

**SPRINGFIELD TOWN CENTER PROFFERS
RZ 2007-LE-007**

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Revised May 6, 2009
Revised May 7, 2009
Revised June 17, 2009**

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicants for themselves and their successors and/or assignees (collectively referred to as the "Applicant") in this Rezoning ("RZ") application proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Map as 90-2 ((1)) 81A and 98, and 90-2 ((13)) 1, 2, 3, 4A1, 5A1 and 6 (the "Property") shall be in accordance with the following conditions if, and only if, RZ 2007-LE-007 (the "Application") is granted. In the event that this Application is denied, these Proffers shall be immediately null and void and of no further force or effect.

GENERAL

1. **Conceptual/Final Development Plan.** The Property shall be developed in substantial conformance with the Conceptual Development Plan and Final Development Plan ("CDP/FDP") dated February 7, 2007 and revised through May 7, 2009, prepared by Christopher Consultants and consisting of 124 sheets, as further described below.
 - A. **CDP Elements.** Notwithstanding that the CDP/FDP is presented on 124 sheets and defined as both the CDP and the FDP in this Proffer 1, it shall be understood that the CDP consists of (i) the minimum and maximum square footage of permitted development on the Property, including the proposed mix and locations

of uses as set forth on the CDP/FDP and as qualified under Proffer 5; (ii) the minimum proposed open space; (iii) the general location and arrangement and maximum building heights of the buildings on the Property as shown on the CDP/FDP; and (iv) the points of access to the Property and accompanying pedestrian and vehicular circulation routes through the Property (collectively, the "CDP Elements"). The Applicant reserves the right to request approval from the Planning Commission of a Final Development Plan Amendment ("FDPA") pursuant to Section 16-402 of the Zoning Ordinance for elements other than the CDP Elements for all or a portion of the Property and the CDP/FDP, provided such FDPA is in substantial conformance with these Proffers.

2. Minor Modifications. Minor modifications to the CDP/FDP may be permitted pursuant to Section 16-403(4) of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site engineering. The number of residential units and square footage within each building may be adjusted up or down, so long as (a) the minimum number of residential units and minimum square footage of non-residential uses as set forth in Proffer 5A are provided; (b) the maximum number of residential units and maximum square footage of non-residential uses as set forth in these Proffers are not exceeded; (c) the proposed open space tabulation provided on Sheet 1.2 of the CDP/FDP is not reduced; (d) the building heights for each building are not increased beyond the heights identified on Sheet 1.2 of the CDP/FDP and Proffer 9E; and (e) the development otherwise is in substantial conformance with these Proffers and the CDP/FDP.

3. Relationship of Existing Leases to Proposed Development. The Applicant's construction of the Proposed Development (as defined in Proffer 5) will occur in phases and, depending on market conditions, may take 15-25 years for completion. Although the Applicant intends to proceed with the Proposed Development as market conditions permit, portions of the Proposed Development will be constructed on areas of the Property (the Northwest Area, the Northeast Area and the Southwest Area, in particular) that are the subject of three (3) retail leases or agreements existing as of the approval date of this Application that the Applicant must honor until they expire or are terminated. Further, as an incentive to facilitate implementation of the Proposed Development, the Applicant may have the need to relocate any or all such uses/buildings (except for the existing approximately 22,000 s.f. office building located on Tax Map Parcel 90-2 ((1)) Parcel 98) to new locations until further redevelopment can proceed. Such relocations, if approved, shall occur in accordance with sub-paragraph (A) below. Any use or building existing as of the approval date of this Application that will be removed or replaced by the Proposed Development (as defined in Proffer 5) may continue in accordance with Article 15 of the Zoning Ordinance.

A. Relocation of Pad Retail Tenants to Facilitate. Subject to the conditions set forth in this sub-paragraph, the Applicant may elect to relocate uses/buildings on the Property without further approval of the Planning Commission or Board of Supervisors (and no FDPA shall be required), provided that the Applicant shall comply with the requirements of Article 17 of the Zoning Ordinance. Prior to the submission of a site plan proposing such relocation of either pad retail tenant in the Northeast, the Applicant shall submit to the Director of the Zoning Evaluation Division of the Department of Planning and Zoning ("ZED") for review and

approval plans demonstrating the location to which such use(s) are proposed along with documentation of how such relocation(s) further the Applicant's implementation of the Proposed Development. Any new leases or amendments to existing leases executed as part of such relocations shall contain provisions permitting the Applicant to proceed with implementation of the Proposed Development as market conditions permit.

- i. Vehicle Light Service Establishment. At such time as the Applicant constructs (i) parking structure P3 located in the West Area-A or (ii) Building OF4/R5 in the Southwest Area (as such Buildings and Land Areas are defined in Proffer 5E), the Applicant may relocate, in whole or in part, the existing vehicle light service establishment located in the Southwest Area to a new, temporary location within the same Land Area, as shown on Sheet 13.0.8 of the CDP/FDP, until such time as the Applicant constructs Buildings R4a/R4b and, concurrently, removes the vehicle light service establishment.
- ii. Northwest and Northeast Areas. At such time as the Applicant constructs the first building in either the Northwest or Northeast Areas (as defined in Proffer 5E) or otherwise requires the displacement of one or both of two (2) existing retail uses/buildings located in the Northeast Area, the Applicant may relocate such uses to another location on the Property in accordance with the this Proffer.

B. Interior Improvements to Existing Structures. For those buildings existing on the Property as of the approval date of this Application but that are proposed for redevelopment or removal as part of the Applicant's implementation of the Proposed Development, the Applicant may secure building permits for and make interior improvements to such buildings without triggering the requirement to reconstruct such buildings in conformance with the CDP/FDP, as determined by ZED.

C. Casualty. The Applicant may restore any building or structure existing as of the approval date of this Application that later is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its then-appraised value according to the records of the Department of Tax Administration, exclusive of foundations, before the termination of said lease, provided such restoration occurs within two (2) years after such destruction or damage and otherwise is in accordance with Sheets 2.0.1 and 2.0.2 of the CDP/FDP. Any restoration of a building or structure that would otherwise be allowed in accordance with Proffers 5Eia or 5Eviia shall not be prohibited hereby.

4. Future Applications.

A. Modifications. Any portion of the Property may be the subject of a Conceptual Development Plan Amendment ("CDPA"), FDPA, Proffered Condition Amendment ("PCA"), Rezoning, Special Exception, Comprehensive Sign Plan,

Special Permit, Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Par. 6 of Sect. 18-204 of the Zoning Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property that are not the subject of such an application shall remain in full force and effect.

- B. Acquisitions. The Applicant hereby acknowledges and agrees that certain adjacent parcels identified as Tax Map 90-2 ((1)), Parcel 50 (the "Fried Parcel") and/or Tax Map 90-2 ((1)) Parcel 97 (the "Reizakis Parcel") may be the subject of one or more zoning applications that propose to incorporate one or both such parcels into and, thereby, expand the Proposed Development (as defined in Proffer 5) through appropriate amendments to these Proffers, including the CDP/FDP (each a "Zoning Amendment"). In furtherance of such Zoning Amendments, the Applicant may elect to submit zoning applications only for the portion of the Property constituting the Land Area (as defined in Proffer 5E) into which the Fried Parcel and/or the Reizakis Parcel is to be incorporated and may do so without the joinder and/or consent of the owners of the Property located outside the boundaries of the Land Area to be amended as determined by the Zoning Administrator.

PROPOSED DEVELOPMENT

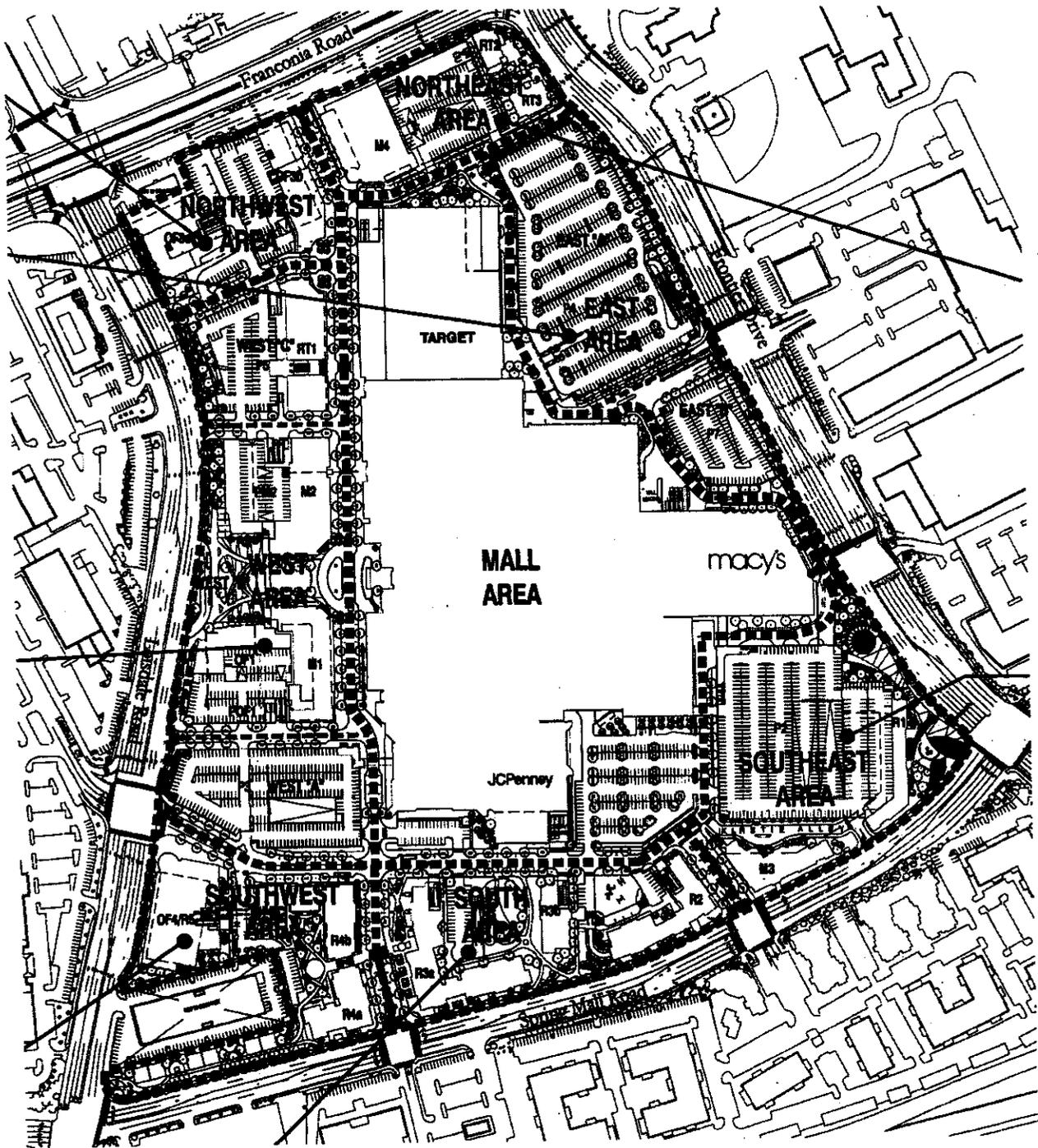
5. Proposed Development. The Applicant shall construct the following improvements and facilities on the Property (collectively, the "Proposed Development") in accordance with the tabulations set forth on Sheet 1.2 of the CDP/FDP and this Proffer. The Applicant may elect, however, to reallocate the square footage of non-residential uses and the number of Residential Units (as defined in this Proffer) shown on Sheet 1.2 of the CDP/FDP from one Land Area to another Land Area (as defined in this Proffer) and among each building labeled on the CDP/FDP for such uses, including the right to exceed the specific maximums for each building in these Proffers and shown on the CDP/FDP, so long as (a) the minimum square footage of non-residential uses and the minimum number of Residential units established under these Proffers are provided; (b) the total square footage of residential and non-residential uses constructed on the Property collectively do not exceed a maximum 1.71 FAR shown on Sheet 1.2 of the CDP/FDP, and (c) the maximum buildings heights for each building are not increased beyond the heights shown on Sheet 1.2 of the CDP/FDP; and (d) the Proposed Development otherwise is in substantial conformance with the CDP/FDP and these Proffers.

- A. Minimum and Maximum Square Footages and Residential Units. The Proposed Development shall include the following:
- i. A minimum of 1,550 residential units and a maximum of 2,737 residential units (inclusive of Workforce Housing/ADU Units, as defined in Proffer 30) (collectively, the "Residential Units"). A minimum ten percent (10%) of the market rate Residential Units constructed on the Property shall be designed and constructed with Universal Design features as determined by the Applicant in consultation with ZED;

- ii. A minimum of 500,000 square feet and a maximum of 1,044,000 square feet of office uses (collectively, the “Office Uses”);
 - iii. A minimum of 175 hotel rooms and a maximum of 450 hotel rooms (collectively, the “Hotel Rooms”);
 - iv. A maximum 1,952,000 square feet of retail and community-service retail uses as defined in Proffer 5D. Included in this total shall be retail and services uses located in the Mall Area and on the ground floor of the residential buildings and/or the office buildings located in the Northwest, Southwest, South and Southeast Land Areas (all as defined in Proffer 5E). Each retail tenant located on the ground floor of a residential building and/or office building shall have a separate entrance on the abutting street;
 - v. A grocery store tenant containing a minimum 12,500 square feet and a maximum 150,000 square feet and designed to provide daily necessities and prepared foods for residents and tenants of the Property (the “Grocery Store”). For purposes of these Proffers, Grocery Store means a store that offers for sale a variety of foodstuffs and household supplies, but shall not be only convenience retail or quick service food store. Following approval of this Application, the Applicant shall not execute any new or amended agreements for the Property that would preclude the Applicant’s ability to secure the Grocery Store as set forth in this Proffer. The square footage of the Grocery Store shall count toward the maximum 1,952,000 square feet of retail and service uses described in the immediately preceding paragraph;
 - vi. A private health club or similar fitness facility containing a maximum 80,000 square feet (the “Health Club”). The Health Club shall be in addition to any fitness facilities provided for the exclusive use of tenants and residents of the Office and Residential Buildings;
 - vii. Interior Community Space, as defined in Proffer 7B, totaling a minimum of 2,500 square feet; and
 - viii. Accessory uses, facilities and structures.
- B. Square Footage Tabulations on Site Plans. The Applicant shall maintain an ongoing tabulation of the total square footage of development and uses (e.g., number of Residential Units, Hotel Rooms, etc.) on the Property and for each Land Area (as defined in Proffer 5E) (the “Density Tabulation”). Concurrent with the submission of the first site plan for the Proposed Development following the approval of this rezoning and on each site plan submitted thereafter, the Applicant shall submit the Density Tabulation to the Department of Public Works and Environmental Services (“DPWES”), with a copy to ZED, to demonstrate the Property’s compliance with the density tabulations set forth on the CDP/FDP and in these Proffers.

- C. Cellar Space. The Applicant may utilize cellar space (as defined in the Zoning Ordinance) constructed as part of the Proposed Development for (i) resident or office/retail tenant amenities (including, but not limited to, fitness centers), (ii) maintenance or utility rooms, (iii) storage, (iv) ancillary offices associated with retail uses in the Mall Area, and (v) retail uses, provided that the total square footage of nonresidential uses on the Property, inclusive of cellar space, does not exceed the maximum total square footage set forth in Proffer 5A. No portion of the cellar space established on the Property shall contain Residential Units or be leased or sold for Office Uses.
- D. Mix of Uses. The Property shall be developed with a mix of uses. In order to create an active street-front along key perimeter roads and internal streets, the Applicant shall, to the extent permitted by market conditions, establish uses designed to meet the daily shopping and support needs of residents and tenants of the Proposed Development on the ground floors of each building in the Proposed Development (the "Community-Serving Retail Uses") for which such uses are proposed (excluding the Mall Area as defined in this Proffer), as listed on Sheet 1.2 of the CDP/FDP. Proffer 6 contains a list of uses that, for purposes of this Proffer and the Proposed Development, qualify as Community-Serving Retail Uses. Such uses shall be located along the building's frontage on perimeter and internal streets and shall incorporate features or characteristics intended to animate the storefront, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in this Proffer and Proffer 9C. The Applicant will design and construct each building and use its "best efforts" to achieve the square footage totals of Community-Serving Retail uses set forth on Sheet 1.2 of the CDP/FDP for each building (exclusive of the Mall Area, as defined in this Proffer). The Applicant's "best efforts" shall include retaining a qualified retail broker or internal leasing agent and marketing the space for Community-Serving Retail Uses for at least twenty-four (24) months following submission of a building permit application for each building in which such uses are proposed. In the event the Applicant is unable to lease the required square footage of Community-Serving Retail Uses in one or more buildings despite the Applicant's marketing efforts, as evidenced by documentation provided to and approved by ZED, the Applicant may substitute other nonresidential uses for the required Community-Serving Retail Uses, with the goal of locating uses that generate foot traffic and help create a sense of place on the street.
- E. Location of Uses. The Property is divided into sub-areas, as represented in the following graphic and labeled for such purpose on Sheet 1.3 of the CDP/FDP (each an "Area" or "Land Area"), and the Applicant shall develop each Land Area in accordance with the details shown on the CDP/FDP for each such Land Area and as set forth below. Within each Land Area, each building is identified by letter/number and shall be developed in accordance with the CDP/FDP and these Proffers, provided that the Applicant reserves flexibility to allow market conditions to influence the order of development of buildings and uses within and among each Land Area. Notwithstanding the foregoing, development of the Mall

Area and portions of the West Area (as defined below) abutting Village Drive shall be the Applicant's primary focus during the earliest phases of development.



- i. Mall Area. The Mall Area consists of the existing regional shopping mall (totaling approximately 1,782,000 square feet) containing retail sales establishments, eating establishments, a cinema and other uses. As part of its initial phase of the Proposed Development, the Applicant proposes to renovate the interior of the existing Mall and modify the square footage and uses therein, resulting in a maximum total square footage of 1,725,000 square feet, of which 158,000 square feet of development is reserved for the portion of the Mall Area located on Fairfax County Tax Map 90-2 ((13)) Parcel 2.
 - a. Existing Target Store. Notwithstanding any other provisions in these Proffers, the Applicant, as an option, may elect to expand or reconstruct the existing two-story structure located on Fairfax County Tax Map 90-2 ((13)) Parcel 2 located within the Mall Area (the "Existing Target Store") until such time as the Applicant constructs the Target expansion as defined in Proffer 5Eiii. As part of such expansion/reconstruction, the Applicant may increase the square footage for the Existing Target Store by up to ten percent (10%) above that of the existing structure located on the Property as of the approval date of this Application. Except as set forth in this subsection, the Existing Target Store shall have no obligation to comply with the requirements and obligations set forth in these Proffers, but shall comply with applicable provisions of the Zoning Ordinance and the Public Facilities Manual..
- ii. Northeast Area. As more particularly set forth on Sheet 4.0.1 of the CDP/FDP, the Northeast Area consists of Buildings RT2, RT3, M4 and P6 and shall be developed in accordance with Sheets 4.0.1 through 4.0.3 of the CDP/FDP, subject to the options set forth below. The ground-floor design of the portions of Building M4 fronting Village Drive and North Street shall include uses, features or characteristics intended to animate the storefront, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. The Applicant also shall establish the Recreation Court Facility on the roof deck of either Building M4 (Sheet 4.0.2) or Building P6 (Sheet 4.0.2A), as more particularly set forth in Proffer 26D.
 - a. Grocery Store and Health Club. The Applicant shall use "best efforts" to co-locate the Grocery Store and the Health Club in Building M4, with the Grocery Store on the ground floor and the Health Club above. The Applicant's "best efforts" shall include retaining a qualified retail broker or internal leasing agent and marketing the space for such uses for at least twenty-four (24) months following submission of a building permit application for Building M4. Such uses may co-locate in a single building or be integrated into an Office Building as more particularly described in

paragraph (b) immediately below. If the Applicant's marketing efforts are not successful in co-locating the Grocery Store and Health Club in Building M4, as evidenced by documentation provided to and approved by Zoning Administrator, then the Applicant may elect to locate the Grocery Store and/or Health Club elsewhere on the Property and to proceed with the alternative designs for Building M4 set forth in sub-paragraphs (b) and (c) immediately below.

Should the Grocery Store and Health Club co-locate in Building M4 in accordance with this Proffer, then the Health Club shall have a separate entrance from the Grocery Store and may have direct access from Building P6. Under this alternative, the Recreation Court Facility shall be located on the roof deck of Building M4.

- b. Office Alternative. Subject to paragraph (a) above, the Applicant shall be permitted to develop Building M4 as an Office Building containing up to 219,000 square feet of Office Uses plus up to approximately 72,000 square feet of Community-Serving Retail Uses located on the ground and/or second floors (which uses may include the Grocery Store and/or Health Club), as more particularly listed in the tabulations on Sheet 1.2 and shown on Sheet 4.0.2A of the CDP/FDP (and provided the maximum square footage of Office Uses set forth on the CDP/FDP and in these Proffers is not exceeded). No single retail tenant in Building M4 except the Grocery Store or Health Club shall exceed 45,000 square feet, and each retail tenant shall have a separate entrance. Under this alternative, the Recreation Court Facility shall be located on the roof deck of Building P6. Development of Building M4 with office uses under this alternative shall not relieve the Applicant of the obligation to provide a Grocery Store and a Health Club on the Property as set forth in Proffer 5A above.
- c. Retail Alternative. In the event the Applicant, following use of its "best efforts," is unable to co-locate the Grocery Store and/or Health Club in Building M4 as set forth in this Proffer, then the Applicant shall be permitted to develop Building M4 with up to approximately 72,000 square feet of other Community-Serving Retail Uses (which uses may include the Grocery Store or Health Club) consistent with the CDP/FDP and these Proffers. In such case, Building M4 shall be designed to appear as a two-story building, with the Recreation Court Facility located on the roof deck of Building M4. No single retail tenant in Building M4 except the Grocery Store or Health Club shall exceed 45,000 square feet, and each retail tenant shall have a separate entrance. Development of Building M4 with retail uses under this alternative

shall not relieve the Applicant of the obligation to provide a Grocery Store and a Health Club on the Property as set forth in Proffer 5A above. Under this alternative, the Recreation Court Facility shall be located on the roof deck of Building M4.

- iii. East Area. As more particularly set forth on Sheets 5.0.1 through 5.2.1 of the CDP/FDP, the East Area of the Property is planned for one or two parking structures (Buildings P4 and P7) to primarily serve the Mall Area, although the specific designs for such structures are not included as part of the CDP/FDP. It also includes a new pedestrian plaza connection from Frontier Drive to the Mall Area, which shall be developed generally as shown on Sheets 5.0.6 and 5.2.1 of the CDP/FDP and in accordance with Proffer 9Cii. The Applicant shall provide Streetscape treatments along Frontier Drive as more particularly shown on the CDP/FDP and described in Proffer 15, as well as one or more pedestrian connections between Frontier Drive and the entrance(s) to the Mall.
 - a. FDPA Application for Buildings P4 and P7. Notwithstanding the illustrations shown on Sheets 5.0.1 through 5.0.6 of the CDP/FDP and anything else in these Proffers, prior to site plan approval for the single-story retail store to be located on Tax Map 90-2 ((13)) Parcel 2 at the northern-most end of the Mall Area (the "Target Expansion"), the Applicant shall obtain approval by the Planning Commission of an FDPA to permit the construction of one or two parking structures in Buildings P4 and/or P7 to serve the Mall Area and other portions of the Proposed Development (the "Target Deck(s)"). The Target Deck(s) shall be designed to use the vehicular and pedestrian access points to the adjacent perimeter streets shown on the CDP and shall incorporate, as necessary and warranted, façade treatments outlined in Proffer 9B herein for those portions of the Target Deck(s) that front the pedestrian sidewalks along East Street and North Street. The Applicant acknowledges that, as part of the approval of the Target Deck(s), modifications to these Proffers (including transportation improvements, among other things) may be necessary to address the adjusted development plan as determined by ZED, in which case the Applicant also shall submit and have approved by the Board of Supervisors a PCA and/or CDPA for the full East Area. Scoping and submission of an updated traffic analysis evaluating the impact of the development of the Target deck(s) may also be necessary.
- iv. Southeast Area. The Southeast Area of the Property includes Buildings M3, R1 and P2, which shall be developed with (a) a minimum of 370 Residential Units and a maximum of 741 Residential Units, (b) a maximum of 225 Hotel Rooms, and (c) approximately 4,000 square feet of Community-Serving Retail Uses to be located on the ground-floor of

Building M3, as more particularly set forth on Sheets 6.0.1 through 6.0.6 of the CDP/FDP. Streetscape elements in the Southeast Area adjacent to Buildings M3 and R1 shall be in substantial conformance with those shown on Sheet 6.0.6 of the CDP/FDP. The ground-floor design of the portions of Buildings M3 and R1 fronting Spring Mall Road, Frontier Drive and Arch Street shall incorporate uses, features or characteristics intended to animate the building façade and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. Each ground-floor Community-Serving Retail tenant in Building M3 shall have a separate entrance onto the abutting street.

- a. Residential Option. Notwithstanding the foregoing, as an option, the Applicant reserves the right to develop Building M3 with up to 172 Residential Units, in addition to the 741 Residential Units listed immediately above and in lieu of the 225 Hotel Rooms, provided the total number of Residential Units in the Southeast Area does not exceed 913 Residential Units. Streetscape elements and ground-floor building façade treatments under the residential option for Building M3 generally shall be the same as for the hotel option immediately above.
 - b. Building R1 Awning. As part of its design of the ground floor portion of Building R1 facing the intersection of Frontier Drive and Spring Mall Road, the Applicant shall provide an awning or similar covered area (but not enclosed) of sufficient size to serve as a temporary refuge area for pedestrians seeking shelter during inclement weather while walking to/from the Property and the Franconia-Springfield Metro Station.
- v. South Area. The South Area includes Buildings R2, R3a and R3b and shall be developed with (a) a minimum of 450 Residential Units and a maximum of 898 Residential Units, and (b) approximately 7,000 square feet of Community-Serving Retail Uses to be located on the ground floor of Buildings R2 and R3a, as more particularly set forth on Sheets 7.0.1 and 7.0.2 of the CDP/FDP. The ground-floor design of the portions of Buildings R2 and R3a fronting Spring Mall Road, Arch Street and Village Drive shall incorporate uses, features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as walkways or stoops, large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. Each ground-floor Community-Serving Retail tenant in Buildings R2 and R3a shall have a separate entrance onto the abutting street.
- vi. Southwest Area. The Southwest Area of the Property includes Buildings OF4/R5, R4a and R4b and shall be developed with (a) a minimum of 151

Residential Units and a maximum of 352 Residential Units, (b) a maximum of 307,000 square feet of Office Uses, and (c) approximately 8,000 square feet of Community-Serving Retail Uses located in the ground floors of Buildings R4a and R4b, as more particularly set forth on Sheets 8.0.1 through 8.0.3 of the CDP/FDP. The ground-floor design of the portions of Buildings R4a and R4b fronting Village Drive, Spring Mall Road and South Street shall incorporate uses, features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as walkways or stoops, large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. Each ground-floor Community-Serving Retail tenant in Buildings R4a and R4b shall have a separate entrance onto the abutting street.

- a. Residential Option. Notwithstanding the foregoing, as an option, the Applicant reserves the right to develop Building OF4/R5 with up to 392 Residential Units, in addition to the maximum 352 Residential Units listed immediately above and in lieu of the 307,000 square feet of Office Uses, as more particularly set forth on Sheet 8.0.2A in the CDP/FDP, provided the total number of Residential Units in the Southwest Area does not exceed 744 Residential Units. Streetscape elements and ground-floor building façade treatments under the residential option for Building OF4/R5 generally shall be the same as for the office option immediately above.
 - b. Interparcel Connection. As part of its development of the Southwest Area, the Applicant continually shall maintain interparcel access between the Property and the Fried Parcel in the location shown on the CDP/FDP to provide access through both properties to abutting public streets. The location of the required interparcel access may be modified from time to time during construction of the Proposed Development upon mutual agreement of the Applicant and the owner of the Fried Parcel.
- vii. West Area. The West Area of the Property is divided into three (3) sub-areas labeled A, B and C and shall be developed with (a) a maximum of 190,000 square feet of Office Uses, (b) a maximum of 182 Residential Units, (c) a maximum of 225 hotel rooms and (d) approximately 84,000 square feet of Community-Serving Retail Uses in Buildings M1, M2, OF1, and RT1, as more particularly set forth on Sheets 9.0.1 through 9.0.11 of the CDP/FDP.
- a. West Area A includes the existing portion and a planned expansion of Building P3. The ground-floor design of the portions of Building P3 fronting Village Drive and South Street shall incorporate design elements or features intended to animate the

façade and reduce the visual bulk of the parking structure, such as awnings, screens, plantings or similar treatments, as more particularly defined in Proffer 9B.

- b. West Area B includes Buildings M1, OF1 and M2, as well as the planned Central Plaza, all as more particularly shown on Sheets 9.0.4 through 9.0.8 of the CDP/FDP.
 - i. Building M1 shall include up to 225 Hotel Rooms plus approximately 23,000 square feet of Community-Serving Retail Uses. The ground-floor design of the portions of Building M1 fronting Village Drive and Central Plaza shall incorporate separate storefront entrances directly onto Village Drive or the plaza, as well as features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. The Applicant also shall construct a roof deck terrace on the roof of Building M1 as open space to be available to hotel guests as generally shown on Sheet 9.0.8 of the CDP/FDP.
 - ii. Building OF1 shall contain up to 190,000 square feet of Office Uses plus approximately 5,000 square feet of Community-Serving Retail Uses. The ground-floor design of the portions of Building OF1 fronting Central Plaza shall incorporate features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings or similar treatments, as more particularly defined in Proffer 9C. Each ground-floor tenant in Building OF1 fronting Central Plaza shall have a separate entrance.
 - iii. Building M2 shall include up to 182 Residential Units plus approximately 27,000 square feet of Community-Serving Retail Uses with separate storefront entrances directly onto Village Drive. The ground-floor design of the portions of Building M2 fronting Village Drive shall incorporate separate storefront entrances directly onto Village Drive, as well as features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. Building M2 also shall include a private, landscaped

courtyard area with passive recreation facilities, benches and similar features located on the roof deck of the parking structure associated with Building M2. The courtyard area may be made accessible to the public from Center Plaza, but principally shall be for the benefit of the residents of Building M2.

- c. West Area C includes Buildings P5 and RT1 as more particularly shown on Sheets 9.0.9 through 9.0.11 of the CDP/FDP. Building RT1 shall include approximately 29,000 square feet of Community-Serving Retail Uses on the ground floor and fronting Village Drive and Central Plaza. Building P5 provides parking for the Proposed Development. The ground-floor design of the portions of Building RT1 fronting Village Drive and Central Plaza shall be designed to have or give the appearance of multiple tenants. If Building RT1 is multi-tenant occupied, each tenant shall have a separate entrance directly onto Village Drive, while a single tenant occupant shall provide a minimum of two (2) separate storefront entrances. The design also shall include features or characteristics intended to animate the building facade, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C.

- viii. Northwest Area. The Northwest Area of the Property includes Buildings OF3a, OF3b and POF3 and shall be developed with (a) a maximum of 547,000 square feet of Office Uses and (b) approximately 40,000 square feet of Community-Serving Retail Uses to be located on the ground floor of Buildings OF3a and OF3b, as more particularly set forth on Sheets 10.0.1 through 10.0.3 of the CDP/FDP. The ground-floor design of the portion of Building OF3b fronting Village Drive and North Street shall include uses, features or characteristics intended to animate the storefront, draw attention to the building and convey a sense of activity for pedestrians, such as large bay windows, awnings, outdoor café/seating or similar treatments, as more particularly defined in Proffer 9C. Each ground-floor tenant in Buildings OF3a and OF3b fronting Village Drive and North Street shall have a separate entrance.
 - a. Target Pad Building. Notwithstanding any other provisions in these Proffers, until such time as the Applicant constructs either Building OF3a in the Northwest Area or the Target expansion at the northern-most end of the Mall Area (as defined in Proffer 5Eiii herein), the Applicant, as an option, may elect to expand or reconstruct the existing one-story building located on Fairfax County Tax Map 90-2 ((13)) Parcel 2 located within the Northwest Area (the "Target Pad Building"). As part of such

expansion/reconstruction, the Applicant may increase the square footage for the Target Pad Building by up to ten percent (10%) above the square footage existing as of the approval date of this Application. The Applicant may establish any Principal or Secondary Use listed in Proffer 6 herein other than dwelling units in the Target Pad Building notwithstanding any limitations on such uses set forth in these Proffers related to maximum square footage devoted to such use on the Property. Except as set forth in this subsection, the Target Pad Building shall have no obligation to comply with the requirements and obligations set forth in these Proffers, but shall comply with applicable provisions of the Zoning Ordinance and the Public Facilities Manual.

6. Uses.

A. Proposed Uses. The Property may include the following Principal and Secondary Uses provided the overall square footage does not exceed the numbers provided in the CDP/FDP or in Proffer 5A above. Uses that are noted as “CSR” qualify as Community-Serving Retail Uses under Proffer 5D. Furthermore, uses permitted under the PDC district not listed in this Proffer may be added with approval of an FDPA.

- Eating establishments (CSR)
- Business service and supply service establishments (CSR)
- Financial institutions (without a drive-through) (CSR)
- Hotel/Motel
- Office
- Personal service establishment, including, but not limited to garment cleaning establishments limited to pick up/drop off service only (CSR)
- Public uses (CSR)
- Repair service establishments (CSR)
- Retail sales establishments (CSR)
- Retail sales establishments-large
- Theatres
- Accessory uses, accessory service uses and home occupations, including business centers inside residential buildings (CSR)

- Affordable dwelling units
- Automated teller machines, located within a multiple family dwelling (CSR)
- Amusement arcades (CSR)
- Fast food restaurants (without a drive-through) (CSR)
- Quick-service food stores (CSR)
- Vehicle rental establishments, other than shared-car providers such as ZipCar and FlexCar, are limited by the provisions of Sect. 9-518 and if on-site storage is desired, subject to a special exception. (CSR)
- Vehicle light service establishments (existing user only)
- Billiard and pool halls (subject to approval of a special permit) (CSR)
- Bowling alleys (CSR)
- Commercial swimming pools, tennis courts and similar courts
- Health clubs (CSR)
- Skating facilities
- Dwellings
- Institutional uses (limited to home child care facilities) (CSR)
- Child care centers and nursery schools, with approval of a Special Exception or an FDPA (CSR)
- Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school of general or special education with approval of a Special Exception or an FDPA (CSR)
- Colleges and universities (limited to locations in Office Buildings and having no dormitories or separate dining facilities)
- Cultural centers, museums and similar facilities (CSR)
- Independent living facilities, with approval of a Special Exception or an FDPA
- Private clubs and public benefit associations (CSR)

- Private schools of general education, with approval of a Special Exception or an FDPA
- Private schools of special education, with approval of a Special Exception or an FDPA
- Quasi-public parks, playgrounds, athletic fields and related facilities
- Vehicle transportation service establishments, limited to bus or shuttle services owned by private or quasi-public entities and primarily serving residents or employers/employees of the Property and the surrounding community, such as a private shuttle service to/from the Franconia/Springfield Metro Station
- Community clubs, centers, meeting halls
- Swimming clubs, and tennis clubs/courts
- Parking, commercial off-street as a principal use
- Commercial, off-street parking in Metro/Transit Station Areas

B. Child Care Center. Prior to issuance of the earlier of the 301st RUP or the Non-RUP representing more than 350,000 square feet of Office Uses on the Property, the Applicant shall file with Fairfax County and diligently pursue approval of a Special Exception application and/or FDPA to establish at least one child care center on the Property. Should such application(s) be approved, then the Applicant shall establish a child care facility on the Property prior to issuance of the earlier of the 501st RUP or the Non-RUP representing more than 500,000 square feet of Office Uses. Should the application(s) not be approved, then the Applicant shall have no further obligation under this Proffer.

- i. The size and enrollment of the child care center shall be determined as part of the approval of the Special Exception and/or FDPA, but in no event shall accommodate fewer than 75 children.
- ii. Marketing of the child care center initially shall be directed toward the employees, tenants and residents of the Property, although enrollment shall not be limited to such persons/children.
- iii. The child care center shall meet the applicable standards in the Zoning Ordinance current at the time of submission of the building plans, including those standards governing outdoor recreation areas.

C. Telecommunications Equipment. New telecommunications equipment may be placed on the rooftops of the Mall or on top of buildings in the Proposed Development; provided, however, that any such facilities must (a) comply with the Zoning Ordinance and (b) be screened, designed 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. Screening measures shall be used such as (a) including the facilities as part of the architecture of the building(s), (b) enclosing the antennas inside of a mechanical penthouse or similar architectural element, and (c) utilizing flush-mounted antennas of colors consistent with the building treatment in the area where the antennas are to be installed. Accessory equipment and facilities shall be located either inside the appurtenant building or within mechanical penthouses so as not to be visible.

7. Community Uses and Facilities

- A. Satellite Police Office. Prior to the issuance of the first RUP or first Non-RUP for the Proposed Development that raises the total development on the Property above 2,006,000 square feet, the Applicant shall provide to the Board of Supervisors at no charge a lease or license in a form acceptable to the County Attorney and having an initial term of at least five (5) years (the "Lease/License") permitting the Fairfax County Police Department to occupy approximately 2,700 square feet within the existing Mall Area for use as a satellite police office ("Satellite Police Office") in which the Police Department may store police bicycles/equipment, conduct limited interviews and perform other select police/community interactions. Alternatively, the Satellite Police Office may be located elsewhere in the Proposed Development upon mutual agreement by the Applicant and the Fairfax County Police Department. The initial term shall commence as agreed to by the Applicant and the Police Department, and the Lease/License shall have a guaranteed option of renewal at no cost by the Police Department for five (5) additional terms of five (5) years each. The exact location of the Satellite Police Office shall be determined by the Applicant in coordination with the Police Department, and a temporary location shall continue to be provided until the permanent space is complete, resulting in the continuation of the existing police presence at the Mall. The form of the Lease/License shall be prepared by the Applicant and submitted to the Fairfax County Attorney for review and approval within sixty (60) days following approval of this Application. In the event that the Police Department notifies the Applicant in writing that it does not intend to lease or occupy the Satellite Police Office, then this Proffer 7A automatically shall expire, and the Applicant thereafter shall be permitted to market and lease the space as part of the existing Mall.
- B. Community Space. Prior to the issuance of the first RUP or first Non-RUP for the Proposed Development that raises the total development on the Property above 2,006,000 square feet, the Applicant shall make available at no cost to the County no less than 2,500 square feet of finished space within the existing Mall Area as community space that can accommodate group meetings and educational activities, such as the Classroom on the Mall. Alternatively, the community space may be located elsewhere in the Proposed Development upon mutual agreement by the Applicant and ZED, in consultation with the office of the Lee District Supervisor. The Applicant shall provide utilities and cleaning services for this space at no cost to the County. The Applicant also shall provide basic office

furniture, including desks, conference table(s) and chairs to accommodate meetings or instructional activities for up to thirty (30) people.

8. Declarations and Owners' Associations.

- A. Umbrella Owners' Association. Prior to the issuance of the first RUP or first Non-RUP for the Proposed Development that raises the total development on the Property above 2,006,000 square feet, the Applicant shall record a declaration and/or establish an Umbrella Owners' Association (the "UOA") for the Property to address the general maintenance and other obligations of the owner(s) (and their successors and assigns), including the fulfillment of these Proffers. Franconia Two LP, or any successor entities that are the owners of the Mall Area, shall be a party to the declaration and a member(s) of the UOA, as applicable. The declaration and/or UOA documents shall separately identify those maintenance or proffer obligations that will or are expected to fall principally on owners or residents of residential buildings and such obligations shall be disclosed to the owners/residents in accordance with the terms of this proffer.
- B. Homeowner and Condominium Owners' Associations. For each residential building or proximate group of buildings in which units are held for sale, the Applicant shall cause either a homeowners' association and/or a condominium owners' association ("HOA/COA") to be formed for that building or group of buildings. Each of these associations shall be members of the declaration and/or UOA.
- C. Commercial Associations. For each non-residential building, rental residential building or proximate group of buildings that are held for sale, the Applicant shall cause a Commercial Association ("CA") to be formed for that building or group of buildings. Each of these associations shall be members of the declaration and/or UOA.
- D. Disclosures. The declaration establishing any HOA/COA/CA on the Property (including budgets provided in any offering or sale materials) shall specify the proffer and maintenance conditions and obligations set forth in these Proffers. Purchasers shall be advised in writing of these proffer conditions and obligations prior to entering into a contract of sale.
- E. UOA Transportation Demand Management ("TDM") Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be advised of the TDM Plan described in Proffer 19. All HOA/COA/CA members shall be informed of any funding obligations for the TDM program prior to entering into a contract of sale, and all such obligations shall be included in the HOA/COA/CA documents.

BUILDING ARCHITECTURE

- 9. Architecture. Prior to the submission of building permit applications for each new building or addition to an existing building in the Proposed Development, except for any

building for which a site plan or building permit has been submitted prior to the approval date of this Application but including any relocated uses/buildings pursuant to Proffer 3, the Applicant shall submit the proposed building architecture and materials to the Planning Commission for administrative review. Such submissions shall comply with the following provisions.

- A. Elevations. The general architectural design of the Proposed Development is shown on Sheets 11.1 through 11.5 of the CDP/FDP (the "Building Elevations"). The Building Elevations are conceptual in nature and may be modified by the Applicant as part of final engineering and building design, provided that such modifications provide a similar quality of design as that shown on the Building Elevations and that are typically used on the exterior of Class A office buildings and residential and hotel buildings of a similar quality. Building materials for the Proposed Development, as generally reflected on the Building Elevations, shall be selected from among the following: siding (to be used only on the interior side of the Residential Buildings where it is not visible to the perimeter streets, such as in the courtyards), brick, hardi-plank, masonry/stone, Exterior Insulation Finish Systems (EIFS), aluminum trim, glass, steel, split-face block and pre-cast panels, provided that final architectural details and accents may include other materials. Bay windows, balconies, awnings, storefronts and other architectural details may be provided so long as (i) such features do not extend more than eight (8) feet beyond the building footprints shown on the CDP/FDP, (ii) such features comply with the noise attenuation standards set forth in Proffer 11, and (iii) the required streetscape features and dimensions are maintained.
- B. Garage Facades. Those portions of new or expanded above-grade parking structures that front perimeter or internal streets other than East Street and Mall Road, but including the west façade of Building P2, shall incorporate architectural features or façade elements to help break up the mass and bulk of the parking structures, as well as provide a pedestrian sense of scale. Examples of the façade treatments to be provided under this Proffer are listed on Sheet 3.5 of the CDP/FDP. The Applicant shall be permitted to vary the façade treatments among each of the parking structures to match the architectural style of the buildings each serves, provided that the character and quality of treatments are comparable across the Property. Completion of the façade improvements may be phased to coincide with construction/modification of each parking garage to which this Proffer applies.
- C. Animated Facades and Entry Locations. The Applicant shall provide animated façade areas throughout the Property as represented by the facades shown on Sheet 11.1 of the CDP/FDP ("Animated Façade Areas"). Ground-floor Community-Serving Retail Uses with frontage on internal private streets or located in buildings with multi-tenant spaces each shall have functioning entry doors separated by a distance of not more than sixty (60) feet on-center, unless a greater separation is needed to accommodate larger tenant spaces as may be permitted by the Zoning Administrator. Should the operational requirements of a larger tenant not accommodate multiple entries within a maximum spacing of sixty (60) feet on the west façade of the Mall Area along Village Drive opposite

Buildings M2 and RT1, then the Applicant shall treat such façade with architectural elements designed to break up the expanse of a single-tenant space, including, for example, the use of display windows spaced no more than 20-feet apart and of a size no smaller in area than sixty (60) square feet.

- i. Glazing Requirements and Transparency Levels. All new ground-level Community-Serving Retail Uses with openings directly onto the street (other than the Mall Area) shall incorporate materials such as glazed windows and doors to permit pedestrians or passersby to visibly see into the tenant space. The Applicant may, however, use tenant displays, window lettering, signage, trim materials, or other similar features in the windows that reduce the overall transparency of the facades, provided that such features otherwise comply with the Zoning Ordinance and some level of transparency is still provided.
- ii. Macy's Entry Plaza. Concurrent with the Applicant's reconstruction of Frontier Drive adjacent to Macy's (as described in Proffer 17Fvi), the Applicant shall construct the new Macy's Entry Plaza to provide street-level access to Macy's from Frontier Drive, as illustrated on Sheet 5.2.1 of the CDP/FDP. If approved by FCDOT in coordination with VDOT, the Applicant shall provide crosswalks across Frontier Drive and to the Southeast Park as part of such improvements.

D. Loading Space Screening. In order to address the visual impacts of loading spaces in the Proposed Development and to reduce conflicts between pedestrians and loading trucks, the Applicant shall, to the extent possible, incorporate features or materials, such as truck enclosures, roll-up doors, berms, landscaping and/or screening walls, to screen loading spaces within the Proposed Development and shown on the CDP/FDP that are or may be visible to pedestrians. Such features shall be designed to be attractive and to blend harmoniously with the architecture of the building(s) they serve. The Applicant shall identify the screening features and techniques to be used for each building as part of the architectural materials submitted to ZED and the Lee District Planning Commissioner and Supervisor in accordance with this Proffer.

E. Building Heights. Building heights for each building in the Proposed Development shall not exceed the maximum building heights shown on Sheet 1.2 of the CDP/FDP. Building height shall be measured in accordance with the provisions of the Fairfax County Zoning Ordinance and shall be exclusive of those structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Zoning Ordinance, including, for example, penthouses and other rooftop structures used for common amenity space, exercise rooms, meeting rooms and similar facilities. Such penthouses and other rooftop structures permitted under Section 2-506 of the Zoning Ordinance may be constructed to a height 25 feet from the roof level of the top floor of the building below to the top of the penthouse/rooftop structure roof, provided such structure otherwise complies with Section 2-506. All building penthouses/rooftop

structures shall be integrated into the architecture of the residential building below. Notwithstanding the foregoing, however, nothing shall preclude the Applicant from constructing buildings to a lesser building height than that shown on the CDP/FDP, provided (i) building heights retain the urban character depicted on the CDP/FDP, (ii) the configuration of the building footprints remain in substantial conformance with those shown on the CDP/FDP (or as approved with an FDPA) and (iii) the minimum number of Residential Units and minimum square footage of Office and Community-Serving/Retail uses are provided.

- i. Elder Avenue Proffer. No portion of any building or parking structure that wholly or partly fronts Frontier Drive (such as, but not limited to, the Mall Area and Buildings RT2, RT3, M4, R1 and M3), including all penthouses or amenity spaces, shall protrude above a 14-degree line of sight as measured from a point perpendicular to such buildings along the eastern edge of the Elder Avenue right-of-way (east of the Property and across Frontier Drive) using a line of sight beginning five feet above grade, as depicted on Sheet 3.7 of the CDP/FDP. Concurrent with its submission of the initial building permit for any building to which this Proffer applies, the Applicant shall submit an exhibit to DPWES demonstrating such building's compliance with the restrictions of this Proffer.

LIGHTING

10. Lighting. All on-site, outdoor and parking garage lighting provided with the Proposed Development shall comply with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. All proposed parking lot and building mounted security lighting shall utilize full cut-off fixtures.

- A. Parking Structure/Lot Lighting. Light poles in new surface parking lots and on the top level of proposed above-grade parking structures, as well as building-mounted security lighting, shall all use shielded cut-off fixtures and be directed inward and downward such that the lamp surface is not directly visible to adjacent properties. New above-grade parking structures that will be built as part of the Proposed Development and that have exposed frontage along Spring Mall Road, Frontier Drive and Loisdale Road shall be constructed with solid vertical perimeter walls, not less than 32 inches in height, for the purpose of blocking headlights from shining into adjacent residences.
- B. Construction Lighting. During construction of the Proposed Development, the Applicant shall reduce glare from OSHA, VOSHA, VUSBA and local ordinance-required superstructure lighting to the extent possible without violating the aforementioned laws, regulations or policies. The Applicant shall present measures such as cut-off shields, lower intensity or lower number of light bulbs, dimming or extinguishing lighting after operating hours of the existing Mall Area to appropriate construction inspectors for their consideration and will be implemented by the Applicant if approved. Additionally, during construction, the Applicant shall direct its contractor(s) to erect opaque coverings over windows

that face Spring Mall Road or windows that face the adjacent Springfield Hilton or the adjacent Sunrise Assisted Living Facility if such windows are illuminated after 10 p.m.

NOISE ATTENUATION

11. Noise Attenuation. The Applicant has submitted to the County an Environmental Noise Measurement and Noise Impact Assessment for the Springfield Town Center dated September 10, 2008, prepared by Miller, Beam & Paganelli, Inc. (the "Noise Study"), detailing the projected noise impacts on the Proposed Development and proposed mitigation techniques.

- A. Revised Noise Study. In addition to the Noise Study listed above, concurrent with the initial submission of a site plan for each building in the Proposed Development that the Noise Study determined may be impacted by noise in excess of 65 dBA Ldn, the Applicant shall submit a detailed noise study specifically addressing the noise impacts for the building(s) shown on such site plan (the "Revised Noise Study"). The Revised Noise Study shall be conducted in accordance with requirements established by DPZ and shall be submitted to DPZ and DPWES for review and approval. The Revised Noise Study shall include projected noise levels in the Residential Units, Hotel Rooms and outdoor recreation areas shown on the submitted site plan based on the proposed final site topography and conditions as shown on the site plan (rather than existing topography/conditions). A copy of the approved Revised Noise Study shall be included with the submission of the building permit applications for each affected building and shall identify the noise-affected spaces and the noise attenuation measures, including materials, to be provided to ensure that each such affected occupied space meets the standards outlined below.
- B. Acceptable Noise Levels within Residential Units and Hotel Rooms. The Applicant shall provide noise attenuation measures in order to reduce interior noise in all Residential Units and Hotel Rooms to 45 dBA Ldn or less.
- i. Above 75 dBA Ldn. No Residential Unit or Hotel Room (or portion thereof, such as outdoor balconies) may be established in areas projected to be impacted by noise levels greater than 75 dBA Ldn.
- ii. 70 dBA Ldn to 75 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Residential Units and Hotel Rooms that are projected to be impacted by noise greater than 70 dBA Ldn (but not more than 75 dBA Ldn) the Applicant shall construct such units using the following acoustical measures:
- a. Exterior walls shall have a laboratory STC rating of at least 45;
- b. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 70 dBA or above;

- c. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 45; and
 - d. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (“ASTM”) to minimize sound transmission.
- iii. 65 dBA Ldn to 70 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Residential Units that are projected to be impacted by noise projected greater than 65 dBA Ldn (but not more than 70 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:
 - a. Exterior walls shall have a laboratory sound transmission class (“STC”) rating of at least 39;
 - b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 70 dBA or above;
 - c. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 39; and
 - d. 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.
- iv. Sample of Residential Unit Noise Impacts. To measure the actual effectiveness of the Applicant’s noise mitigation efforts, the Applicant shall conduct a sample noise measurement from the interiors of at least five (5) finished Residential Units on different residential floors (or, if on the same floor, at a reasonable distance apart) within each Residential Building that is projected by the Revised Noise Study to be noise impacted (the “Noise Tests”). The results of each Noise Test shall be certified by the Applicant (or its noise consultant, as applicable) and submitted to ZED no later than fifteen (15) days prior to the Applicant’s request for the issuance of the first RUP for a noise-impacted Residential Building. In the event one or more of the tested units in the Noise Tests does not meet the standards set forth in the Proffer, then the Applicant shall be required to test an additional five (5) Residential Units in the same building as determined by ZED to see if the excessive noise issues are isolated to a particular unit or group of units in such building. Thereafter, the Applicant shall develop and implement recommendations, as approved by ZED, to remedy the excessive noise in the affected units. Should the Applicant be unable to remedy the excessive noise, then the affected Residential Units may not be occupied for such purpose and, instead, may

be used for other purposes not inconsistent with these Proffers, such as for resident amenity space or storage.

- C. Noise Levels at Outdoor Recreation Facilities. The Applicant shall provide noise attenuation measures as shown on the CDP/FDP as necessary to ensure that traffic-related noise in the outdoor recreation areas identified on Sheet 3.2.2 of the CDP/FDP, including Building M4, do not exceed 65 dBA Ldn. Adjustments to the noise attenuation measures that are in substantial conformance with those indicated on the CDP/FDP may be permitted subject to the approval of ZED to ensure that the noise attenuation measures provide the necessary noise attenuation.
- D. Noise Contours on Site Plans and Building Permits. All site plans, building permit applications and building plans submitted to the County for a Residential Building shall indicate whether such building is required to include noise attenuation measures and, if so, the type of attenuation measure to be implemented. Building and site plans for each unit that is subject to noise mitigation as provided herein shall depict the final noise contours as determined by the Noise Study.

PARKING

12. Parking.

- A. Zoning Ordinance Requirements. Parking shall be provided in accordance with the parking requirements of Article 11 of the Fairfax County Zoning Ordinance, as determined by DPWES, for the uses within the Proposed Development. The Applicant reserves the right, however, to provide parking spaces in addition to the total number of parking spaces shown on Sheet 1.2 of the CDP/FDP if (a) such additional spaces result from the final design of the parking structures to avoid partial garage floors; or (b) to the extent necessary to accommodate uses established on the Property that result in a higher parking requirement than is shown on the CDP/FDP (e.g., eating establishments), provided that (i) the Building and Garage Heights as set forth on Sheet 1.2 of the CDP/FDP and in Proffer 9E are not exceeded and (ii) the building footprints for each building as shown on the CDP/FDP do not increase.
- B. Parallel Parking Spaces Along Private Streets. The Applicant shall establish parallel surface parking spaces along the internal private streets of the Property. The Applicant reserves the right to restrict the use, through appropriate signage or such other means as the Applicant determines, of those Parallel Spaces that otherwise are not required to satisfy the minimum parking requirements of the Proposed Development for use as a (a) Kiss-and-Ride loading/unloading area or (b) temporary loading areas for short-term deliveries, such as single-package delivery trucks (UPS, Fed-Ex, etc.), flowers, restaurant deliveries, etc., or for programmed events in the Center Plaza area (as defined in Proffer 28). Such signage shall comply with applicable Zoning Ordinance standards unless

otherwise approved by the Planning Commission as part of a future Comprehensive Sign Plan.

C. Future Parking Reductions.

i. Parking Reduction. Given (a) the Property's proximity to the Franconia-Springfield Metro Station, (b) the existence of the regional TAGS and Fairfax Connector bus service at the Property, (c) the character of the Proposed Development as a mixed-use, urban development, and (d) the TDM Plan detailed in Proffer 19, the Applicant shall in good faith evaluate and pursue one or more shared parking agreements and/or parking reductions for the Proposed Development, as may be permitted by Article 11 of the Fairfax County Zoning Ordinance and approved by the Board of Supervisors. An initial proposal for reduced or shared parking shall be submitted to the Board of Supervisors as part of site plan approval for the first Office Building to be constructed on the Property. The initial reduced/shared parking proposal shall evaluate and include as much of the Proposed Development as the Applicant reasonably estimates can be addressed at that point in its development program. Should the Board of Supervisors approve the Applicant's shared/reduced parking proposal, then the Applicant shall implement such approval. At least once every five (5) years following the Board of Supervisors' approval of the Applicant's initial shared/reduced parking proposal, the Applicant shall provide a written evaluation to ZED of whether additional parking reductions/modifications may be achieved and, if so, shall diligently pursue such reductions/modifications through appropriate applications to the Board of Supervisors.

ii. Board-Initiated Change in Required Parking through Zoning Ordinance Amendment. In the event the Fairfax County Board of Supervisors modifies the provisions of Article 11 to reduce the parking requirements for some or all of the uses within the Proposed Development, the Applicant may elect to select and implement the lesser of the two parking requirements, and any such election automatically shall be deemed in substantial conformance with these Proffers and the CDP/FDP.

D. Location of Shared Car Parking. In furtherance of Proffer 19Cx, the Applicant shall provide a minimum of ten (10) parking spaces for use by shared car services (the "Shared Car Spaces"), such as the current ZipCar program. Locations of the Shared Car Spaces shall be distributed across the Property, with at least one (1) such space provided in each Land Area. The Applicant shall locate the Shared Car Spaces in structured parking facilities or in surface parking lots, but not in the Parallel Spaces located on internal streets of the Proposed Development.

E. Parking for Transit Users. Subject to the conditions set forth in this Proffer, the Applicant shall maintain the existing agreement or execute a new agreement with Fairfax County to permit transit commuter parking on the Property on terms

mutually agreeable to the Applicant and the County (the "Transit Parking Agreement"). At a minimum, the Transit Parking Agreement shall incorporate the following elements:

- i. The Transit Parking Agreement's spaces shall be located in Building P2 unless otherwise agreed to by the Applicant and County;
- ii. The Applicant may, upon sixty (60) days written notice to FCDOT (with copies to ZED and the Office of the Lee District Supervisor), terminate the Transit Parking Agreement at such time as it determines necessary to accommodate the parking requirements of the Proposed Development, as well as when it elects to proceed with development of Buildings R1 or M3, which development would require structural modifications to Building P2 and result in a decrease in the available parking, provided that the Applicant provides the Lee District Supervisor two (2) months notice of the termination; and
- iii. The Applicant may elect to institute "pay to park" regulations in Building P2 at any time, including the Transit Parking Agreement Spaces, as market conditions permit or as a means of further regulating the number of parking spaces used for commuter parking. In the event the Applicant elects to institute paid parking pursuant to this Proffer, then the Applicant shall not be permitted to charge the County for use of the Transit Parking Agreement's spaces and shall execute any amendments to the Transit Parking Agreement as may be needed to eliminate such payment by the County.

F. Parking Management Plan. Prior to site plan approval for the building representing more than 2,006,000 square feet of development on the Property, the Applicant shall develop and have approved by FCDOT a parking management plan to properly direct office tenants, residents, visitors and retail patrons to the appropriate parking facilities for each building or use in the Proposed Development (the "Parking Plan"). The initial Parking Plan shall address the portion of the Proposed Development then-existing plus the building(s) to which the site plan applies. Thereafter, as necessary, the Applicant shall propose one or more amendments to the Parking Plan as additional portions of the Proposed Development are implemented. The Parking Plan may include, but need not be limited to, the following strategies and facilities:

- i. An on-site and offsite directional signage program that directs office tenants, residents, visitors and retail patrons to the appropriate parking facilities serving each use;
- ii. Parking attendants and/or valets;
- iii. Separation of residential, visitor and retail parking within structured parking facilities to properly segregate parking for each use;

- iv. Use of paid or gate-controlled parking. For example, retail patrons parking in retail spaces may be charged an hourly or daily fee to park while visiting retail services, while residents and visitors of Residential Units served by the same parking structure would not be subject to such hourly or daily fee;
 - v. Parking meters on internal private streets; and
 - vi. Variable Message Boards or similar technology located within or serving a parking structure to direct patrons to the location of vacant parking spaces; provided, however, that no such signs shall be affixed to the exterior of the buildings.
- G. Construction Parking. The Applicant shall develop, in consultation with its general contractor, a parking management policy for construction workers hired to construct any building on the Property that raises the total development on the Property above 2,006,000 square feet (the "Construction Parking Plan"). As part of the Construction Parking Plan, the Applicant shall identify locations on or off the Property where construction workers are permitted and forbidden to park given the building(s) that are under construction. The Applicant shall include provisions in its construction contracts and a requirement for similar provisions in all subcontracts requiring all construction workers to adhere to the Construction Parking Plan. The Applicant also shall erect signage on the Property in both English and Spanish that lists the permitted parking areas and prohibits parking by construction workers outside the designated areas.

SIGNAGE

13. Signage. Signage for the Proposed Development shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance or, as discussed in this Proffer below and if approved by the Planning Commission, pursuant to a Comprehensive Sign Plan. If lighted, signage may be internally lighted, halo-lighted, neon or lighted via downward-directed lights and shall conform to the standards of Part 9 of Article 14 of the Zoning Ordinance concerning outdoor lighting. No signs or other amenities shall be located in or near public rights-of-way such that they obstruct sight distances at intersections of the Property with public streets.

- A. Comprehensive Sign Plan. Prior to site plan approval for the building representing more than 2,006,000 square feet of development on the Property, the Applicant shall submit an application to the County for and diligently pursue approval of a Comprehensive Sign Plan for the Property that provides for a coordinated signage system, including wayfinding signs (including those for sidewalks/trails), to promote a uniform theme, color palette and design of signage throughout the Proposed Development. The Applicant's Comprehensive Sign Plan shall incorporate elements, including directional signage to offsite facilities (e.g. the Metro Station), of any signage program adopted or implemented for the Franconia-Springfield Transit Station Area ("FSTSA") and/or the Springfield Commercial Revitalization District ("SCRD"). If approved by the Planning

Commission, the Comprehensive Sign Plan shall govern all signage erected on the Property.

LANDSCAPING

14. Landscape Plan. The Applicant shall implement the landscape design for the Proposed Development shown on Sheet 3.3.1 of the CDP/FDP (the "Overall Landscape Plan"), which illustrates the plantings and other features to be provided with the Proposed Development, including streetscapes, plazas and parks. The Overall Landscape Plan is conceptual in nature and may be modified by the Applicant as part of final engineering and building design for each Land Area or as part of the SWM Plan, as defined in Proffer 16, provided that such modifications provide a similar quality of landscaping as that shown on the Overall Landscape Plan and the CDP/FDP, as determined by Urban Forest Management Division of DPWES ("UFM").

- A. Native Species. The Applicant shall use principally native species throughout the Proposed Development, provided that the Applicant reserves the right, in consultation with and approved by UFM, to modify as part of site plan approval for each building(s) or Land Area the exact species to be used, such as where some plant materials are not available or have been deemed by UFM to no longer be appropriate.
- B. Site Plan. As part of the initial site plan submission for each building(s) in the Proposed Development that exceeds 2,006,000 square feet of development on the Property, the Applicant shall submit to UFM for review and approval a detailed landscape and tree cover plan (the "Landscape Plan") for such building(s), which shall include, among other things:
 - i. Irrigation information;
 - ii. Design details for tree wells or grates and other similar planting areas above structures and along streets;
 - iii. Composition of the planting materials and/or structural soils used for street trees or where plantings are to be located within or on top of structures and other methods to be used to ensure the viability of the proposed plantings;
 - iv. Information demonstrating that the Landscape Plans are consistent with and are part of implementation of the SWM Plan defined in Proffer 16; and
 - v. Other information that may be requested by UFM.
- C. Planting Quality. Each Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on the Overall Landscape Plan and Sheets 3.3.2 through 3.3.5 of the CDP/FDP and may include the use of additional shade trees and other plant materials as determined by the Applicant. The Applicant may adjust the type and location of vegetation and the design of the public spaces, courtyard areas and streetscape improvements and plantings as

approved by ZED and UFM, provided such adjustments otherwise are in substantial conformance with the CDP/FDP.

- D. Planting Strips. The Applicant shall install street trees consistent with the Streetscape plans included on Sheets 3.3.3 and 3.3.4 of the CDP/FDP. For trees not planted within an 8-foot wide minimum planting area, or that do not meet the minimum planting area required by the PFM, the Applicant shall provide a minimum of 130 square feet of structural soil for Category 4 shade trees and 90 square feet of structural soil for Category 3 shade trees, for such trees as identified in the PFM. The structural soil shall have a minimum width of 8-feet and a minimum depth of 36-inches and the plantings shall be done to be consistent with the arrangements and grates shown on Sheet 3.3.5 of the CDP/FDP. Such planting areas shall be interconnected to the extent feasible, as determined by UFM. As part of the submission of each site plan that includes streets trees for which structural soils are proposed, the Applicant shall provide written documentation to UFM that the structural soils or structural cells selected by the Applicant have been shown through research to effectively increase the survivability of trees in environments where soil volume and the available rooting area is reduced by restrictive barriers such as paving, curbs and compacted earth. The Applicant shall provide notice to UFM no less than 72 hours prior to the Applicant's installation of the structural soils or structural cells to permit UFM to verify the proposed composition and mix of the structural soils or structural cells. At such time, the Applicant also shall provide UFM written documentation that the structural soils or structural cells were produced by a licensed company. Following installation of the structural soils and no later than final bond release for the site plan on which the use of structural soils is proposed, the Applicant shall provide written documentation, including written confirmation from a certified arborist and/or landscape architect verifying installation of the structural soil or structural cells consistent with the requirements of this Proffer by a licensed contractor.
- E. Parking Garage Plantings. The Applicant reserves the right to request a waiver of the requirements for interior parking lot landscaping on the top decks of above-grade structured parking facilities existing as of the date of this Application, as well as on the top decks of new or expanded parking structures, in favor of the landscaping shown on the Overall Landscape Plan and detailed Landscape Plans.
- F. Open Space Designs. As part of final engineering and design and subject to review and approval by ZED, the Applicant may elect to modify the designs of the various open space areas from the designs shown on Sheets 3.2.1 of the CDP/FDP, provided that such modifications offer a similar quality of design and quantity of plantings and materials as those shown on the CDP/FDP. The Applicant shall incorporate into the design of one (1) or more open space areas on the Property public art to be selected by the Applicant in consultation with representatives of the arts community of the greater Springfield area (as recommended by the Lee District Supervisor) and maintained by the Applicant.

The public art shall be installed prior to final bond release for the portion of the Proposed Development in which it is located.

15. Streetscaping. The Applicant shall establish a hierarchy of streets and streetscapes within the Proposed Development consistent with the locations and sidewalk types shown on Sheet 3.1 of the CDP/FDP (collectively, the "Streetscape"). The Applicant shall phase installation of the Streetscape with the development of each (a) adjacent building and/or (b) adjacent road as indicated on Sheets 13.0.1 through 13.0.18 of the CDP/FDP, including the establishment, where indicated on the CDP/FDP, of interim Streetscape improvements at various locations throughout the Property in order to facilitate pedestrian connections through the Property prior to full development of individual Land Areas. Notwithstanding the foregoing, and subject to approval by ZED, the Applicant may make minor modifications to the Streetscape, including shifting the locations of street trees, to accommodate final architectural designs, parallel street parking, sight distance concerns and utilities, as well as to facilitate elements such as outdoor cafes, entry doors and facilities/structures in the Proposed Development, provided that such changes are in substantial conformance with these Proffers and the CDP/FDP.

- A. Streetscapes Adopted into the Comprehensive Plan. Following approval of this Application, should streetscaping guidelines applicable to the public rights-of-way abutting the Property be incorporated into the County's Comprehensive Plan, the Applicant may elect to revise its Streetscape, as applicable, to incorporate the streetscaping guidelines of the Comprehensive Plan into the Proposed Development, provided that such guidelines (i) are more stringent than the streetscape elements provided with this Application, and (ii) do not reduce the amount of landscaping provided on the Property.

STORMWATER MANAGEMENT

16. Stormwater Management Facilities. As of the date of these Proffers, stormwater runoff from the Property, including the existing Mall, is piped under the Franconia-Springfield Parkway to two offsite detention ponds constructed pursuant to Site Plan #5869-SP-02 and located on property owned by the Washington Metropolitan Area Transit Agency ("WMATA") (the "Existing Ponds") as indicated on Sheet A.1 of the CDP/FDP. The Existing Ponds provide both water quantity and water quality benefits to the Property. Notwithstanding the foregoing, concurrent with the submission and approval of the first site plan for the Proposed Development that raises the total development on the Property above 2,006,000 square feet, the Applicant shall submit to and obtain approval from DPWES of a Stormwater Plan for the Proposed Development (the "Stormwater Plan") consistent with the requirements of this Proffer. The Stormwater Plan shall provide onsite strategies designed to improve both water quality and water quantity management prior to the conveyance of storm runoff into the Existing Ponds. Following approval by DPWES of the initial Stormwater Plan, the Applicant thereafter shall submit an updated Stormwater Plan to DPWES for approval concurrent with each subsequent site plan submission for the Proposed Development. These updated plans shall include any modifications to the stormwater detention or stormwater quality treatment program since the initial approval of the Stormwater Plan. The Applicant shall implement the Stormwater Plan (and each subsequent revisions thereto) concurrent with its construction of the Proposed Development. Any underground stormwater detention vaults incorporated as part of the Stormwater Plan shall be

located only within or under nonresidential buildings in accordance with the Public Facilities Manual (“PFM”). In the event the Applicant determines that an underground stormwater detention vault must be located within or under a residential building(s), which requires a waiver of the PFM standards, then the Applicant shall secure a PCA to permit such facility.

- A. Stormwater Quantity Goals. The Stormwater Plan shall demonstrate that there is a net reduction in the combined peak rate of stormwater discharge from the Property of ten percent (10%), which net reduction shall be based on a comparison of the conditions of the Property as developed as of the date of these Proffers and the conditions of the Property upon completion of the Proposed Development. Compliance with this requirement shall be based on the sum of all stormwater discharge coming from the Property as a whole upon completion of the Proposed Development, not as a reduction at each individual discharge location on the Property (meaning that the discharge at individual locations may vary, so long as the overall reduction goal is achieved).

- B. Best Management Practices. The Applicant shall, as part of the Stormwater Plan, incorporate low impact development (“LID”) techniques and other Best Management Practices (“BMP”) into the Proposed Development in order to improve water quality for stormwater runoff from the Property. Using the facilities and techniques listed on Sheet 12.1 of the CDP/FDP, the Stormwater Plan shall demonstrate that, after the full build-out of the Proposed Development, there is a ten percent (10%) reduction of the phosphorous loading from the Property based on a comparison of the conditions of the Property as developed as of the date of these Proffers and the conditions of the Property upon completion of the Proposed Development. The Applicant also shall consider using, where practical and feasible, facilities or techniques that permit or promote infiltration of storm runoff into the soil in lieu of draining offsite into the regional facilities. In the event that either the Applicant or DPWES deems it necessary to substitute another LID strategy for one of those listed on the Sheet 12.1 of the CDP/FDP, the Applicant shall identify an alternate strategy acceptable to both parties and, if necessary, will seek administrative approval from the Zoning Administrator pursuant to the provisions of Sect. 16-403 of the Zoning Ordinance.

- C. Maintenance Responsibility.
 - i. Regular Maintenance. Prior to initial site plan approval for the Proposed Development, the Applicant shall execute, if not previously executed and existing, a stormwater maintenance agreement with the County in a form satisfactory to the County Attorney (the “SWM Agreement”) providing for the perpetual maintenance of all of the elements of the Stormwater Plan, including the BMP and LID devices and underground detention facilities (collectively, the “SWM Facilities”). The SWM Agreement shall require the Applicant (or a successor UOA/HOA/COA/CA) to contract with one or more maintenance/management companies to perform regular routine maintenance of the SWM Facilities and to provide a maintenance and equipment condition report annually to the Fairfax County

Maintenance and Stormwater Management Division of DPWES. As necessary and appropriate, the SWM Agreement shall designate which associations among the UOA/HOA/COA/CA shall have principal maintenance responsibilities for the SWM Facilities, in whole or in part, and the association documents creating such association(s) shall document those specific responsibilities.

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

TRANSPORTATION

17. Transportation Improvements. The Applicant shall make the following transportation improvements as part of the Proposed Development.

- A. Onsite Dedication. Prior to site plan approval for the building that triggers the completion of any transportation improvements set forth in this Proffer 17, or upon demand by the County, whichever is sooner, the Applicant shall dedicate in fee simple to the Board of Supervisors the right-of-way required for such improvements, plus all necessary and ancillary grading and temporary construction easements, in the general locations shown on Sheet 3.6.3 of the CDP/FDP.
 - i. Upon demonstration by the Applicant that, despite diligent efforts or as a result of factors beyond the Applicant's control, the required dedications or improvements are delayed—such as the inability to secure necessary permission for utility relocations or VDOT approval for traffic signals—beyond first site plan approval, the ZED may agree to a later date for dedication/completion of the improvement(s).

- B. Acquisition of Offsite Right-of-Way. Because several of the public improvements set forth below require the use of property outside the public right-of-way and/or property other than that owned by the Applicant and included in the application Property, such as improved pedestrian connections to the Franconia-Springfield Metro Station, and the respective widening of Loisdale Road and Franconia Road, these improvements may only be completed through acquisition of needed right-of-way. This proffer shall govern the procedure for acquiring such offsite right-of-way.
 - i. Dedication. The Applicant shall attempt to acquire and, if successful, shall dedicate in fee simple to the Board of Supervisors such off-site right-of-way and easements as are necessary to complete the improvements described herein and shown on Sheets 3.6.1 and 3.6.2 of the CDP/FDP.

The Applicant shall use its good faith efforts and offer a reasonable fair market value for such rights-of-way and easements.

- ii. Condemnation. If the Applicant is unable to bring about the dedication by others of the necessary rights-of-way and easements, or to acquire by purchase the rights-of-way or easements at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, then the Applicant shall request the Board of Supervisors to condemn the necessary land and/or easements. It is understood that the Applicant's request to the Board of Supervisors for condemnation will not be considered until it is forwarded in writing to the Division of Land Acquisition or other appropriate County official, accompanied by (a) plans, plats and profiles showing the necessary right-of-way or grading easements to be acquired, including all associated easements and details of the proposed transportation improvements to be located on said right-of-way property; (b) an independent appraisal of the value of the right-of-way property to be acquired and of all damages to the residue of the affected property; (c) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (d) a letter of credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by the County. The public improvement plans shall be submitted to FCDOT concurrent with the Applicant's submission of such plans to DPWES. It is also understood that in the event the property owner of the property to be acquired is awarded more than the appraised value of the property in damages to the residue in a condemnation suit, the amount of the award in excess of the letter of credit amount shall be paid to the County by the Applicant within forty-five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within sixty (60) days of written demand.
- iii. Contribution in Lieu of Construction. In the event the offsite right-of-way and/or easements required for any of the transportation improvements listed in this Proffer 17 and delineated on the CDP/FDP cannot be acquired voluntarily, and the Board of Supervisors elects not to exercise its right of eminent domain, then the Applicant shall, prior to the issuance of the first building permit for the building that triggers the completion of the subject improvement, escrow funds with DPWES in an amount equal to the cost of completing such improvement, including but not limited to the cost of right-of-way acquisition in accordance with these Proffers and utility relocation, as determined by DPWES for use by the Board of Supervisors and/or VDOT to complete such improvement in the future. The Applicant thereafter shall be relieved of its obligation to complete the proffered improvement.

C. Access Improvements to Metro Station.

- i. Metro Improvements. Pursuant to the timing set forth in sub-paragraph (ii) immediately below, the Applicant shall complete the following improvements to enhance pedestrian, bicycle and vehicular access from the Property to the Franconia-Springfield Metro Station (the “Metro Improvements”):
- a. Rebuild Frontier Drive northbound and southbound between Spring Mall Road and the Metro Station as generally shown on Sheets 13.1.4 through 13.1.7 of the CDP/FDP, including installation of (i) five foot (5’) bike lanes (or four feet (4’) when adjacent to a curb and gutter) in each direction, (ii) eight foot (8’) sidewalks, and (iii) street trees.
 - b. Remove the island channelizing the southbound right-turn movement from Frontier Drive onto westbound Franconia-Springfield Parkway, to create dual right turn lanes as shown on Sheet 13.1.4. As part of such improvement, the Applicant shall modify the existing traffic signal, including upgrading the pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or approved by VDOT) and repainting the crosswalk to be at least ten feet (10’) in width. As part of site plan or public improvement plan (“PIP”) approval for this improvement, the Applicant shall coordinate with VDOT and FCDOT to design the median, islands and curbs to physically reinforce the required turning movements from the westbound off-ramp of the Franconia-Springfield Parkway at its intersection with Frontier Drive and deter pedestrian and vehicle conflicts. The Applicant shall construct such features as part of its intersection improvements.
 - c. Construct dual left turn lanes from northbound Frontier Drive onto westbound Spring Mall Road, including a pedestrian refuge in the Frontier Drive median of at least four feet (4’) in width as shown on Sheet 13.1.4. As part of such improvement, the Applicant shall modify the existing traffic signal including upgrading the pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or approved by VDOT) and repainting the crosswalk to be ten feet (10’) in width.
 - d. Install a pedestrian refuge island at Frontier Drive and the Franconia-Springfield Parkway eastbound exit as shown on Sheet 13.1.4. As part of such improvement, the Applicant shall modify the existing traffic signal including upgrading the pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or approved by VDOT) and repainting the crosswalk to be ten feet (10’) in width.

- e. Install, as approved by VDOT, new signage and lighting under the Franconia-Springfield Parkway to assist pedestrians accessing the Metro Station.
 - f. Construct Phase 1 of the "Southeast Park" located in the Southeast Area to enhance the pedestrian experience of persons walking between the Property and the nearby Metro Station, as more particularly shown on Sheets 13.1.10 and 13.1.11 of the CDP/FDP. Phase 1 of the Southeast Park shall include street trees, additional plantings and hardscape areas. The Southeast Park shall remain open for use during construction of the Pedestrian Promenade, as described in Proffer 17D below.
 - g. Provide striping through Building P2 to establish a dedicated pedestrian pathway of eight feet (8') in width leading from the east side of the parking structure along Frontier Drive (at elevation 225') to the Mall Area as shown on Sheets 13.1.8 and 13.1.9 of the CDP/FDP. The pathway shall be designed to minimize pedestrian and vehicular conflicts and shall include directional signage, bollards and overhead lighting to further define the pedestrian connection through the garage. This pathway shall remain in place until the Pedestrian Promenade, as described in Proffer 17D below, is completed and opened for use.
 - h. Improve the pedestrian connection on the west side of P2 by providing sidewalks and crosswalks to create a safe pedestrian passage from Arch Street to the Mall Area as shown on Sheets 13.1.16 and 13.1.17.
- ii. Schedule for Completion of Metro Improvements. The Applicant shall complete the Metro Improvements in accordance with the following schedule:
- a. The Applicant shall submit one or more site plan(s) to Fairfax County for the Metro Improvements no later than six (6) months following the approval date of this Application.
 - b. The Applicant shall diligently pursue approval of the site plan(s) for the Metro Improvements, including the dedication and acquisition of required right-of-way and ancillary easements.
 - c. The Applicant shall commence construction of the Metro Improvements prior to the issuance of a Non-RUP representing more than 80% of the gross floor area associated with the Applicant renovations of the existing Mall Area (Minor Site Plan 7463-MSPV-001-A-1 and Building Permits #80660209 and #82540152), as defined in Proffer 5Ei. For purposes of this

Proffer, "commencement of construction" means (i) the Applicant has executed a contract with a general contractor for the Metro Improvements; (ii) the Applicant has issued formal written notice to proceed to such general contractor for the full scope of the Metro Improvements; and (iii) the general contractor has, in fact, mobilized at the Property to undertake and proceed with the full scope of the Metro Improvements.

d. The Applicant shall complete construction of the Metro Improvements and open them for use by the public (subject to punch list items) no later than two (2) years following the Applicant's commencement of construction.

e. In accordance with Proffer 17Ai above, upon demonstration by the Applicant that, despite diligent efforts or as a result of factors beyond the Applicant's control, the milestones set forth in this Proffer for the Metro Improvements will not be achieved or are delayed, such as the inability to secure right-of-way, to obtain necessary permission for utility relocations or secure VDOT approval for the improvements, the Director of ZED may agree to extend the dates for completing the required obligation(s).

iii. Maintenance of Frontier Drive Pedestrian Facilities. Following completion of the Metro Improvements, the Applicant shall coordinate with VDOT to develop plans for the Applicant's "adoption" of all or portions of the maintenance obligations for the pedestrian pathways contained in the Metro Improvements and located in the public rights-of-way. Under this program, the Applicant may, in the event VDOT is unable or unwilling to provide frequent mowing and other services necessary to create an attractive and inviting pedestrian experience from the Property to the Metro Station, provide supplemental maintenance of such facilities for such purpose in accordance with VDOT standards.

D. Additional On-Site Pedestrian Access Improvements to the Metro Station. Prior to the issuance of the first RUP for Building R1, the Applicant shall complete Phase 2 of the Southeast Park, as more particularly shown on Sheet 13.1.14 of the CDP/FDP, to provide enhanced access between the Metro Station and the Mall Area. Phase 2 of the Southeast Park shall expand upon the amenities of Phase 1 by adding a water feature and outdoor seating. As part of such improvements, the Applicant also shall modify parking structure P2 to establish a covered pedestrian corridor leading pedestrians from the Pedestrian Promenade into the Mall Area in the location shown on Sheets 13.1.13 and 13.1.15 of the CDP/FDP (the "Pedestrian Promenade"). The Pedestrian Promenade shall be covered, conditioned space constructed with materials and architectural features comparable to the quality of the Mall Area. Once inside the Pedestrian Promenade, pedestrians will have the option of accessing both the first and second

floors of the Mall at various locations via stairs and/or ramps and pedestrian bridges.

- E. Pedestrian Crossing of Loisdale Road. Subject to FCDOT and, where necessary, VDOT approval, the Applicant shall design and construct an at-grade pedestrian connection across Loisdale Road at a location generally between North Street and Della Street (the "Loisdale Crossing"). The Applicant shall submit the Loisdale Crossing as part of its site plan for the later of Building OF1 or OF3a and shall include a pedestrian-activated signal, a painted crosswalk or special treatment/pavers to denote the location of the crossing, signage and similar features. The Loisdale Crossing shall be installed prior to the issuance of the Non-RUP for the building for which the Loisdale Crossing is shown.

- F. Road and Pedestrian Improvements. Subject to FDCOT approval and, where necessary, VDOT approval, the Applicant shall construct the following road and pedestrian improvements concurrent with its development of the Proposed Development, as more particularly set forth on Sheets 3.6.1 and 3.6.2 of the CDP/FDP and in this Proffer. To help provide a more urban character on the Property and set the stage for future development of a mixed-use environment, the earlier phases of the Applicant's implementation of the Proposed Development primarily shall focus on the creation of Village Drive and the improvements that complement it, as more particularly set forth below. For any traffic or pedestrian countdown signals installed or modified as part of the transportation improvements set forth below, the Applicant shall use light-emitting diode ("LED") signal heads as may be permitted by VDOT.
 - i. Village Drive – Phase I. Prior to the issuance of the first Non-RUP for Building M1, the Applicant shall construct the following transportation improvements as shown on Sheet 13.0.2 of the CDP/FDP:
 - a. Create Village Drive between Center Park East (as defined in Proffer 28) and Spring Mall Road, including the interim and permanent Streetscape treatments. For those sections of Village Drive between Center Park East and Spring Mall Road for which no site plan has been approved for the adjacent portion of the Proposed Development, the Applicant may install interim Streetscape improvements in lieu of permanent improvements and limited to sidewalks, landscaped islands and street trees to help establish a sense of place and connectivity prior to actual construction of the remaining portions of Village Drive, when permanent Streetscape treatments shall be installed as shown on the CDP/FDP;
 - b. Construct Della Street to the extent and in the location shown on the CDP/FDP, but not connect it to Loisdale Road unless approved by FCDOT, and;

- c. Provide an interim pedestrian connection between Center Park East, as defined in Proffer 28Ai, and Loisdale Road. Such connection shall be completed using painting or striping, shall minimize pedestrian and vehicular conflicts and shall be identified on wayfinding or directional signage provided as part of the Proposed Development.
- ii. Village Drive – Phase II. Prior to the earlier of (i) issuance of the first RUP for the residential portion of Building M2, (ii) the issuance of the first RUP or Non-RUP for development in the Southeast Area, (iii) the issuance of the first Non-RUP for Buildings OF3a or OF3b, or (iv) the issuance of the 301st RUP in the collective South and Southwest Areas, the Applicant shall construct the following transportation improvements as shown on Sheet 13.0.3 of the CDP/FDP:
- a. Complete Village Drive linking Franconia Road and Spring Mall Road, including permanent Streetscape treatments. For those sections of Village Drive for which no site plan has been approved for the adjacent portion of the Proposed Development, the Applicant may install interim Streetscape improvements limited to sidewalks, landscape islands and street trees to help establish a sense of place and connectivity prior to actual construction of the remaining portions of Village Drive, when permanent Streetscape treatments shall be installed;
 - b. Construct Lois Lane to the extent and in the location shown on the CDP/FDP, but not connect it to Loisdale Road unless approved by FCDOT;
 - c. Repair/complete sidewalks around the perimeter of the Property adjacent to public streets, and;
 - d. If not already completed, provide an interim pedestrian connection between Center Park East, as defined in Proffer 28Ai, and Loisdale Road. Such connection shall be completed using painting or striping, shall minimize pedestrian and vehicular conflicts and shall be identified on wayfinding or directional signage provided as part of the Proposed Development.
- iii. East Area. Prior to the issuance of the first Non-RUP for parking structure P4 along Frontier Drive, the Applicant shall complete the following transportation improvements as shown on Sheet 13.0.4 of the CDP/FDP:
- a. Construct future North Street linking Village Drive and Frontier Drive, including permanent Streetscape treatments on the south side of North Street;

- b. Construct Mall Road North between East Street and North Street, including permanent Streetscape treatments;
 - c. Install permanent Streetscape treatments on the north side of East Street;
 - d. Construct improvements along southbound Frontier Drive between North Street and East Street, including a dedicated right turn lane into both parking structure P4 and East Street and permanent Streetscape treatments; and
 - e. Modify southbound Frontier Drive between North Street and East Street to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements.
- iv. Northwest, West, South and Southwest Areas. Subject to any conditions set forth herein, prior to the issuance of the first Non-RUP or RUP for the earlier of (a) Building OF3a, (b) Building OF1 or (c) Building OF4/R5, or prior to the issuance of the collective 601st RUP in the South and Southwest Areas, the Applicant shall complete the following transportation improvements as shown on Sheets 13.0.6, 13.0.7, 13.0.8, 13.0.13 and 13.0.14 of the CDP/FDP and as may be approved by FCDOT:
- a. Widen Franconia Road to accommodate a third (3rd) eastbound through lane from approximately 750 feet west of Loisdale Road, or the maximum extent possible as determined by FCDOT, to Village Drive. As part of such improvement, the Applicant shall modify the existing traffic signal, including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT). The Applicant also shall widen the roadway pavement within the existing right-of-way abutting the Reizakis Parcel (as defined in Proffer 4) to the extent possible while maintaining the existing sidewalk and without removing or altering the existing parking on the Reizakis Parcel;
 - b. Construct an eastbound right turn lane from Franconia Road onto southbound Village Drive;
 - c. Widen northbound Loisdale Road to accommodate a third (3rd) through lane from Spring Mall Road to Lois Lane. As part of such improvement, the Applicant shall widen the roadway pavement within the existing right-of-way abutting the Fried Parcel (as defined in Proffer 4) to the extent possible while maintaining the

existing sidewalk and without removing or altering the existing parking on the Fried Parcel;

- d. Widen northbound Loisdale Road to accommodate a second (2nd) northbound through lane from Lois Lane through the intersection with Franconia Road. As part of such improvement, the Applicant shall widen the roadway pavement within the existing right-of-way abutting the Reizakis Parcel (as defined in Proffer 4) to the extent possible while maintaining the existing sidewalk and without removing or altering the existing parking on the Reizakis Parcel;
- e. Construct a second (2nd) left turn lane from southbound Loisdale Road onto eastbound South Street;
- f. Construct a right turn bay from eastbound Loisdale Court onto southbound Loisdale Road. As part of such improvement, the Applicant shall modify the existing traffic signal, including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT);
- g. Conduct a warrant study and, if warranted and approved by VDOT, install a traffic signal at Village Drive and Spring Mall Road including pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT);
- h. Widen southbound Loisdale Road between Franconia Road and South Street to three (3) through lanes and dual left turn bays onto eastbound South Street. As part of such improvement, the Applicant shall modify the existing traffic signal at Loisdale Road and South Street including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT);
- i. Widen southbound Loisdale Road between South Street and Spring Mall Road to two (2) through lanes, one (1) full-length left turn lane and one (1) left turn bay onto eastbound Spring Mall Road. As part of such improvement, the Applicant shall modify the existing traffic signal at Loisdale Road and Spring Mall Road including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT);
- j. Reconstruct and extend the right turn bay from the eastbound I-95 off-ramp to southbound Loisdale Road and modify the intersection to accommodate two (2) through lanes onto Spring Mall Road and two (2) dedicated left turn lanes onto northbound Loisdale Road, in addition to the right turn bay;

- k. Widen the median along Loisdale Road to a minimum five feet (5') in width;
 - l. Modify northbound Loisdale Road between Spring Mall Road and Franconia Road to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements;
 - m. Establish a right-in, right-out intersection at Loisdale Road and Lois Lane including Streetscape treatments along Lois Lane;
 - n. Establish a right-in, right-out intersection at Loisdale Road and Della Street including Streetscape treatments along Della Street;
 - o. Establish a right-in, right-out intersection at Loisdale Road and North Street including Streetscape treatments along North Street;
 - p. Construct North Street between Loisdale Road and Village Drive with the construction of OF3a only, including Streetscape treatments;
 - q. Modify the text on the existing northbound overhead signs located on the two (2) sign bridges stretching across Loisdale Road to clarify directions for vehicles approaching Franconia Road from the south on Loisdale Road; and
 - r. As may be requested by VDOT and until such time as the signal modifications have been completed around the Property, submit signal timing studies for traffic signals located at existing or new entrances to the Property. In the event VDOT determines that adjustments to the signal timing are warranted, then, subject to VDOT approvals, the Applicant shall make such adjustments.
- v. Northeast Area. Subject to any conditions set forth herein and if not previously constructed, prior to the issuance of the first Non-RUP for Building M4, the Applicant shall complete the following improvements as shown on Sheet 13.0.17 of the CDP/FDP and as may be approved by FCDOT:
- a. Widen Loisdale Road to accommodate a second (2nd) northbound through lane at its intersection with Franconia Road, As part of such improvement, the Applicant shall widen the roadway pavement within the existing right-of-way abutting the Reizakis Parcel (as defined in Proffer 4) to the extent possible while maintaining the existing sidewalk and without removing or altering the existing parking on the Reizakis Parcel;

- b. Widen northbound Loisdale Road to accommodate a third (3rd) through lane from Della Street to Lois Lane;
- c. Widen northbound Loisdale Road to accommodate a second (2nd) northbound through lane from Lois Lane through the intersection with Franconia Road;
- d. Widen Franconia Road to accommodate a third (3rd) eastbound through lane from approximately 750 feet west of Loisdale Road, or the maximum extent possible as determined by FCDOT, to Village Drive. As part of such improvement, the Applicant shall modify the existing traffic signal, including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT). The Applicant also shall widen the roadway pavement within the existing right-of-way abutting the Reizakis Parcel (as defined in Proffer 4) to the extent possible while maintaining the existing sidewalk and without removing or altering the existing parking on the Reizakis Parcel;
- e. Establish a right-in, right-out intersection at Loisdale Road and Lois Lane including Streetscape treatments along Lois Lane;
- f. Establish a right-in, right-out intersection at Loisdale Road and Della Street including Streetscape treatments along Della Street;
- g. Establish a right-in, right-out intersection at Loisdale Road and North Street including Streetscape treatments along North Street;
- h. Construct North Street between Frontier Drive and Village Drive, including permanent Streetscape treatments along the north side of North Street;
- i. Construct a second right turn lane along eastbound Franconia Road from Village Drive to Frontier Drive and convert the free-flow right turn from eastbound Franconia Road onto southbound Frontier Drive to create signalized dual right turn lanes onto Frontier Drive;
- j. Widen the median along Frontier Drive between Franconia Road and North Street to six feet (6') in width or, where six feet (6') is not feasible, to a minimum five feet (5');
- k. Modify southbound Frontier Drive between Franconia Road and North Street to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements; and

- i. As may be requested by VDOT and until such time as the signal modifications have been completed around the Property, submit signal timing studies for traffic signals located at existing or new entrances to the Property. In the event VDOT determines that adjustments to the signal timing are warranted, then, subject to VDOT approvals, the Applicant shall make such adjustments.
- vi. Southeast Area. Subject to any conditions set forth herein, prior to the issuance of the first RUP or Non-RUP in the Southeast Area, the Applicant shall complete the following on-site transportation improvements as shown on Sheets 13.0.15 and 13.0.16 of the CDP/FDP and as may be approved by FCDOT.
- a. Complete Village Drive in accordance with Proffer 17Fii above;
 - b. Widen Frontier Drive to accommodate a second (2nd) northbound left turn lane at the entrance to parking structure P2 and modify the free-flow southbound right turn lane to require cars to yield before turning right into P2. As part of such improvement, the Applicant shall modify the existing traffic signal including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or VDOT and approved by VDOT);
 - c. Widen Frontier Drive to accommodate a second (2nd) northbound left turn lane and second (2nd) southbound left turn lane at East Street. As part of such improvement, the Applicant shall modify the existing traffic signal including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or VDOT and approved by VDOT);
 - d. Establish a right-in, right-out intersection at Spring Mall Road and Kirstie Alley including Streetscape treatments along Kirstie Alley;
 - e. Improve Arch Street with Streetscape treatments prior to the issuance of the first RUP or first Non-RUP in Building M3. As part of such improvement, the Applicant shall modify the existing traffic signal at Arch Street and Spring Mall Road including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or VDOT and approved by VDOT);
 - f. Modify westbound Spring Mall Road between Frontier Drive and Arch Street to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The

Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements;

- g. Widen the median along Spring Mall Road between Frontier Drive and Arch Street to a minimum five feet (5') in width;
 - h. Widen the median along Frontier Drive between East Street and Spring Mall Road to a minimum five feet (5') in width;
 - i. Modify southbound Frontier Drive between East Street and Spring Mall Road to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements; and
 - j. As may be requested by VDOT and until such time as the signal modifications have been completed around the Property, submit signal timing studies for traffic signals located at existing or new entrances to the Property. In the event VDOT determines that adjustments to the signal timing are warranted, then, subject to VDOT approvals, the Applicant shall make such adjustments.
- vii. Southwest and South Areas. Subject to any conditions set forth herein, prior to the issuance of the collective 301st RUP in either the Southwest or South Areas, the Applicant shall complete the following improvements as shown on Sheets 13.0.9 through 13.0.11 of the CDP/FDP and as may be approved by FCDOT.
- a. Complete Village Drive in accordance with Proffer 17Fii above;
 - b. Conduct a warrant study and, if warranted and approved by VDOT, install a traffic signal, if not already installed, including installing pedestrian-activated countdown signal heads (or reasonable alternative if requested by FCDOT and/or VDOT and approved by VDOT), at the intersection of Spring Mall Road and Village Drive;
 - c. Modify westbound Spring Mall Road between Arch Street and Loisdale Road to accommodate a future bike lane five feet (5') in width adjacent to a turn lane and six feet (6') in width (4 feet pavement plus 2 feet gutter pan) when adjacent to a curb. The Applicant shall provide striping within the area of the future bike lane in accordance with VDOT requirements;
 - d. Widen the median along Spring Mall Road between Arch Street and Loisdale Road to a minimum five feet (5') in width;

- e. Improve South Street with permanent Streetscape treatments at such time each adjacent residential building is constructed; and
 - f. As may be requested by VDOT and until such time as the signal modifications have been completed around the Property, submit signal timing studies for traffic signals located at existing or new entrances to the Property. In the event VDOT determines that adjustments to the signal timing are warranted, then, subject to VDOT approvals, the Applicant shall make such adjustments.
- G. Congestion Management. The Applicant shall prepare and implement a construction congestion management plan during construction of each Land Area of the Proposed Development. The congestion management plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane closures and/or other construction-related activities to minimize disturbance on the surrounding road network. The Applicant also will prepare a Maintenance of Traffic plan to identify traffic management during the construction of the road improvements.
- H. Maintenance of Median Facilities. Following completion of road improvements located within the public rights-of-way as set forth in this Proffer, the Applicant shall coordinate with VDOT to discuss the Applicant's "adoption" of the medians located on the perimeter public streets. Under this program, the Applicant may, in the event VDOT is unable or unwilling to provide mowing and other services necessary to maintain an attractive road segment, provide supplemental maintenance of the public medians in accordance with VDOT standards.
18. Regional Road and Transit Contributions. The Applicant shall make the following contributions for regional road and transit contributions.
- A. Road Contributions. The Applicant shall make a contribution of (a) \$4.31 per square foot of nonresidential development constructed on the Property that exceeds 1,930,000 square feet of nonresidential square footage, and (b) \$863.00 for each Residential Unit constructed on the Property, except for those Residential Units located in Building M1, up to a total contribution of \$4.0 million. Except as set forth in this Proffer, such contributions shall be paid to the Board of Supervisors on a building-by-building basis and used to design and construct regional road improvements in the greater Springfield area that are located within three (3) miles of the Property (the "Springfield Road Fund"). Payment of the required contribution shall be made in two parts: (i) ten percent (10%) of the required contribution shall be paid prior to site plan approval for the Residential Building or square footage for which the requirement to make such contribution arises; and (ii) the remaining ninety percent (90%) shall be paid prior to issuance of the first RUP or Non-RUP for the same building or square footage. Once the Applicant commences contributions to the Springfield Road Fund and continuing until such time as the Applicant's contributions reach the maximum total set forth

in this Proffer, the Applicant shall maintain and submit with each site plan a tabulation documenting the Applicant's total contributions to the Springfield Road Fund by square foot and per unit. The per square foot and per unit amount of the contribution to be made under this Proffer (and the total contribution amount of \$4.0 million) shall be in 2009 dollars, as adjusted in accordance with the escalation provisions in Proffer 32D.

i. Exemption for Target Building. Notwithstanding the foregoing paragraph, the Applicant's expansion/reconstruction of any or all of the (a) Existing Target, (b) Target Pad Building and (c) Target Expansion on Fairfax County Tax Map 90-2 ((13)) Parcel 2 shall be exempt from the requirement to contribute to the Springfield Road Fund.

B. Transit Contributions. In furtherance of the Applicant's Transportation Demand Management ("TDM") commitments set forth in Proffer 19 below, the Applicant shall contribute to Fairfax County on an annual basis the additional cost of providing enhanced bus transit service (TAGS Route 80 or comparable service) between the Property and the Metro Station (the "TAGS Contribution"). Specifically, the Applicant shall contribute \$210,000 per year, to be escalated in accordance with Proffer 32D, to the County to fund the higher operational costs associated with increased bus headways during weekday peak periods and the addition of weekend service on the designated transit route(s). The initial installment of the TAGS Contribution shall be paid prior to the later to occur of (i) the issuance of the first Non-RUP for the Property representing more than 2,506,000 square feet of development on the Property, of which at least 500,000 square feet must be some combination of Office Uses and Residential Units, or (ii) written notification from FCDOT that the Enhanced TAGS service has commenced. Thereafter, the Applicant shall pay each subsequent year's TAGS Contribution no later than one (1) year after the prior year's payment. The Applicant's obligation to make the TAGS Contribution shall terminate on the earlier of (a) the fifth anniversary of the Applicant's first TAGS Contribution or (b) the establishment of a regional funding mechanism, such as a community development authority, special tax district or comparable funding stream, to support the development and operation of a regional bus circulator system (the "Circulator") serving the Property, the FSTSA and the SCR D (each as defined in Proffer 13) or portion thereof.

C. Circulator System. Given the Applicant's TDM commitments set forth in these Proffers, as well as the Property's size in relation to the areas identified immediately above, the Applicant acknowledges and agrees that it and the Property will play an important role in the development of the Circulator system. To that end, the Applicant proactively shall work with FCDOT and the County to promote the establishment of the Circulator and the adoption of appropriate regional funding mechanisms to support the Circulator's operations. Beginning no later than six (6) months following approval of this Application and at least every six (6) months thereafter (unless fewer or more frequent meetings are called by FCDOT), the Applicant shall meet with FCDOT representatives to discuss the

status of the Circulator's development and, as appropriate, shall serve as a community "ambassador" for the Circulator to promote its development and funding within the FSTSA, SCRCD or portion thereof. In the event the Circulator is established, the Applicant (or successor association) shall participate on a pro rata basis in ongoing funding for such service provided (i) the Circulator provides reasonable and consistent peak-hour service between the Property and the Metro Station, and (ii) such financial participation in the Circulator is reasonably proportional to the assessed value of the Proposed Development and other properties participating in the regional funding authority or district.

TRANSPORTATION DEMAND MANAGEMENT

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

A. Definitions:

- i. Applicant Control Period. The "Applicant Control Period" is the period starting immediately following approval of this rezoning Application and ending on the date when two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation show that vehicle trips generated by the Proposed Development are less than or equal to the Phase II TDM Goal (as defined herein); provided, however, that implementation of the TDM Plan may not be assigned by the Applicant to a successor UOA/HOA/COA/CA until the Applicant Control Period has expired. Upon expiration of the Applicant Control Period, the UOA/HOA/COA/CA shall assume responsibility for ongoing implementation of the TDM Plan, and Applicant shall have no further obligations under this Proffer, and the Letter of Credit/Cash (as defined in this Proffer) provided by the Applicant shall be returned to the Applicant.
- ii. Full Occupation. For purposes of this Proffer, "Full Occupation" of the Proposed Development shall be deemed to occur upon the issuance of (a) 100 percent (100%) of all RUPs and (b) 100 percent (100%) of all Non-RUPs for the Proposed Development, except as otherwise agreed to by the Applicant and FCDOT.
- iii. Peak Hours. For purposes of this Proffer, the relevant weekday "Peak Hours" shall be that 60-minute period during which the highest weekday volume of mainline trips occurs between 7:00 to 9:00 AM and 4:00 to

6:00 PM, as determined by mechanical traffic counts conducted at two select locations abutting the Property as approved in consultation with FCDOT. To determine the Peak Hour, such counts shall be collected beginning on a Monday at 24:00 hours and continuing to the following Thursday at 24:00 hours at a time of year that reflects typical travel demand conditions (e.g. September to May, not during a holiday week or when public schools are not in session). The relevant Peak Hours shall be defined in conjunction with each of the Trip Counts, as defined in Proffer 19J, required pursuant to this Proffer. The methodology for determining the Peak Hours may be modified subject to approval of FCDOT, but without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.

- iv. TDM Program Manager. The TDM “Program Manager” (“PM”) shall be a qualified or trained TDM professional appointed by the Applicant to oversee all elements of the TDM Plan and act as the liaison between the Applicant/UAO/HOA/COA/CA and FCDOT. The PM may be employed either directly by the Applicant or UOA/HOA/COA/CA, or be employed through a property management company contracted by the Applicant or UOA/HOA/COA/CA.
- v. TDM Account. The TDM Account shall be an account established by the Applicant and used by the PM each year to implement the TDM Plan in accordance with the TDM Budget.
- vi. TDM Budget. The “TDM Budget” means the budget sufficient to implement the TDM Plan in a given year and shall include a contingency equivalent to a minimum of 10% of the amount of the TDM Budget (the “TDM Budget Contingency”).
- vii. TDM Penalty Fund. The “TDM Penalty Fund” is an account into which the Applicant will deposit penalty payments as may be required to be paid pursuant to this Proffer (the “TDM Penalty Fund”).
- viii. TDM Remedy Fund. The TDM Remedy Fund shall be an account established by the Applicant and used to supplement the TDM Account in support of additional TDM strategies that may be determined to be necessary following any of the Trip Counts for which insufficient funding is not immediately available via the then-existing TDM Account.

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

- i. General. The objective of the TDM Plan shall be the phased reduction of the number of vehicle trips generated by the new office and residential uses to be developed on the Property during the weekday Peak Hours (as determined based on the Institute of Transportation Engineers, Trip Generation, 7th Edition rates and/or equations). The Mall Area and the

retail uses established as part of the Proposed Development shall not be included in the TDM Plan and, instead, shall be part of the Mall TDM Plan set forth in Proffer 20.

- ii. Baseline. The baseline number of vehicle trips against which the TDM Goals (as defined herein) will be measured shall be 3,079 AM Peak Hour trips and 3,285 PM Peak Hour trips (the “Baseline Trips”), which is based on 2,250 multifamily Residential Units and 1,485,000 square feet of Office Uses that may be constructed on the Property as part of the Proposed Development and using the trip generation rates/equations applicable to such uses and densities as set forth in the Institute of Transportation Engineers, Trip Generation, 7th Edition. In the event the Applicant constructs fewer than 2,250 multifamily Residential Units or 1,485,000 square feet of Office Uses as part of the Proposed Development, then the Baseline Trip generation numbers applicable upon Full Occupation shall be calculated as if the 2,250 multifamily Residential Units and 1,485,000 square feet of Office Uses in the Proposed Development had actually been constructed as reflected on the CDP/FDP. In the event the Applicant constructs more than 2,250 Residential Units on the Property, then the Baseline Trips and the maximum permitted Peak Hour trips under the TDM Goals may be adjusted, if approved by FCDOT, to reflect the actual number of Residential Units constructed on the Property and utilizing the same trip generation rates listed in this Proffer.
- iii. TDM Goals. The “TDM Goals” shall be phased in accordance with the issuance of the RUPs for the Residential Units and the Non-RUPs for the Office Uses in accordance with the following tables:

Residential Trip Reductions

AM Peak Hour

TDM Phase	Residential Use Permits (RUP)	Max. ITE Projected Trips	TDM Trip Reduction Goal	Max. Trips Permitted
I (≤ 65% total RUPs)	1 to 1,462	790	30%	553
II (> 65% RUPs)	1,463 to 2,250	1215	35%	790

PM Peak Hour

TDM Phase	Residential Use Permits (RUP)	ITE Projected Trips	TDM Trip Reduction Goal	Max Trips Permitted
I (\leq 65% total RUPs)	1 to 1,462	951	29%	675
II ($>$ 65% RUPs)	1,463 to 2,250	1463	35%	951

Office Trip Reductions

AM Peak Hour

TDM Phase	Non-Residential Use Permits (Non-RUP)	ITE Projected Trips	TDM Trip Reduction Goal	Max Trips Permitted
I (\leq 70% total Non-RUPs)	0 - 1,044,000 s.f.	1,225	20%	980
II ($>$ 70% Non-RUPs)	+ 1,044,000 s.f.	1,864	25%	1,398

PM Peak Hour

TDM Phase	Non-Residential Use Permits (Non-RUP)	ITE Projected Trips	TDM Trip Reduction Goal	Max Trips Permitted
I (\leq 70% total Non-RUPs)	0 - 1,044,000 s.f.	1,225	20%	980
II ($>$ 70% Non-RUPs)	+ 1,044,000 s.f.	1,822	25%	1,367

Total Trips Permitted

TDM Phase	AM Peak Hour	PM Peak Hour
I	1,533	1,674
II	2,188	2,318

C. TDM Plan. In order to meet the TDM Goals set forth in this Proffer, the Applicant shall implement the TDM Plan. Because the TDM Plan represents the strategy to be employed by the PM to meet the TDM Goal(s), the TDM Plan may be amended from time to time, subject to approval of FCDOT; provided, however, that the TDM Goal(s) shall not be amended, and the amended TDM Plan shall include provisions for the following with respect to the Proposed Development:

- i. Designation of PM, as more particularly described below;
- ii. A targeted marketing program for residential sales/leases that encourages and attracts TDM-oriented residents, such as bicyclists, one or no-car individuals/families and employees of nearby employers to live in the Proposed Development; provided, however, that such marketing shall be completed on a non-discriminatory basis in conformance with the Fair Housing Act and all other applicable laws and regulations;
- iii. Integration of transportation information and education materials into office leases and residential sales/rental kits;
- iv. Coordination/assistance with vanpool and carpool formation programs, including ride matching services, with adjacent office/residential buildings and homeowners associations and established guaranteed ride home programs;
- v. Establishment of a site-specific project website that includes multimodal transportation information, real-time travel and transit data, the possibility of online transit pass sales or value loading and connections to supporting links;
- vi. Provision of a minimum 850-square-foot business center in each Residential Building that offers broadband or high-speed data connections (including "secure" voice and/or data connections), computers, facsimile machine and similar items;

- vii. Establishment of a location to be staffed/managed by the PM (as defined below) within the Proposed Development at which transit and ridesharing information is made available to tenants, residents and visitors to the Proposed Development; the location may be determined by the Applicant and may be part of the existing Mall or at another location convenient for the intended patrons;
 - viii. A parking management plan for the Residential Buildings and the Office Uses, which shall include (i) a unit sales/rental program/policy under which each residential unit is allocated one (1) parking space as part of the base purchase/rental price, and that additional parking spaces may be purchased/leased for an additional cost; (ii) consideration of un-bundling parking spaces for office tenants, such as requiring office tenants to lease at an additional cost parking spaces above the minimum required; and (iii) dedicated space for residential vanpools and car-sharing vendors not otherwise addressed in these Proffers;
 - ix. Distribution of fare media or other incentives up to a maximum \$50.00 per unit, at least one time, to all initial residents of driving age, as well as on select occasions as an incentive, as more particularly described in Proffer 19H;
 - x. Use of car sharing program(s) (such as the existing ZipCar service or comparable program);
 - xi. Establishment of a phasing strategy, coordinated with FCDOT as provided herein, to address which TDM strategies are implemented at what time; and
 - xii. "Personalized transportation advising" integrated into new residential unit walk-throughs, including appropriate training of residential sales/leasing agents.
- D. **TDM Program Manager (PM)**. Prior to the issuance of the first building permit representing more than 2,006,000 square feet of development on the Property, the Applicant shall develop a position description for and appoint the PM for the project, whose duties shall be to further develop, implement and monitor the various components of the TDM Plan, provided that the PM also may have other duties beyond implementation of the TDM Plan. The Applicant shall provide written notice to FCDOT of the appointment of the PM within ten (10) days of such appointment, along with the position description prepared by the Applicant and evidence of such PM's qualifications, and, thereafter, within ten (10) days of any change in such appointment. Following the initial appointment of the PM, the Applicant or UOA/HOA/COA/CA, as applicable, thereafter shall continuously employ, or cause to be employed, a PM for the Proposed Development.

- E. **TDM Budget.** Within thirty (30) days following the issuance of the first building permit representing more than 2,006,000 square feet of development on the Property, the Applicant, through the PM, shall formulate the TDM Budget sufficient to implement Phase 1 of the TDM Plan for the remainder of the year and for the next calendar year, which amount shall not be less than \$84,500.00, adjusted annually for inflation as described in Proffer 32D. In conjunction with annual monitoring of TDM strategies as provided in Proffer 19Iii below, the PM shall re-establish the TDM Budget each year for the forthcoming year.
- F. **TDM Account.** Within sixty (60) days following the issuance of the first building permit representing more than 2,006,000 square feet of development on the Property, the Applicant shall establish and fund the TDM Account in an amount equal to the initial TDM Budget for the TDM Plan and including the TDM Budget Contingency. The PM shall provide written documentation demonstrating the establishment of the TDM Account to FCDOT within ten (10) days of its establishment. As provided in Proffer 19Iii below, the PM shall provide an annual report of the TDM Account to FCDOT, and such report shall include demonstration that the applicable strategies of the TDM Plan were implemented and sufficiently funded that year.
- i. **Annual Funding.** The TDM Account shall be replenished annually based on the forthcoming year's estimated TDM Budget and any transfer of funds to the TDM Remedy Fund as provided in Proffer 19G below.
 - ii. **Management of TDM Account.** The TDM Account shall be managed by the Applicant (or successor developer) through the PM until such time as the Applicant Control Period terminates. Thereafter, management of the TDM Account shall become the responsibility of the UOA/HOA/COA/CA. As applicable, a line item for the TDM Account shall be included in the UOA/HOA/COA/CA budget upon the establishment of the UOA/HOA/COA/CA. The association documents that establish and control the UOA/HOA/COA/CA shall provide that the TDM Account shall not be eliminated as a line item in the UOA/HOA/COA/CA budget, and that funds in the TDM Account shall not be utilized for purposes other than to fund the TDM Plan. The TDM Account shall be funded solely by the Applicant (or successor developer) until such time as the Applicant Control Period expires or the pro-rata assessments of residents are implemented as provided in the UOA/HOA/COA/CA documents, whichever is first.
- G. **TDM Remedy Fund.** Concurrent with the establishment and funding of the TDM Account, the Applicant shall establish a separate, interest-bearing account referred to herein as the "TDM Remedy Fund." All interest earned on moneys deposited in the TDM Remedy Fund shall be added to the principal of the TDM Remedy Fund and used for TDM Remedy Fund purposes. Prior to the issuance of the first RUP or Non-RUP for the Proposed Development that raises the total development on the Property above 2,006,000 square feet, the Applicant shall contribute to the

TDM Remedy Fund moneys in an amount necessary for the TDM Remedy Fund to achieve a \$189,000.00 balance. Moneys from the TDM Remedy Fund shall be drawn on by the Applicant or UOA/HOA/COA/CA only for purposes of immediate need of TDM funding and may be drawn upon prior to any TDM Budget adjustments that may be required under Proffer 19Fi above. The revenues transferred from the TDM Remedy Fund to the TDM Account thereafter shall be repaid to the TDM Remedy Fund through the transfer of subsequent surpluses, if any, in the TDM Account, as provided in subparagraph 19Gi below. Once the Applicant Control Period expires, the Applicant shall contribute such amounts as may be necessary to bring the balance in the TDM Remedy Fund to a balance of \$189,000.00 (as escalated pursuant to Proffer 32D) and thereafter transfer the TDM Remedy Fund to the UOA/HOA/COA/CA or successor developer/management company. Following such transfer, the UOA/HOA/COA/CA shall continue to replenish the TDM Remedy Fund as necessary to maintain a balance of \$189,000.00.

- i. Excess Funds in TDM Account. Until such time as the Phase II TDM Goal is met for two (2) consecutive years, any funds remaining in the TDM Account at the end of any given year shall be transferred to the TDM Remedy Fund until such time as the TDM Remedy Fund has achieved a balance of \$189,000.00, as adjusted based on inflation from the date of the initial deposit into the TDM Remedy Fund to the last day of such year. Once the TDM Remedy Fund achieves a balance of \$189,000.00, then any funds remaining in the TDM Account at the end of any given year shall remain in the TDM Account to be utilized for the next calendar year's TDM Budget. In the event that the TDM Remedy Fund is drawn upon, then the TDM Remedy Fund shall be replenished during the next TDM Budget cycle (and repeated for multiple TDM Budget cycles, if necessary) until the TDM Remedy Fund achieves a balance of \$189,000.00, as adjusted for inflation.

H. TDM Purchase Incentives. Prior to the issuance of the first RUP for each Residential Building to be constructed as part of the Proposed Development, the Applicant shall make a one-time contribution of \$50.00/unit in that building to a segregated sub-account in the TDM Account to fund a transit incentive program for initial purchasers and/or lessees of Residential Units in such building. Such program shall be prepared by the Applicant, in coordination with FCDOT, and shall include consideration for fare media distribution and value loading, financing incentives, and alternative incentives (such as grocery delivery) tailored to residents who are not likely to make use of alternative commute option benefits.

I. TDM Monitoring and Reporting.

- i. Surveys. Every other September until the expiration of the Applicant Control Period, and every five (5) years thereafter, the PM shall conduct a survey of residents and office tenants designed to evaluate the

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

- a. A description of the TDM measures in effect for the survey period and a description of how such measures have been implemented;
 - b. The number of people surveyed and the number of people who responded;
 - c. The results of the surveys taken during the survey period;
 - d. The number of residents, employees and/or others participating in the TDM programs, displayed by category and mode of use;
 - e. An evaluation of the effectiveness of the TDM program elements in place, including their effectiveness at achieving the TDM Goals, and, if necessary, proposed modifications and how they will be implemented; and
 - f. A description of the uses constructed and occupied on the Property at the time the Survey was conducted.
- ii. Annual Report. The PM shall report annually to FCDOT on the TDM Plan no later than December 31st of each year (the "Annual Report"). The Annual Report shall include (a) a description of the prior year's TDM strategic efforts, including, as applicable, sample marketing materials; (b) a financial statement that includes the TDM Budget and TDM Account revenues and expenditures for the preceding year; (c) an analysis of the Survey, as applicable, for the preceding year; (d) a compilation and analysis of any Trip Counts that were conducted during the preceding year; (e) discussion of any changes to the TDM Plan for the upcoming year; and (f) the TDM Budget for the upcoming year. The PM also shall post copies of the Annual Report, including the Survey, on the TDM website required in Proffer 19Cv above.
- iii. Adjustments to Calendar and Due Dates. Upon mutual agreement between FCDOT and the PM, the due dates for the delivery of the Annual Report may be extended by up to sixty (60) days if changes have occurred, or appear to have occurred, in trip characteristics resulting from events such as the opening of an additional phase of development or changes to

the TDM Plan that are not yet fully implemented as of the due date for the Annual Report.

- iv. Meetings with FCDOT. The PM shall meet with FCDOT annually to discuss the results of the Trip Counts, the Survey, the Annual Report and the TDM Plan.

J. Trip Counts.

- i. Initial Trip Counts. Except as set forth in this Proffer 19J, the PM shall conduct a Trip Count on a date(s) approved by FCDOT that is between eight (8) and twelve (12) months following the issuance of the earlier of (a) the first RUP for the first Residential Building or (b) the first Non-RUP for the first Office Building constructed as part of the Proposed Development to measure the actual vehicle trips generated by the residential/office uses constructed on the Property as of the date the Trip Count is completed and to evaluate whether such vehicle trips are less than, equal to or greater than the applicable phased TDM Goal (which is determined by the number of residential units or square footage, respectively, for which RUPs or Non-RUPs have been issued) set forth in Proffer 19Biii above. Trip Counts provided to FCDOT shall include information on the percentage of RUPs and Non-RUPs issued for the Proposed Development as of the date of the Trip Count.
- ii. Methods. For purposes of this Proffer, Trip Counts shall be measured on three (3) consecutive days over a maximum two-week period (but not including a week containing a federal holiday or when public schools are not in session) between September 1 and October 31 of each calendar year, or such other time as the PM and FCDOT shall mutually determine. The Trip Counts shall include Peak Hour counts of vehicles entering and exiting driveways to buildings within the Proposed Development, as well as intersection turning movement counts at those street connections to/from the Property, as coordinated with and approved by FCDOT. The Trip Counts shall be conducted so that only trips generated by the residential and office uses on the Property shall be counted (i.e. cut-through trips, retail trips, etc., shall be excluded). Values will be provided for each Residential Building and Office Building included in the Proposed Development, and a sum of vehicle trips generated by such buildings will be calculated.
 - a. In lieu of Trip Counts, the PM may, subject to FCDOT approval, conduct surveys of employees or residents in a building(s) to determine compliance with the TDM Goals. The content and sample size of such survey shall be approved by FCDOT. Should the survey data not provide sufficient information or conclusions to evaluate compliance with the TDM Goals, FCDOT may subsequently demand that the PM conduct actual Trip Counts.

- b. Using a methodology approved by FCDOT, the Applicant may exclude from the Trip Counts used to determine compliance with the TDM Goals vehicle trips generated by commuters parking in Building P2 pursuant to the Transit Parking Agreement discussed in Proffer 12E or parking elsewhere on the Property principally for commuter purposes.
 - iii. Frequency of Trip Counts. Once initiated, the PM shall conduct Trip Counts annually until such time as two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation show that vehicle trips generated by the residential and office uses in the Proposed Development are less than or equal to the Phase II TDM Goal. Trip Counts provided to FCDOT shall include information on the percentage of RUPs and Non-RUPs issued for the Proposed Development as of the date of the Trip Count. If the results of two (2) consecutive Trip Counts reveal that the Phase II TDM Goal has been met, then the Applicant Control Period shall expire as provided in Proffer 19Ai above, the Letter of Credit (as defined in Proffer 19M) (or cash, as applicable) shall be returned to the Applicant, and the Applicant shall have no further responsibility under Proffer 19L below. Thereafter, the UOA/HOA/COA/CA (or successor developer/management company) shall conduct additional Trip Counts as set forth in this Proffer. Notwithstanding the provisions of this paragraph, FCDOT may request Trip Counts be undertaken at any time to validate traffic data, but not more frequently than twice per calendar year. If such requests are made by FCDOT, the PM shall conduct the requested Trip Counts.
- K. Evaluation. The results of each Trip Count shall be compared to the maximum number of trips allowed under Proffer 19Biii above for the then-applicable phase of the Proposed Development to determine whether actual traffic counts are equal to, less than or greater than the maximum allowed trips for the then-applicable TDM Goal.
- i. Compliance. In the event the trips generated by the Residential and Office Buildings constructed at the time the Trip Count is conducted are equal to or less than the maximum allowed trips set forth in Proffer 19 as determined by the then-applicable phase of the Proposed Development, then (i) no penalty is owed, and (ii) the Applicant (and subsequently the UOA/HOA/COA/CA, as applicable) shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers until the Phase II TDM Goal has been met for two (2) consecutive Trip Counts and the Applicant Control Period Expires, after which Proffer 19L below shall apply.
 - ii. Out of Compliance. In the event the trips generated by the Residential and Office Buildings constructed at the time the Trip Count is conducted are greater than the maximum allowed trips set forth in this Proffer 19 as

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

- L. Ongoing Implementation of TDM Plan. Once the Applicant Control Period has expired, the Letter of Credit/Cash (as defined in this Proffer 19M) (as then-valued) shall be returned to the Applicant, and thereafter the UOA/HOA/COA/CA shall be responsible for ongoing implementation of the TDM Plan. The PM shall conduct additional Trip Counts at five (5) year intervals to determine whether the Phase II TDM Goal continues to be met. In the event an Annual Report submitted by the PM demonstrates through trend analysis that a change in commuting patterns has occurred that is significant enough to reasonably call into question whether the Phase II TDM Goal continues to be met, as determined by FCDOT, then FCDOT may require the PM to conduct additional Trip Counts on a more frequent basis (but not more frequently than once per year) to determine whether, in fact, the Phase II TDM Goal is being met.
- i. Continuation of TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual trips generated remain equal to or less than the maximum number of trips permitted under the Phase II TDM Goal, then the PM shall continue to implement the TDM Plan and to make Annual Reports to FCDOT.
 - ii. Future Increases in Vehicle Trips. In the event subsequent Trip Counts conducted after the Applicant Control Period expires reveal that the actual trips generated exceeds the maximum number of trips permitted under the Phase II TDM Goal, then the PM shall resume conducting Trip Counts annually until such time as two (2) consecutive annual Trip Counts show that vehicle trips generated by the Proposed Development once again are less than or equal to the Phase II TDM Goal. The PM also shall convene a meeting with FCDOT within thirty (30) days of the completion of the applicable Trip Count to review the results of the Trip Count and the TDM Plan then in place and to develop modifications to the TDM Plan and the TDM Budget to address the surplus of trips. The PM shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30)

days following this meeting. If no written response is provided by FCDOT within sixty (60) days, the PM's revisions to the TDM Plan and updated TDM Budget shall be deemed approved. Following approval of the revised TDM Plan and updated TDM Budget, the PM shall (a) draw down on the TDM Remedy Fund, as needed; (b) increase the TDM Account with TDM Remedy Funds, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (c) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT.

- iii. Additional Trip Counts If Excess Trips. The PM shall repeat the process above (including additional adjustments to the TDM Plan, additional funding and additional monitoring) until the Phase II TDM Goal again has been met for two (2) consecutive years, whereupon the PM shall then be required to conduct Trip Counts only at five (5) year intervals, as described above.

M. TDM Penalty Fund. Concurrent with the establishment and funding of the TDM Account, the Applicant (or its successor owner or developer, but not the UOA/HOA/COA/CA) shall (a) establish the TDM Penalty Fund and (b) deliver to the County (i) \$500,000.00 cash or (ii) a clean, irrevocable letter of credit in the stated amount of \$500,000.00 issued by a banking institution approved by the County to secure the Applicant's obligations to make payments into the TDM Penalty Fund as described below (collectively, the "Letter of Credit/Cash"). If a letter of credit is used to secure the TDM Penalty Fund, then it shall name the County as the beneficiary and shall permit partial draws or a full draw.

- i. Establishment of TDM Penalty Fund; Letter of Credit. During the Applicant Control Period, if the results of two (2) consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Proposed Development reaches Full Occupation reveal that the actual vehicle trips generated by the Proposed Development exceed the maximum number of trips permitted under the Phase II TDM Goal, then the Applicant shall pay into the TDM Penalty Fund the amounts specified below. FCDOT may thereafter withdraw funds from the TDM Penalty Fund. If the Applicant fails to pay what is due to the TDM Penalty Fund, then, upon thirty (30) days written demand, FCDOT may draw against the Letter of Credit/Cash in the amount then due and owing. FCDOT may apply funds withdrawn from the TDM Penalty Fund, or drawn under the Letter of Credit/Cash, for transportation improvements in the vicinity of the Property. The maximum aggregate amount of all penalties to be paid under this paragraph is \$500,000.00. No penalties shall be imposed while the Phase I TDM Goal is applicable.

- a. Failure up to 2%. A failure in the reduction of trips in either or both of the Peak Hours by two percent (2%) or less requires the Applicant to make a payment to the TDM Penalty Fund of

\$1,000.00 per vehicle trip for each trip that exceeds the Phase II TDM Goal for the applicable Peak Hour.

- b. Failure greater than 2% but less than or equal to 5%. A failure in the reduction of trips in either or both of the Peak Hours by more than two percent (2%) but less than or equal to five percent (5%) requires the Applicant to make a payment into the TDM Penalty Fund of \$2,000.00 per vehicle trip for each trip that exceeds the Phase II TDM Goal for the applicable Peak Hour
- c. Failure Greater than 5%. A failure in the reduction of trips in either or both of the Peak Hours by an amount greater than 5% requires the Applicant to make a payment into the TDM Penalty Fund of \$4,000.00 per vehicle trip for each trip that exceeds the Phase II TDM Goal for the applicable Peak Hour.

- N. Enforcement. If the PM fails to timely submit the Annual Report to FCDOT as required by this Proffer, the County may thereafter issue the PM a notice stating that the PM has violated the terms of Proffer 19Iii and providing the PM sixty (60) days within which to cure such violation. If after such sixty (60) day period the PM has not submitted the delinquent Annual Report, then the Applicant and/or UOA/HOA/COA/CA, as applicable, shall be subject to a penalty of \$100.00 per day payable to Fairfax County to be used for transit or transportation related improvements in the vicinity of the Property until such time as the report is submitted to FCDOT.

20. Retail and Hotel Employee Participation in TDM Plan. The Applicant shall encourage the employees and guests of the Proposed Development other than those covered by the TDM Plan in Proffer 19 above to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle (“non-SOV”) modes of transportation to travel to and from the Property through voluntary participation in the TDM Plan, as supplemented by this Proffer (the “Mall TDM Program”). The goal of the Mall TDM Program is to reduce by twenty-five percent (25%) the number of vehicle trips that would be expected from retail and hotel employees working on the Property through promotion and use of non-SOV modes of transportation.

- A. Components of the Mall TDM Program. The Mall TDM Program shall include, at a minimum, the components listed below, provided that such components may be subsequently amended from time to time by mutual agreement between the Applicant and FCDOT without the need to secure approval of a PCA.
 - i. Employee/Tenant Meetings. No later than one (1) year following approval of this Application and at least annually each year thereafter, the PM shall meet with representatives of the retail and hotel uses covered by the Proffer and their employees to review the available transit options, adequacy of bus schedules (including hours of service), changes in transit service and other relevant transit-related topics. The PM shall invite Fairfax County and/or WMATA representatives to these meetings to

speak to the group(s) about these and related subjects. Following expiration of the Applicant Control Period, the frequency of such meetings may be reduced to one meeting every three (3) years. Based on these meetings, the PM shall work with Fairfax County and/or WMATA to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to such tenants and their employees.

- ii. Transit Incentives. Utilizing the Mall TDM Incentive Fund (described in paragraph B below), the PM shall provide financial incentives to retail and hotel employees to utilize transit. These incentives may include programs such as contests with fare card rewards, mall gift certificates and similar programs (for example, an award could be offered to the transit riding employee of the month/year or the tenant with the highest percentage of employees utilizing non-SOV transport to commute to and from the Property).
- iii. Regional TDM Incentive Programs. The PM shall make information available to retail and hotel employees about programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.
- iv. Ridesharing. The PM shall assist retail and hotel tenants and their employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.

B. Mall TDM Incentive Fund. The Applicant shall establish a Mall TDM Incentive Fund for use exclusively by the Applicant with retail and hotel employees. Once the total development on the Property exceeds 2,006,000 square feet, the Applicant shall expend \$20,000 per year to this fund for the provision of transit incentives, such as gift certificate awards, fare card contests and/or give-aways, transit fairs specific to the retail and hotel tenants and their employees and for similar inducements or incentive activities. This amount shall be adjusted annually based on the escalation clause in Proffer 32D. The Applicant shall start providing this funding at the time that the first TDM Budget is approved and funded per Proffer 19E above. Should any tenant elect to financially contribute to the Mall TDM Program, such contributions shall be utilized in addition to the Applicant's annual contributions (that is, the Applicant's annual contributions shall not be reduced or offset in any way).

C. Biennial Mall Surveys and Analysis. The PM shall monitor the success of the Mall TDM Program through retail and hotel employee surveys completed in September of every other year ("Mall Surveys"). Following expiration of the Applicant Control Period, the frequency of the Mall Surveys may be reduced to one (1) survey every three (3) years. The PM shall review and analyze the Mall Surveys, and submit an analysis of survey results ("Mall Survey Analysis") to

FCDOT as a supplement to the Annual Report required by Proffer 19Iii above (if the Annual Reports are not yet required, then the Mall Survey Analysis may be submitted as a stand-alone document). The Mall Survey Analysis shall include the following information:

- i. A description of the Mall TDM Program measures in effect for the survey period and a description of how such measures have been implemented;
 - ii. The number of tenants and/or employees surveyed and the number who responded;
 - iii. The results of the Mall Surveys taken during the survey period;
 - iv. The number of people participating in the Mall TDM Program, displayed by category of participants and by mode of use; and
 - v. An evaluation of the effectiveness of the Mall TDM Program, including any proposed modifications.
- D. Mall TDM Program Participation Outreach. The PM and Mall Area management shall endeavor in good faith to encourage participation by retail and hotel tenants in the Mall TDM Program, including the encouragement of a financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the PM and Mall Area management in furtherance of this objective shall include dissemination of information to, and solicitation of participation from, the tenant's Mall Area in-store management and executives or officers at their headquarters offices, at appropriate intervals.
- E. Supplement to Annual Report. The PM shall provide a detailed report to the County with respect to the activities described in this Proffer as a supplement to the Annual Report that is to be filed with the County in accordance with Proffer 19Iii. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants. The report shall also include information on how the PM and the Applicant will address any lack of interest in, opposition to, or other issues posed by retail and hotel tenants with the Mall TDM Program.

PEDESTRIAN/BICYCLE CONNECTIONS

21. Hours of Operation of the Mall Corridor. To permit convenient access through the Property and to the nearby Franconia-Springfield Metro Station, following the completion of the Mall renovations that bring the Mall Area to approximately 1,725,000 square feet, the primary interior corridors (other than service corridors) of the existing Mall Area (but not individual stores/tenants) shall be open each day between the hours representing at least one (1) hour before and one (1) hour after the hours of operation of the Franconia-Springfield Metro Station to allow access through the Mall Area. This proffer shall not preclude the Applicant from (a) altering, for security reasons, the alignment of or pedestrian flow through the interior corridors of the Mall, so long as Mall corridors as a whole provide substantially equivalent connectivity; (b) temporarily

restricting access to portions of the corridors, as necessary, for cleaning, general construction, tenant construction and/or other Mall operations, so long as Mall corridors provide substantially equivalent connectivity and appropriate signage is provided; or (c) exercising such other reasonable controls over interior and exterior mall corridors and bridges to prevent the general public from acquiring rights of access that are inconsistent with the status of the Property as private property, so long as mall corridors as a whole provide substantially equivalent connectivity.

22. On-site Pedestrian Connections. In combination with the Streetscape improvements identified in Proffer 15 above, the Applicant shall provide sidewalks of varying widths and crosswalks throughout and around the Property and at key intersections, generally as shown on Sheets 3.0.2 and 3.0.3 of the CDP/FDP (the "Pedestrian Connections"). The Pedestrian Connections shall be constructed concurrent with the development of the adjacent buildings and road improvements, recognizing that interim improvements as set forth in these Proffers may be put in place until construction on both sides of the street is complete. All Pedestrian Connections not located in the right-of-way shall be maintained by the Applicant and/or UOA/HOA/COA/CA. Pedestrian Connections located within existing or proposed right-of-way shall be provided as approved by VDOT. The Applicant shall not erect barriers or other impediments on the Property (such as gates or fences) except as may be necessary during periods of construction or routine maintenance that restrict or preclude pedestrian access across the Property by patrons, invitees or guests of the Proposed Development, as well as the Franconia-Springfield Metro Station, during the normal hours of operation for such services.

23. Bicycle Racks. Following the completion of the Mall renovations that bring the Mall Area to approximately 1,725,000 square feet, the Applicant shall provide secure bicycle storage in locations convenient to the office, multifamily residential and hotel uses of the Proposed Development, but at a minimum in accordance with the following formula: (a) for each Office Building, one (1) bicycle parking space for the first 7,500 square feet or portion thereof of office gross floor area and one (1) additional bicycle parking space for each additional 20,000 square feet or portion thereof of office gross floor area in each building; (b) for each Residential Building, one (1) bicycle parking space for the first five (5) multifamily residential units or portion thereof and one (1) additional bicycle parking space for each additional fifty (50) multifamily residential units or portion thereof; and (c) two (2) bicycle parking spaces for every 10,000 square feet or portion thereof of the minimum square feet of Community-Serving Retail Uses other than Residential Uses. The bicycle parking spaces, rooms or lockers for Office Buildings and Residential Buildings as required by this Proffer shall be located within the building itself or another structure within proximity thereto. The bicycle parking spaces for Community-Serving Retail Uses as required herein shall be installed at exterior locations that are visible from such uses and do not block sidewalks. The exact locations of the bicycle parking spaces and lockers to be provided in each Land Area of the Proposed Development shall be determined by the Applicant in consultation with FCDOT at the time of site plan approval for each building where such racks are required. The bicycle parking spaces and lockers shall be installed prior to the issuance of the first RUP or Non-RUP for the portion of the Proposed Development covered by the site plan on which the applicable bicycle parking spaces, rooms and lockers are shown, provided that the Applicant periodically shall coordinate with FCDOT to determine whether the installation of proposed secure bicycle facilities in one area of the Property could be advanced in time as part of the Applicant's construction of other parts of the

Proposed Development. In addition, the Applicant shall provide one (1) shower per gender for every 50,000 square feet of office gross floor area, up to a maximum of three (3) showers per gender in each Office Building.

PUBLIC TRANSPORTATION

24. Bus Shelters. The Applicant shall provide bus stops with enclosed shelters on the Property in the general locations shown on Sheet 3.0.2 of the CDP/FDP. The exact locations of the bus shelters shall be determined in coordination with FCDOT as part of site plan approval for each Land Area or transportation improvement in which such shelters are to be located. The Applicant shall install the bus shelters concurrent with the earlier of (a) the completion of road improvements adjacent to the shelter location or (b) the issuance of the first RUP or Non-RUP for the building(s) covered by such site plan or (c) concurrent with the establishment of the enhanced TAGS service (or comparable service) as defined in Proffer 18B. If requested and approved by FCDOT as part of its review and approval of the perimeter public road improvements detailed in Proffer 17, the Applicant also shall, as part of its construction of such road improvements, install up to two (2) additional bus shelters in locations approved by FCDOT. The Applicant (or a successor UOA/HOA/COA/CA) shall be responsible for routine maintenance of the shelters, including trash removal and the repair/replacement of damaged structures.

- A. Transit Bus Circulation. The Applicant shall permit transit buses and shuttles to circulate through the Property to access the bus shelters located on or abutting the Property. The exact circulation routes through the Property shall be determined jointly by the Applicant, the Lee District Supervisor's office and FCDOT, which may be modified from time to time as circumstances warrant.

RECREATION FACILITIES

25. Recreation/Fitness Path. As part of or in addition to the Pedestrian Connections, the Applicant shall install outdoor exercise equipment or fitness stations at strategic locations around the perimeter of the Property ("Fitness Station") to provide tenants, residents and visitors of the Property with opportunities for physical fitness as shown on Sheet 3.2.2 of the CDP/FDP. Where the path on which the Fitness Stations abuts or connects to either the Reizakis Parcel or the Fried Parcel, the Applicant shall establish an interim, alternate path through the Property to provide a continuous pathway for fitness users until such time as the Reizakis Parcel and/or the Fried Parcel are added to the Proposed Development. The Applicant shall install and maintain at least ten (10) Fitness Stations around the Property as part of the Proposed Development. The Applicant shall coordinate with the Fairfax County Park Authority on the types and materials of the Fitness Stations. The Fitness Stations to be located around the Property's perimeter shall be installed concurrent with the Applicant's completion of proffered transportation improvements, as set forth in Proffer 17, but in no event later than the issuance of the first RUP or Non-RUP, as applicable, for the first building in the Land Area (other than the Mall Area) in which such station is to be located. Fitness Stations to be located along internal private streets or adjacent to buildings shall be installed prior to the issuance of the first RUP or Non-RUP for the building immediately abutting such Fitness Station that was part of the same site plan approval or at such other time as the Applicant may propose, as determined by ZED. The Fitness Stations may be

relocated from time to time across the Property to make room for construction staging or other improvements to the Property, as determined by the Applicant, but in any event shall remain available for use by residents or tenants of the Proposed Development. The Applicant shall not restrict access to the Fitness Stations by patrons, invitees or guests of the Proposed Development except as may be necessary during periods of construction or routine maintenance; provided that the Applicant (or a successor UOA/HOA/COA/CA) may establish reasonable rules and regulations governing use of the Fitness Trail consistent with other quasi-public or common areas located on the Property.

26. Amenities and Facilities for Residents. The Applicant shall provide facilities designed to meet the onsite recreation and other needs of the future residents of the Proposed Development. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,500 per Residential Unit (excluding ADUs as defined in Proffer 30) on on-site recreation facilities, as more particularly described below. The facilities shall be located generally as shown on the CDP/FDP or on the rooftops of buildings, as applicable, provided they otherwise are in substantial conformance with the CDP/FDP and these Proffers. The Applicant's compliance with the per-unit expenditure requirements of this Proffer shall be measured based on the Applicant's total expenditure for qualifying onsite recreational facilities, rather than on a building-by-building basis. Prior to final bond release for the Proposed Development, the balance of any funds not expended on site shall be contributed to the Fairfax County Park Authority for the provision of recreation facilities located in proximity to the Property.

- A. Southeast Area. The Applicant shall provide the following facilities or amenities as shown on Sheets 3.2.2 and 6.0.6 in the Southeast Area. Residents of all of the buildings in the Southeast Area shall have access to at least one (1) swimming pool located in the Southeast Area. These amenities shall be completed prior to the issuance of the RUP representing more than 75% of the total Residential Units to be constructed in the building(s) in which the facilities are located:
- i. A roof terrace with outdoor seating, specialty paving and plantings to be located between Building R1 and the existing parking structure P2 located immediately west of such building;
 - ii. At least one (1) swimming pool serving Buildings R1 and M3;
 - iii. A media/entertainment center in each Building (R1 and M3) containing at least one (1) large screen/projection TV (at least 42 inches wide), seating areas and stereo/sound equipment; and
 - iv. A fitness center in each Building (R1 and M3) that includes equipment such as stationary bikes (at a ratio of one bike per residential floor), treadmills (at a ratio of one treadmill per residential floor), weight machines, free weights, etc., having a total value of at least \$75,000.
- B. South Area. The Applicant shall provide the following facilities or amenities as shown on Sheets 3.2.2 and 7.0.2 in the South Area. Residents of all of the

buildings in the South Area shall have access to at least one (1) swimming pool and multipurpose room located in the South Area. These amenities shall be completed prior to the issuance of the RUP representing more than 75% of the total residential units to be constructed in the building(s) in which the facilities are located or adjacent:

- i. An ornamental garden to be located at grade or on the top deck of the parking structure below Building R3a. The garden shall include informal seating areas, landscaping, hardscape features, etc.;
- ii. An enclosed dog park for use by residents of all the Residential Buildings in the Proposed Development. The dog park shall be enclosed with a galvanized/powder coated double wire fence at least five and a half (5.5) feet tall or equivalent enclosure. The entrance will contain a double gate with enough room to allow owners to unleash or leash their dogs before proceeding through the second gate. The dog park will measure at least 0.30 acres, the majority of which will consist of decomposed granite with areas of gravel. Native, low water/low maintenance grasses will be planted amid the gravel areas and a hardscaped pathway will lead through the park. There will be tree plantings along the perimeter of the park and outdoor seating. The HOA/COA will manage the dog park and conduct daily waste pickup. The Applicant shall not restrict access to the dog park by patrons, invitees or guests of the Proposed Development except as may be necessary during periods of construction or routine maintenance; provided that the Applicant (or a successor UOA/HOA/COA/CA) may establish reasonable rules and regulations governing use of the dog park consistent with other quasi-public or common areas located on the Property;
- iii. An outdoor children's playground for use by residents of all the Residential Buildings and nearby communities. The fenced playground shall measure at least 0.20 acres and include structures made of materials recommended by the Fairfax County Park Authority to ensure proper safety and outdoor seating;
- iv. A landscaped area fronting Spring Mall Road with at least one fitness station between Building R3a and R2. The largely softscaped area shall include low informal plantings and provide a link for the recreation/fitness path and access to the proximate dog park and children's play area.
- v. At least one (1) swimming pool serving Buildings R2, R3a and R3b;
- vi. A multipurpose fitness room in at least one Residential Building in the South Area (R2, R3a or R3b) to provide space for activities such as yoga, pilates, aerobics or dance classes;

- vii. A media/entertainment center in each Building (R2, R3a and R3b) containing at least one (1) large screen/projection TV (at least 42 inches wide), seating areas and stereo/sound equipment; and
 - viii. A fitness center in each Building (R2, R3a and R3b) that includes equipment such as stationary bikes (at a ratio of one bike per residential floor), treadmills (at a ratio of one treadmill per residential floor), weight machines, free weights, etc., having a total value of at least \$75,000.
- C. Southwest Area. The Applicant shall provide the following facilities or amenities as shown on Sheets 3.2.2 and 8.0.3 of the CDP/FDP in the Southwest Area. Residents of all of the buildings in the Southwest Area shall have access to a swimming pool and multipurpose room located in the Southwest Area through an agreement by the HOA/COA. These amenities shall be completed prior to the issuance of the RUP representing more than 75% of the total residential units to be constructed in the building(s) in which the facilities are located or adjacent:
- i. A courtyard located between Buildings R4a and R4b. The courtyard area shall include informal seating areas, BBQ areas, landscaping, hardscape features, etc.;
 - ii. At least one (1) swimming pool serving Buildings R5, R4a and R4b;
 - iii. A multipurpose fitness room in at least one Residential Building in the Southwest Area (R5, R4a or R4b) to provide space for activities such as yoga, pilates, aerobics or dance classes;
 - iv. A media/entertainment center in each Residential Building (R5, R4a and R4b) containing at least one (1) large screen/projection TV (at least 42 inches wide), seating areas and stereo/sound equipment; and
 - v. A fitness center in each Residential Building (R5, R4a and R4b) that includes equipment such as stationary bikes (at a ratio of one bike per residential floor), treadmills (at a ratio of one treadmill per residential floor), weight machines, free weights, etc., having a total value of at least \$75,000.
 - vi. Should Building R5 be built, rather than Building OF4, an additional courtyard east of building R5 shall be constructed as shown on Sheet 8.0.2A of the CDP/FDP. The courtyard area shall include informal seating areas, BBQ areas, landscaping, hardscape features, etc.; and
 - vii. An outdoor recreation fitness park (“Southwest Fitness Park”) located west of Building R4a along Spring Mall Road. The fitness park shall be constructed prior to the issuance of the 301st RUP in the collective South or Southwest Areas and shall include at least two (2) grass volleyball courts and up to three (3) Bocce ball courts for use by residents of the Proposed Development and nearby communities. If the Bocce ball courts

are not provided, an additional volleyball court will be built, as shown on Sheet 8.0.3. The fitness park also shall include at least one (1) fitness station and outdoor seating and landscaping. Should the Fried Parcel be acquired and developed, the Southwest Fitness Park may be removed in favor of the Recreation Court Facility to be provided in the Northeast Area. The Applicant shall not restrict access to the Southwest Fitness Park by patrons, invitees or guests of the Proposed Development except as may be necessary during periods of construction or routine maintenance; provided that the Applicant (or a successor UOA/HOA/COA/CA) may establish reasonable rules and regulations governing use of the Southwest Fitness Park consistent with other quasi-public or common areas located on the Property.

D. Northeast Area. The Applicant shall provide the following facilities or amenities as shown on Sheet 4.0.3 of the CDP/FDP in the Northeast Area.

i. A recreation court facility to be constructed as part of the development of Buildings M4 and/or P6 and made available to all of the residents and office tenants of the Proposed Development and their employees and guests (the "Recreation Court Facility"). Pursuant to Proffer 5Eiia and 5Eiic, should Building M4 be developed as the Grocery Store/Health Club or another principally retail use, as shown on Sheet 4.0.2 of the CDP/FDP, then the Recreation Court Facility shall be located on the roof deck of Building M4. Should Building M4 be developed as an Office Building, pursuant to Proffer 5Eiib and as shown on Sheet 4.0.2A of the CDP/FDP, then the Recreation Court Facility shall be located on the top deck of Building P6 and a landscaped terrace shall be added featuring specialty paving, plantings and outdoor seating. In either event, the Recreation Court Facility shall be an outdoor facility and include, at a minimum, two (2) un-lit full basketball courts and two (2) un-lit tennis courts. The Applicant may erect fencing, parapet walls and similar enclosures around the perimeter of the Recreation Court Facility to facilitate patron safety and reduce outdoor noise levels emanating from the adjacent public streets. The Recreation Court Facility shall be constructed and open for use prior to the issuance of the first Non-RUP for Building M4, but in no event later than the issuance of the 501st RUP for the South and Southwest Areas, combined. The Applicant shall not restrict access to the Recreation Court Facility by patrons, invitees or guests of the Proposed Development except as may be necessary during periods of construction or routine maintenance; provided that the Applicant (or a successor UOA/HOA/COA/CA) may establish reasonable rules and regulations governing use of the Recreation Court Facility consistent with other quasi-public or common areas located on the Property.

a. Access to the Recreation Court Facility shall be provided via a separate, signed entrance through parking structure P6 or Building M4, as determined by the Applicant and shown on Sheet 4.0.3 of

the CDP/FDP. The Applicant shall install signage throughout the Property directing patrons to the location of the Recreation Court Facility and shall advertise its existence and location to residents of the Residential Buildings through residential leases, HOA/COA sale packages, newsletters, the Internet and similar means of communication used in the Proposed Development.

- b. The hours of operation for the Recreation Court Facility shall be determined by the Applicant, but, at a minimum, shall be open during daylight hours consistent with similar courts owned/managed by the Fairfax County Park Authority.
- ii. A courtyard located between Buildings RT2 and RT3. The courtyard area shall include an outdoor seating, landscaping and hardscape features.
- iii. A passive landscaped space north of the Target building fronting North Street. Outdoor seating shall be provided.

E. West Area. The Applicant shall provide the following facilities or amenities in the West Area as shown on Sheet 9.0.1 through 9.0.11 of the CDP/FDP. Residents of Building M2 also shall have access to at least one (1) swimming pool and a multipurpose room located on the Property.

- i. A landscaped courtyard to be located on the top deck of the parking structure associated with Building M2. The courtyard shall include informal seating areas, landscaping, hardscape features, etc. The courtyard shall be completed prior to the issuance of the RUP representing more than 75% of the total residential units to be constructed in Building M2.
- ii. Central Plaza, as more particularly described in Proffer 28.

27. Lee High School Field and Lee District Park Family Recreation Area.

- A. First Contribution. The Applicant shall contribute to the Board of Supervisors \$1,000,000 to be used for the installation of a synthetic field at Robert E. Lee High School adjacent to the Property for shared community and school use as defined by a Memorandum of Understanding to be executed between FCPS and Fairfax County (including, without limitation, during peak youth practice and game times throughout the school year) and/or the construction of the Family Recreation Area at Lee District Park and/or the installation of a fence abutting Island Creek Elementary School, with the exact amount allocated to each facility determined by the Board of Supervisors in its discretion. Such payment shall be made no later than thirty (30) days following the Applicant's "commencement of construction" pursuant to (i) Minor Site Plan 7463-MSPV-001-A-1 (exclusive of the work associated with Electrical Relocation Permit #80920075) or (ii) Building Permits #80660209 and #82540152, but in no event sooner than thirty (30) days following approval of this Application, provided no appeal of such approval has

been filed. In the event of an appeal challenging approval of this Application, then the Applicant may elect to defer payment of this contribution until such time as the appeal has been formally resolved. For purposes of this Proffer, "commencement of construction" means (a) the Applicant has executed a contract with a general contractor for the work covered by the above plans and permits; (ii) the Applicant has issued formal written notice to proceed to such general contractor for the full scope of the work covered by such plans and permits; and (iii) the general contractor has, in fact, mobilized at the Property to undertake and proceed with the full scope of the work covered by the above plans and permits.

- B. Second Contribution. No later than thirty (30) months following the Applicant's "commencement of construction" of the improvements associated with (i) Minor Site Plan 7463-MSPV-001-A-1 (exclusive of the work associated with Electrical Relocation Permit #80920075) or (ii) Building Permits #80660209 and #82540152, whichever is later, the Applicant shall contribute an additional \$600,000 to the Board of Supervisors to be used for the installation of a synthetic field at Robert E. Lee High School and/or the construction of the Family Recreation Area at Lee District Park, with the exact amount allocated to each facility determined by the Board of Supervisors in its discretion. In the event of an appeal challenging approval of this Application, then the Applicant may elect to defer payment of this contribution until such time as the appeal has been formally resolved. Should the Fairfax County Park Authority or the Board of Supervisors later determine not to construct the Family Recreation Area at Lee District Park, then the Applicant's contribution shall be used to improve other public athletic amenities in the vicinity of the Property.

PUBLIC FACILITIES

28. Public Amenities and Facilities. The Applicant shall construct a series of facilities and structures on the Property that are intended to serve or be used by residents, tenants, invitees, visitors and guests of the Proposed Development, as set forth below and illustrated on Sheet 3.2.2 of the CDP/FDP.

- A. Central Plaza. The Applicant shall construct a central plaza in the West Area to be located adjacent to the Mall Area's entrance along Village Drive, as shown on Sheet 9.0.8 of the CDP/FDP ("Central Plaza"). Central Plaza shall be approximately 1.5 acres in size and include hardscape areas, open spaces, pedestrian pathways, water features, areas for community festivals or performances, etc., and shall feature wide sidewalks and areas to accommodate outdoor seating, etc., as well as connect the Mall Area to Loisdale Road. The Applicant or its designee shall develop and implement in phases and with increasing frequency over time programs in coordination with the Lee District Supervisor, or his/her designee, within Center Park East designed to promote community gatherings and events, such as concerts, art exhibits, farmers markets, etc. No later than two (2) years following final bond release for the completion of the full Central Plaza, the Applicant shall offer such events no fewer than 10 times a year. The Applicant shall not restrict access to the Central Plaza by

patrons, invitees or guests of the Proposed Development except as may be necessary during periods of construction or routine maintenance; provided that the Applicant (or a successor UOA/HOA/COA/CA) may establish reasonable rules and regulations governing use of the Central Plaza consistent with other quasi-public or common areas located on the Property. Construction of the Central Plaza shall occur in two phases as follows:

- i. Center Park East. Concurrent with the Applicant's construction of the earlier of either Building M1 or Building M2, the Applicant shall construct Center Park East, a hardscaped plaza where the programmed public functions will occur.
- ii. Center Park West. Prior to the issuance of the earlier of (a) the first RUP or Non-RUP among Buildings OF1, OF3a, or OF4/R5, or (b) the 301st RUP in the South Area, the Applicant shall construct Center Park West, a landscaped public garden with wide sidewalks and an inviting ambiance.

PUBLIC SCHOOLS CONTRIBUTION

29. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on January 7, 2003, at the time of issuance of the first building permit for each residential building, the Applicant shall contribute \$967.20 per high-rise and mid-rise Residential Unit (based on an assumed rate of 0.078 students per unit multiplied by \$12,400 per student generated) constructed on the Property to the Board of Supervisors for transfer to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements to schools in the Springfield area that serve the Property.

- A. Escalation in Contribution. Prior to site plan approval for each building or Development Area, if Fairfax County should increase the accepted ratio of students per high-rise multifamily unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution for that phase of development to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the greater of the two amounts.

AFFORDABLE HOUSING

30. Affordable Housing.

- A. Affordable Dwelling Units. Unless otherwise exempt pursuant to Section 803 of Part 8 of Article 2 of the Fairfax County Zoning Ordinance in effect as of the approval date of this Application (the "ADU Ordinance"), the Applicant shall provide Affordable Dwelling Units ("ADUs") pursuant to the ADU Ordinance.
- B. Workforce Dwelling Units. In addition to the number of ADUs required pursuant to this Proffer 30, the Applicant also shall provide for-sale and/or rental housing units on the Property that will be affordable to future residents who have a median

household income of up to (i) 120% of the Washington, D.C. metropolitan statistical area median income (“AMI”) as determined by the U.S. Census Bureau (for for-sale units), and (ii) 100% of AMI for rental units, so that a total of twelve percent (12%) of the total Residential Units constructed as part of the Proposed Development are sold/rented as either ADUs or Workforce Units (as defined in this Proffer 30) (“WDUs”). Such WDUs shall be in addition to any requirement to provide ADUs in accordance with the ADU Ordinance in effect as of the approval date of this Application.

- i. Definitions. The following terms used in this Proffer 30 shall be defined as follows, unless specifically modified:
 - a. Market-Rate Units. Residential Units approved on the Property to be sold/rented that are not subject to either the price restrictions of Part 8 of Article 2 of the Fairfax County Zoning Ordinance or this Proffer 30.
 - b. Workforce Dwelling Units. Dwelling units on the Property to be sold/rented on either a for-sale basis to persons with an income of one-hundred-twenty percent (120%) of AMI or below, or on a rental basis to persons with an income of one-hundred percent (100%) of AMI or below, as further classified in this Proffer. WDU tenancy may be provided as rental or for-sale at the Applicant’s sole discretion and shall be of the same ratio as the tenancy of Market-Rate Units offered on the site.
- ii. Administration of Workforce Dwelling Units. WDUs shall be generally administered pursuant to the “Board of Supervisors’ Workforce Dwelling Unit Administrative Policy Guidelines” adopted October 15, 2007, including the income tiers for for-sale and rental units (e.g., for-sale WDUs shall be made available in three (3) equal tiers to persons making up to and including 80%, 100% and 120% of AMI, respectively, while rental WDUs shall be made available in two (2) equal tiers to persons making up to and including 80% and 100% of AMI, respectively). Where this Proffer conflicts with the Policy Guidelines, this Proffer shall control.
- iii. Designation of Workforce Housing Units on Plans and Plats. Approved site plans and record subdivision plats shall designate the specific lots or units that are the WDUs and any associated bonus market rate units. Such site plans and/or record subdivision plats shall also provide a tabulation of any bonus units and/or any bonus floor area achieved on the Property. The tabulations shown on Sheet 1.2 of the CDP/FDP are inclusive of ADUs, WDUs and bonus units. If the location of a WDU is to change after the original approval of a site plan or subdivision, the Applicant shall be responsible for amending the approved plats and/or plans to reflect the designation of the alternate WDU prior to the issuance of a RUP for the new WDU. However, in the case of a multiple family rental development

that is under single ownership, the WDUs need not be specifically identified. In such rental developments, the site plan and/or record subdivision plats shall identify the development as a rental project and shall note the total number of WDUs and associated market rate units provided. For all for-sale developments, the floor area and bedroom count of each WDU and each associated bonus market rate unit shall be noted on the approved site plan and/or subdivision plat and building plan.

- iv. Marketing of WDUs. In accordance with the transit-oriented nature of the Proposed Development, which encourages people to live, work, shop and play without using an automobile, the Applicant, working with the Fairfax County Department of Housing and Community Development, shall initially market the WDUs and give preference to prospective WDU residents that are working on the Property or within the FSTSA and SCRD, provided that such marketing policies otherwise comply with applicable Fair Housing laws and regulations. In the event the Applicant is unable to sell/rent all or a portion of the available WDUs as described in this paragraph, then the Applicant may broaden the scope of its marketing efforts to include additional persons otherwise qualified to purchase/rent WDUs.
- v. Feature Shown. WDUs accepted as part of proffered conditions that are included on approved site plans shall be deemed features shown for purposes of Section 15.2-2232 of the Code of Virginia and, as such, shall not require further approvals pursuant thereto in the event the Board shall acquire or lease such units.
- vi. Phasing. The establishment of WDUs may occur in phases, concurrent with the phased development/construction of the Proposed Development, so long as the minimum number of WDUs is not reduced and construction of the WDUs is phased in general proportion to the market-rate units.
- vii. Unit Size and Features. The WDUs may be provided as efficiency, one-bedroom and/or two-bedroom units, as determined by the Applicant, provided that the Applicant shall be required to consult with the Fairfax County Redevelopment and Housing Authority ("FCRHA") prior to site plan approval for any Residential Building in which WDUs are proposed to discuss a potential mix of WDUs for such building based on then-current workforce housing needs. Efficiency units shall be a minimum size of 450 square feet of gross floor area, one-bedroom units shall be a minimum size of 600 square feet of gross floor area, and two-bedroom units shall be a minimum 750 gross square feet. A minimum of ten (10) WDUs required under this Proffer shall be designed and constructed as handicapped-accessible units. A minimum of ten (10) additional WDUs required under this Proffer shall be designed and

constructed with Universal Design features, and each such unit shall be as determined by the Applicant.

- viii. Alternative Administration. Notwithstanding the foregoing, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

GREEN BUILDING PRACTICES

31. Green Building Certifications.

- A. LEED Certification for Individual Buildings. The Applicant shall obtain certification under the U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design (LEED) certification on a building-by-building basis for each new Building (Residential, Office, Hotel, Mixed-use and stand-alone Retail) constructed on the Property that raises the total development on the Property above 1,930,000 square feet. Certification shall be under either the most current version of the LEED for New Construction (LEED-NC) or LEED for Core and Shell (LEED-CS) rating systems. Notwithstanding the foregoing two (2) sentences, the Applicant's expansion/reconstruction of any or all of the (a) Existing Target, (b) Target Pad Building and (c) Target Expansion on Fairfax County Tax Map 90-2 ((13)) Parcel 2 shall be exempt from the requirement to obtain LEED-NC or LEED-CS certification under this Proffer.
- i. Stand-alone retail buildings shall have the option of using the most current version of LEED-NC, LEED-CS, or if it is available for the Applicant's use, LEED for Retail (NC) or other applicable LEED certification rating system designed for new construction (e.g., LEED for restaurants) excluding rating systems for the operation and maintenance of an existing or newly constructed building (i.e. LEED-EB, O&M).
- ii. Any stand-alone retail building with a grocery use that is less than 50% of the total square footage shall obtain LEED-CS certification for the entire building. Any stand-alone retail building with a grocery use that is more than 50% of the total square footage shall be exempt from the requirement to obtain LEED certification under this Proffer.

- iii. As part of the initial site plan submission for each building for which LEED certification is required, The Applicant shall include a statement certifying that a LEED-accredited professional (LEED-AP) who is also a professional engineer or architect is a member of the Applicant's design team, and that the LEED-AP has provided direction to incorporate sustainable design elements and innovative technologies into the building's design to facilitate attainment of LEED certification pursuant to this Proffer.
- iv. As part of the initial site plan submission and building permit application for each building for which LEED certification is required, the Applicant shall provide a list of specific credits within the most current version of the LEED-NC or LEED-CS (or, if applicable, LEED for Retail (NC) or other LEED rating system selected by the Applicant as specified above) rating system that the Applicant anticipates incorporating in the design of such building. As part of such submissions, the Applicant's LEED-AP shall provide certification statements confirming that the proposed credits will satisfy the minimum number of credits necessary to attain LEED certification of the subject building.
- v. Concurrent with the submission of a building permit application for each new building required to attain certification under this Proffer, the Applicant shall execute a separate agreement and post, as a "Green Building Escrow," in the form of cash or a letter of credit from an institution acceptable to DPWES an amount equal to \$1.00 per square foot of development in such building to be held in an escrow account by the County to ensure compliance with this Proffer. This escrow shall be in addition to and separate from other bond requirements and shall be released to the Applicant upon the applicable building's certification under the LEED-CS or LEED-NC (or, if applicable, LEED for Retail (NC) or other LEED program selected by the Applicant as specified above) rating system by the USGBC. A letter or other documentation from the USGBC stating that the building has obtained LEED-CS or LEED-NC (or, if applicable, LEED for Retail (NC) or other LEED rating system selected by the Applicant as specified above) certification shall be sufficient to demonstrate compliance with this Proffer. In the event the Applicant fails to produce documentation of the Property's certification under the LEED-CS or LEED-NC (or, if applicable, LEED for Retail (NC) or other LEED rating system selected by the Applicant as specified above) rating system within two (2) years following the issuance of the final RUP or Non-RUP for the building for which such escrow was posted, then the escrow shall be released to Fairfax County as the sole remedy available for the building's failure to secure LEED certification under this Proffer and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

- B. LEED-ND Program. The Applicant shall design and construct the Proposed Development in general accordance with the LEED-Neighborhood Development (“LEED-ND”) rating system, which focuses on redevelopment of existing suburban locations and, therefore, is appropriate for the Proposed Development. The Applicant shall not be required, however, to secure certification under the LEED-ND rating system, as this proffer is intended to supplement LEED certification on a building-by-building basis as set forth in this Proffer.

MISCELLANEOUS PROFFERS

32. Miscellaneous Proffers.

- A. Advance Density Credit. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all eligible dedications described herein.
- B. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to “Applicant” in this proffer statement shall include within its meaning and shall be binding upon Applicant’s successor(s) in interest and/or developer(s) of the site or any portion of the site.
- C. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.
- D. Annual Escalation Clause. For all proffers in this document specifying contribution amounts or budgets for the construction of improvements or facilities, the contribution and/or budget amount shall escalate on a yearly basis from the base year of 2009 and change effective each January 1 thereafter, based on changes in the Marshall and Swift Building Cost Index. For all proffers in this document specifying contribution amounts or budgets for operational expenses, including but not limited to, Proffer 19 (Transportation Demand Management) and Proffer 24A (Transit Bus Circulation), the contribution and/or budget amount shall escalate on a yearly basis from the base year of 2009 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) (“CPI-U”), both as permitted by Virginia State Code Section 15.2-2303.3.

SIGNATURES ON THE FOLLOWING PAGES

FRANCONIA TWO, L.P.
Tax Map #: 0902-13-0005A1, 0902-01-0081A,
0902-13-0003, 0902-13-0004A1, 0902-13-0005A1

By: Franconia GP, LLC, its General Partner

By: 

Sandeep L. Mathrani, Authorized Signatory

VORNADO SAVANNA LLC
Tax Map # 0902-01-0098

By: Vornado Savanna SM LLC, its Managing Member

By: 

Sandeep L. Mathrani, Authorized Signatory

J.C. PENNEY PROPERTIES, INC.
Tax Map # 0902-13-0006



By: [Signature]
Name: Richard P. O'Leary
Title: Vice President

VILLAGE GREEN PROPERTY, INC.

Tax Map # 090-2-13-0001

By: Caroline Randel

Name: Caroline Randel

Title: President

TARGET CORPORATION
A Minnesota Corporation
Tax Map # 0902-13-0002

By: 
Name: Scott Nelson
Title: Sr. Vice President
Target Corporation