provide a comparable number of temporary bike racks during construction of the Proposed Development;

- d. Construct/Establish asphalt trails or concrete sidewalks on the Property and along Gallows Road and Prosperity Avenue in the general locations shown on the Phasing Plan (including those sidewalks labeled as "covered," the use of which shall be limited to pedestrians and dismounted bicyclists) to permit Metro patrons and pedestrians/bicyclists to access the Metrorail Station without crossing through the construction site;
- e. Construct/Establish traffic calming measures, such as raised medians, and pedestrian crosswalks, as necessary or advisable, on the Property to reduce conflicts between pedestrians/bicyclists and vehicles accessing the Metrorail Station locations through the construction site;
- f. Establish lane control/closure measures, such as the erection of temporary fencing or barriers, along Prosperity Avenue to create a loading/drop-off area for construction vehicles and trailers. Such lane control/closure measures shall be submitted to FCDOT and VDOT for review and approval as part of site plan approval for the Metro Improvements;
- g. Construct the proposed Main Street linking Gallows Road and Prosperity Avenue, including any traffic signal improvements set forth in subparagraph (i) below. The Main Street shall be completed and opened for use (subject to top-coat paving and punch-list items) prior to the issuance of a Non-RUP for the Metro Improvements (exclusive of any Non-RUPS for the Secondary Uses that may locate therein);
- h. Construct the proposed Transit Street linking Prosperity Avenue with the WMATA Garage along the northwest boundary of the Property. The Transit Street shall be completed and opened for use (subject to top-coat paving and punch-list items) prior to the issuance of a Non-RUP for the Metro Improvements;
- i. Construct one or more construction entrances to the Property (each a "Construction Entrance") at the general locations shown on the Phasing Plan. The Applicant shall erect signage in both English and Spanish at each Construction Entrance indicating that Construction Entrances are for construction vehicles only; and
- j. As part of site plan approval for the Metro Improvements, submit to VDOT a traffic signal warrant study for a traffic signal at the intersection of Prosperity Avenue, Merrilee Drive and the proposed Main Street; provided, however, that if such signal, including audible, pedestrian-activated countdown signals, already has been determined by VDOT as warranted, then no such warrant

study shall be required. Should the warrant study determine that a traffic signal at this location will be warranted upon issuance of a Non-RUP for the Metro Improvements, then, prior to the issuance of a Non-RUP for the Metro Improvements (and subject to timely VDOT approval of the signal construction plans), the Applicant shall design and install such signal, including audible (if approved by VDOT), pedestrian-activated countdown signals, across Prosperity Avenue.

- k. Adjust, as warranted and approved by VDOT, the timing of traffic signals located at existing or interim entrances to the Property to improve vehicle circulation during construction of the Proposed Development. As requested by VDOT, the Applicant shall submit periodic signal timing studies and, in the event VDOT determines that adjustments to the signal timing are warranted, then, subject to VDOT approvals, shall make such adjustments.
- ii. Upon Completion of the Metro Improvements. Once the Metro Improvements are completed and a Non-RUP issued for their use, the Applicant shall complete or provide/establish the following during construction of the balance of the Proposed Development:
- a. Remove, as applicable, the Temporary Bus Shelters from Gallows Road and/or Prosperity Avenue;
  - b. Dedicate in fee simple to the Board of Supervisors the right-of-way for and construct the Gallows Road Improvements and the Prosperity Avenue Improvements (collectively, the "Road Improvements"). Subject to VDOT approval, the Road Improvements shall be completed and opened to through traffic (but not necessarily accepted into the VDOT system) no later than the issuance of the 401<sup>st</sup> RUP for the Proposed Development;
  - c. Submit to VDOT a traffic signal warrant study for a traffic signal at the intersection of Prosperity Avenue, Merrilee Drive and the proposed Main Street; provided, however, that if such signal, including audible, pedestrian-activated countdown signals, already has been determined by VDOT as warranted, then no such warrant study shall be required. Should the initial warrant study (or a subsequent warrant study) determine that a traffic signal at this location would be warranted once the final Non-RUP for the Proposed Development has been issued, then the Applicant shall design and install such signal, including audible (if approved by VDOT), pedestrian-activated countdown signals, across Prosperity Avenue. If, based on the warrant studies, VDOT determines that a traffic signal will not be warranted until a time subsequent to expected bond release for the Proposed Development, then the

Applicant shall provide an escrow for the cost of such signal prior to final bond release in lieu of construction in an amount to be determined by FCDOT. In the event a traffic signal already has been installed without an audible, pedestrian-activated countdown signal, then (subject to VDOT approval) the Applicant shall upgrade the signal to include such a feature. The Applicant shall be entitled to be reimbursed for (or in the event of an escrow, credited for) any contribution by others for a signal at the intersection of Prosperity Avenue and Merrilee Drive associated with RZ 88-P-030 after the Applicant installs the signal or, as applicable, at the time of escrow;

- d. Submit to VDOT a traffic signal warrant study for a traffic signal at the intersection of Prosperity Avenue and the proposed Transit Street. Should the warrant study determine that a traffic signal at this location would be warranted once the final Non-RUP for Proposed Development has been issued, then the Applicant shall design and install such signal, including audible (if approved by VDOT), pedestrian-activated countdown signals, across Prosperity Avenue. In the event a traffic signal already has been installed without an audible, pedestrian-activated countdown signal, then (subject to VDOT approval) the Applicant shall upgrade the signal to include such a feature. If, based on the warrant studies, VDOT determines that a traffic signal will not be warranted until a time subsequent to expected bond release for the Proposed Development, then the Applicant shall provide an escrow for the cost of such signal prior to final bond release in lieu of construction in an amount to be determined by FCDOT. The Applicant shall be entitled to be reimbursed for (or in the event of an escrow, credited for) any contribution by others for a signal at this location associated with RZ 88-P-030 after the Applicant installs the signal or, as applicable, at the time of escrow.
- e. Submit to VDOT a traffic signal warrant study for a traffic signal and/or left-turn exit lane from the proposed Western Surface Lot to Prosperity Avenue. Should the warrant study determine that a traffic signal or left-turn exit lane at this location would be warranted once the final Non-RUP for Proposed Development has been issued, then the Applicant shall design and install such signal and/or lane, including audible (if approved by VDOT), pedestrian-activated countdown signal across Prosperity Avenue. If, based on the warrant studies, VDOT determines that a traffic signal is not warranted until a time subsequent to expected bond release for the Proposed Development, then the Applicant shall provide an escrow for the cost of such signal prior to final bond release in lieu of construction in an amount to be determined by FCDOT. Notwithstanding the foregoing, the Applicant shall be required to

install a traffic signal at the entrance to the Western Surface Lot only if a traffic signal also is to be installed at the entrance to the Transit Street from Prosperity Avenue.

- iii. Construction of Residential Buildings and Secondary Uses. The Applicant shall be permitted to construct the Residential Buildings, the Proposed Street and the Secondary Uses to be located in buildings A, B and C (but not the Plaza, as defined in Proffer 13 below) at any time during or after construction of the Metro Improvements. In the event the Applicant defers construction of any of the Residential Buildings, and such deferral results in a portion of the Property remaining undeveloped/vacant at grade level (e.g., no residential/retail parking structure started/completed), then the Applicant shall be permitted to use the undeveloped/vacant portion of the Property on a temporary basis for surface parking until construction of the Residential Building(s) resumes. Interior parking lot landscaping on the temporary surface parking shall be provided in accordance with Zoning Ordinance requirements.
  - iv. Adjust Traffic Signal Timing. Prior to the issuance of the final RUP for the Proposed Development, the Applicant shall submit to VDOT an analysis of the existing and new traffic signals located at the entrances to the Property to determine whether adjustments to the signal timings of one or more of the studied traffic signals would improve or enhance circulation through the intersections analyzed. The signal timing study shall include updated traffic counts based on the occupancy of the Proposed Development as of the date of the study. In the event VDOT determines that adjustments to the signal timing are warranted, then the Applicant shall make such adjustments prior to bond release for the Proposed Development.
- B. Offsite Temporary Parking Spaces. To the extent a portion the Temporary Spaces are provided offsite, the Applicant shall comply with the following:
- i. The Applicant shall secure the consent of the owner(s) of the property (properties) on which the Temporary Spaces are to be located and shall execute agreements or make arrangements satisfactory to DPWES and FCDOT to ensure the availability of the Temporary Spaces during the period in which such spaces are required as part of the Phasing Plan; and
  - ii. The Applicant shall secure all zoning and/or site plan approvals that may be necessary to permit the use of such offsite property (properties) for the location of the Temporary Spaces, even if on a temporary basis;
  - iii. The offsite Temporary Spaces generally shall be located within 1,400 feet walking distance (or such other distance as WMATA may approve) of the southern entrance into the Metrorail and labeled on the Development Plan as "Existing Overhead Crosswalk." Alternatively, to the extent that the

location(s) of the offsite Temporary Spaces is/are beyond 1,400 feet walking distance (or such other distance as WMATA may approve) of the southern entrance to the Existing Overhead Crosswalk, then the Applicant shall demonstrate to the satisfaction of DPWES and FCDOT that the Applicant has made arrangements to provide onsite sidewalks (if none currently exist) and/or a valet or shuttle service to and from the Property and the offsite location of the Temporary Spaces. The locations of all existing or planned pedestrian connections to serve the Property from the offsite Temporary Spaces shall be shown on the Phasing Plan submitted to FCDOT as part of site plan approval for the Proposed Development. In the event a shuttle or valet service is required, the Applicant shall operate the service on weekdays (except federal holidays) between the hours of 5:00 a.m. and midnight, as well as on specific days (including weekends) of expected heavy transit use, such as July 4<sup>th</sup>, as may be determined by the Applicant and WMATA and approved by FCDOT.

- C. Construction Parking. The Applicant shall develop, in consultation with its general contractor, a parking management policy for construction workers hired to complete the Proposed Development (the "Construction Parking Plan"). As part of the Construction Parking Plan, the Applicant shall erect signage on the Property in both English and Spanish that prohibits parking by construction workers in the Temporary Spaces and in abutting residential developments.

#### SITE DESIGN AND AMENITIES

12. Metrorail Facilities. The facilities and/or amenities listed below shall be completed by the Applicant concurrent with the Applicant's development of the Proposed Development. Irrespective of the layouts of the facilities or amenities indicated on the Development Plan, however, the Applicant reserves the right to alter the layout or design of such facilities if the alterations are determined to be in substantial conformance with the Development Plan by the Zoning Administrator. If the Zoning Administrator determines a proposed change is not in substantial conformance and cannot be approved administratively, then the Applicant may pursue a Conceptual/Final Development Plan Amendment, as applicable, to implement the proposed change in layout or mix of facilities. These facilities shall be functionally complete and available for use by Metro patrons (subject to minor adjustments and punch-list items) prior to the issuance of a Non-RUP for the WMATA Garage.

- A. Pedestrian Corridor to Metrorail. The Applicant shall construct as part of the WMATA Garage (Building D) a pedestrian corridor from the proposed Main Street north through the WMATA Garage in between the proposed Bus Loop to the east and the ground floor retail in Building D to the west, all as more particularly shown on Sheets 11, 12 and 20A of the Development Plan (the "Metro Walkway"). The Metro Walkway shall provide for the physical separation of pedestrians from the Bus Loop area and be constructed with concrete (or similar materials) and decorative features, such as brick banding. A combination of benches, decorative barriers/railings, decorative lighting, banners, wall art/murals or similar features shall be incorporated into the design of the

Metro Walkway to add character and a sense of place. One or more entry feature signs may be located at the entrance to the Metro Walkway, as more particularly shown on the Development Plan.

- B. Kiss-and-Ride Lot; Merrifield Shuttle. The Applicant shall construct the Kiss-and-Ride Lot (as defined in Proffer 4) as a surface parking lot to be used for the short-term drop-off and pick-up of Metrorail patrons, as more particularly shown on Sheet 11 of the Development Plan. The Applicant also shall designate, through signage or such other means as the Applicant may determine, a specific location in the Kiss-and-Ride Lot (consistent with WMATA policy) for a future Merrifield-area shuttle to load and unload passengers (the "Merrifield Stop"); in addition, the Merrifield Stop may be used by private van shuttle services, such as from nearby hotels or residential developments, for similar such purposes. The Applicant reserves the right, however, to relocate the Merrifield Stop to the Bus Loop (as defined in this Proffer) and to require any private shuttle service using the Merrifield Stop to abide by applicable WMATA policies and procedures.
- C. Entrance Plaza. The Applicant also shall incorporate into the design of the Kiss-and-Ride Lot a plaza area to be located immediately south of the Existing Overhead Crosswalk to the Metrorail (the "Entrance Plaza"), also as more particularly shown on Sheet 13 of the Development Plan. The Entrance Plaza shall include landscaping (such as planter boxes or tree wells), hardscape areas (such as concrete walkways with brick pavers, stonework, etc.), benches, seating areas and similar passive recreation amenities. The Entrance Plaza shall be functionally complete (benches, landscaping and lighting installed) and open for use (subject to minor adjustments and punch-list items) prior to the issuance of a Non-RUP for the Kiss-and-Ride Lot.
- D. Pedestrian Canopy to Metrorail Station. The Applicant shall construct as part of the WMATA Garage (Building D) a covered (but not fully-enclosed), permanent pedestrian walkway and canopy linking the northeast ground-floor corner of the WMATA Garage to the Existing Overhead Crosswalk to the Metrorail (the "Pedestrian Canopy"), as more particularly shown on Sheets 11, 12, 13 and 20A of the Development Plan. The Pedestrian Canopy shall be designed so as to provide protection for pedestrians accessing the WMATA Garage and the Metrorail from exposure to the weather elements and constructed using materials that are consistent with the other materials used in the Proposed Development.
- E. Bicycle Racks in WMATA Garage and Across Development. The Applicant shall install bicycle racks throughout the Proposed Development (collectively, the "Bike Racks") in the locations generally as shown on the Development Plan. The Bike Racks shall be designed and installed as inverted U-shaped racks and collectively accommodate parking for at least one hundred (100) bicycles. At least fifty percent (50%) of the Bike Racks shall be located under building cover and not exposed to the elements or shall be placed under some form of outdoor protective cover (such as Plexiglas awnings or similar features) so that bicycles are protected from the elements while parked at the Bike Racks. The Bike Racks

shall be installed prior to the issuance of the first Non-RUP for the Metro Improvements. Prior to the issuance of the final RUP for the Proposed Development, the Applicant shall submit to FCDOT for review and comment a survey of the daily usage of the Bike Racks to determine if the total number of Bike Racks provided is sufficient to meet the then-existing demand (the "Bike Survey"). In the event the Bike Survey indicates that additional Bike Racks are needed, the Applicant shall install such Bike Racks prior to final bond release for the Proposed Development. First priority for the location(s) of such additional Bike Racks shall be in areas that are under cover and not exposed to the elements, but otherwise such racks may be located anywhere on the Property where space is available.

- F. Bus Loop in WMATA Garage. The Applicant shall construct the Bus Loop as part of Building D in substantial conformance with the design shown on Sheet 11 of the Development Plan. The Bus Loop shall be constructed of reinforced materials, such as concrete, and shall provide a minimum of eight (8) sawtooth locations for the pick-up and drop-off of bus patrons, along with additional layover space(s) for buses not immediately loading or unloading passengers, as shown on Sheet 11 of the Development Plan. The Bus Loop shall include, in addition to the Bus Shelters described elsewhere in this Proffer 12, a combination of brick pavers, benches, decorative light fixtures, a Metrorail information kiosk, planter boxes or similar features selected by the Applicant and designed to add character and sense of place to the Bus Loop.
- G. Bus Shelters in/near WMATA Garage. The Applicant shall install eight (8) Bus Shelters (as defined in Proffer 4) within the Bus Loop generally as shown on Sheet 11 of the Development Plan. The design and materials of the Bus Shelters shall be of similar size and quality to those of a typical bus shelter installed by WMATA elsewhere in Fairfax County and shall include benches and trash receptacles. The Applicant shall be responsible for the general maintenance and upkeep of the Bus Shelters, including trash removal.

13. Public Plaza. The Applicant shall construct a public plaza (the "Plaza") to be located at the western end of the proposed Main Street immediately in front of Building E, as more particularly shown on Sheets 13 and 14 of the Development Plan. The Plaza shall include landscaping, hardscape areas (such as concrete walkways with brick pavers, stonework, etc.), benches, seating areas and similar passive recreation amenities, provided that at least fifty percent (50%) of the surface area of the Plaza shall be comprised of pervious or porous materials. The Plaza also shall include a focal point feature to be selected by the Applicant, such as a fountain, public art or similar amenity that will serve as a defining entry feature for the development. The Applicant shall also provide a bicycle rack near the Plaza, with the location to be coordinated with FCDOT prior to approval of the site plan for the Plaza. The Plaza shall be functionally complete (benches, landscaping and lighting installed) and open for use (subject to minor adjustments and punch-list items) prior to the issuance of the first Non-RUP for the Secondary Uses to be established in Building E.

14. Lighting. Except as may be included as part of an onsite signage program, all on-site, outdoor and parking garage lighting shall comply with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. As part of its lighting program, the Applicant shall provide lighting along the northern exterior side of the WMATA Garage (parallel with the right-of-way for I-66) for the bike path and pedestrian walkway to be located adjacent to the WMATA Garage. The Applicant also shall provide lighting at the Entrance Plaza (as defined in Proffer 12(C) above) to the Dunn Loring Metrorail Station platform. Lighting within the stair towers of the WMATA Garage shall be designed to contain light within the tower and prevent light from spilling outward in order to mitigate the impact of light pollution on the adjacent properties. The south and east elevations of the WMATA Garage shall be constructed with a solid vertical perimeter wall, not less than 32 inches in heights, for the purpose of blocking headlights from shining into adjacent residences. Light poles in surface parking lots and on the top level of the WMATA Garage shall use shielded cutoff fixtures and be directed inward and downward such that the lamp surface is not directly visible. Building mounted security lighting shall utilize full cut-off fixtures with shielding such that the lamp surface is not directly visible.

15. Signage. Signage for the Property and the Proposed Development shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance or pursuant to a Comprehensive Sign Plan approved by the Planning Commission. In either event, however, a coordinated signage system, including wayfinding signs (including those for sidewalks/trails) and potential retail awning signage, shall be provided for all residential and non-residential uses to establish a uniform theme throughout the Proposed Development. Signs shall use a consistent color palette, lighting and font. Building mounted signage shall be compatible in terms of height, color, illumination and letter sizing. If lighted, signage may be internally lighted, neon or lighted via downward-directed lights. Stand-alone, pole-mounted signage shall be prohibited. No signs or other amenities shall be located in or near public rights-of-way such that they obstruct sight distances at intersections of the Property with public streets.

16. Noise Attenuation. The Applicant has submitted to the County a preliminary Environmental Noise Measurement and Noise Impact Assessment for Dunn Loring Town Center dated March 7, 2006, revised through July 31, 2006, and prepared by Miller, Beam & Paganelli, Inc. (the "Noise Study"), detailing the projected noise impacts on the Proposed Development and proposed mitigation techniques.

A. Based on the Noise Study, the Applicant proffers as follows:

- i. Refined Noise Assessment. The Applicant shall submit a revised Noise Study for the Proposed Development to demonstrate that all affected interior areas of the Residential Buildings will have noise levels reduced to approximately 45 dBA Ldn or less based on future traffic conditions and final site conditions, as well as potentially suggest alternative noise mitigation techniques other than those outlined in this Proffer 16, including changes to the laboratory sound transmission class ("STC") ratings set forth below. Such analysis shall be submitted to and approved by DPZ concurrent with site plan approval for the portion of the Property in which the affected residential units/recreation areas are located and shall be based on the methodology contained in the previous Noise Study

or as approved by DPZ. Any changes to the noise mitigation techniques or STC ratings premised on the conclusions of a revised Noise Study automatically shall be considered in substantial conformance with these Proffers, provided that they also are in substantial conformance with the Development Plan.

ii. Noise Levels within Residential Units.

- a. Greater than 75 dBA Ldn. No space in any building that shall be occupied by a residential unit shall be located in any area impacted by noise at a level of 75 dBA Ldn or greater. In the event the Noise Study demonstrates that portions of any building for which residential units are proposed would be impacted by noise at a level of 75 dBA Ldn or greater, then the Applicant shall either (a) adjust the use of the impacted portions of such building, or (b) step back the top floors of such building such that no residential units are located in the impacted area for which expected noise levels are 75 dBA Ldn or greater. In such event, the Applicant shall demonstrate to DPZ that its selection of mitigation techniques otherwise complies with the provisions of this proffer.
- b. 70 dBA Ldn to 75 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for residential units that are projected to be impacted by noise greater than 70 dBA Ldn (but not more than 75 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:
  - i. Exterior walls shall have a laboratory STC rating of at least 45;
  - ii. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 70 dBA or above;
  - iii. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 45; and
  - iv. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials ("ASTM") to minimize sound transmission.
- c. 65 dBA Ldn to 70 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for residential units that are projected to be impacted by noise projected greater than 65 dBA Ldn (but not more than 70 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:

i. Exterior walls shall 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 Ldn 70 dBA or above;

iii. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 39; and

iv. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials ("ASTM") to minimize sound transmission.

iii. Noise Contours on Site Plans and Building Permits. All site plans, building permit applications and building plans submitted to the County shall indicate whether such portion of the Proposed Development is required to include noise attenuation measures and, if so, the type of attenuation measure to be implemented. Building and site plans for each unit that is subject to noise mitigation as provided herein shall depict the final noise contours as determined by the Revised Noise Study.

iv. Sample of Residential Unit Noise Impacts. To measure the actual effectiveness of the Applicant's noise mitigation efforts, the Applicant shall conduct a sample noise measurement from the interiors of at least five (5) finished residential units on different residential floors (or, if on the same floor, at a reasonable distance apart) that are projected by the Noise Study (as revised) to be noise impacted (the "Noise Tests"). The results of the Noise Test shall be certified by the Applicant (or its noise consultant, as applicable) and submitted to DPZ prior to the issuance of the first RUP for the first residential building.

17. Amenities and Facilities for Residents. The Applicant shall provide as part of Buildings A, B and C facilities designed to meet the onsite recreational needs of the future residents of the Proposed Development. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$955 per market-rate residential unit on such recreation facilities. Prior to final bond release for the Proposed Development, the balance of any funds not expended on-site shall be contributed to the Fairfax County Park Authority for the provision of recreation facilities located in proximity to the Property.

A. Buildings A and B. The Applicant shall provide the following facilities or amenities in one or both of Buildings A and B, provided that a substantially-comparable level of amenities are provided in each building or are shared between the buildings. These amenities shall be completed prior to the issuance of the

RUP representing more than 75% of the total residential units to be constructed in Buildings A and B of the Proposed Development:

- i. Interior courtyard areas to be located on the top deck of the parking structure(s) in the open area between Buildings A and B, as illustrated on Sheet 10 of the Development Plan, at least one of which shall include informal seating areas, landscaping, hardscape areas and passive recreation areas;
- ii. Storage facilities, including bike racks, for use by residents of the building, which may be provided in the Cellar Space as defined in these Proffers;
- iii. A media/entertainment center outfitted with large screen/projection TV(s), seating areas and stereo/sound equipment;
- iv. A fitness center that includes equipment such as stationary bikes, treadmills, weight machines, free weights, etc., having a total value of at least \$100,000; and
- v. A business center, with broadband or high-speed data connections (including "secure" voice and/or data connections), computers, facsimile machine and similar items.

**B. Building C.** The Applicant shall provide the following facilities or amenities to serve the residents of Building C. These amenities shall be completed prior to the issuance of the RUP representing more than 75% of the total residential units to be constructed in Building C of the Proposed Development:

- i. Two semi-private terraces to be located on the top deck of the Building C parking structure below, as illustrated on Sheet 10 of the Development Plan. The courtyard areas shall include informal seating areas, landscaping, hardscape features, etc.;
- ii. A swimming pool;
- iii. Storage facilities, including bike racks, for use by residents of the building, which may be provided in the Cellar Space as defined in these Proffers;
- iv. A media/entertainment center outfitted with large screen/projection TV(s), seating areas and stereo/sound equipment;
- v. A fitness center that includes equipment such as stationary bikes, treadmills, weight machines, free weights, etc., having a total value of at least \$100,000; and

- vi. A business center, with broadband or high-speed data connections (including "secure" voice and/or data connections), computers, facsimile machine and similar items.

### LANDSCAPING

18. Landscape Plan. The Applicant's Development Plan includes a conceptual landscape plan for the Property (Sheet 9) and detail sheets (Sheets 10-15) illustrating the plantings and other features to be provided with the Proposed Development, including streetscapes, plazas and other features.

- A. As part of each site plan submission for the Proposed Development, the Applicant shall submit to Urban Forest Management Division of DPWES for review and approval a detailed landscape and tree cover plan (the "Landscape Plan"), which shall include, among other things:
  - i. Irrigation information (all landscaping areas shall be irrigated);
  - ii. Design details for tree wells and other similar planting areas above structures and along streets;
  - iii. Composition of the planting materials and/or structural soils used where plantings are to be located within or on top of structures and other methods to be used to insure the viability of the proposed plantings;
  - iv. Information demonstrating that the SWM requirements of Proffer 23 have been met; and
  - v. Other information that may be requested by the Urban Forest Management Division.
- B. Such Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on the Development Plan and shall include the use of additional shade trees as determined by the Applicant. Adjustments to the type and location of vegetation and the design of the Plaza, courtyard areas and streetscape improvements and plantings shall be permitted in consultation with DPZ and the Urban Forest Management Division of DPWES if determined to be in substantial conformance with the Development Plan.
- C. Planting Strips. The Applicant shall install street trees consistent with the Streetscape plans included on the Development Plan. For trees not planted within an 8-foot wide minimum planting area, or that do not meet the minimum planting area required by the PFM, the Applicant shall provide a minimum of 130 square feet of surface area of structural soil for Category 4 shade trees and 90 square feet of surface area of structural soil for Category 3 shade trees, as such trees are identified in the PFM. The structural soil shall have a minimum width of 8-feet and a minimum depth of 36-inches and such planting areas shall be interconnected to the extent feasible, as determined by Urban Forest Management.

At the time of site plan submission, the Applicant shall provide written documentation, including written confirmation from a certified arborist and/or landscape architect verifying installation of the structural soil consistent with the requirements of this Proffer.

19. Tree Survey and Preservation Plan.

A. Preservation of Existing Trees. A small portion of the western end of the Property contains existing trees worthy of preservation, if possible. This area is identified on the Development Plan as being approximately 4,200 s.f. and is labeled thereon as "Trees to Remain." Accordingly, the Applicant's landscape architect or arborist, in consultation with the Urban Forest Management Division, shall identify as part of the Landscape Plan individual trees the Applicant proposes for preservation and those trees it plans to remove because they (i) are dead, dying or diseased, (ii) pose or create a hazard, or (iii) negatively impact the viability and survivability of other existing trees (the "Tree Preservation Plan"). The Tree Preservation Plan shall be made part of and submitted for approval with the Landscape Plan. The Applicant shall save those trees identified in the Tree Preservation Plan as intended to be saved. All trees shown to be preserved on the Tree Preservation Plan and site plan shall be protected by 14-gauge welded wire fencing, a minimum of four (4) feet in height, attached to steel posts spaced no farther than ten (10) feet apart. The fencing shall be erected at the proposed Limits of Clearing (as defined immediately below) prior to commencement of any clearing or grading on the relevant portion(s) of the site, and shall be made clearly visible to construction personnel. In the event that, during construction of the Proposed Development, any of the Trees to Remain die or are damaged, then the Applicant shall, subject to Urban Forest Management Division approval, replant two (2) new trees for every one (1) Tree to Remain that does not survive construction. Such replacement trees shall be a minimum 3.5"-4" caliper (or 8' evergreen, provided that no more than fifty percent (50%) of the replacement trees shall be evergreens) and selected, to the extent possible and as approved by the Urban Forest Management Division, from among the native species of trees utilized by the Applicant as part of its Landscape Plan. The Applicant also shall pay a penalty of \$250 per Tree to Remain that is removed or irreparably damaged during construction.

B. Limits of Clearing. The Applicant shall adhere to the Limits of Clearing ("LOC") as noted on the Development Plan. Minor adjustment of the LOC at time of final design and engineering and the location of proposed utilities may be permitted pursuant to Section 16-203 and Section 18-204 of the Zoning Ordinance.

20. Streetscaping. Streetscape improvements and plantings shall be provided as indicated on the Development Plan. Notwithstanding the foregoing, the Applicant reserves the right, in consultation with the Zoning Administrator, to shift the location of street trees along the proposed Main Street to accommodate final architectural design, utilities and layout considerations.

## STORMWATER MANAGEMENT/WATER QUALITY TREATMENT

21. Stormwater Management Master Plan. Concurrent with the submission and approval of the first site plan for the Proposed Development, the Applicant shall submit to and obtain approval from DPWES of a Stormwater Plan for the Proposed Development (the "Stormwater Plan"). The Stormwater Plan shall include strategies for addressing both water quality and water quantity management issues, including detailed mitigation measures to be implemented as part of construction. Following approval by DPWES of the initial Stormwater Plan, the Applicant thereafter shall submit an updated Stormwater Plan to DPWES for approval concurrent with subsequent site plans submissions for the Proposed Development. These updated plans shall include any modifications to the stormwater detention or stormwater quality treatment program since the initial approval of the Stormwater Plan. The Applicant shall construct stormwater quality and stormwater quantity impact mitigation measures in accordance with the Stormwater Plan (and each subsequent revisions thereto) with the Proposed Development, such that the runoff reductions outlined below shall be achieved.

- A. Stormwater Quantity Goals. As of the date of these Proffers, there is no on-site detention of stormwater runoff on the Property. Nevertheless, using (i) a series of underground detention vaults and other methods as shown on the Development Plan, and (ii) structural and non-structural BMPs, the Stormwater Plan shall demonstrate that, after the full build-out of the Proposed Development, there is a net reduction in the combined peak rate of stormwater discharge from the Property of twenty-five percent (25%), which net reduction shall be based on a comparison of the conditions of the Property as currently developed and the conditions of the Property upon completion of the Proposed Development. The twenty-five percent (25%) net reduction set forth on this Proffer shall apply to the sum of all stormwater discharge coming from the Property as a whole, but not as a standard reduction at each individual discharge location on the Property (meaning that the discharge at individual locations may vary, so long as the overall reduction goal is achieved).
- B. Best Management Practices. The Applicant shall, as part of the Stormwater Plan, incorporate low impact development ("LID") techniques and other Best Management Practices ("BMP") into the Proposed Development in order to improve water quality associated with stormwater runoff from the Property. Using structural and non-structural BMPs such as sand filters, storm filters, Filterra devices or a combination thereof, the Stormwater Plan shall demonstrate that, after the full build-out of the Proposed Development, there is a fifteen percent (15%) reduction of the phosphorous loading from the Property, based on a comparison of the conditions of the Property as currently developed and the conditions of the Property upon completion of the Proposed Development.
- C. Low Impact Development. To further mitigate the environmental impacts of the Proposed Development beyond the 15% reduction in phosphorous loading required under Proffer 21(B) above, the Applicant shall incorporate the following additional LID strategies, subject to approval by DPWES. The LID facilities shown on the Development Plan are for the purpose of illustrating the application

of the proposed LID techniques. The Applicant estimates that these additional LID facilities will result in an additional four percent (4%) reduction in phosphorous loading from the Property. In the event that either the Applicant or DPWES deems it necessary to substitute another LID strategy for one of those listed below, the Applicant shall identify an alternate strategy acceptable to both parties and, if necessary, will seek administrative approval from the Zoning Administrator pursuant to the provisions of Sect. 16-403 of the Zoning Ordinance.

- i. Courtyard Plazas in Residential Buildings. In order to (1) incorporate into otherwise impervious areas of the site a soil matrix and plantings intended to provide stormwater pollutant removal; (2) reduce the heat island effect; and (3) naturalize and add aesthetically-pleasing elements for residents of the Proposed Development, the Applicant shall install and maintain plantings and other materials within the semi-private terraces to be located on the top decks of the parking structures for Buildings A, B and C, as shown on the Development Plan. Each courtyard area shall include landscape plantings in a natural soil matrix over an under-drain system. Specific details concerning the plantings and design elements of the courtyard areas shall be included on the Landscape Plan that will be submitted pursuant to these Proffers.
- ii. Porous Pavement/Materials. To the extent permitted by the underlying soils, the Applicant shall install and use porous pavement or materials within the surface parking spaces (not including drives aisles) to be located on the western end of the Property, as more particularly set forth on Sheet 5 of the Development Plan. Specific details concerning the porous pavement areas shall be included on the site plan submitted for that portion of the Proposed Development.
- iii. Plaza Landscaping. As provided in Proffer 15 above, in order to (1) incorporate into otherwise impervious areas of the site a soil matrix and plantings intended to provide stormwater pollutant removal; (2) reduce the heat island effect; and (3) naturalize and add aesthetically-pleasing elements, the Applicant shall install landscaping and other materials on the Plaza and the Entrance Plaza as more particularly shown on Sheets 13 and 14 of the Development Plan. Specific details concerning the plantings and design elements of the Plaza and Entrance Plaza shall be included on the Landscape Plan that will be submitted pursuant to these Proffers.

D. Maintenance Responsibility.

- i. Regular Maintenance. Prior to initial site plan approval for the Proposed Development, the Applicant shall execute an agreement with the County in a form satisfactory to the County Attorney (the "SWM Agreement") providing for the perpetual maintenance of all of the elements of the Stormwater Plan, including the BMP and LID devices and underground detention facilities (collectively, the "SWM Facilities"). The SWM

Agreement shall require the Applicant (or a successor UOA/HOA/COA) to contract with one or more maintenance/management companies to perform regular routine maintenance of the SWM Facilities and to provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES. The UOA/HOA/COA documents for each residential building(s) shall specify the maintenance responsibilities of the owners under the SWM Agreement.

- ii. SWM Maintenance Fund; Residential Buildings. Prior to site plan approval for the first residential building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Maintenance Account") to be used for the ongoing maintenance of the SWM Facilities located on or serving the Property. The SWM Maintenance Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for ongoing maintenance of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Maintenance Account annually. The association documents that establish and control the UOA/HOA/COA shall provide that the SWM Maintenance Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that funds in the SWM Maintenance Account shall not be utilized for purposes other than to fund the maintenance of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Maintenance Account in an amount approved by DPWES. Thereafter, the SWM Maintenance Account shall be funded through pro-rata assessments of the subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.
- iii. SWM Replacement Fund; Residential Buildings. Prior to site plan approval for the first residential building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Replacement Account") to be used as an escrow account for the eventual replacement of the SWM Facilities located on or serving the Property. The SWM Replacement Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for future replacement of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Replacement Account annually. The association documents that establish and control the UOA/HOA/COA shall provide that the SWM Replacement Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that funds in the SWM Replacement Account shall not be utilized for purposes other than to fund the

replacement of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Replacement Account in an amount approved by DPWES. Thereafter, the SWM Replacement Account shall be funded through pro-rata assessments of subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.

- iv. County Agreement. The SWM Agreement shall address the following issues to the satisfaction of DPWES: (a) Future replacement of elements of the Stormwater Plan, when and as warranted; (b) Requirement for liability insurance in an amount reasonably acceptable to DPWES; and (c) Easements for County inspection and emergency maintenance to ensure that the facilities are maintained by the Applicant in good working order.

### TRANSPORTATION DEMAND MANAGEMENT

22. Transportation Demand Management. This Proffer and the Applicant's Transportation Demand Management Plan dated October 2006 and prepared by Urban Trans Consultants, Inc. (collectively, the "TDM Plan"), set forth the programmatic elements of a transportation demand management plan that shall be implemented by the Applicant, and subsequently, as appropriate, the UOA/HOA/COA, to encourage the use of transit (Metrorail and bus), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the residential uses constructed on the Property. The TDM Plan shall complement the synergies already expected from the Proposed Development and the numerous transportation systems management programs and improvements referenced elsewhere in these Proffers.

#### A. Definitions:

- i. Applicant Control Period. The "Applicant Control Period" is the period starting immediately following approval of this rezoning Application and ending on the date when two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation show that vehicle trips generated by the multifamily residential units are less than or equal to the Phase III TDM Goal (as defined herein); provided, however, that implementation of the TDM Plan may not be assigned by the Applicant to a successor UOA/HOA/COA until the Applicant Control Period has expired. Upon expiration of the Applicant Control Period, the Applicant shall have no further obligations under this Proffer 22, and the Letter of Credit/Cash (as defined in this Proffer 22) provided by the Applicant shall be returned to the Applicant.
- ii. Full Occupation. For purposes of this Proffer, "Full Occupation" of the Proposed Development shall be deemed to occur upon the issuance of (a) 100% of all RUPs and (b) Non-RUPs representing 80% or more of the

maximum total Secondary Uses permitted within the Proposed Development.

- iii. Peak Hours. For purposes of this Proffer, the relevant weekday "Peak Hours" shall be that 60-minute period during which the highest weekday volume of mainline trips occurs between 6:00 to 9:00 AM and 4:00 to 7:00 PM, as determined by mechanical traffic counts conducted at two select locations along Gallows Road between I-66 and Lee Highway and at two select locations along Prosperity Avenue between Lee Highway and Gallows Road and as approved in consultation with FCDOT. To determine the Peak Hour, such counts shall be collected beginning on a Monday at 2400 hours and continuing to the following Thursday at 2400 hours at a time of year that reflects typical travel demand conditions (e.g. September to May, not during a holiday week or when public schools are not in session). The relevant Peak Hours shall be defined in conjunction with each of the Trip Counts (as defined herein) required pursuant to this Proffer. The methodology for determining the Peak Hours may be modified subject to approval of FCDOT, but without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.
- iv. TDM Program Manager. The TDM "Program Manager" ("PM") shall be a qualified or trained TDM professional appointed by the Applicant to oversee all elements of the TDM Plan and act as the liaison between the Applicant/UOA/HOA/COA and FCDOT. The PM may be employed either directly by the Applicant or UOA/HOA/COA, or be employed through a property management company contracted by the Applicant or UOA/HOA/COA.
- v. TDM Account. The TDM Account shall be an interest bearing account established by the Applicant with a banking or other financial institution qualified to do business in Virginia and used by the PM each year to implement the TDM Plan in accordance with the TDM Budget.
- vi. TDM Budget. The "TDM Budget" means the budget sufficient to implement the TDM Plan in a given year and shall include a contingency (the "TDM Budget Contingency") equivalent to a minimum of 10% of the amount of the TDM Budget.
- vii. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the Applicant will deposit penalty payments as may be required to be paid pursuant to this Proffer (the "TDM Penalty Fund").
- viii. TDM Remedy Fund. The TDM Remedy Fund shall be an interest bearing account established by the Applicant with a banking or other financial institution qualified to do business in Virginia and used to supplement the TDM Account in support of additional TDM strategies that may be

determined to be necessary following any of the Trip Counts for which insufficient funding is not immediately available via the then-existing TDM Account.

B. Components of the TDM Plan. The TDM Plan shall include the following components:

- i. General. The objective of the TDM Plan shall be the phased reduction of the number of vehicle trips generated by the new multifamily residential uses to be developed on the Property during the weekday Peak Hours (as determined based on ITE, 7<sup>th</sup> edition, Trip Generation rates and/or equations). The Metro Improvements and Secondary Uses established as part of the Proposed Development, including retail uses, shall not be made part of the TDM Plan.
- ii. Baseline. The baseline number of vehicle trips against which the TDM Goals (as defined herein) will be measured shall be 414 Peak Hour trips (the "Baseline Trips"), which is based on the maximum total 720 multifamily residential units that may be constructed on the Property as part of the Proposed Development and using the trip generation rates/equations applicable to such multifamily residential uses as set forth in the Institute of Transportation Engineers, Trip Generation, 7<sup>th</sup> Edition. In the event the Applicant constructs fewer than 720 multifamily residential units as part of the Proposed Development, then the Baseline Trip generation numbers applicable upon Full Occupation shall be calculated as if 720 multifamily residential units had actually been constructed as reflected on the Development Plan.
- iii. TDM Goals. Because the reduction of Peak Hour trips depends, in part, on the synergy of uses created through implementation of the Proposed Development, the "TDM Goals" shall be phased in accordance with the issuance of the Non-RUPs for the Secondary Uses as follows:

TDM Phase	Residential Use Permits (RUP)	Non-Residential Use Permits (Non-RUPs)	ITE Projected Trips	TDM Trip Reduction Goal	Max Trips Permitted
I	1 or more	> 65%	414	40%	248
II	1 or more	65% < 80%	414	45%	228
III	1 or more	> 80%	414	50%	207

C. TDM Plan; Proposed Development. In order to meet the TDM Goals set forth in this Proffer, the Applicant shall implement the TDM Plan. Because the TDM Plan represents the strategy to be employed by the PM to meet the TDM Goal(s), the TDM Plan may be amended from time to time, subject to approval of FCDOT, without the requirement to secure a PCA; provided, however, that the TDM

Goal(s) shall not be amended, and the amended TDM Plan shall include provisions for the following with respect to the Proposed Development:

- i. Designation of PM, as more particularly described below;
- ii. A targeted marketing program for residential sales/leases that encourages and attracts TDM-oriented residents, such as bicyclists, one or no-car individuals/families and employees of nearby employers to live in the Proposed Development; provided, however, that such marketing shall be completed on a non-discriminatory basis in conformance with the Fair Housing Act and all other applicable laws and regulations;
- iii. Integration of transportation information and education materials into residential sales/rental kits;
- iv. Coordination/Assistance with vanpool and carpool formation programs, including ride matching services, with adjacent office buildings and homeowners associations and established guaranteed ride home programs;
- v. Establishment of a site-specific project website (including targeted information on a building-by-building basis) that includes multimodal transportation information, real-time travel and transit data, the possibility of online transit pass sales or value loading and connections to supporting links;
- vi. Establishment of a location to be staffed/managed by the PM (as defined below) within the Proposed Development at which transit and ridesharing information is made available to both residents and non-residents; the location may be determined by the Applicant and may be part of the leasing/sales or concierge office for/inside the Residential Buildings;
- vii. A parking management plan, which shall include (i) a unit sales/rental program/policy under which each residential unit is allocated one (1) parking space as part of the base purchase/rental price, and that additional parking spaces may be purchased/leased for an additional cost; and (ii) dedicated space for residential vanpools and car-sharing vendors not otherwise addressed herein;
- viii. Distribution of fare media or other incentives, at least one time, to all initial residents of driving age, as well as on select occasions as an incentive;
- ix. Subject to agreement with third-party vendor(s) and Proffer 9(D) above, use of car sharing program(s) (such as ZipCar/FlexCar);
- x. Establishment of a phasing strategy, coordinated with FCDOT as provided herein, to address which TDM strategies are implemented at what time; and

- xi. "Personalized transportation advising" integrated into new unit walk-throughs, including appropriate training of sales/leasing agents.
- D. TDM Program Manager (PM). Prior to the issuance of the first building permit for the Proposed Development, the Applicant shall develop a position description for and appoint the PM for the project, whose duties shall be to further develop, implement and monitor the various components of the TDM Plan. The Applicant shall provide written notice to FCDOT of the appointment of the PM within ten (10) days of such appointment, along with the position description prepared by the Applicant and evidence of such PM's qualifications, and, thereafter, within ten (10) days of any change in such appointment. Following the initial appointment of the PM, the Applicant or UOA/HOA/COA, as applicable, thereafter shall continuously employ, or cause to be employed, a PM for the Proposed Development.
- E. TDM Budget. Within thirty (30) days following the issuance of the first building permit for the first residential building, the Applicant, through the PM, shall formulate the TDM Budget sufficient to implement the TDM Plan for the remainder of the year and for the next calendar year, which amount shall not be less than \$109,400.00, adjusted annually for inflation based on the CPI (as defined in Proffer 37 herein). The PM shall provide written documentation demonstrating the basis for and the formulation of the TDM Budget to FCDOT within ten (10) days of its establishment. In conjunction with annual monitoring of TDM strategies as provided in Proffer 22(I) below, the PM shall re-establish the TDM Budget for the forthcoming year.
- F. TDM Account. Within sixty (60) days following the issuance of the first building permit for the first residential building, the Applicant shall establish and fund the TDM Account in an amount equal to the initial TDM Budget for the TDM Plan and including the TDM Budget Contingency. The PM shall provide written documentation demonstrating the establishment of the TDM Account to FCDOT within ten (10) days of its establishment. As provided in Proffer 22(I) below, the PM shall provide an annual report of the TDM Account to FCDOT, and such report shall include demonstration that the applicable strategies of the TDM Plan were implemented and sufficiently funded that year.
- i. Annual Funding. The TDM Account shall be replenished annually based on the forthcoming year's estimated TDM Budget and any transfer of funds to the TDM Remedy Fund as provided in Proffer 22(G) below.
  - ii. Management of TDM Account. The TDM Account shall be managed by the Applicant (or successor developer) through the PM until such time as the Applicant Control Period terminates. Thereafter, management of the TDM Account shall become the responsibility of the UOA/HOA/COA. As applicable, a line item for the TDM Account shall be included in the UOA/HOA/COA budget upon the establishment of the UOA/HOA/COA. The association documents that establish and control the UOA/HOA/COA

shall provide that the TDM Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that funds in the TDM Account shall not be utilized for purposes other than to fund the TDM Plan. The TDM Account shall be funded solely by the Applicant (or successor developer) until such time as the Applicant Control Period expires or the pro-rata assessments of residents are implemented as provided in the UOA/HOA/COA documents, whichever is first.

- G. TDM Remedy Fund. Concurrent with the establishment and funding of the TDM Account, the Applicant shall establish a separate, interest-bearing account referred to herein as the "TDM Remedy Fund." All interest earned on moneys deposited in the TDM Remedy Fund shall be added to the principal of the TDM Remedy Fund and used for TDM Remedy Fund purposes. Prior to the issuance of the first RUP for the Proposed Development, the Applicant shall contribute to the TDM Remedy Fund moneys in an amount necessary for the TDM Remedy Fund to achieve a \$200,000.00 balance. Moneys from the TDM Remedy Fund shall be drawn on by the Applicant or UOA/HOA/COA only for purposes of immediate need of TDM funding and may be drawn upon prior to any TDM Budget adjustments that may be required under Proffer 22(F) above. The revenues transferred from the TDM Remedy Fund to the TDM Account thereafter shall be repaid to the TDM Remedy Fund through the transfer of subsequent surpluses, if any, in the TDM Account, as provided in subparagraph G(i) below. Once the Applicant Control Period expires, the Applicant shall contribute such amounts as may be necessary to bring the balance in the TDM Remedy Fund to a balance of \$200,000.00 (as escalated pursuant to Proffer 39 below) and thereafter transfer the TDM Remedy Fund to the UOA/HOA/COA or successor developer/management company. Following such transfer, the UOA/HOA/COA shall continue to replenish the TDM Remedy Fund as necessary to maintain a balance of \$200,000.00 pursuant to Proffer 27(J) herein.
- i. Excess Funds in TDM Account. Until such time as the Phase III TDM Goal is met, any funds remaining in the TDM Account at the end of any given year shall be transferred to the TDM Remedy Fund until such time as the TDM Remedy Fund has achieved a balance of \$200,000.00, as adjusted based on the CPI (as defined in Proffer 37 herein) from the date of the initial deposit into the TDM Remedy Fund to the last day of such year. Once the TDM Remedy Fund achieves a balance of \$200,000.00, then any funds remaining in the TDM Account at the end of any given year shall remain in the TDM Account to be utilized for the next calendar year's TDM Budget. In the event that the TDM Remedy Fund is drawn upon, then the TDM Remedy Fund shall be replenished during the next TDM Budget cycle (and repeated for multiple TDM Budget cycles, if necessary) until the TDM Remedy Fund achieves a balance of \$200,000.00, as adjusted based on the CPI (as defined in Proffer 37 herein).

H. TDM Purchase Incentives. Prior to the issuance of the first RUP for each Residential Building to be constructed as part of the Proposed Development, the Applicant shall make a one time contribution of \$135/unit in that building to a segregated sub-account in the TDM Account to fund a transit incentive program for initial purchasers and/or lessees of residential units in such building. Such program shall be prepared by the Applicant, in coordination with FCDOT, and shall include consideration for fare media distribution and value loading, financing incentives, and alternative incentives (such as grocery delivery) tailored to residents that are not likely to make use of alternative commute option benefits.

I. Monitoring and Reporting.

i. Annual Surveys. Each September, the PM shall conduct a survey of residents designed to evaluate the effectiveness of the TDM Plan in meeting the TDM Goals applicable at that time and to evaluate the need for changes to the TDM Plan (the "Annual Survey"). The PM shall coordinate the draft Annual Survey materials and the methodology for validating Survey results with FCDOT prior to each year's Annual Survey. If an Annual Survey reveals that changes to the TDM Plan are needed or advisable, then the PM shall coordinate such changes with FCDOT and, as necessary, adjust the TDM Budget and implement the revisions. The PM shall submit as part of each Annual Report (defined below) an analysis of the Annual Surveys to FCDOT. Such analysis shall include at a minimum:

- a. A description of the TDM measures in effect for the survey period and a description of how such measures have been implemented;
- b. The number of people surveyed and the number of people who responded;
- c. The results of the surveys taken during the survey period;
- d. The number of residents, employees and/or others participating in the TDM programs, displayed by category and mode of use;
- e. An evaluation of the effectiveness of the TDM program elements in place, including their effectiveness at achieving the TDM Goals, and, if necessary, proposed modifications;
- f. A description of the uses constructed and occupied on the Property at the time the Survey was conducted.

ii. Annual Report. The PM shall report annually to FCDOT on the TDM Plan no later than ninety (90) days after completion of the Annual Survey and, as required, the annual Trip Count (the "Annual Report"). The Annual Report shall include (a) a description of the prior year's TDM strategic efforts, including, as applicable, sample marketing materials; (b)

a financial statement that includes the TDM Budget and TDM Account revenues and expenditures for the preceding year; (c) an analysis of the Annual Survey for the preceding year; (d) a compilation and analysis of any Trip Counts that were conducted during the preceding year; (e) discussion of any changes to the TDM Plan for the upcoming year; and (f) the TDM Budget for the upcoming year. The PM also shall post copies of the Annual Report, including the Annual Survey, on the TDM website required in Proffer 22(C) above.

- iii. Adjustments to Calendar and Due Dates. Upon mutual agreement between FCDOT and the PM, the due dates for the delivery of the Annual Report may be extended by up to sixty (60) days if changes have occurred, or appear to have occurred, in trip characteristics resulting from events such as the opening of an additional phase of development or changes to the TDM Plan that are not yet fully implemented as of the due date for the Annual Report.
- iv. Meetings with FCDOT. The PM shall meet with FCDOT annually to discuss the results of the Trip Counts, the Annual Survey, the Annual Report and the TDM Plan.

J. Trip Counts.

- i. Annual Trip Counts. The PM shall conduct a Trip Count between eight (8) and twelve (12) months following the issuance of the first RUP for the first Residential Building to measure the actual vehicle trips generated by the residential uses constructed on the Property as of the date the Trip Count is completed and to evaluate whether such vehicle trips are less than, equal to or greater than the applicable phased TDM Goal (which is determined by the percentage of Secondary Uses for which Non-RUP have been issued) set forth in Proffer 22(B) above. Trip Counts provided to FCDOT shall include information on the percentage of RUPs and Non-RUPs issued for the Proposed Development as of the date of the Trip Count. The PM also shall post the results of each Annual Trip Count on the TDM website required under Proffer 22(C) above.
- ii. Methods. For purposes of this Proffer, Trip Counts shall be measured on three (3) consecutive days over a maximum two-week period (but not including a week containing a federal holiday or when public schools are not in session) between September 1 and October 31 of each calendar year, or such other time as the PM and FCDOT shall mutually determine. At least thirty (30) days prior to conducting the Trip Counts, the PM shall meet with FCDOT to review and reach agreement on the dates and methodology for the Trip Counts and the analyses to be done after the Trip Counts are complete. The Trip Counts shall include Peak Hour counts of vehicles entering and exiting driveways to buildings within the Proposed Development, as well as intersection turning movement counts at those

street connections to/from the Property, as coordinated with and approved by FCDOT. The Trip Counts shall be conducted so that only trips generated by the residential uses on the Property shall be counted (i.e. cut-through trips, Metro trips, retail trips, etc., shall be excluded). Values will be provided for each residential building included in the Proposed Development, and a sum of vehicle trips generated by the residential uses in the Proposed Development will be calculated.

- iii. Frequency of Trip Counts. Once initiated, the PM shall conduct Trip Counts annually until such time as two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation show that vehicle trips generated by the multifamily residential units are less than or equal to the Phase III TDM Goal. If the results of two (2) consecutive Trip Counts reveal that the Phase III TDM Goal has been met, then the Applicant Control Period shall expire as provided in Proffer 22(A) above, the Letter of Credit (as defined in Proffer 22(K) herein) (or cash, as applicable) shall be returned to the Applicant, and the Applicant shall have no further responsibility under Proffer 22(K)(v) below. Thereafter, the UOA/HOA/COA (or successor developer/management company) shall conduct additional Trip Counts as set forth in this Proffer. Notwithstanding the provisions of this paragraph, FCDOT may request Trip Counts be undertaken at any time to validate traffic data, but not more frequently than twice per calendar year. If such requests are made by FCDOT, the PM shall conduct the requested Trip Counts.
- iv. Evaluation. The results of each Trip Count shall be compared to the maximum number of trips allowed under Proffer 22(B) above for the then-applicable phase of the Proposed Development to determine whether actual traffic counts are equal to, less than or greater than the maximum allowed trips for the then-applicable TDM Goal.
  - a. In the event the trips generated by the multifamily residential units at the time the Trip Count is conducted are equal to or less than the maximum allowed trips set forth in Proffer 22(B) above as determined by the then-applicable phase of the Proposed Development, then (i) no penalty is owed, and (ii) the Applicant (and subsequently the UOA/HOA/COA, as applicable) shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers until the Phase III TDM Goal has been met for two (2) consecutive Trip Counts and the Applicant Control Period Expires, after which Proffer 22(J)(v) below shall apply.
  - b. In the event the trips generated by the multifamily residential units at the time the Trip Count is conducted are greater than the maximum allowed trips set forth in Proffer 22(B) above as

determined by the then-applicable phase of the Proposed Development, then the PM shall convene a meeting with FCDOT within thirty (30) days of the completion of the Trip Count to review the results of that Trip Count and the TDM Plan then in place and to develop modifications to the TDM Plan and the TDM Budget to address the surplus of trips. The PM shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting. If no written response is provided by FCDOT within sixty (60) days, the PM's revisions to the TDM Plan and updated TDM Budget shall be deemed approved. Following approval of the revised TDM Plan and updated TDM Budget, the PM shall (a) draw down on the TDM Remedy Fund, as needed; (b) increase the TDM Account with TDM Remedy Funds, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (c) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT.

- v. Ongoing Implementation of TDM Plan. Once the Applicant Control Period has expired, the Letter of Credit/Cash (as defined in this Proffer 22) (as then-valued) shall be returned to the Applicant, and thereafter the UOA/HOA/COA shall be responsible for ongoing implementation of the TDM Plan. The PM shall conduct additional Trip Counts at five (5) year intervals to determine whether the Phase III TDM Goal continues to be met. In the event that an Annual Report submitted by the PM demonstrates through trend analysis that a change in commuting patterns has occurred that is significant enough to reasonably call in to question whether the Phase III TDM Goal continues to be met, as determined by FCDOT, then FCDOT may require the PM to conduct additional Trip Counts on a more frequent basis (but not more frequently than once per year) to determine whether, in fact, the Phase III TDM Goal is being met.
  - a. Continuation of TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual trips generated remain equal to or less than the maximum number of trips permitted under Phase III TDM Goal, then the PM shall continue to implement the TDM Plan and to make Annual Reports to FCDOT.
  - b. Further Revisions to TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual number of trips generated by the multifamily residential units are greater than the maximum number of trips permitted under the Phase III TDM Goal, then the PM shall convene a meeting with FCDOT within thirty (30) days of the completion of the Trip Count to review the results of the Trip Count and the TDM Plan then in place and to develop

modifications to the TDM Plan and the TDM Budget to address the surplus of trips. The PM shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting. If no written response is provided by FCDOT within sixty (60) days, the PM's revisions to the TDM Plan and updated TDM Budget shall be deemed approved. Following approval of the revised TDM Plan and updated TDM Budget, the PM shall (a) draw down on the TDM Remedy Fund, as needed; (b) increase the TDM Account with TDM Remedy Funds, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (c) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT. The PM shall repeat the process above (including additional adjustments to the TDM Plan, additional funding and additional monitoring) until the Phase III TDM Goal again has been met for two (2) consecutive years, whereupon the PM shall then be required to conduct Trip Counts only at five (5) year intervals, as described above.

- K. TDM Penalty Fund. Prior to the issuance of the first RUP for the first residential building, the Applicant (or its successor owner or developer, but not the UOA/HOA/COA) shall (a) establish the TDM Penalty Fund and (b) deliver to the County (i) \$500,000.00 cash or (ii) a clean, irrevocable letter of credit in the stated amount of \$500,000.00 issued by a banking institution approved by the County to secure the Applicant's obligations to make payments into the TDM Penalty Fund as described below (collectively, the "Letter of Credit/Cash"). If a letter of credit is used to secure the TDM Penalty Fund, then it shall name the County as the beneficiary and shall permit partial draws or a full draw.
- i. Establishment of TDM Penalty Fund; Letter of Credit. During the Applicant Control Period, if the results of two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation reveal that the actual vehicle trips generated by the multifamily residential units exceed the maximum number of trips permitted under the Phase III TDM Goal, then the Applicant shall pay into the TDM Penalty Fund the amounts specified below. FCDOT may thereafter withdraw funds from the TDM Penalty Fund. If the Applicant fails to pay what is due to the TDM Penalty Fund, then, upon thirty (30) days written demand, FCDOT may draw against the Letter of Credit/Cash in the amount then due and owing. FCDOT may apply funds withdrawn from the TDM Penalty Fund, or drawn under the Letter of Credit/Cash, for transportation improvements in the vicinity of the Property. The maximum aggregate amount of all penalties to be paid under this paragraph K is \$500,000.00. No penalties shall be imposed while the Phase I and Phase II TDM Goals are applicable.

- a. Failure up to 2%. A failure in the reduction of trips in either or both of the Peak Hours by two percent (2%) or less requires the Applicant to make a payment to the TDM Penalty Fund of \$1,000 per vehicle trip for each trip that exceeds the Phase III TDM Goal for the applicable Peak Hour.
  - b. Failure Greater than 2% but less than or equal to 5%. A failure in the reduction of trips in either or both of the Peak Hours by more than two percent (2%) but less than or equal to five percent (5%) requires the Applicant to make a payment into the TDM Penalty Fund of \$1,600 per vehicle trip for each trip that exceeds the Phase III TDM Goal for the applicable Peak Hour
  - c. Failure Greater than 5%. A failure in the reduction of trips in either or both of the peak hours by an amount greater than 5% requires the Applicant to make a payment into the TDM Penalty Fund of \$2,400 per vehicle trip for each trip that exceeds the Phase III TDM Goal for the applicable Peak Hour.
- L. Enforcement. If the PM fails to timely submit the Annual Report to FCDOT as required by this Proffer, the County may thereafter issue the PM a notice stating that the PM has violated the terms of this Proffer 22 and providing the PM sixty (60) days within which to cure such violation. If after such sixty (60) day period the PM has not submitted the delinquent Annual Report, then the Applicant and/or UOA/HOA/COA, as applicable, shall be subject to a penalty of \$200 per day payable to Fairfax County to be used for transit or transportation related improvements in the vicinity of the Property until such time as the report is submitted to FCDOT.

#### MULTIMODAL TRANSPORTATION

23. Pedestrian/Bicycle Circulation. In combination with the Streetscape improvements identified in Proffer 20 above, the Applicant shall provide sidewalks of varying widths and crosswalks throughout the Property and at key intersections of the Proposed Development, as indicated on the Development Plan. The sidewalks shall be constructed concurrent with the development of the Property. All onsite sidewalks not located in the right-of-way shall be maintained by the Applicant and/or UOA/HOA/COA. Sidewalk improvements located within existing or proposed right-of-way shall be as approved by VDOT. The Applicant also shall provide, pursuant to Proffers 10 and 11 above, a five foot (5') bike trail along Gallows Road. Except for those features shown on the Development Plan, the Applicant shall not erect barriers or other physical impediments on the Property (such as gates or fences) that are designed to restrict or preclude pedestrian access across the Property (including the Plaza) by patrons, invitees or guests of the Dunn Loring/Merrifield Metrorail Station or the Secondary Uses during the normal hours of operation for such services.

24. WMATA Parking Policy Coordination. Within six (6) months after the approval of the rezoning application (and once thereafter), WMATA shall make staff available to meet with

representatives of FCDOT and/or the Board of Supervisors to consider requests for modifications to WMATA's parking policies for the WMATA Garage, including, but not limited to, the provision of additional reserved parking spaces for Metro patrons arriving/departing during non-Peak Hours and for drivers of vanpools and carpools. Any actual modification to WMATA parking policies pursuant to such consultations shall be subject to the approval of WMATA staff and its Board of Directors. Implementation of modifications to WMATA parking policies pursuant to such consultations shall not require approval of a FDPA/PCA by the Board of Supervisors.

25. High Occupancy Toll ("HOT") Lanes Coordination. As requested or directed by FCDOT, the Applicant shall meet with representatives of any public or private entities that propose to design, construct and operate high occupancy toll lanes or similar transportation improvements to be located in the right-of-way of nearby interstate highways that may affect the distribution of transit trips to and from the Property. The Applicant also shall meet with representatives or members of VDOT, FCDOT, DPZ, and the Board of Supervisors to discuss and evaluate the estimated impacts and relation of the Property to such improvements.

#### WORKFORCE/AFFORDABLE HOUSING

26. Affordable Dwelling Unit ("ADU"). The Applicant shall provide ADUs in accordance with the requirements of Article 2 of the Zoning Ordinance (the "ADU Ordinance"). The actual number of ADUs to be provided shall be determined at the time of site plan approval in accordance with the formula for calculating ADUs in Section 2-801 of the Zoning Ordinance for developments with greater than fifty percent (50%) structured parking. The ADUs may be provided as for-sale or rental units and administered in accordance with the requirements of the ADU Ordinance. At least ten (10) of the ADU units required under this Proffer shall be designed and constructed as fully handicapped accessible units.

27. Workforce Housing Units. In addition to the number of ADUS required pursuant to Proffer 26 above, the Applicant also shall provide housing units on the Property that will be affordable to future residents who have a median household income of up to 80% of the Washington D.C. metropolitan statistical area median household income ("MHI") as determined by the U.S. Census Bureau so that a total of eight percent (8%) of the total residential units constructed as part of the Proposed Development are sold/rented as either ADUs or Workforce Units (as defined in this Proffer 27). ADUs and/or Workforce Units (as defined in this Proffer 27) provided at any given phase (or in any single Residential Building) of the Proposed Development may be greater or less than eight percent (8%) of the total residential units in such phase/building; provided, however, that the total number of ADUs and Workforce Units provided at the completion of the Proposed Development shall satisfy the eight percent (8%) overall requirement. Nothing contained herein shall be deemed to alter the administration of the ADUs or the number of ADUs required by the ADU Ordinance.

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

- i. Market-Rate Units. Dwelling units approved on the Property that are not subject to either the price/rental restrictions of Section 2-800 of the Zoning Ordinance or Proffers 26 or 27; and
  - ii. Workforce Units. Dwelling units on the Property subject to the price/rental restrictions of this Proffer 27, but not subject to those of Proffer 26 and Section 2-800 of the Zoning Ordinance.
- B. Workforce Units. Each Workforce Unit provided shall be made available through the Fairfax County Redevelopment and Housing Authority ("FCRHA") on either a for-sale basis or rental basis to persons with an average income of at least 80% of MHI. FCRHA shall be encouraged to market the Workforce Units to bicyclists, one or no-car individuals/families and employees of nearby employers; provided, however, that such marketing shall be completed on a non-discriminatory basis in conformance with the Fair Housing Act and all other applicable laws and regulations. Workforce Units shall have a minimum size of 500 square feet and a maximum size of 850 square feet and may be provided as efficiency and/or studio units and one (1) bedroom units, as determined by the Applicant in its sole discretion. The establishment of Workforce Units may occur in phases, concurrent with the phasing of development/construction of the Proposed Development.
- C. Designation on Approved Site Plan. The approved site plan(s) for the Residential Buildings shall designate the number of Workforce Units/ADUs and the number of Market-Rate Units to be provided. The Applicant shall determine the interior amenities, including the number of bedrooms, for each Workforce Unit provided. If the development of the Residential Buildings is phased or developed in sections, then the approved site plan(s) for the respective Residential Buildings shall also contain tabulations of the total number of Workforce Units by bedroom count and the number of Market-Rate Units by bedroom count on the Property. Whenever the calculation of the required Workforce 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 greater than 0.5 shall be rounded up to the next whole number.
- D. Timing for Provision of the Work-Force Units. RUPs shall not be issued for more than eighty percent (80%) of the total dwellings units approved on the Property until all of the RUPs have been issued for all of the Workforce Units required pursuant to this Proffer 27.
- E. Provisions of the ADU Ordinance. The Applicant intends that the Workforce Units shall be administered in a like-fashion as the ADUs pursuant to 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 Units: Sections 2-805, 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 Proffers. Where these Proffers conflict with the ADU administrative sections of the Zoning Ordinance, these Proffers shall control.

- F. Alternative Administration. Notwithstanding the foregoing subparagraph E, the Applicant reserves the right 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 Units following approval of this Application. 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 Units shall be administered solely in accordance with such an agreement, and subparagraph E above shall become null and void. Such an agreement and any modifications thereto, shall be recorded in the land records of Fairfax County.
- G. Compliance with Federal, State, and Other Local Laws/Severability. If it is found by a court of competent jurisdiction, that any portion of this Proffer 27 related to providing Workforce Units violates any Federal, State or other local law, then the offending portion of this Proffer shall be deemed null and void and no longer in effect. All remaining conditions of these Proffers.
- H. Condominium Conversion. If a residential building was initially operated as a rental project, then subsequently is converted to a condominium project, any existing Workforce Units shall be maintained as Workforce Units and shall be administered as Workforce Sale Units as set forth herein. The restrictions on the Workforce Sale Units shall be disclosed in the condominium declaration creating the condominium.

#### COMMUNITY FACILITIES

28. County Athletic Field Contributions. In addition to the recreation facilities provided in the Residential Buildings, the Applicant also shall provide a contribution of \$300,000.00 to the Board of Supervisors (the "Parks Contribution") to be used for parks and/or athletic facilities and fields in the vicinity of the Property, as determined by the Providence District Supervisor in consultation with the Providence District Athletic Fields Task Force. The Applicant shall make the Parks Contribution prior to the issuance of the first RUP for the first residential building in the Proposed Development.

29. Vienna Little League Contribution. Prior to issuance of the first RUP for the first residential building, the Applicant shall contribute \$25,000.00 to the Vienna Baseball Foundation, Inc. to be used in support of Vienna Little League activities serving children in the vicinity of the Property.

30. Contribution for Pedestrian Bridge to Dunn Loring Village. Prior to the issuance of the final RUP for the second residential building, the Applicant shall contribute \$25,000.00 to the

Board of Supervisors for use in constructing/reconstructing a pedestrian bridge across the existing stormwater channel located offsite from the Property near its northwest boundary (the "Pedestrian Bridge"). Design and construction of the Pedestrian Bridge shall be completed and maintained by others and shall not be the responsibility of the Applicant. In the event the Pedestrian Bridge is not constructed within five (5) years of the Applicant's contribution, then such funds shall be transferred to the Providence District Trail Fund and distributed/used to enhance pedestrian connections between Dunn Loring Village and the Property in accordance with the procedures provided for the administration of the Trail Fund.

31. Park Authority Contributions. Prior to issuance of the first RUP for the first residential building, the Applicant shall contribute to the Fairfax County Park Authority the amounts set forth below (up to \$35,000.00 in total contributions) for capital improvements to the following Fairfax County Parks:

- A. Fairfax County South Railroad Street Park - \$15,000.00; and
- B. Fairfax County Dunn Loring Park - \$20,000.00.

32. Contribution for Lighting on Gallows Road Bridge. Prior to the issuance of the first RUP for the first residential building, the Applicant shall contribute \$10,000.00 to the Board of Supervisors to be used for the installation of enhanced lighting along the Gallows Road bridge over I-66 northeast of the Property (the "Lighting Contribution"). In the event the Lighting Contribution has not been used by the Board within five (5) years of the Applicant's contribution, then such funds shall be transferred to the Providence District Trail Fund and distributed/used to enhance pedestrian connections along Gallows Road between the Washington and Old Dominion Trail and the Property in accordance with the procedures provided for the administration of the Trail Fund.

33. Miscellaneous Contributions. Prior to issuance of the first RUP for the first residential building, the Applicant shall contribute \$5,000.00 to each of the following entities or funds (up to \$25,000.00 in total contributions) to support their activities and programs:

- A. Providence District Tree Fund;
- B. Dunn Loring Volunteer Fire Department;
- C. Merrifield Volunteer Fire Department;
- D. Nottoway Nights; and
- E. Oakton Library.

34. Merrifield Shuttle.

- A. In order to provide initial support for the development of a Merrifield Shuttle or circulator system, the Applicant shall, in addition to the designation of a Merrifield Shuttle location in the Kiss-and-Ride Lot and at FCDOT's election, (1) contribute \$25,000.00 to Fairfax County toward the expenses of a feasibility study

to examine the creation of a consolidated shuttle or circulator system in the Dunn Loring/Merrifield area (the "Shuttle Study"), or (2) retain a qualified consultant at the Applicant's expense not to exceed \$25,000.00 to perform the Shuttle Study. Prior to the issuance of the first building permit for the first residential building, the Applicant shall request FCDOT to make its election of whom should complete the Shuttle Study. If FCDOT has not made its election on the form of the Shuttle Study prior to the issuance of the first RUP for the Proposed Development, then the Applicant shall be required only to contribute funds to the County for the Shuttle Study. If FCDOT elects to have the Applicant's consultant complete the Shuttle Study, then such study shall be completed prior to (i) the issuance of the final RUP for the first residential building or (ii) six (6) months following FCDOT's election, whichever is later. In the event FCDOT elects to receive a contribution for the Shuttle Study, then the Applicant shall contribute the moneys for the Shuttle Study prior to the issuance of the final RUP for the first residential building. If the County elects for the Applicant to complete the Shuttle Study, then the scope of the Shuttle Study will be prepared by the Applicant, subject to review and approval by FCDOT, and the selected consultant shall be approved by FCDOT. The purpose of the Shuttle Study will be to summarize and evaluate the various private shuttle services, if any, currently provided in the Dunn Loring/Merrifield area and make recommendations to the County about the possible ownership, organizational structure, routes, sources of revenue and start-up and on-going capital and operating budget requirements for a Merrifield Shuttle that would consolidate and replace existing shuttle services.

- B. In the event that, after the completion of the Shuttle Study, a privately-operated Merrifield Shuttle is established by others, then the Applicant (or successor UOA/HOA/COA) may participate in ongoing funding for such service provided that (i) the Merrifield Shuttle provides reasonable and consistent peak-hour service to the Property and, if constructed, the future Merrifield Town Center, and (ii) such financial participation in the Merrifield Shuttle is proportional to the actual usage of the Shuttle by future residents/tenants/visitors and employees of the Proposed Development and to the participation of other users of the Merrifield Shuttle.

#### FAIRFAX COUNTY PUBLIC SCHOOLS

35. Public Schools. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, effective January 7, 2003, the Applicant shall contribute \$7,500 per expected student in the Proposed Development (with a projected total of 73 students based on a ratio of 0.102 students per residential unit) to the Board of Supervisors for transfer to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements at the schools that any students generated by the Residential Buildings will attend. Such contribution shall be made prior to the issuance of the first RUP for each residential building triggering the Fairfax County Public Schools contribution for the students generated by that building.

- A. Adjustment to Contribution Amounts. Following approval of this Application and prior to the Applicant's payment of the amount(s) set forth in this Proffer, if Fairfax County should increase the ratio of students per high-rise multifamily unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution for that phase of development to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the greater of the two amounts.

### ARCHITECTURAL DESIGNS AND BUILDING MATERIALS

#### 36. Main Street Storefronts.

- A. External Streetscape Presence. The Applicant shall encourage retail and other tenants/uses with street frontage along the proposed Main Street (as defined herein) (such areas being those labeled as "Secondary Uses" on the Development Plan) to create a lively building façade and pedestrian-oriented streetscape that provides interest to pedestrians and vehicles passing through the Property, as more particularly shown on Sheets 19-20A of the Development Plan. Elements of this program may include, but need not be limited to, transparent exterior storefront facades (as outlined below) and entries, landscaping, restaurant seating areas, benches, canopies and awnings, decorative light fixtures, brick pavers, shade elements and other techniques with similar effect.
- B. Glazing Requirements and Transparency Levels. All Main Street Retail areas shall incorporate materials such as glazed windows and doors to permit pedestrians or passersby to visibly see into the tenant space; provided, however, that nothing shall preclude the use of tenant displays or signature materials in the tenant windows that reduce the overall transparency of the facades, such as window lettering, signage, trim materials, display set-ups or other similar features.

37. Building Design and Materials. The general architectural design of the Proposed Development is shown on Sheets 19-20A of the Development Plan (the "Conceptual Elevations"). The Conceptual Elevations are conceptual in nature and may be modified by the Applicant as part of final engineering and building design, provided that such modifications provide a similar quality of design as that shown on the Development Plan. Building materials for the Proposed Development, as generally reflected on the Conceptual Elevations, shall be selected from among the following: siding (to be used on the interior of the Residential Buildings where it is not visible to the public, such as in the courtyards), brick, hardi-plank, masonry/stone, aluminum trim, glass, steel, split-face block and pre-cast panels, provided that final architectural details and accents may include other materials. No EIFS shall be used. Bay windows, balconies, awnings, storefronts and other architectural details may be provided so long as such features do not extend more than eight (8) feet beyond the building footprints shown on the Development Plan, and provided that the streetscape features and dimensions are maintained.

- A. Residential Building Fronting Gallows Road. The portion of Residential Building C fronting Gallows Road and located on residential floors 3 and above shall be inset approximately six (6) feet from the building footprint of Building C as

depicted on the Development Plan to provide visual relief in the building's mass and scale.

- B. Garage Elevations. The Applicant's design of the WMATA Garage, as illustrated on Sheets 20-20A of the Development Plan, shall include an architectural surface treatment that is complementary to the theme of the residential buildings to be constructed on the Property, such as the use of special forming or scoring and/or pre-cast panels or similar architectural embellishments, in order to promote compatibility of design among the structures. The façade of the portion of the WMATA Garage that fronts I-66 shall utilize a stamped texture or similar treatment to provide further noise mitigation from vehicle traffic along I-66.
- C. Rear Façade of Buildings D and F. The Applicant shall incorporate architectural and design features into the rear façade of the Secondary Uses contained in Buildings D and F that face/open to the Bus Loop and the Metrorail platform entrance, as more particularly shown on Sheet 20A of the Development Plan. Such design features shall include a combination of decorative lighting, advertisements, banners, wall art/murals or similar features. The Applicant also shall be permitted to create/maintain additional/secondary entrances into the Secondary Uses, but without a requirement to match the design standards for the Main Street storefronts set forth in Proffer 29 herein. The Applicant shall design the rear façade of Buildings D and F so that the utility boxes and similar "back of house" elements serving the uses therein are screened from view or located inside Buildings D and F.

#### SANITARY SEWER

38. Sewer Coordination. At the time of submission of a site plan for any residential building, the Applicant shall provide DPWES with an analysis of the capacity of the sanitary sewer lines serving the Property. If the County determines that any sewer line serving the Property is inadequate, the Applicant shall upgrade or improve offsite sanitary sewer lines, as necessary, to accommodate all future phases of the Proposed Development.

#### TEMPORARY SIGNS

39. 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.

## MISCELLANEOUS

40. Escalation in Contribution Amounts. Except for the amount to be contributed to the TDM Penalty Fund, the amounts of each cash contribution set forth in these Proffers shall escalate on a yearly basis from the base year of 2007 and change effective each January 1 thereafter based on the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI").

41. Advance Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT pursuant to the PFM, at the time of site plan approval for the Property.

42. Hours of Construction. The hours of outdoor construction activity on the Property shall be limited to between 7:00 a.m. and 9:00 p.m. Monday-Saturday, and 9:00 a.m. to 7:00 p.m. on Sundays and federal holidays; provided, however, that there shall be no outdoor construction on January 1<sup>st</sup>, July 4<sup>th</sup>, Thanksgiving Day and Christmas Day each year. The Applicant shall inform all contractors and subcontractors of the permitted hours of construction, and signs designating such construction hours shall be published in both English and Spanish and posted at all construction entrances to the Property.

43. Trash Removal. Trash pickup services from the Residential Buildings and the Secondary Uses shall not occur on weekdays between the hours of 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.

44. Utility Locations. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall place all utilities serving the Property underground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground without approval of a PCA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from third-parties that, despite having been diligently pursued by the Applicant, are not available.

45. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property may be the subject of a proffered condition amendment ("PCA"), Special Exception ("SE"), Special Permit ("SP"), or Final Development Plan Amendment ("FDPA") without joinder and/or consent of the owners of the other portions of the Property, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.

46. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and his 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 developer(s) of the site or any portion of the site.

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

[SIGNATURES ON FOLLOWING PAGES]

DUNN LORING METRO LLC,

a ~~DELAWARE~~ limited liability company

Contract Purchaser of: Tax Map # 49-2 ((1)) parcels 13A and 15A,

Tax Map # 49-1 ((1)) 27A, and

Tax Map # 49-1 ((13)) parcels 17A and 18A

By: TCR Mid Atlantic Land Acquisition Limited Partnership, its sole member

By: TCR Mid Atlantic Properties, Inc., its General Partner

By: Ellen N. Bay  
Name: CHARLES N. BAY  
Title: VICE PRESIDENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Owner of Tax Map # 49-2 ((1)) parcels 13A and 15A,  
Tax Map # 49-1 ((1)) 27A, and  
Tax Map # 49-1 ((13)) parcels 17A and 18A

By:

Gary Malasky

Name: GARY MALASKY

Title: MANAGING DIRECTOR  
PROPERTY DEVELOPMENT AND MANAGEMENT