

Tysons II Land Company, L.L.C.
PCA 84-D-049-5
Tax Map 29-4 ((10)) 2-A1, 2-A2, 2-C, 2-D,
3-A, 3-B, 3-C, 3-D, 4-A, 4-B, 5-A, 5-B,
5-C, 6 and Outlot B

PROFFER STATEMENT

June 11, 2003

Pursuant to Section 15.2-2303A of the Code of Virginia, 1950, as amended, and Section 18-204 of the Zoning Ordinance of the County of Fairfax (1978, as amended) ("Ordinance"), subject to the Board of Supervisors' approval of the requested Proffer Condition Amendment ("PCA") and Conceptual Development Plan Amendment ("CDPA"), the applicant and owners, for themselves and their successors and assigns ("Applicant") hereby proffer the following conditions ("Proffers"). The Property that is the subject of these Proffers is identified on the Fairfax County Tax Maps as 29-4 ((10)) Parcels 2-A1, 2-A2, 2-C, 2-D, 3-A, 3-B, 3-C, 3-D, 4-A, 4-B, 5-A, 5-B, 5-C, 6 and Outlot B. Any future modifications to the Proffers and/or CDPA which affect only a specific parcel or parcels may be approved by the Board of Supervisors upon application for a proffered conditioned amendment and/or conceptual development plan amendment, as applicable, by the individual owner of a specific parcel or parcels without amending the entire proffer statement, and/or the entire CDPA, provided such amendment does not affect the remainder of the Property.

BACKGROUND/IMPLEMENTATION:

- A. On October 15, 1984, the Board of Supervisors of Fairfax County rezoned 106.84 acres which was the subject of Rezoning Application RZ 84-D-049 to the Planned Development Commercial (PDC) District and accepted proffers dated August 17, 1984, as revised through October 15, 1984 ("1984 Proffers"). The Board also approved the Conceptual Development Plan for Tysons II which accompanied the rezoning application ("1984 CDP"). On October 4, 1984, the Planning Commission approved the Final Development Plan, as revised through October 4, 1984 ("1984 FDP").
- B. On October 16, 1995, the Board of Supervisors approved Proffer Condition Amendment PCA 84-D-049 and adopted proffers dated February 15, 1995 revised through September 14, 1995 ("1995 Proffers"). The Board also approved Conceptual Development Plan Amendment dated April 12, 1995, as revised through September 13, 1995, for Sectors II, III, and IV which accompanied the Proffer Condition Amendment ("1995 CDPA"). On October 12, 1995, the Planning Commission approved the Final Development Plan Amendment dated April 12, 1995, as revised through September 13, 1995 ("1995 FDPA"). The 1995 Proffers, 1995 CDPA and 1995 FDPA applied to Sectors II, III and IV, which Sectors include Parcels 3-A, 3-B, 3-C, 3-D, 4-A, 4-B, 5-A, 5-B, 5-C, 6 and Outlot B, and which Parcels include the buildings designated as G, H, I, J1, J2, K, L, and M.
- C. On May 18, 1998, the Board of Supervisors approved Proffer Condition Amendment PCA 84-D-049-2 and adopted proffers dated July 29, 1997, revised

through May 18, 1998 ("1998 Proffers"). On April 2, 1998, the Planning Commission approved the Final Development Plan Amendment dated July 29, 1997 as revised through March 9, 1998 ("1998 FDPA"). The 1998 Proffers and the 1998 FDPA applied to a portion of Sector I, which Sector includes Parcels 2-A1, 2-A2, 2-C and 2-D, and which Parcels include the buildings designated as C, D, E and F.

D. On May 2, 2002, the Planning Commission approved the Final Development Plan Amendment dated August 20, 2001, last revised April 29, 2002 ("2002 FDPA"), which 2002 FDPA applied to Parcel 2-A2, which includes Building F, subject to certain Development Conditions.

E. The 1984 Proffers, 1984 CDP and 1984 FDP, as modified by the (i) 1995 Proffers, (ii) 1995 CDPA, (iii) 1995 FDPA, (iv) 1998 Proffers (v) 1998 FDPA and (vi) 2002 FDPA are collectively referred to as the Existing Proffers and Development Plans. The Property shall continue to be developed in substantial accordance with, and subject to, the Existing Proffers and Development Plans unless, upon the request of the applicant, the Director of the Zoning Evaluation Division ("ZED") of the Department of Planning and Zoning determines that there exists a Full Funding Grant Agreement as defined in 49 U.S.C. § 5309 ("FFGA") for rail from the West Falls Church metro station through Tysons (to and including the Tysons West station) by January 1, 2005, or such later date, if any, that is agreed to in writing by the Applicant and the Director of ZED, as such rail system is generally set forth in the Tysons Corner Metro Rail Alignments

designated as T1, T4, T6 or T9 in the Draft EIS (as defined in Proffer III.B.2. herein).

If the event stated above has occurred, as determined by the Director of ZED and communicated in writing to the Applicant (the "Implementation Notice") by the date set forth above, as such date may be extended, then the Property shall be developed in substantial accordance with, and subject to, the following Proffers and the CDPA/FDPA. If the Director of ZED issues a determination that a FFGA does not exist, the Applicant agrees to waive its right pursuant to 18-300 of the Ordinance, to appeal such determination to the Board of Supervisors.

F. Nothing contained herein shall affect the parcels subject to the 1984 Proffers that are not part of the Property and that are not part of these applications. Attached hereto as Exhibit A is a chart setting forth the building and sector designation for each tax parcel that is part of the Property subject to these applications.

I CONCEPTUAL DEVELOPMENT PLAN/FINAL DEVELOPMENT PLAN

- A. Development of the Property shall be in substantial conformance with the Conceptual/Final Development Plan entitled "Conceptual/Final Development Plan Amendment Tysons II" prepared by Dewberry & Davis dated September 19, 2001, last revised January 31, 2003 ("CDPA/FDPA"), except as otherwise provided herein. Minor modifications from the CDPA/FDPA may be permitted pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance.
- B. The 1984 CDP and the 1995 CDPA are hereby deleted in their entirety and replaced by the CDPA/FDPA as it relates to the Property, which Property includes

all of Sectors II, III and IV and a portion of Sector I as shown on the CDPA/FDPA.

- C. Notwithstanding the fact that the Conceptual Development Plan and Final Development Plan are presented on the same plan, the elements of such common plan that are components of the Conceptual Development Plan are as set forth in the third paragraph of Note 1 on sheet 3 of the CDPA/FDPA and are limited to the points of access, the general location of the buildings, parking garages and, open space areas and only a future amendment to such elements shall require a subsequent Proffered Condition Amendment.
- D. The 1984 FDP, 1995 FDPA, 1998 FDPA and 2002 FDPA are hereby deleted in their entirety and replaced by the CDPA/FDPA as it relates to the Property, which Property includes Buildings C, D, E, F, G, H, I, J, K, L and M. Attached as Exhibit G are the Development Conditions for Building F, which shall continue as development conditions affecting the Building F parcel. Subsequent modifications to the Building F Development Conditions shall not require a proffered condition amendment, but shall require a final development plan amendment to the Building F parcel.

II PERMITTED USES

The principal and secondary uses which shall be permitted are identified in Note 27 on Sheet 3 of the CDPA/FDPA, which are all the principal and secondary uses permitted in the PDC District except those uses expressly excluded in Note 27. Such principal and secondary uses shall not result in any additional free-standing buildings beyond those represented on the CDPA/FDPA. Notwithstanding that the CDPA/FDPA depicts

Building J as the only residential building, the Applicant shall be permitted to transfer residential gross floor area into other office or hotel buildings and to replace such transferred gross floor area with hotel or office gross floor area in Building J. However, temporary free-standing structures may be permitted, as required to operate any outdoor recreation uses that is not an excluded use as described in Note 27 on Sheet 3 of the CDPA/FDPA, provided such free standing structures shall only be located on areas of the Property that are intended to be disturbed as shown on the CDPA/FDPA. Further, the Applicant reserves the right to establish Group 8 Temporary Uses on an interim basis as may be approved by the Zoning Administrator or Board of Zoning Appeals, provided such free standing structures shall only be located on areas of the Property that are intended to be disturbed as shown on the CDPA/FDPA.

III TRANSPORTATION

A. Tysons Corner Road Fund.

1. At the time of issuance of the first Non Residential Use Permit ("Non RUP") for a building within Sectors II, III or IV of the Property, which results in the total non residential gross floor area within such Sectors exceeding 1,963,474 square feet (being the presently permitted non residential gross floor area for such Sectors prior to the approval of this PCA), the Applicant shall contribute Three and 24/100 Dollars (\$3.24) for each square foot of total gross non residential floor area above 1,963,474 square feet contained in such Sectors. This amount shall be paid on a building by building basis. Each site plan for a building within Sectors II, III or IV shall include a tabulation setting forth the total non-residential gross floor area constructed to date within such Sectors. At

the time of issuance of the first Residential Use Permit ("RUP") for any building within Sector IV that contains residential dwelling units the Applicant shall contribute \$720.00 per residential dwelling unit contained in such building. The contribution amounts proffered in this paragraph shall be utilized for the following Tysons Corner Area Wide Improvements or other improvements in the Tysons Corner area as to be determined by the Board of Supervisors: (i) the design and/or construction of improvements to Route 123 between International Drive and the Capital Beltway, or (ii) the design and/or construction of the Route 123/International Drive Interchange. The contribution amount shall be adjusted by changes to the Construction Cost Index published by the Engineering News Record from the date of Board of Supervisors approval of this proffered condition amendment application to the date such payment is made.

2. Alternatively, in lieu of the Applicant's Tysons Corner Road Fund contribution set forth in Proffer III.A.1 above, the County at the time of giving the Implementation Notice may give written notice to the Applicant to proceed in accordance with this Proffer III.A.2 in which event the Applicant shall expend or contribute \$5,000,000 toward the following "Route 123 Improvements":

(i) Upon receipt of the Implementation Notice from the County, the Applicant shall commence the design of Route 123 to include an additional through lane on both the North and South bound sections of Route 123 from approximately International Drive to Interstate 495, and

(ii) upon approval of such design by VDOT, FCDOT and other affected property owners, commence the construction of such road improvements, subject to the availability of any required offsite easements and right-of-way and the availability of the balance of the construction funds, i.e., the funds needed above and beyond the Applicant's \$5,000,000 obligation.

(iii) Prior to commencing the design of such improvements, the Applicant, VDOT, FCDOT and the County shall negotiate an agreement with respect to the design and construction of such improvements, including with respect to (i) the scope of the project, (ii) the responsibility of VDOT/County to obtain any necessary easements and right-of-way and the timing for the same, (iii) the project budget, including the timing and availability of any necessary funds from others, (iv) the entity to be the contracting party for purposes of utility relocation, liability for payment and to third parties, (v) the Applicant's role in working with the Commonwealth Transportation Board in seeking to have such improvements added to VDOT's Six Year Plan, and (vi) other similar matters. If the Applicant, VDOT, FCDOT and the County can not agree on the terms of such Agreement within 6 months of the Implementation Notice for any reason (or such additional time as may be agreed upon by the Applicant and the County), then the Applicant shall pay such \$5,000,000.00 to the County at that time to be utilized for the Route 123 Improvements in full satisfaction of any Tysons Corner Road Fund obligations and its obligations, at site plan or otherwise, to construct improvements along Route 123 other than a fourth through lane on the north side of Route 123 as, and to the extent, provided for in Proffer III.F. hereof.

B. Transit Facilities.

1. Dedication. Applicant shall reserve for future dedication or conveyance the land areas within the Property designated as "Future Transit Station" on the CDPA/FDPA. Such dedication or conveyance shall (i) include necessary construction easements and utility easements (to the extent not available in public rights-of-way) and (ii) shall be subject to the reservation that such land area be used solely for transit and ancillary support purposes and shall expressly exclude the right to develop the air rights above the station for uses other than public uses or uses accessory to or providing a service to or for the convenience of transit patrons or other uses agreed to in writing by the Applicant and the County. Such land areas shall be conveyed in fee simple to the County, or if directed by the County, the Washington Metropolitan Area Transit Authority ("WMATA"), the Virginia Department of Rail and Public Transportation ("VDRPT") or other public operator of such transit facilities upon demand by the County within 60 days following the County's written request, but no sooner than the effective date of the Implementation Notice as set forth in Proffer E. under Background/Implementation, above. Applicant shall make such dedication or conveyance without monetary consideration provided Applicant receives density credit for the area dedicated or conveyed as provided for in Section 2-308 of the Ordinance. Prior to such dedication the Applicant shall cooperate with WMATA, VDRPT or other public operator of such transit facilities and shall provide access to the area

to be dedicated for WMATA, VDRPT or other public operator of such transit facilities to perform preliminary engineering and surveying activities.

2. Adjustment to Dedication Area. The Draft Environmental Impact Statement for the Dulles Corridor Rapid Transit Project prepared by WMATA (the "Draft EIS") sets forth four (4) possible "Tysons Corner Metrorail Alignments" designated as T1, T4, T6 and T9 and the area reserved for "Future Transit Station" is based on the T-6 Alignment, as endorsed by the Board of Supervisors, WMATA and the Commonwealth Transportation Board. The Applicant shall, in cooperation with the appropriate public agencies, adjust the area to be dedicated or conveyed if one of the other three (3) alignments is selected and such selection requires an adjustment in the station location and design, or if there are any minor adjustments to the T-6 alignment based on final engineering that require additional land, with the understanding that the adjustments contemplated above, including any minor modifications to the adjacent parking structure or building shall not require an amendment to the Proffers or the CDPA/FDPA. This Proffer shall not require additional dedication or conveyance required to accommodate the bus lanes/transfer areas presently shown on Tax Parcel 29-4-((1))-35A in the T-6 Alignment without the consent of the Owners of the parcels within Sector II, however, if it is determined by the appropriate public agencies that some of the aforementioned bus lanes/transfer areas are best located other than on Tax Parcel 29-4-((1))-35A, the Applicant shall work with the appropriate public agencies, to consider alternative locations,

including locations north of Route 123 taking into account, among other criteria, the impact on traffic flows and the planned development on the Property.

3. Station Platform. Applicant acknowledges that the plans for the T-6 Alignment show the station platform designated as "North Entrance Pavilion" on such T-6 plans as located between Building K and Tysons Boulevard, and the Applicant shall cooperate and coordinate with the applicable agencies with respect to the construction of the same, and shall grant necessary construction, utility and air rights easements for such platform to the extent such platform extends beyond the area to be dedicated pursuant to Proffer III.B.1.

4. Pedestrian Connections from Station Platform to Street Level. Applicant shall permit a connection (stairs, elevator and/or escalator) to be made by WMATA, VDRPT or other public transit agency from the station platform in Sector II to the street level pedestrian network, including granting any necessary easements for such purpose, which street level connection shall be in addition to the above-grade connection to be made by the Applicant pursuant to Paragraph III.B.5 below.

If the elevated bridge from Sector IV to the rail station platform shown as "Proposed Elevated Pedestrian Connection" on the CDPA/FDPA is constructed, the Applicant shall provide stairs and/or an elevator to provide 24-hour access from such bridge or the structure/plaza in Sector IV to which it connects to the street level pedestrian network.

Additionally, should the selection of any of the four (4) proposed alignments require an adjustment to the pedestrian connections to the transit

facility, as such connections are shown on the CDPA/FDPA, the Applicant shall cooperate with the appropriate public agencies and shall make such minor adjustments (i) to the area to be dedicated or subjected to easement and (ii) to the layout shown on the CDPA/FDPA with the understanding that the adjustments contemplated above, including any minor modifications to the adjacent streetscape, parking structure or building, shall not require an amendment to the Proffers or the CDPA/FDPA.

5. Above Grade Pedestrian Connection from Station Platform to Building K Improvements. Applicant acknowledges that the plans for the T-6 Alignment show a station platform at elevation 474 while the CDPA/FDPA shows the connection to the station platform occurring at elevation 470 and the Applicant shall (i) adjust its plans to assure a functional above-grade connection is made to Sector II which adjustments may consist of a stairway and an ADA compliant connection or (ii) if the Building K improvements have been constructed prior to the construction of the station platform, make appropriate adjustments to such existing improvements to assure a functional above-grade connection to the station platform, which adjustments may consist of a stairway and an ADA-compliant connection.

6. Coordination with WMATA/VDRPT. Prior to the second submission of the site plan (or if no second submission is required, prior to site plan approval) for any improvements (including parking structures) associated with Building K in Sector II and Building J in Sector IV, the Applicant shall furnish evidence to FCDOT that the site plan in question has been coordinated

with, and is satisfactory to WMATA, VDRPT or such other public transit operator, with respect to such improvements interface with existing or proposed rail facilities and any minor modifications to such dedicated area as contemplated by this Proffer III.B.

C. Pedestrian Network.

1. In addition to constructing the on-grade pedestrian network shown on the Property as depicted in the CDPA/FDPA, the Applicant shall, subject to obtaining any and all required approvals from the Virginia Department of Transportation ("VDOT"), have the option of constructing all or any of the above-grade pedestrian network, including the three (3) pedestrian connection bridges across the public rights-of way known as Galleria Drive and Tysons Boulevard as depicted on the CDPA/FDPA. The pedestrian bridges may be either an open or closed facility. Additionally, the Applicant shall subject to the approval of VDOT be permitted to construct and establish retail and similar type uses on such pedestrian connection bridges. To the extent the pedestrian connection bridges are not constructed, the Applicant shall demonstrate to DPZ that access to the major plazas from the street level pedestrian network will be provided.

2. Applicant shall provide stairs and/or an elevator to provide 24-hour access from the upper plaza in Sector II to the lower plaza in that Sector and from there to the sidewalks in the public right-of-way.

3. Prior to the issuance of the first Non-RUP for the first building within Sector III, the Applicant shall extend the existing asphalt trail along the

northeastern portion of Sector III from its current terminus to Galleria Drive as depicted on Sheet 6 of the CDPA/FDPA.

4. Minor modifications to the on-site pedestrian network may be made by the Applicant at time of site plan consistent with the provisions of Section 16-403 of the Ordinance.

D. Pedestrian Connection to West*Park.

1. Connection to West*Park. The Applicant shall provide a mid-block pedestrian connection to the West*Park Parcel (as defined below), as provided in Proffer III.D.2 and III.D.3 below, with such connection to address the following scenarios: (i) the West*Park Parcel has not been redeveloped and/or continues to have surface parking, and (ii) the West*Park Parcel has been redeveloped and has structured parking adjacent to Sector III.

2. At -Grade Connection to West*Park Parcel Prior to Redevelopment of West*Park Parcel. As part of the on-site pedestrian network shown on the Property as depicted on the CDPA/FDPA, the Applicant shall construct a mid-block pedestrian connection between the existing/proposed development on tax parcel 29-4-((7))-3 (the "West*Park Parcel") and the pedestrian network for Sector III as depicted on the CDPA/FDPA. Prior to approval of a site plan showing such mid-block connection, the Applicant shall coordinate and diligently work with the owner of the West*Park Parcel ("West Park") to establish the location of the pedestrian connection, which shall be either the location shown on the CDPA/FDPA or another location in the general vicinity acceptable to Applicant and West*Park. At the time of site plan submission for

Building G, the Applicant shall provide documentation to DPWES that it has used good faith efforts to coordinate the location of the pedestrian connection with the owner of the West*Park Parcel.

The connection shall consist of constructing an asphalt trail six (6) feet in width from the current asphalt trail along the northeastern (rear) portion of Sector III to the common boundary of Sector III and the West*Park Parcel, as shown on the CDPA/FDPA (the "Pre-redevelopment Connection"). The Pre-redevelopment Connection shall be constructed by the Applicant prior to the issuance of the first Non-RUP for the first building within Sector III.

When the parking structure adjacent to Building I is constructed, the Applicant shall construct the at grade asphalt trail six (6) feet in width from the current asphalt trail along the northeastern (rear) portion of Sector III into such garage as shown on Sheet 17 of the CDPA/FDPA and a walkway through such garage as provided for in Proffer III.D.5. This walkway may be discontinued at such time, if ever, that the connection to the West*Park parcel contemplated by III.D.3. is constructed including the walkway through the garage adjacent to Building G or from the terrace to the remainder of Section III.

Additionally, the proposed park depicted on Sheet 8 of the CDPA/FDPA shall be designed to permit future pedestrian access from tax parcels 29-4-((7))-9 and 10 to such park.

3. Connection to West*Park Parcel Post-redevelopment of West*Park Parcel. If, at the time of site plan for Building G and the associated parking structure adjacent to the West*Park Parcel, the West*Park Parcel has been

redeveloped to include structured parking, the Applicant shall design and construct a connection to the West*Park Parcel concurrent with the construction of the parking structure adjacent to the West*Park Parcel provided the Applicant is granted necessary easements by the owner of the West*Park Parcel to allow the construction of such connection (such easements to be provided at no cost to the Applicant) and provided funds have been contributed by the owner of the West*Park Parcel and such funds are available to the Applicant and adequate to pay for the cost of designing and constructing the connection from the boundary line of the West*Park Parcel to its terminus on the West*Park Parcel parking structure. The location of such connection shall be in the general vicinity of either of the two locations set forth on sheet 17 of the CDPA/FDPA or in an alternative location agreed to by West*Park, the applicant and the Director of ZED. At the time of site plan submission for Building G, the Applicant shall provide documentation to DPWES that it has used good faith efforts to coordinate the location of the pedestrian connection with the owner of the West*Park parcel.

4. Continuing Obligation to Make Connection to West*Park Parcel Post-Redevelopment of West*Park Parcel. In the event such funds and/or easements for the construction of the connection provided for in Proffer III.D.3 are not contributed by the West*Park owner upon 90 days following Applicant's written notice to the owner of the West*Park Parcel of its intent to file a site plan for Building G and the associated parking structure adjacent to the West*Park Parcel because either (i) West*Park was unwilling to contribute such funds and easements or (ii) the West*Park Parcel has not been redeveloped with structured

parking, the Applicant shall not be required to design and/or construct the connection. In such event, however, the Applicant shall remain obligated to contribute funds sufficient to pay for the cost of design and construction of the connection from the parking structure associated with Building G (or, at the Applicant's option, the terrace) to the boundary line of the West*Park Parcel generally in the vicinity shown on the CDPA/FDPA, as well as grant necessary easements to allow the construction of the connection, to any party ready, willing and able to complete the construction of the connection. Such contribution shall be subject to the Applicant receiving ninety (90) days written notice to provide such contribution by such party. Applicant shall, as part of the approval of the site plan for Building G, provide DPWES with copies of its written request(s) to the West*Park owner to provide such funds and/or easements.

The Applicant reserves the right to provide for such a connection by separate agreement with the owner of the West*Park Parcel (or other appropriate party) without requiring the approval of a Proffered Condition Amendment. Such agreement shall be subject to the review and approval of the Director of ZED for substantial conformance with this Proffer III.D3.

5. Elements of Pedestrian Connection Through Garage or Terrace.

The walkway through, or on the top level of, the parking garage or, at the option of the Applicant, through the terrace adjacent to Building G, as shown on Sheet 17 of the CDPA/FDPA from the pedestrian connection to be made pursuant to Proffers III.D.2 and/or III.D.3. to the remainder of the Sector III site shall have the following elements: (i) the walkway shall be a minimum of five (5) feet in width

and shall be available to the public 24 hours a day; (ii) if through or on top of the garage; the walkway shall be differentiated from the driving surface and the walkway shall be a different pavement type from the drive aisles/parking spaces or painted to be clearly distinguishable; (iii) signage shall be provided to direct pedestrians in the walkway; and (iv) security shall be provided for the walkway and, if applicable, garage consistent with sound property management principals.

- E. Traffic Signals. The Applicant shall design, equip and install signalized intersections (including pedestrian signals) at the following locations as required and when deemed warranted by the Virginia Department of Transportation ("VDOT"): (1) Tysons Boulevard and Westbranch Drive; (2) Galleria Drive and Westpark Drive; and (3) Tysons Boulevard and Park Run Drive. Applicant shall provide a separate warrant study covering each signal to VDOT when requested by the Fairfax County Department of Transportation ("DOT").
- F. Route 123 Improvements. Applicant shall at the time of site plan approval for a parcel within the Sector II or Sector IV property adjacent to Route 123, design and construct a fourth through lane on Route 123 adjacent to such Sector II or Sector IV parcel, as applicable, within the existing right-of-way to VDOT specifications, or, at the request of DPWES, escrow the costs of such construction with DPWES for future construction of such improvements by the County or its designee, unless such improvements have been previously constructed. Additionally, Applicant shall at the time of site plan approval for a building within Sectors II, III or IV of the Property which results in the total non residential gross floor area within such Sectors exceeding 1,963,474 square feet, subject to VDOT approval and the

availability of sufficient right-of-way at no cost to the Applicant, construct an additional approximately 550 foot left turn lane to VDOT standards for a tandem left turn lane from north bound Route 123 onto Tysons Boulevard, including any redesign and reconstruction of Route 123 within the existing right-of-way necessary to accommodate this improvement or at the request of DPWES, escrow the costs of such construction with DPWES for future construction of such improvements by the County or its designee, unless such improvements have been previously constructed. If the County elects to have the Applicant proceed pursuant to Proffer III.A.2, then Applicant's obligations with respect to any Route 123 improvements at time of site plan or otherwise shall be deemed satisfied upon its performance of its obligations under Proffer III.A.2 other than with respect to the fourth through lane on Route 123 as, and to the extent, provided for above.

- G. Route 123 - International Drive Right-of-Way. The Applicant shall dedicate and convey to Fairfax County Board of Supervisors in fee simple (i) at the time of site plan approval for Building M or the associated garage or (ii) when requested by VDOT, whichever first occurs, the land areas within Sector II designated as Proposed Right-of-Way and grant temporary construction easements in the land areas within Sector II designated Planning Level Construction Easement as shown on Sheet 30 of the CDPA/FDPA for the grade-separated improvement at Route 123 and International Drive (the "Interchange"), provided Applicant receives density credit for the land area so dedicated as provided for in Section 2-308 of the Ordinance. The Applicant agrees to provide additional dedication area and/or temporary construction easements to accommodate the Interchange, provided such

additional grants do not require (i) the relocation of buildings and parking structures shown on the CDPA/FDPA and permits a 15-foot landscape buffer between the right-of-way and such improvements or (ii) an amendment to the CDPA/FDPA and provided Applicant receives density credit for any additional land area dedicated as provided for in section 2-308 of the Ordinance.

- H. Tysons Boulevard Right-of-Way. The Applicant shall dedicate and convey to Fairfax County Board of Supervisors in fee simple at the time of site plan for Building K or when requested by VDOT, whichever first occurs, the land areas within Sector II adjacent to Tysons Boulevard designated as "Proposed R/W" on Sheet 30 of the CDPA/FDPA, provided Applicant receives density credit for the land area so dedicated, as provided for in Section 2-308 of the Ordinance.
- I. Utility Easement. Applicant shall reserve a utility corridor and grant to Fairfax County and/or other utility providers utility easements within Sector II and Sector IV in the area designated as "Planning Level Utility Easement" on Sheet 30 of the CDPA/FDPA, and if such utility providers can not be accommodated within that portion of the Planning Level Utility Easement located outside the parking structure shown in Sector II because of the encroachment of the parking structure on such easement, then the Applicant shall (i) provide easements in other locations acceptable to the Applicant, such utility providers, VDOT and/or the County, as applicable, or (ii) provide a utility duct bank or similar facility within or under the parking structure to accommodate such utility providers. The Applicant shall provide DPWES with evidence that such utility providers agrees to any alternative easement locations contemplated above.

J. Intersection/Access Improvements. Subject to approval of VDOT and DPWES, the Applicant shall provide the intersection and access improvements shown on Exhibit F attached hereto to VDOT standards. Such improvements shall be constructed as indicated on the Phasing Schedule shown on Exhibit F prior to final bond release for the applicable site plan that triggers the improvement.

K. Transportation Demand Management.

The Tyson's Corner Urban Center Plan establishes an overall 20% mode split goal for SOV trips to and from the Tysons Corner area through transportation demand management efforts and major improvements in the transit system. To facilitate the achievement of this goal, the Applicant shall implement and operate a transportation demand management ("TDM") program for both existing and future development within the Property consisting of three (3) major components as follows:

1. The designation of an Employee Transportation Coordinator (ETC). The Applicant shall appoint an ETC from its management staff, (so long as the ETC's other duties do not prevent it from performing his/her function as ETC), or from the property owner's association for Tysons II within 60 days of the approval of this application to implement immediately upon the Applicant's receipt of the Implementation Notice the TDM program.

2. Ongoing coordination by the ETC with a designated FCDOT agent or staff member on a quarterly basis, to provide opportunities for adjustment to the program to increase its effectiveness. As part of that effort, the Applicant shall conduct a survey bi-annually of tenants and their employees to identify in

coordination with FCDOT which transportation demand management strategies would be most effective.

3. Implementation of specific incentive programs as follows:

(i) The Applicant shall promote ride sharing on an ongoing basis by displaying information on ride sharing in areas utilized by tenants and their employees, such as building lobbies. The ETC shall: (a) maintain a tenant database that can be used by the ETC and/or FCDOT to distribute transit/rideshare information and promote transit use; (b) Coordinate with FCDOT to ensure appropriate, up-to-date materials are distributed for promotion of transit and ridesharing; (c) Provide reports on a biannual basis, based on surveys, detailing TDM programs in operation, including estimated number of participants by program; (d) Provide reports to FDOT on a biannual basis of ongoing measurements of mode split and TDM effectiveness.

(ii) Guaranteed Ride Home. The Applicant shall encourage tenants and their employees to participate in the Washington Council of Government's "guaranteed ride home" program and to provide financial incentives to their employees to travel other than by single occupancy vehicles such as "Metrochek".

(iii) The Applicant, at the initial signing of a lease, shall advise each tenant that a private TDM program exists and a public TDM program exists and encourage them to participate and contact the ETC or FCDOT for participation opportunities.

(iv) The Applicant or the Tysons II Property Owners Association shall be a dues paying member of TYTRAN or successor organization for the next ten (10) years from the approval of this Application at an annual cost not to exceed \$2,000.00 per year for ten (10) years.

(v) Preferential Parking for Car and Vanpools. The Applicant shall reserve parking spaces convenient to parking garage entrance and exit points for car and vanpools based on the estimated number of car and vanpools being utilized and such spaces will be clearly identified as so reserved.

(vi) Parking Rates for (i) Single or Double Occupancy Vehicles, (ii) carpools and (iii) vanpools. The Applicant shall charge tenants and/or their employees utilizing single or double occupancy vehicles for parking at prevailing market rates. Carpool vehicles (with three or more occupants) will be charged no more than one-half of the single occupant vehicle parking rate and Vanpools shall be provided free parking.

(viii) Each new building or associated garage shall provide bicycle storage if the Employee Survey provided for in Proffer III.K.2 indicates the same would be utilized.

(ix) Shuttle Bus to Metro. If requested by the FCDOT, prior to the issuance of a non-residential use permit for the first additional office building to be constructed in Sectors II, III or IV that exceeds 1,963,474 of non-residential gross floor area, the Applicant shall operate or contract

with a third party to operate and maintain a shuttle bus service for use by the tenants of the office buildings to provide access to and from the West Falls Church or Dunn Loring Metro Station as determined most beneficial by the Employee Survey. Such service shall be available during the morning peak (6:30 a.m. to 8:30 a.m.) and evening peak (5:00 p.m. to 6:30 p.m.) excluding Saturday, Sundays, and national holidays. Seating capacity of such shuttle bus(es), the frequency of trips and number of such bus(es) shall be coordinated to reasonably meet employee demand as determined by the results of the Employee Survey. The shuttle bus program shall be periodically updated as employee demand is reassessed, and the program shall be coordinated with the Fairfax County Department of Transportation. The Applicant shall not be required to establish the shuttle bus service as provided herein (and shall be permitted to discontinue such service if established) if (i) a twenty percent (20%) mode split of single occupancy vehicles is being achieved; (ii) public transportation service is provided by WMATA or other provider from the Metro Station in question to a location adjacent to the Property; or (iii) rail service exists on or adjacent to the Property.

(x) If at the time of issuance of the first non-RUP for a building in Sectors II, III or IV which results in the non-residential gross floor area within such sectors exceeding 1,963,474, if rail through Tysons (to and including the Tysons West station) has not been established and a twenty percent (20%) mode split has not been achieved by the Property, the

Applicant shall establish a "TDM Fund" of \$100,000.00 to subsidize the TDM program. The Fund shall be used for transit and parking subsidies and the cost of operating any shuttle bus service that may exist or be established. On the first anniversary of the establishment of the TDM Fund, and on each anniversary date thereafter, the ETC shall solicit those tenants whose employees have availed themselves of the transit and parking subsidies in the prior year and request that such tenants contribute to the TDM Fund in recognition of the benefits received by their employees. Any such funds received shall be utilized in the same manner as the initial TDM Fund. Such solicitation shall continue so long as the conditions which require the initial funding of the TDM Fund by the Applicant continue to exist. If such solicitation efforts are not successful, then the Applicant agrees to work with FCDOT, tenants of the Property, the operator of the parking facilities and WMATA to explore alternative sources of funding for the TDM Fund or subsidies for transit riders for so long as the conditions which require the initial funding of the TDM Fund by the Applicant continue to exist.

(xi) The Applicant shall, upon request of FCDOT, provide space in each building or those buildings designated by FCDOT for the on-site sale of fare media, subject to the permission of the relevant transit service providers. Fare media to be sold shall include, but is not limited to, Metrorail, Metrobus, Metrocheck and Fairfax Connector bus fare media.

(xii) Showers and locker facilities shall be provided at no charge to the office tenants in order to facilitate and encourage those persons desiring to commute via alternative means of transportation (e.g. bicycle, motorcycle, or by walking.)

(xiii) Employer occupants shall be encouraged to provide alternative work schedules, including staggered work hour programs and flex-time, and telework programs.

(xiv) In order to monitor the success of the TDM program, the applicant shall complete and submit to the FCDOT annual reports, the first of which shall be submitted within 18 months of the Implementation Notice. In addition to the information required elsewhere in Proffer K., the report shall demonstrate the mode split that has been achieved during the reporting period year within the entire development subject to this application. The report shall also document the TDM strategies that were employed during the year covered by the report.

L. Bus Stops. The Applicant agrees to construct bus turnout lanes and bus shelters at two (2) additional locations within Tysons II mutually agreed upon by the Applicant and FCDOT, including, potentially, at locations that might serve the rail facility, as referenced in Proffer III.B.2 above, and shall remove trash and debris from such shelters, and if no such agreement on locations can be reached, to donate \$10,000 per bus stop to FCDOT to be used for bus stops in the Tysons area.

M. Prior Transportation Improvements. The Applicant asserts that the transportation improvements set forth in Proffers 1, 2 and 3 of the 1984 Proffers have been completed (except for the installation of a signal at Tysons Boulevard and Westbranch Drive), but such obligations continue as a proffered obligation of the Property and the other property that is subject to the 1984 Proffers. A copy of Proffers 1, 2, and 3 of the 1984 Proffers is attached hereto as Exhibit B.

IV PHASING

The total amount of undeveloped gross floor area on Sectors II, III and IV of the Property as depicted on the CDPA/FDPA consists of 4,097,781 square feet. The presently permitted non residential floor area permitted in Sectors II, III and IV prior to the approval of this PCA consists of 1,963,474 square feet. These applications propose an additional 722,154 square feet of residential gross floor area and an additional 1,444,307 square feet of non residential gross floor area.

- A. Within Sectors II, III and IV of the Property, 1,963,474 square feet of non residential gross floor area (the presently permitted non-residential gross floor area for such Sectors prior to the approval of this PCA) may be developed at any time and is not subject to any phasing requirement.
- B. The 722,154 square feet of residential uses in Sector IV may be constructed at any time and are not subject to any phasing requirement. However, in the event that the Applicant elects to construct prior to Phase III (as described in Proffer IV.C. below) the 722,154 square feet of residential development , the Applicant shall phase construction of 240,718 square feet of the presently permitted non-

residential development in the same manner as the additional 1,444,307 of non-residential gross floor area is phased under Proffer IV.C. below.

- C. The additional 1,444,307 of non residential gross floor area (and any of the presently permitted non-residential gross floor area that must be phased pursuant to Proffer IV.A. above) may be built on the first to occur of (i) Upon the Applicant's receipt of the Implementation Notice indicating that a rail station is selected and programmed for design and construction within Sectors II, III, or IV, such additional 1,444,307 of non-residential gross floor area (i.e., the non-residential gross floor area above existing non-residential gross floor area) may be built in the following phases:

- PHASE I. Up to one-fourth of the additional non-residential square footage (or 361,077 square feet) may be constructed prior to completion of a rail extension to the vicinity of Route 7 and Spring Hill Road (Tysons West station as shown in the Draft EIS).
- PHASE II. Up to an additional one-half of the additional non-residential square footage (or 722,153 square feet) may be constructed after a rail extension is completed to the vicinity of Route 7 and Spring Hill Road (Tysons West station as shown in the Draft EIS).
- PHASE III. The remaining one-fourth of the additional non-residential square footage (or 361,077 square feet) may be constructed after a rail extension is constructed to the general vicinity of Reston Parkway and rail or bus rapid transit is constructed to the vicinity of Dulles Airport; or

(ii) January 1, 2019.

V STORM WATER MANAGEMENT AND BEST MANAGEMENT PRACTICES

- A. Storm Water Management ("SWM") has been and, subject to any required approval of DPWES contemplated in Proffer V.B. below, will continue to be provided as set forth in the Overall Storm Water Management Plan No. 6028-DS-01-3 approved by Fairfax County on September 20, 1990. The CDPA/FDPA does not depict any additional SWM or Best Management Practice ("BMP") facilities on the Property. Minor modifications may be made to the configuration of the currently SWM facilities approved with final engineering.
- B. If deemed necessary by the Director of DPWES at the time of site plan(s) submission, an exception to the performance criteria may be requested in accordance with the provisions set forth in Section 118-6-9 of the Chesapeake Bay Preservation Ordinance and/or the Public Facilities Manual. If the exception is not approved, SWM or BMPs will be provided for any incremental increase in the total impervious area in accordance with a plan approved by the Director of DPWES, and said plan may require minor modifications to the SWM facilities represented on CDPA/FDPA or the construction of underground vaults in areas that are planned for land disturbance activities. In addition to the landscaping represented on the CDPA/FDPA, landscaping, to include the planting of a wetland seed mix and trees adaptable to wetlands such as Bald Cypress, River Birch, Black Gum/or Laurel Oak, shall be provided in the SWM dry ponds in accordance with a plan to be approved by the Urban Forestry Division with such landscaping to be installed prior to bond release for the site plan for the building nearest to the dry pond in question.

VI PARKING

- A. In recognition that not all of Sector I is a part of these applications, the number of parking spaces within Sector I shall be as set forth in Proffer 13 of the 1984 Proffers which "Proffer 13" remains applicable and is attached hereto as Exhibit C.
- B. Sectors II, III and IV shall provide the number of parking spaces based on the ratios set forth on Sheet 3 of the CDPA/FDPA. The Applicant reserves the right to request a parking reduction or shared parking agreement pursuant to Article 11 of the Ordinance or to reduce its parking to provide the number of parking spaces required by any subsequent amendments to the Ordinance. Upon the construction of rail from the West Falls Church metro station through Tysons (to and including the Tysons West station), the Applicant agrees to have a parking study prepared and if such parking study based on projected parking needs and market requirements in the area supports a lesser amount of parking than required by Ordinance, the Applicant will seek approval of a parking reduction from the County. Any modification to the required parking as approved by such parking reduction or shared parking agreement may be accommodated without requiring a CDPA/FDPA. The number of parking spaces represented on the CDPA/FDPA is based on preliminary estimates; the final number of parking spaces provided at the time of site plan submission shall be as required by Article 11 of the Ordinance in effect as of the date hereof, and shall be consistent with (i) any approved parking reduction, (ii) the uses developed, and (iii) the gross floor area or number of units developed. Applicant reserves the right to provide parking in excess of the

minimum required per Ordinance or approved parking reduction so long as it does not decrease open space and is in substantial conformance with the CDPA/FDPA, provided that for all non-residential development, Applicant shall not provide a number of parking spaces more than approximately five percent (5%) in excess of the Ordinance, unless it demonstrates to the satisfaction of DPWES that such spaces are necessary to meet anticipated demand or anticipated changes in uses. The limitation on the number of parking spaces shall not require that the Applicant construct partial parking decks, if being acknowledged that sound engineering or construction management principles might indicate that the construction of a full parking deck is appropriate or desirable.

- C. The parking spaces shown as "Provided/Proposed" on Sheet 3 of the CDPA/FDPA that are in excess of the number of spaces required by the Ordinance as modified by Proffer 13 may be provided at the option of Applicant, but shall not be required.

VII SIGNAGE

The Property is presently subject to an approved "Comprehensive Sign Plan" (CSP - 84-D-049). Prior to the issuance of any sign permits for signs that are inconsistent with the approved Comprehensive Sign Plan the Applicant shall prepare and submit to the Planning Commission for approval a revised Comprehensive Sign Plan to address any inconsistencies between the improvements reflected on the CDPA/FDPA and the Comprehensive Sign Plan with respect to the location of free standing (as opposed to building) signage. Such revised sign plan will also provide for an informational/directional signage program designed to facilitate the movement of both

pedestrian and vehicular traffic within Tysons II , including the proposed transit station, and, with respect to such transit station, such signage shall be coordinated with WMATA.

VIII URBAN DESIGN

- A. Design Concepts. The urban design concepts for the Property are set forth in the Tysons II Master Plan Design Concepts dated August 2002 prepared by Kohn Pedersen Fox and attached hereto as Exhibit D (the "Design Concepts"). The urban design booklet illustrates concepts of Landmark, Gateway and Precint as devices to organize the master plan for the Property. These concepts are characterized by a varied skyline, major and minor gardens and plazas, pedestrian friendly circulation patterns, such as sidewalks, enclosed walkways and bridges and pathways and are consistent with the general location and massing of buildings and the locations of open space areas and plazas as shown on the CDPA/FDPA. Modifications to the layout shown on the CDPA/FDPA may be permitted by the Director of ZED when it is determined that the changes are in substantial conformance with these design concepts.
- B. Building Materials. The Applicant shall utilize materials of comparable or higher quality to the materials presently existing on Buildings C, D and E within the Property.
- C. Garage Facades. All above grade garages shall have façade treatments that are compatible with the architectural design of the building associated therewith and include screening and landscaping to a similar or greater degree than the garages presently associated with Buildings C, D and E within the Property.

- D. Site Plan Submissions. At the time of each site plan submission, a copy of the site plan shall be submitted to both the Supervisor and Planning Commissioner for the district where the Property is located for review and comment.
- E. Landscaping. Landscaping shall be provided in substantial accordance with the CDPA/FDPA. Landscape treatments adjacent to all proposed buildings and parking structures shall be of a comparable quality and quantities as the landscaping that was installed adjacent to the existing buildings and parking structures in Tysons II at the time of initial construction of such buildings, i.e. buildings C, D and E, as such landscaping is shown on the approved site plans for such buildings. Copies of the relevant sheets of such C, D and E site plans shall be included with site plan submissions for future buildings.
- F. Streetscapes. The streetscapes along the public streets shown on the CDPA/FDPA are in conformance with the guidelines set forth for the "Core" area of the Tysons Corner Urban Center component of the Comprehensive Plan, which is attached as "Exhibit H." Where utilities and sight distance requirements inhibit the placement of trees in strict accordance with the guidelines as shown in the CDPA/FDPA, an alternative streetscape scheme that archives the purpose and intent of the Tysons Corner Streetscape in "Exhibit H" may be established subject to the review and approval of the Urban Forestry Division and shall be implemented subsequent to that approval. The revised streetscape shall provide, where practical, the following: a walkway for pedestrians; a planted separation between pedestrians and the adjacent street that is approximately six feet wide; landscaping between the building and the main pathway (this may be modified

where store fronts are provided along the street); and, where appropriate, as determined by Applicant, provide visual connections and pathways to nearby buildings, plazas, entry courts, and other features. For example, landscaping in planters and street furniture may be used to meet some of the standards noted above as shown on Sheet 7 of the CDPA/FDPA. Where permitted by the appropriate authorities, plantings may, at the option of the Applicant, be provided in the median strips of public rights-of-way.

- G. Sidewalks. Along the public street frontage of Building F and Sectors II, III and IV, the existing sidewalks shall be replaced by a sidewalk a minimum of six (6) feet in width which shall be constructed at time of approval of the site plan that includes the parcel upon which the sidewalk is located. The preceding sentence shall not require the Applicant to demolish and replace the existing sidewalks on Parcels 2-A1, 2-C and 2-D, i.e. Buildings C, D and E. The sidewalk may, include the alternative paving patterns, such as but not limited to, that shown on Sheet 8 of the CDPA/FDPA consisting of brick bands. Alternative sidewalk paving sections may be used to delineate special areas, identifying pathways to special landscaping features such as plazas, entrances to buildings and retail spaces or to provide visual interest.
- H. Plazas. The applicant shall construct the plazas depicted on the CDPA/FDPA at time of construction of the building on the Parcel upon which such plaza is located. To allow further refinement of the various and diverse types of plazas shown on the CDPA/FDPA, such plazas need not be constructed as illustrated on the CDPA/FDPA; however, any such refinements shall be in substantial

conformance with the purpose and functions of each plaza as shown on the CDPA/FDPA. As noted in Note 15 on Sheet 3 of the CDPA/FDPA, the design of the plazas in Sectors II, III and IV are illustrative, but, at a minimum, shall include the following elements: outdoor seating, lighting, landscaping and locations for public art, generally as illustrated on sheets 15, 16, 22, 23, 27 and 28 of the CDPA/FDPA.

I. Lighting.

1. Site lighting, including lighting for parking structures, stair wells, drive aisles, sidewalks and plazas shall, with respect to (i) type of fixture e.g. shielded or full cut off for parking lot lighting, and (ii) illumination, e.g. number of foot candles, be similar to the existing site lighting that presently exist for Buildings C, D and E. The specifications for such site lighting are attached hereto as Exhibit E. The Applicant reserves the right to substitute different types of fixtures and illumination provided the substitute lighting minimizes the impact of glare on parcels adjacent to the Property to at least an equivalent degree.

2. During construction, the Applicant will attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies. Such measures as cut off shields, lower intensity or lower number of light bulbs, or dimming or extinguishing after 10 PM will be presented to appropriate inspectors for their consideration. Additionally, during construction, if requested by the Board of Directors of the Regency and Encore Condominium Associations at the time of construction, the Applicant shall direct its contractor to

erect paper or black plastic covering over windows if they are to be illuminated after 10:00 PM.

IX SUPPORT RETAIL, SERVICE, AND OTHER USES

- A. A minimum of 52,800 square feet of gross floor area within the Property shall be devoted to any of the following, or any combination of the following: community uses, commercial recreation uses, quasi-public uses, support retail, or retail-type uses such as, but not limited to, support services such as concierge services, financial institutions, eating establishments, fast food restaurants and quick-service food stores, business service and supply establishments, personal service establishments, health clubs, newsstands or other retail sales establishments as defined by the Ordinance, theatres, senior or child care, cultural or civic space (exclusive of the plazas depicted on the CDPA/FDPA). Areas devoted to outdoor seating for newsstands or eating establishments (even if such seating is located in an outdoor plaza) or outdoor cultural or civic space (exclusive of the plazas depicted on the CDPA/FDPA) may be used to satisfy a portion of the required square footage. The minimum square footage devoted to such uses at any given time shall be 4,800 square feet multiplied by the number of buildings existing within the Property, provided such minimum square footage may be provided in any of the buildings or parcels then developed. Any child care uses shall be subject to a demonstration by the Applicant to the Office for Children that the required outdoor play area is acceptable as to size and location.
- B. The 442' and 460' levels of Building F, the 440' level of Building G and Building H, the 460' level of building K and the 480' level of Building L and Building M

shall be designed and constructed to accommodate any one of the following, or any combination of the following: community uses, commercial recreation uses, quasi-public uses, support retail, or retail-type uses such as, but not limited to, support services such as concierge services, financial institutions, eating establishments, fast food restaurants and quick-service food stores, business service and supply establishments, personal service establishments, health clubs, newsstands or other retail sales establishments as defined by the Ordinance, theatres, child care, cultural or civic space.

- C. Applicant agrees to negotiate in good faith to lease a minimum of 110,000 square feet of the space designed and constructed for the purposes set forth in Proffer IX.B. for retail purposes in accordance with commercially viable economic parameters and, if unable to secure such tenants, will provide documentation of such marketing efforts to the Director of the Department of Planning and Zoning. This commitment to marketing such space shall not require that such space remain vacant if other tenants, including office tenants, are willing to lease such space.

X NOISE ATTENUATION

- A. Prior to final site plan approval for any building intended in whole or in part for residential purposes, the Applicant shall provide an acoustical analysis based on final site grades, building location and future traffic volumes on Route 123 and adjacent transit facilities to DPWES for review and approval. The acoustical analysis shall identify which units are exposed to highway/transit noise levels above DNL 65 dBA.

B. In order to reduce interior noise to a level of approximately DNL 45 dBA, units within a highway/transit noise impact zone of DNL 65-70 dBA, as ultimately determined by the study in Paragraph (A) above, shall be constructed with the following acoustical treatment measures:

- (1) Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.**
- (2) Doors and windows shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the windows shall have a STC rating of at least 39.**
- (3) 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. In order to reduce interior noise to a level of approximately DNL 45 dBA, units within a highway/transit noise impact zone of DNL 70-75 dBA, as determined by the study in Paragraph (A) above, shall be constructed with the following acoustical treatment measures:

- (1) Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.**
- (2) Doors and windows shall have a laboratory STC rating of at least 37 unless glazing constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20% of**

an exposed façade, then the windows shall have a STC rating of at least 45.

(3) 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.

D. Nothing herein shall be construed to restrict or otherwise limit the use of upper-level balconies or decks on residential building(s).

XI PUBLIC FACILITIES CONTRIBUTION

A. Park/Civic Space. The Applicant shall construct and dedicate to the Fairfax County Park Authority ("Park Authority") that portion of the park/civic space ("Park") depicted on sheet 8 of the CDPA/FDPA that is located on Parcels 3-A and 3-D prior to issuance of the first Non-RUP for Building G located on Parcel 3-A, provided the Applicant receives density credit for the land area so dedicated, as provided for in Section 2-308 of the Ordinance. The Park shall consist of approximately 5 acres, the boundaries of which are shown on Exhibit I attached hereto. The Applicant shall construct and dedicate to the Park Authority that portion of the park depicted on sheet 8 of the CDPA/FDPA that is located on Parcel 6 prior to the issuance of the first Non-RUP for the next office building to be constructed within the Property other than Building F. The Park shall be known as the "Park at Tysons II." The design of the Park facilities shall (i) at the request of the Park Authority, substitute perennial plants in lieu of annuals, (ii) provide a trellis or roof over a portion of the stage, (iii) provide access for maintenance and emergency vehicles, (iv) provide café tables and chairs, park

benches, drinking fountains and trash receptacles, (v) comply with the Americans With Disabilities Act, and (iv) include on-site restroom facilities or access to such facilities in or adjacent to Building G and wardrobe/storage facilities or access to such facilities in or adjacent to Building G. The visitors to the Park may utilize up to 150 parking spaces in the aggregate in the parking structures associated with Building G, on weekends and after business hours without charge, provided the Park Authority shall coordinate the scheduling of events with the Applicant or its designee and provide parking validation i.e. evidence of event attendance, to event attendees.

- B. Obligation for Park Maintenance. The Park Authority has estimated the annual maintenance of the park at Thirty Thousand and No/100 Dollars (\$30,000.00). For five (5) years commencing with the dedication to the Park Authority of that portion of the Park adjacent to Building G, the Applicant shall contribute to the Park Authority Twenty Thousand and No/100 Dollars (\$20,000.00) per annum for maintenance. The Applicant shall, as a condition to bond release for the site plan associated with Building G, post a \$100,000.00 letter of credit to secure its maintenance obligation contribution, which letter of credit will be reduced on an annual basis by the amount of the contribution made by Applicant. Subject to Park Authority approval as to the type of services, the Applicant shall be permitted to provide such contribution by in-kind services. The Park Authority and the Applicant shall cooperate and coordinate in establishing maintenance standards for the Park and, if the Park Authority is not maintaining the Park at a level consistent with the remainder of the landscaping on the Property, the

Applicant reserves the right to maintain the Park to such standards. The Applicant shall submit a copy of the site plan(s) that include the Park simultaneously with the submission of such site plan(s) to DPWES.

C. Schools Contribution

1. The Applicant shall contribute \$400,000.00 to the Fairfax County Board of Supervisors as its public school contribution for this rezoning application.

2. The contribution shall be for construction, capital improvements, repair or deferred maintenance, or purchase of modular classrooms for the school pyramid that receives children originating from the subject property. The \$400,000.00 shall be paid as a prerequisite to the issuance of the first Residential Use Permit for the residential building on Sector IV.

D. Public Art Contribution. Applicant shall expend a minimum of Sixty Thousand and No/100 Dollars (\$60,000.00) for the installation of sculpture or other outdoor art in the plazas depicted on the CDPA/FDPA. At least Twenty Thousand and No/100 Dollars (\$20,000.00) shall have been expended at the time of completion of each of the major plazas in Sectors II, III and IV respectively, provided such art may be located in any of the major or minor plazas within the Property.

E. License for Public Use Antennas. The Applicant shall provide a no cost, ten-year license agreement to the County for the County's installation, maintenance and operation of (i) a maximum of two (2) whip antennae a maximum of 240" in length and 5" in diameter to be located on the rooftop of one of the buildings located on Tax Parcel 39-2((1))-45-D and (ii) a maximum of two equipment

cabinets within the mechanical penthouse or other suitable indoor location, with sufficient space to accommodate two radio equipment cabinets measuring 24" (w) x 24" (d) x 84" (h), with 36" minimum clearance to the front and rear of the equipment cabinets for maintenance purposes. The Applicant shall approve the specific building and rooftop location and shall have the right to relocate the same. The license agreement shall be on the County's standard form, or other form reasonably acceptable to the County and stipulate the antennae are for public use purposes only (police, fire, rescue, homeland security). This license agreement shall be renewable for five (5) five-year periods at no rent at the specific request of the County.

XII RECREATIONAL FACILITIES CONTRIBUTION

- A. The Applicant shall contribute \$955 per residential unit for the total number of residential units to be constructed on the Property with such payment to be made in accordance with Section 16-404 of the Ordinance. Credited against said contribution shall be the cost of any recreational improvements located in Sector IV for residents or guests only, whether located inside or outside of the building, such as swimming pools, health clubs and related facilities. Any portion of the recreational facilities contribution not expended within Sector IV may be satisfied by the Applicant's construction of the Park under Proffer XI.A. above.

XIII AFFORDABLE DWELLING UNITS

The Applicant shall either (i) provide three (3) one bedroom Affordable Dwelling Units within the residential building to be constructed on Parcel 4-A consistent with the provisions of Section 2-800 of the Ordinance provided such units are made available to

Fairfax County government employees, (ii) acquire and convey to the Fairfax County Redevelopment and Housing Authority three (3) one-bedroom condominium units in the Tysons Corner area with a market value in 2003 dollars of no less than \$450,000 in the aggregate or (iii) the Applicant shall provide to the Affordable Housing Trust Fund approximately \$450,000 (the "ADU Obligation"). This ADU Obligation shall be satisfied prior to the issuance of the first non-RUP for the multi-family high-rise building to be developed within Sector IV. If options (i) or (ii) are selected, the market value or contribution amount shall be adjusted by changes to the Construction Cost Index published by the Engineering News Record from the date of Board of Supervisors approval of this proffered condition amendment application to the date such market value is determined or payment is made.

XIV COUNTERPARTS.

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

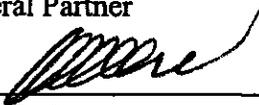
SIGNATURES BEGIN ON THE FOLLOWING PAGE

TYSONS II LAND COMPANY, L.L.C.,

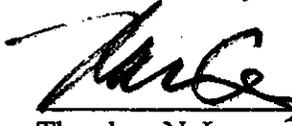
a Virginia limited liability company

By: Lerner Enterprises Limited Partnership, a
Maryland limited partnership, its manager

By: Taleco Partners, L.L.C.
Its: General Partner

By: 
Mark D. Lerner
Executive Vice President

TYSONS II DEVELOPMENT CO. LIMITED
PARTNERSHIP, a Maryland limited partnership

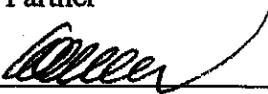
By: 
Theodore N. Lerner
Its: General Partner

MDM DEVELOPMENT COMPANY, L.L.C.,
a Virginia limited liability company

By: Tysons II Land Company, L.L.C., a Virginia
limited liability company

By: Lerner Enterprises Limited Partnership, a
Maryland limited partnership, its manager

By: Taleco Partners, L.L.C.
General Partner

By: 
Mark D. Lerner,
Executive Vice President

TYC DEVELOPMENT COMPANY, LLC, a
Virginia limited liability company

By: Tysons II Land Company, L.L.C., a Virginia
limited liability company

By: Lerner Enterprises Limited Partnership, a
Maryland limited partnership, its manager

By: Taleco Partners, L.L.C.
General Partner

By: 

Mark D. Lerner,
Executive Vice President

TYSONS II PROPERTY OWNERS
ASSOCIATION, a Virginia non-stock corporation

By: 

Its: Vice President