

WEST*GROUP PROPERTIES LLC

RZ 2002-PR-016

January 2, 2003

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PRM District, for property identified as Tax Map 29-4 ((7)) A-3 (hereinafter referred to as the "Application Property"), the Applicant and Owner in RZ-2002-PR-016 proffer for themselves, their successors and assigns (the "Applicant") the following conditions. In the event the Board of Supervisors approves RZ 2002-PR-016, these proffers shall supercede all previous proffers for the Application Property and all previous proffers for the Application Property shall be deemed null and void and of no further effect on the Application Property.

1. Development Plan

- A. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP") prepared by VIKA, Incorporated dated March 7, 2002, as revised through October 31, 2002. Notwithstanding that the CDP/FDP is presented on 24 sheets, it shall be understood that the CDP shall be only those elements of the plan shown on Sheet 3 of 13 that depict points of access (except those shown in the Linear Urban Park), the amount and location of open space, peripheral setbacks, limits of clearing and grading, building heights, the total number and general location of buildings and the type of units (the "CDP Elements"). The Applicant has the option to request a FDPA for elements other than CDP Elements from the Planning Commission for all or a portion of the CDP/FDP and related development conditions in accordance with the provisions set

forth in Sect. 16-402 of the ZO if the amendment is in conformance with the approved CDP and the proffers.

- B. The total site area is 590,033 square feet or 13.5453 acres (“Gross Tract Area”) and the overall maximum density shall not exceed 3.0 floor area ratio (“FAR”) or 1,770,099 square feet of gross floor area (“GFA”).
- C. The development of the multi-family high-rise buildings shall be completed on the common parking structure/building as depicted on the CDP/FDP. The parking structure/building may be built in a single phase or in multiple phases corresponding to the high-rise buildings so long as parking for each phase is provided per Zoning Ordinance (“ZO”) and in substantial conformance with the Phasing Plan as shown on Sheets 13B and 13C of the CDP/FDP. The Applicant reserves the right to revise the Phasing Plan with administrative approval of the Zoning Administrator.
- D. The maximum permitted GFA cited above is exclusive of approximately 128,000 square feet of cellar space (as defined by the Zoning Ordinance) to be utilized for multi-family dwelling units or other secondary uses as shown on the CDP/FDP. Parking shall be provided for all cellar space in accordance with applicable ZO provisions.
- E. The maximum number of residential units to be developed on the Application Property, including any multi-family and single-family attached dwellings, whether located within GFA or cellar space (as defined by the Zoning Ordinance), shall be 1354 units.

2. Minor Modifications

Pursuant to Paragraph 4 of Section 16-403 of the ZO, minor modifications from the Final Development Plan (“FDP”) may be permitted as determined by the Zoning Administrator.

The Applicant shall have the flexibility to modify the layouts shown on the FDP provided such changes are in substantial conformance with the FDP as determined by the Department of Planning and Zoning (“DPZ”) and do not increase the total amount of square footage, decrease the overall square feet or percentage of open space, decrease the setback from the peripheries, or substantially change the location of natural open space areas or the streetscaped elements as depicted on Sheet 13C of the CDP/FDP. Landscaped open space created with site plan and building design may be re-arranged, relocated or re-shaped as long as the number of trees and foundation plantings do not decrease. Streetscapes shall be designed and constructed in substantial conformance with the Details A-D as shown on Sheet 13D.

3. Uses

A. Principal Use

The principal use shall be multi-family residential.

B. Secondary Uses

i. Single-Family Attached Dwelling Units:

Any reduction in the number of single family attached units (58) or consequent reduction in GFA resulting from such reduction (i.e. elimination of units, reduction in size of units) may be utilized as multi-family units or GFA providing the overall total number of residential units does not exceed 1354 nor GFA exceed 1,770,100 or overall FAR of 3.0.

ii. Affordable Dwelling Units

iii. Retail Uses:

a) Notwithstanding what is shown on the CDP/FDP, secondary uses shall include not less than 20,000 square feet or more than 53,760 square feet of

GFA in retail sales establishments, eating establishments, or other secondary uses as listed in this Proffer 3.B(iv).

iv. Other Secondary Uses

Secondary uses as permitted in PRM 6-403 may include the following:

1. Accessory uses and home occupations as permitted by Article 10.
2. Bank Teller machines, unmanned
3. Business service and supply service establishments
4. Commercial and industrial uses of special impact (Category 5), limited to:
 - A. Fast food restaurants
 - B. Quick-service food stores
5. Commercial recreation uses (Group 5), limited to:
 - A. Billiard and pool halls
 - B. Health clubs
 - C. Any other similar commercial recreation use
6. Eating establishments
7. Financial institutions
8. Hotels, motels.
9. Institutional uses (Group 3), limited to:
 - A. Home child care facilities
10. Offices
11. Personal service establishments
12. Quasi-public uses (Category 3), limited to:
 - A. Child care centers and nursery schools

- B. Colleges, universities
 - C. Private clubs and public benefit associations
 - D. Private schools of general education
 - E. Private schools of special education
- 13. Repair service establishments
 - 14. Retail sales establishments
- v. The project shall be designed to accommodate a grocery store/market within the area designated as “retail” on the CDP/FDP in accordance with applicable zoning regulations, and reasonable architectural and engineering standards. The Applicant agrees to negotiate in good faith to lease such space for such use in accordance with commercially viable economic parameters. If a commercially viable lease for a grocery store/market cannot be negotiated, the Applicant shall demonstrate such failed attempts to the Director, Department of Planning and Zoning. The Applicant may develop alternative secondary uses within those areas designated for “retail” use on the CDP/FDP. In the event that the total secondary uses within the Application Property is less than 30,000 square feet, as calculated at the time of issuance of the first Residential Use Permit for the last high-rise building, then the Applicant shall be obligated to pay to Fairfax County Board of Supervisors as a prerequisite to the issuance of the first Residential Use Permit for the last high-rise building an amount equal to \$84 per square foot for any of the thirty thousand (30,000) square feet not developed in such secondary uses. As an example, if the total secondary uses developed was 20,000 square feet, then the payment amount would be equal to $(30,000 - 20,000) \times \84 , or $10,000 \times \$84 = \$840,000$. Any amount paid by the Applicant pursuant to this

Proffer shall be used for acquisition, resurfacing or capital maintenance or repair of rectangular playing fields within the Tysons Corner area or other areas within the Providence District.

- vi. Secondary uses as referenced in Proffer 3.B (iii) and (iv) may be provided within cellar space (as defined in the ZO) and/or within the areas designated as “retail” on the CDP/FDP.
- vii. Signage for retail uses shall be in conformance with Article 11 of the ZO unless an application for special exception is submitted.

C. Temporary Signs. No temporary signs (including “Popsicle” style paper or cardboard signs) which are prohibited by Article 12 of the ZO, 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 direction to assist in the initial sale of homes on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale of residential units on the subject property to adhere to this proffer.

D. Any Additional Principal and Secondary uses specified in the PRM zone and not specifically listed in Proffer 3B above may be permitted within the buildings with the approval of a Final Development Plan Amendment (“FDPA”) and or Special Exception or Special Permit. A Proffered Condition Amendment (“PCA”) application shall not be required so long as the layout is in substantial conformance with the CDP.

4. Subdivision of the Application Property

A. Attached Single-Family Dwelling Units

As a prerequisite to the approval of the first site plan for the Application Property, the Applicant shall subdivide the Application Property as schematically depicted on the

CDP/FDP to create a separate lot on which the attached single-family dwellings will be developed and to create the area of the remaining land as the basis for determining average grade, cellar and other elements of the plan.

B. Multi-Family High-Rise Dwelling Units

- i. The anticipated subdivision lines shown on the CDP/FDP for the multi-family high-rise buildings are for illustrative purposes only, and that portion of the Application Property may be subdivided along alternative subdivision lines as determined by the Applicant without requiring a FDPA or PCA.
- ii. Notwithstanding any subdivision of the multi-family high rise phases, all multi-family high rise buildings shall be constructed vertically from a single parking structure/building platform pursuant to Proffer 1C.
- iii. The calculation of height for multi-family high rise buildings will be determined on average grade pursuant to “Grade Demonstration for Height” detail on Sheet 13 of the CDP/FDP and is contingent upon Proffer 4A being completed and upon those high rise buildings being constructed vertically from a single parking structure/building platform pursuant to Proffer 1C.

5. Home Owners Association

A. Formation of Umbrella Owners Association and Individual HOAs

- i. Umbrella Owners Association
Prior to the issuance of the first RUP for any phase of the development of the Application Property, the Applicant shall establish an Umbrella Owners Association (referred to herein as the “UOA”) in accordance with Virginia law.
- ii. Homeowner and Condominium Owner Association

- a) In addition, prior to the issuance of the first RUP for any phase of the development of the Application Property, the Applicant shall cause either a Home Owners Association and/or Condo Owners Association (collectively referred to in these proffers as “HOA/COA”) to be formed for that phase in accordance with Virginia law.
- b) Each HOA/COA for the separate phases of the development of the Application Property shall be a member of the UOA with weighted voting rights based on the number of dwelling units within the HOA/COA.

B. HOA/COA Maintenance Obligations

- i. Each HOA/COA shall have specific land areas of the Application Property within its boundaries, and shall assume all maintenance obligations required by these Proffers for infrastructure within those boundaries except for those maintenance obligations to be performed by the UOA pursuant to Proffer 5C.
- ii. Maintenance obligations may be shared by HOA/COAs for various phases of the Application Property pursuant to shared maintenance agreements.
- iii. Purchasers shall be advised prior to entering into a contract of sale and in the HOA/COA documents that the HOA/COA shall be responsible for those obligations listed in these Proffers.

C. UOA Maintenance Obligations

- i. The Applicant and subsequent UOA shall have specific maintenance responsibilities which shall include but not be limited to the following:
 - a) Maintenance of private streets, sidewalks, plazas, open space, stormwater management facilities, recreational facilities, and other common areas

within the Application Property, including standard cleaning and lawn/landscaping maintenance,

- b) Maintenance of the Linear Urban Park in the event that the BOS does not accept the Linear Urban Park Dedication for a public park pursuant to details outlined in Proffer 10C,
 - c) repair of surfaces and site furnishings, and
 - d) replacement of dead, dying or diseased trees and landscaping within the Application Property with the same size and similar species as originally approved on the landscape plan.
 - e) Maintenance of trash receptacles in bus shelters as provided in Proffer 6.
- ii. The UOA documents shall specify that the UOA is responsible for the maintenance of the private streets and sidewalks.
- iii. Private Street Reserve Fund
- a) Subject to review and approval by the County Attorney, the UOA documents shall provide for establishment of a Reserve Fund to be used as funding for maintenance of these private streets.
 - b) At the time of settlement on the first dwelling unit (excluding high-rise “for rental” apartments) the Applicant shall deposit Twenty Five Thousand Dollars (\$25,000) into this Reserve Fund.
- iv. Shuttle Bus Operation
- The UOA shall have the obligation to provide the Shuttle Bus System pursuant to Proffer 6 below.

- v. Purchasers shall be advised prior to entering into a contract of sale and in the UOA documents that the UOA shall be responsible for those obligations listed in these Proffers.

D. UOA and HOA/COA Disclosure

Purchasers shall be advised prior to entering into a contract of sale and in the UOA documents and in the HOA/COA documents that the UOA and the HOA/COA shall be responsible for those obligations listed in these Proffers.

6. Transportation

A. Intersection/Access Improvements

- i. Subject to approval of the applicable permitting authorities, the Applicant shall provide all intersection and access improvements shown on the CDP/FDP consistent with each phase of development as indicated on the Phasing Plan as shown on Sheets 13B and 13C prior to final bond release for the applicable site plan for applicable phase.

B. Private Streets

- i. The on-site private streets shall be constructed in conformance with the Public Facilities Manual ("PFM"). Said streets shall be constructed of materials and depth of pavement consistent with Section 7-0502 of the PFM.
- ii. Portions of the project may be a gated community generally closed to the public as shown on the CDP/FDP. However, a public ingress-egress easement only for emergency, fire, rescue and public safety shall be granted over the private streets and sidewalks. Said easements may be provided on a phased basis and shall be recorded as a prerequisite to any site plan approval.

- iii. Clarification. Notwithstanding the notation on Sheet 13A of 13 of the CDP/FDP, the northernmost residential entrance on Park Run Drive shall be posted with a sign stating that the entrance will be restricted to residents only.

C. Shuttle Bus Service

- i. Prior to bond release of the first site plan, the Applicant shall contract with a third party (or with another association providing or sponsoring such shuttle services) to operate and maintain a shuttle bus service for use by the residents of the Application Property to provide access to and from the Tysons Westpark Transit Station and the West Falls Church Metro Station or other platform location as may be designated by Fairfax County Department of Transportation (“DOT”) in consultation with the Providence District Supervisor. Said service shall be available on a schedule determined by DOT on an hourly basis and not less than eight trips per day (excluding Saturdays, Sundays, and national holidays). Trips shall operate generally at one-hour intervals. Seating capacity of the shuttle service shall provide a minimum of 10 passengers. Free and prepaid taxi cab rides may be used in lieu of 10 passenger vans.
- ii. In the event comparable shuttle bus service is being provided by another entity in Tysons Corner, the Applicant (or the successor UOA) may elect to participate in that program upon approval of the Fairfax County Department of Transportation in consultation with the Providence District Supervisor.
- iii. In order to encourage the use of the shuttle bus service, service will be paid for by the Applicant and free of charge to all residents of the Application Property for three (3) years from the first RUP for the first multi-family high-rise building. After the initial three (3) years, the UOA will then be financially responsible for

operating the shuttle bus service for an additional two (2) years and the Applicant shall disclose this obligation to all prospective homebuyers.

- iv. The Applicant shall include provisions in the Declaration of Covenants, Conditions and Restrictions to allow for UOA dues assessments and/or user fees to be allocated to the cost of continued operation and maintenance of the shuttle service for an additional two (2) years beyond the initial three (3) years and shall disclose this obligation to all prospective homebuyers.
- v. The Declaration of Covenants, Conditions and Restrictions for the UOA shall include a reservation and/or power of attorney specifically authorizing the UOA Board of Directors to act on behalf of the owners of lots within the Application Property to take steps, anytime after the initial five (5) years of the shuttle operation after the issuance of the first RUP for the first multi-family building, to determine if the members of the UOA want to continue or discontinue the shuttle service. If a two-third (2/3) majority of the UOA membership agree to abolish the shuttle service, evidence of same shall be provided to the Providence Supervisor, Office of Transportation and Zoning Evaluation Division and this proffer shall be null and void at the end of the fifth year. In the event the two-thirds (2/3) majority is not obtained, the shuttle service shall continue on a year-to-year basis until a two-third (2/3) majority of the UOA membership agree to abolish the shuttle service and evidence of same shall be provided to the Providence Supervisor, Office of Transportation and Zoning Evaluation Division.

- D. Entrances. All entrances to the site shall be designed and constructed to the satisfaction of the Virginia Department of Transportation (“VDOT”).

E. Bus Shelters.

- i. As a condition to approval of the first multi-family high rise site plan, the Applicant shall provide a payment of Thirty Thousand Dollars (\$30,000) to Fairfax County to be applied to the cost of two (2) Metro-quality bus shelters in locations within WEST*PARK and within VDOT right-of-way in a locations mutually acceptable to the Applicant and the Fairfax County Office of Transportation
- ii. The Applicant shall coordinate with Fairfax County Office of Transportation to designate these locations.
- iii. The Applicant agrees that the UOA and HOA/COA documents shall require the UOA to provide and maintain trash receptacles at these bus shelters if the shelters are contiguous to the Application Property.

F. Utility Relocations. The Applicant may request an administrative approval of minor revisions to any Public Street Improvement as shown on Sheets 13A and 13B of the CDP/FDP in order to accommodate any existing utility (including telecommunications or fiber optics as shown on Sheets 3 and 13A of the CDP/FDP) within current or future VDOT right-of-way.

7. Parking

- A. Parking shall be provided at a minimum in accordance with Article 11 of the ZO as determined by DPWES.
- B. However, the Applicant reserves the right to request a parking reduction or shared parking agreement pursuant to Article 11 of the ZO. Any modification to the required parking as approved by such parking reduction or shared parking agreement may be accommodated without requiring a PCA or FDPA provided the layout is in substantial

conformance with the CDP/FDP. The number of parking spaces represented on the CDP/FDP is based on preliminary estimates; the final number of parking spaces provided at the time of site plan submission shall be consistent with any approved parking reduction and number of units developed. The Applicant reserves the right to provide parking in excess of the minimum required per code or approved parking reduction so long as it does not decrease open space and is in substantial conformance with the CDP/FDP.

C. Single-Family Attached Dwellings/Garage Conversion.

- i. Any conversion of garages for the single-family attached dwellings that will preclude the parking of vehicles within the garage is prohibited.
- ii. A covenant setting forth this restriction shall be disclosed in the UOA and HOA/COA documents and recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the UOA, which shall be established, and the Board of Supervisors.
- iii. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

D. Notwithstanding that there are fourteen (14) surface parking spaces shown on the CDP/FDP adjacent to the two-story retail building at the main entry on Westpark Drive, the Applicant agrees to reduce the number of parking spaces from fourteen (14) to a maximum of twelve (12) spaces and convert two (2) of the fourteen (14) spaces to a painted/striped "turn in."

8. Landscape Plan

- A. A landscape plan(s) corresponding to each phase of the Application Property shall be submitted as part of each site plan(s) in substantial conformance with the landscape design shown on Sheet 4 of the CDP/FDP.
- B. The landscaped plan(s) shall include detailed streetscape, courtyard and open space landscaping, and provide details for landscaping, paving and amenities in the Linear Urban Park located along the west property line as depicted on the CDP/FDP. Said plan(s) shall be coordinated with and approved by DPWES.
- C. Existing street trees along Park Run Drive and in the Linear Urban Park shall be preserved to the extent possible. Replacement street trees shall be a minimum of three-inch (3") caliper at the time of planting.
- D. Tree Preservation Plan. The Applicant shall submit a tree preservation plan as part of the second and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 12 inches in diameter and greater located 10 feet to either side of the limits of clearing and grading as shown on the CDP/FDP for the entire site. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP resulting from engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as: crown pruning,

root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

- E. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart, shall be erected at the limits of clearing and grading as shown on the demolition and phase I and II erosion and sediment control sheets for the entire site. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fences, except super silt fence, shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading, or demolition activities, DPWES shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.
- F. Site Monitoring. The developer shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by DPWES.
- G. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading as shown on the CDP/FDP subject to necessary encroachment for the installation of utilities, public and private, and or trails as determined necessary by the Director of DPWES. If it is determined necessary encroachments to install utilities, public and private, and/or trails outside the limits of clearing and grading as shown on

the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the Urban Forester, DPWES. A replanting plan shall be developed and implemented, subject to approval by the Urban Forester, for any area outside the limits of clearing and grading that must be disturbed.

H. Restoration. A reforestation plan for the Urban Linear Park shall be submitted concurrently with the second and all subsequent site plan submissions for review and approval by the Urban Forestry Division. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation plan shall include, but not be limited to the following:

- i. plant list detailing species, sizes and stock type of trees and other vegetation to be planted
- ii. soil treatments and amendments if necessary
- iii. mulching specifications
- iv. methods of installation
- v. maintenance
- vi. mortality threshold
- vii. monitoring
- viii. replacement schedule

9. Pedestrian Facilities

A. On-site

- i. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Application Property as generally shown on Sheets 6A and 6B of the CDP/FDP, including sidewalks along the Application Property

frontages with Westpark Drive and Park Run Drive, and a cross walk connection between all retail and residential components constructed on the Application Property.

- ii. The comprehensive pedestrian system shall provide an ADA compliant route between all retail and residential components.
- iii. Construction of sidewalks shall be concurrent with the corresponding phase of a site plan development activity on the Application Property.
- iv. Sidewalks within or contiguous to VDOT right-of-way shall conform to VDOT standards to the satisfaction of the Department of Public Works and Environmental Services (DPWES). Any sidewalk within VDOT right-of-way shall be VDOT's responsibility for purposes of liability, maintenance and repair.
- v. The Applicant shall reserve an access easement for the benefit of all residents, owners and tenants within the Application Property along the entire length of the Linear Urban Park that may be dedicated pursuant to provisions of Proffer 10C.

B. Off-site

- i. The Applicant shall contribute Fifty Thousand Dollars (\$50,000), which shall be paid to Bonds and Agreements Branch, Office of Site Development Services, DPWES, to be deposited into an account designated for the benefit of "Providence Trail Fund."
- ii. The contribution to the Providence Trail Fund shall be made in two (2) equal installments of Twenty-Five Thousand Dollars (\$25,000.00) payable
 - a) As a prerequisite to the issuance of the Building Permit for the first multi-family high rise building on the Application Property, and

- b) as a prerequisite to the issuance of the Building Permit for the second multi-family high rise building on the Application Property.

10. Recreational Facilities.

A. Bicycle Racks, Bicycle racks in secured and covered areas shall be provided in both the residential and retail areas.

B. Recreational Facilities

- i. The Applicant shall comply with Paragraph 2 of Section 6-110 of the ZO regarding developed recreational facilities for the residential uses.
- ii. The Applicant proffers that the minimum expenditure for the recreational facilities shall be \$955.00 per residential unit per the ZO.
- iii. Shared Recreational Facilities
 - a) Recreational facilities developed on the lot for high-rise Building 1 may be for the sole use of Building 1, if Building 1 is rental building.
 - b) Recreational facilities shown on the CDP/FDP within the lot(s) for high-rise Buildings 2, 3 and 4 (and Building 1 if it is a condo) shall be available for the use of those buildings and for the single-family attached dwellings. Such use shall be governed by the rules of the applicable HOA/COA.
 - c) Nothing herein shall preclude each building from having a separate HOA/COA in which case each HOA/COA may share the use and costs of recreational facilities based on a mutually agreed pro-rata share.
- iv. The Applicant shall receive credit against that ZO minimum expenditure for the cost of recreational facilities (currently \$955 per unit) which credit shall include, but not be limited to, the cost of improvements for swimming pools, indoor and outdoor putting green(s), sun deck(s), outdoor seating areas, pedestrian trail,

plazas, indoor recreational facilities [such as weight training equipment, fitness equipment, billiards room(s), card and game room(s) and indoor multi-purpose court(s)].

- v. The Applicant shall also receive credit against the ZO minimum expenditure for recreational facilities for any funds contributed by the Applicant if such funds are earmarked, budgeted or used for trail improvements within the Tysons Urban Plan Area.
- vi. The Applicant shall receive credit for ZO minimum expenditure for recreation for all improvements within the Linear Urban Park and trail as shown on the CDP/FDP whether or not the Park and improvements are accepted for dedication by Fairfax County or retained by the Applicant or UOA as private recreation open space pursuant to Proffer 10.C.

C. Linear Urban Park Dedication

- i. As a prerequisite to the approval of the second multi-family high rise Building Permit, the Applicant shall make a written offer to the Fairfax County Board of Supervisors to dedicate to the Fairfax County Park Authority for park purposes, in fee simple and at no cost, not less than 1.0 acre or more than 1.29 acres of Linear Urban Park along the western most property line of the Application Property and associated improvements therein to be constructed by the Applicant and as generally shown on the CDP/FDP.
- ii. Any such dedication shall be subject to density credits pursuant to Article 2-308 of the ZO.

- iii. The proposed dedication and construction of the Linear Urban Park facilities, if accepted by Fairfax County, shall be a prerequisite to approval of bond release for the fourth multi-family high-rise building.
- iv. The Applicant reserves the right to establish and record any public or private easements necessary to accomplish the proposed development prior to dedication to County as long as it does not preclude development/landscaping for the Urban Linear Park as shown on the CDP/FDP.
- v. The Applicant's proposal shall include a commitment to develop and construct a 5 - 6 foot-wide trail within the Linear Urban Park commencing at a point on Westpark Drive and terminating at a point on Park Run Drive as generally shown on the CDP/FDP. If the proposed dedication is accepted, then the Applicant will coordinate the design of the two plazas within the Linear Urban Park with FCPA. The trail shall be constructed with a combination of concrete sidewalk, concrete stairs, asphalt or other materials designated by the FCPA. If required by the Building Official at the time of building permit for the stairs or trail, the trail shall be lighted to meet the standards of 1996 VUSBC Article 1207.0 as it relates to exterior stairs, which requires an illumination level on tread runs of one foot candle if the trail is private. If trail is public and maintained by Fairfax County and its assigns, any trail lighting shall be determined by the County and/or its assigns, but the degree of lighting shall not be in excess of tread lighting determined by VUSBC referenced above. All park amenities shown on the CDP/FDP shall be constructed at the cost of the Applicant.

- vi. The potential for the proposed park and trail dedication, or the alternative use by UOA as a private recreation space to be maintained by UOA, shall be disclosed in the UOA and HOA/COA documents.
- vii. If the County does not accept proposed dedication of the Linear Urban Park and trail for maintenance and public use, or if one year passes from the date of the written offer by the Applicant and no action is taken by the County, then the proffer to dedicate the Linear Urban Park and trail shall become null and void.
- viii. If the Park and Trail dedication proposal is formally rejected or one year expires, then as a prerequisite to the approval of bond release for the fourth multi-family high rise building the Applicant shall construct the Linear Urban Park and trail as shown on the CDP/FDP and convey same to UOA. The Park, Trail and other amenities shall then be maintained as a private, active and passive recreation facility generally as shown on the CDP/FDP except as set forth in (x) below. The UOA may fence and gate the Park and Trail to deny access to the public and avoid any associated liability. The exact type and location of facilities shown on the CDP/FDP may be changed subject to compliance with the requirements of these proffered conditions.
- ix. The number, location and configuration of access points to the Linear Urban Park shall be field located at site plan review for the second multi-family high rise Building Permit.
- x. Notwithstanding 10.C(viii) above, if the Park and Trail dedication proposal is formally rejected or one year passes from the date of the written offer by the Applicant and no action is taken by the County, then the Applicant shall grant an access easement for the purposes of active and passive recreational purposes to

the Linear Urban Park to the property shown as 29-3-((22))-0001A in a location along the common boundary of that parcel and the Application Property, provided that a reciprocal access easement for the purposes of active and passive recreational purposes is granted to the Applicant or subsequent UOA by the owner(s) of the property shown as 29-3-((22))-0001A to the Natural Corridor and Storm Drain Easement recorded at Deed Book 6927 Page 1185 in the Fairfax County Clerk's Office and as generally shown on Sheet 3 of 13 of the CDP/FDP. The Applicant shall construct a trail connection from the agreed access point with the adjacent property to the Trail System within the Linear Urban Park. In the event an agreement for reciprocal easements cannot be reached prior to submission of the site plan for the second multi-family high-rise building, the Applicant shall demonstrate such failure to the Providence District Supervisor and ZED, and this proffer shall be null and void.

- xi. The Applicant reserves the right to use portions of the proposed Linear Urban Park for construction staging prior to such Linear Urban Park dedication as shown on the CDP/FDP. Prior to dedication, the Applicant will stabilize, restore and landscape any area used for construction staging.

11. Stormwater Management.

A. Stormwater and Best Management Practices

Stormwater and Best Management Practices (BMPs) shall be provided for the Application Property on-site in proposed underground facilities as reviewed and approved by the Department of Public Works and Environmental Services ("DPWES").

B. Design and Construction Standards

As approved by DPWES, the design of the facilities shall incorporate the following:

- a) The storage vaults, which shall provide BMP/stormwater management, may be constructed of materials in accordance with requirements of the Public Facilities Manual and as approved by DPWES.
- b) Safety measures shall be provided for those facilities as may be reasonably requested by DPWES, at time of site plan approval. Safety measures may include, but not limited to, Bilco doors or equivalent, to cover the facility entrance with a double locked keyed entry and/or bolted manhole lids.

C. Maintenance

- i. The proposed facilities shall be maintained by the Applicant, its successors and assigns, in accordance with the regulations of DPWES.
- ii. The maintenance responsibility shall be incorporated in an agreement to be reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County land records. The maintenance responsibility shall be included in the UOA and HOA/COA documents provided to each purchaser and disclosed to potential purchasers before entering into a contract of sale.
- iii. The Applicant shall establish an initial reserve fund in the amount of Twenty-Five Thousand Dollars (\$25,000) for future maintenance and/or replacement. The reserve fund shall be deposited with the UOA to be formed with respect to the Application Property prior to the conveyance of the first residential unit on the Application Property.

12. Energy Conservation

All dwelling units constructed on the Application Property shall meet the thermal standards

of the Cabo Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES for either electric or gas energy homes, as applicable.

13. Architectural Design

- A. The architectural design of the buildings shall maintain the theme depicted on the elevations shown on Sheets 10 through 11B of the CDP/FDP. Minor modifications may be made with the final architectural designs.
- B. Exterior building materials will consist of brick, glass, precast concrete, or combinations thereof.
- C. Each high-rise building shall utilize similar materials and colors and design features on all of its sides.
- D. Townhouse architecture shall be in general character with the elevations shown on the CDP/FDP. Minor modifications concerning architectural details such as fenestration, copings, and archways, may be made with the final architectural designs.
- E. An architectural surface treatment which is compatible with the theme of building architecture as shown on the CDP/FDP shall be used on all parking structures and garage walls such as one or more of the following: a mix of stone aggregate, special forming or scoring, special mix of textures or polymer paint materials, brick, landscape screening material(s), pre-cast concrete, architectural embellishments and/or other treatments that are compatible with and complement the building architecture and materials per DPWES.
- F. Retaining Walls. An architectural surface treatment shall be used on the face of any retaining wall. Such walls based on the approximate top of wall elevations shown on Sheet 3 of 13 of the CDP/FDP [exact elevations to be determined at time of site plan(s)] and may vary from 2 to 60 feet in height. The surface treatment shall be either

predominately or a combination of a mix of stone aggregate, special forming or scoring, special mix of textures or polymer paint materials, bricks, screening material(s), pre-cast concrete, architectural embellishments and/or other treatments that are compatible with and complement the building architecture and materials per DPWES.

- G. Solid Greenscreen. In addition to 13(F) above, any solid retaining wall or garage wall exceeding 10 feet in height that faces the Linear Urban Park and the residences in the R-30 property to the northwest of the Application Property (Tax Map 29-3-((22))-0001A) shall be vegetatively screened within a minimum three foot (3') planting strip at the base of such solid retaining or garage wall. Vegetation may consist of a mixture of columnar species of trees, climbing plants and vines as approved by the Urban Forester. In the event that vegetative screening is not practical, the Applicant may submit alternative screening methods such as, but not limited to, enhanced landscaping of the Linear Urban Park, artwork, or other medium acceptable to DPWES and/or the Urban Forester and the Department of Planning and Zoning to mitigate the height and mass of the retaining or garage walls.
- H. Open Greenscreen. In the event the garage walls cited above are not solid and are open parking structures as defined by the VUSBC and are internally lighted pursuant to Proffer 15.B.ii below, openings shall receive architectural grill work, grates, or other architectural enhancements to visually occlude the impacts of the garage openings without jeopardizing the ventilation intended by the VUSBC. Alternatively, a combination of metal grating with planter boxes and vines combined with the aforementioned architectural enhancements may be provided.

I. **Building 4 Minimum Setback.** Notwithstanding that Building 4 and a portion of the parking structure immediately below Building 4, as shown on Sheet 3 of 13 of the CDP/FDP dated October 31, 2002 and on the first submission of the Article 17 Site Plan 5166-SR-01-1, currently indicate a setback of approximately 15 feet from the western most property line, the Applicant agrees to maintain a minimum 26 foot set back from the western most property line for Building 4 and that portion of the related parking structure immediately below Building 4 to allow additional landscaping between that portion of the Building 4/parking structure and the existing residential building to the west of Building 4 pursuant to guidelines set forth in 13.G and H above.

14. Geotechnical Report

If required by DPWES, geotechnical studies shall be submitted at the time of site plan submissions and the recommendations of said studies shall be implemented, as required.

15. Lighting

A. All walkway, parking lot and building/wall mounted lighting fixtures shall use shielded light fixtures. Any spotlighting and floodlighting which is used for architectural, landscape or decorative purposes shall use fully shielded lighting fixtures that are made directional such that the directed light does not extend beyond the object intended for illumination or onto another property. Any illuminated signage shall be backlit or internally lit. Internally lit signs shall be opaque or of non-white colors.

B. Neighborhood Lighting Mitigation.

- i. 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. This lighting proffer is voluntary and an inability to obtain approvals for diminished lighting shall not be grounds for a zoning violation, stop work order(s) or cessation of existing or future site plans or building permits.

- ii. Any lighting within parking structure(s) that are not constructed of solid walls and along the perimeter of the parking structure(s) shall be of low intensity and recessed design to mitigate the impact on the adjacent residences. Lighting within the parking structure(s) shall be of low intensity design in order to mitigate the impact on the adjacent residences.

16. Telecommunication Equipment.

- A. Telecommunications equipment serving the Application Property associated with the retail and residential uses, may be placed on the proposed residential building(s) rooftop(s); however, any such facilities must (a) comply with the ZO; and (b) be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they shall not be visible from the surrounding streets at street level. Other screening measures may be used, such as including the facilities as part of the architecture of the building(s), utilizing compatible colors, or employing telecommunication screening material, and flush-mounted antennas.
- B. 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 a maximum of four (4) whip antennae and a maximum of 200 square feet of roof surface for an equipment cabinet to be located on one of the four (4) high-rise

buildings shown on the CDP/FDP. The Applicant shall approve the specific building and rooftop location. The license agreement shall require compliance with all the performance standards set forth in 16A above and stipulate the antennae are for public use purposes only (police, fire, rescue, homeland security). The license agreement shall be renewable for five (5) five-year periods at the specific request of the County.

17. Affordable Dwelling Units.

A. On-Site Affordable Dwelling Units

- i. The Applicant shall provide a number of on-site Affordable Dwelling Units equal to twelve and one-half percent (12 ½ %) of the number of single-family attached residential units developed on the Application Property.
- ii. The Applicant reserves the right to provide those on-site ADUs for the single-family attached dwelling units within the multi-family high-rise building(s).

B. Contribution to Fairfax County Affordable Dwelling Unit Project

- i. In addition to providing the on-site ADUs referenced above, the Applicant shall provide One Million Dollars (\$1,000,000) to be paid in two (2) equal payments of Five Hundred Thousand Dollars (\$500,000) to Fairfax County (the "ADU Contribution"). This ADU Contribution shall as a first priority be used toward funding of a homeless shelter as may be approved by the Board of Supervisors. In the event that a homeless shelter is not feasible, the monies may be allocated to other affordable or special housing project(s) approved by the Board of Supervisors.
- ii. The first payment of Five Hundred Thousand Dollars (\$500,000) shall be paid on the earlier of
 - a) The first anniversary of the approval of this rezoning application, or

- b) The issuance of the Building Permit for the first multi-family high-rise building.
 - iii. The second payment of Five Hundred Thousand Dollars (\$500,000) shall be paid on the earlier of
 - a) The second anniversary of the approval of this rezoning application, or
 - b) The issuance of the Building Permit for the second multi-family high rise building
 - iv. In the event that a beneficiary ADU project has not been designated by the Board of Supervisors at the time when any installment of the ADU Contribution is payable by the Applicant, the Applicant shall pay such installment to Fairfax County to be held by the County for the benefit of such beneficiary ADU project when such project has been designated by the Board of Supervisors.

18. Public Facilities

- A. Office/Meeting Space. Within ninety (90) days of approval of the Rezoning Application or longer if mutually agreed to by the County Executive and the Applicant, the Applicant and the County shall execute a Lease substantially consistent with the terms and conditions set forth in Exhibit A attached for approximately 4,000 square feet of public government office/meeting space within Tysons Corner Urban Plan Land Unit L. The lease may be for a lesser number of square feet if the County Executive determines that such lesser amount fulfills the County's needs for the space.
- B. Additional Dedication of Future Public Facility Site
 - i. As a prerequisite to the issuance of building permit for the third high-rise building, the Applicant shall dedicate in fee simple to Fairfax County the

approximately 0.76 acre site on Old Meadow Road, Tax Map 29-4-((6))-107 (the "Dedication Lot"), subject to

- a) the Generalized Development Plan associated with PCA 92-P-001-4 as most recently approved by the Board of Supervisors on December 3, 2001 and as may be amended in the future, is stamped, sealed and signed by Charles J. Huntley, Land Surveyor, and shall serve as the Preliminary Plan pursuant to 101-2-1 Paragraph 2 of the Subdivision Ordinance, and
 - b) approval of a plat of subdivision and deed, prepared by the Applicant and approved by DPWES and County Attorney and
 - c) the granting of density credit to the Applicant pursuant to Article 2-308 of the ZO.
 - d) Upon DPWES and County Attorney approval of (b) and (c) above, the Applicant shall record dedication plat, which shall render this proffer null and void.
- ii. Within one (1) year of approval of this rezoning application, the Applicant shall submit a study performed by a Virginia Professional Engineer resulting in an opinion as to whether the Dedication Lot can generate an approved Article 17 site plan for an approximately 3,500 to 4,000 square foot office building with approximately 25 parking spaces.

C. The use of any space provided by the Applicant under 18.A and/or 18.B above will be determined by the Fairfax County Executive on the basis of County needs in this area.

19. Community Arts Contribution

As a prerequisite to the approval of the first site plan (exclusive of rough grading plans or

sediment control permits) the Applicant shall contribute Sixty-Thousand Dollars (\$60,000) to the Fairfax County Park Authority to support the Community Arts Program.

20. School Contributions

- A. The Applicant shall pay a total of \$875,000 to the Fairfax County Board of Supervisors as its public school contribution for this rezoning application.
- B. The \$875,000 shall be paid as follows:
 - i. The Applicant shall donate \$700,000 to the Fairfax County Board of Supervisors for construction, capital improvements, repair of deferred maintenance, or purchase of modular classrooms for the school pyramid that receives children originating from the subject property. The \$700,000 shall be paid in four (4) equal installments of \$175,000 as a prerequisite to the issuance of the first Residential Use Permit for each of the four (4) high-rise buildings.
 - ii. As a prerequisite to bond release for the fourth (4) high-rise building site plan, the Applicant shall pay to Fairfax County Board of Supervisors \$175,000 specifically to purchase a modular classroom for any school that receives children originating from the subject property.

21. Successors and Assigns

These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

22. Density Credit

Advanced density credit shall be reserved as may be permitted by the provisions of Article 2-308 of the Fairfax County ZO for all eligible dedications described herein, or as may be required by Fairfax County, Fairfax County Park Authority or VDOT at time of site plan approval.

23. Site Plan Review and Comment

Site plan(s) for the Application Property shall be submitted to the Providence Planning Commissioner for review and comment within five (5) business days after acceptance of the site plan by Engineering Surveyor Institute and/or DPWES.

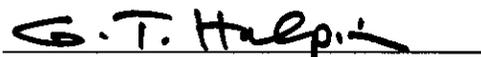
24. Building Permit Definition

When used in these proffers for the purpose of defining when a particular payment must be made or proffer performed, "Building Permit" shall mean the building permit for the vertical construction of an actual multi-family high rise building, or a building containing single-family attached dwelling units. "Building Permit" shall not refer to the issuance of any permits for the construction of footings and foundations, sheeting and shoring, parking structures or retaining walls issued in advance of the building permit that approved the vertical construction of the actual high rise or townhouse building.

25. Severability

Any of the sections/buildings/phases or subdivided lots within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without requiring joinder or consent of the property owners of the other sections/buildings/phases or subdivided lots within the Application Property if such PCA does not adversely affect those other sections/buildings/phases or subdivided lots. Previously approved proffered conditions applicable to the sections/buildings/phases or subdivided lots that are not the subject of such a PCA shall otherwise remain in full force and effect.

WEST*GROUP PROPERTIES LLC


G. T. Halpin, President