PCA 2005-PR-041-2
Eskridge (E&A) LLC
PROFFER STATEMENT
October 15, 2007
February 1, 2011
April 15, 2011
May 13, 2011
June 2, 2011
June 10, 2011
June 16, 2011
July 7, 2011
July 18, 2011

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Fairfax County Board of Supervisors' (the "Board") approval of this application PCA 2005-PR-041-2, Eskridge (E&A) LLC (the "Applicant") as owner, for itself and for its successors and assigns, hereby proffers that development of this partial PCA on approximately 21.9 acres inclusive of Tax Map parcels 49-3 ((37)) Parcels C, D, F, G and J (the "Property") shall be in accordance with the following proffered conditions (the "Proffers"), which, if approved, shall supersede any and all existing proffered conditions as to the area of this Amendment. In the event this partial PCA application is denied, these proffers shall immediately be null and void and the previous proffers shall remain in full force and effect.

I. GENERAL

1. **Substantial Conformance**. Subject to the Proffers and the provisions of Sections 6-200 and 6-400 and Article 16 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Conceptual Development Plan Amendment/Final Development Plan Amendment ("CDPA/FDPA") dated January 10, 2011, as revised through June 17, 2011, consisting of Sheets 1 through 48, and prepared by VIKA, LLC., Lessard Group and SK&I Architectural Design Group, as further modified by these proffered conditions.

2. **Minor Modifications**. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDPA/FDPA described above encompassing the application Property may be permitted due to final architectural and engineering design, as determined by the Zoning Administrator. Building footprints may be decreased, and the number of units and square footage within each building may be

adjusted, as long as the minimum open space tabulations provided in the CDPA/FDPA are not reduced; the minimum building setbacks from the property lines as shown on the CDPA/FDPA are maintained; the number of residential units and the building heights comply with those indicated in the CDPA/FDPA and in these Proffers; and the development otherwise is in substantial conformance with the CDPA/FDPA and these Proffers. The Applicant further retains the option to file partial Conceptual Development Plan Amendments (CDPAs) and/or partial Proffered Condition Amendments (PCAs) in the future pursuant to Paragraph 6 of Section 18-204.

3. **Final Development Plan Amendments**. Notwithstanding that CDP 2005-PR-041 appears on the same development plan with FDP 2005-PR-041-2, it shall be understood that (i) said CDP plan shall consist of the entire plan relative solely to ultimate points of access at their periphery of the Property; the general location of the proposed building footprints, uses, and parking at or above grade; minimum and maximum building heights, on-site vehicular circulation, the amount and location of common open space areas; and (ii) the Applicant has the option to request Final Development Plan Amendment ("FDPA") approvals from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements.

4. **Density Credit**. All intensity/ density attributable to land areas dedicated and/or conveyed at no cost to the Board or any other public entity pursuant to these proffers (including, without limitation, the dedications referenced below) shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the Property.

5. **Escalation**. The amounts of each cash contribution set forth in these Proffers shall adjust on a yearly basis (but not to exceed 3% increase for any given calendar year) from the base year of 2008, and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI").

6. **Demonstration of Square Footage Compliance**. At the time of filing of each development site plan, the Applicant shall submit to the Department of Public Works and Environmental Services ("DPWES") a running square footage tabulation which clearly presents proposed and approved square footage and dwelling units as follows: (i) total overall site development and development within the respective PRM and PDC Zoning

Districts cumulatively; (ii) total non-residential use versus residential use, overall and within the respective PRM and PDC Zoning Districts cumulatively; (iii) total by land use category and (iv) cumulative total proposed in the respective site plans for each development Parcel A through J, broken down by uses. Said tabulations shall demonstrate compliance with the square footage limitations set forth in the tabulations and charts listed on the CDPA/FDPA. All references in the Proffers to "Parcels A, B, C, D, E, F, G, H, and/or I" are to the development parcels as identified in the CDPA/FDPA, and not as identified on the Fairfax County tax maps.

II. LAND USE

1. **Zoning Districts**. As delineated on the CDPA/FDPA, the approximately 31.37-acre land area that was rezoned by the Board on October 15, 2007, RZ 2005-PR-041 (the "Application Property") is zoned as follows:

   A. Approximately 24.14 acres to the PDC District and comprised of development parcels A, B, D, F, H and I.

   B. Approximately 7.23 acres to the PRM District and comprised of development parcels C, E, G and J.

2. **Permitted Uses**. The following uses shall be allowed on the respective portions of the Property, consistent with the CDPA/FDPA and the Parcel Allocation Chart referenced in Proffer II(4), below and set out in the CDPA/FDPA. Any use not set forth below and allowed in the respective District may be permitted with approval of a final development plan amendment, special exception or special permit, as applicable.

   A. PDC District "Principal Uses" Permitted.

   - Business service and supply service establishments
   - Eating establishments
   - Establishments for scientific research, development and training
   - Financial institutions (without drive-through)
   - Garment cleaning establishments (without on-site processing)
   - Hotels
   - Offices, including medical offices/urgent medical care with no overnight stay
   - Personal service establishments
   - Public uses
   - Repair service establishments
   - Retail sales establishments
   - Theatres

B. PDC "Secondary Uses" Permitted.

- Accessory uses, accessory service uses and home occupations as permitted by Article 10
- Bank teller machines, unmanned
- Commercial and industrial uses of special impact (Category 5), limited to:
  -Amusement arcades
  -Fast food restaurants (without drive-through windows)
  -Quick-service food stores
  -Retail sales establishments - large (not to exceed two)
  -Vehicle rental establishments, limited by the provisions of Sect. 9-518
- Commercial recreation uses (Group 5), limited to:
  -Bowling alleys
  -Billiard and pool halls
  -Health clubs
  -Miniature golf courses (limited to elements which are not visually intrusive and which complement, and do not detract from, the high quality design of the Town Center)
  -Ice skating facilities
  -Any other similar commercial recreation use
- Community uses (Group 4), excluding marinas, docks and boating facilities
- Multi-Family Dwellings
- Institutional uses (Group 3), limited to home child care facilities
- Light public utility uses (Category 1) limited to electric substations and distribution centers including transformer stations, roof-top antennae and other facilities associated with a local radio, television, and/or cable access channel, and mobile and land-based telecommunication facilities (See Proffer II.12.C below)
- New vehicle storage (maximum 50 vehicles) (pre-buildout, and only to the extent the number of spaces exceed Zoning Ordinance requirements for uses with occupancy permits)
- Quasi-public uses (Category 3), limited to:
  -Child care centers and nursery schools
  -Colleges, universities (without dormitories)
  -Cultural centers, museums and similar facilities
  -Independent living facilities
  -Private clubs
  -Private schools of special education
- Veterinary hospitals (kennels and boarding allowed, but no exterior runs)

- Single Family Attached

C. PRM "Principal Uses" Permitted.

- Dwellings, multiple family.
- Public uses.

D. PRM "Secondary Uses" Permitted.

- Accessory uses and home occupations as permitted by Article 10

- Bank teller machines, unmanned
- Business service and supply service establishments
- Commercial and industrial uses of special impact (Category 5), limited to:
  -Fast food restaurants (without drive-throughs)
  -Quick-service food stores
  -Vehicle rental establishments, limited by the provisions of Sect. 9-518
- Commercial recreation uses (Group 5), limited to:
  -Bowling alleys
  -Billiard and pool halls
  -Health clubs
  -Ice Skating facilities
  -Any other similar commercial recreation use
- Eating establishments
- Financial institutions (without drive-throughs)
- Garment cleaning establishments (no on-site processing).
- Institutional uses (Group 3), limited to:
  -Home child care facilities
- Light public utility uses (Category 1) limited to electric substations and distribution centers including transformer stations, roof-top antennae and other facilities associated with a local radio, television, and/or cable access channel, and mobile and land-based telecommunication facilities. See Proffer II.12.C below.
- Offices, including medical offices/urgent medical care with no overnight stay
- Personal service establishments
- Quasi-public uses (Category 3), limited to:
  -Child care centers and nursery schools
  -Colleges, universities (without dormitories)
  -Cultural centers, museums and similar facilities
  -Independent living facilities
  -Private clubs
  -Private schools of special education
- Repair service establishments
- Retail sales establishments
- Vehicle transportation service establishments

- Single Family Attached

E. PDC and PRM "Temporary Uses" Permitted

- Festivals, fairs or similar activities, as defined in Paragraph F below
- Farmers' Markets, as defined in Paragraph G below
- Promotional activities of retail merchants
- Apartment sales and rental offices

F. Festivals, Fairs or Similar Activities. The Applicant shall be permitted to provide on the subject Property festivals, fairs or similar activities including, without

limitation, farmers' markets, without the need for issuance or approval of a "Temporary Special Permit" in accordance with the following provisions:

i. Maximum of 64 events per year;

ii. May be provided with or without admission or other fees;

iii. Sponsored by the Applicant, or its designee, a civic organization, public entity including the Fairfax County Park Authority ("FCPA"), local chamber of commerce, charitable organization, service club, non-profit, or similar entity;

iv. Complies with all Health Department regulations;

v. The Applicant reserves the right to periodically close the following portions of the internal private road network: Festival Street between Strawberry Lane and the Festival Street intersection with Festival Street Extended. Other portions of the internal private street network may also be closed on an infrequent basis.

vi. Notwithstanding the "Shopping Center Parking Exhibit" on Sheet 3 of the CDPA/FDPA, the Applicant, upon temporary closure of portions of the internal road network, reserves the right to temporarily provide no more than 61 parking spaces (a number which will fluctuate downward depending upon the portion temporarily closed and the number of street level parking spaces affected) in one "parking zone" for uses in one or more other "parking zones." Such provision of temporary parking shall permit the Applicant to count all on-street spaces on private roads within the development toward the parking required by the Ordinance.

G. Unmanned Freestanding Automated Teller Machines. The Applicant shall be permitted to install up to five free-standing, unmanned bank teller (aka "ATM") machines on the Property; the footprint of each such ATM shall not exceed sixteen (16) square feet. Said ATMs shall not be counted toward the maximum amount of retail or non-residential GFA permitted on the Property referenced below. Said ATMs shall be located in kiosks in a manner that does not interfere with pedestrian movements or safety. This limitation shall not preclude additional ATMs within buildings or on building facades.

H. Retail Kiosks/Moveable Carts. The Applicant shall be permitted to operate movable carts, which shall be defined as temporary, transportable kiosks that

serve a retail purpose, but shall not be counted toward that maximum amount of retail or non-residential GFA permitted on the Property referenced below. Each kiosk/cart shall be no more than 120 square feet; however, one newsstand kiosk shall be permitted to be up to 900 square feet maximum size, which kiosk, if not portable, shall be counted against the maximum amount of retail or non-residential GFA permitted on the Property. Said carts shall be located within park and plaza areas, as well as adjacent to non-residential uses, as determined by the Applicant, provided that, cumulatively, said carts do not negatively impact streetscape views, do not interfere with pedestrian movements or safety and conform with the standards set forth in the "Design Guidelines," as described below.

3. **Overall Maximum Floor Area Ratios and Gross Floor Areas**. Development on the Property as a whole shall not exceed 1,893,112 square feet of GFA of principal and secondary uses, at an overall 1.39 floor area ratio ("FAR"), including (i) "Affordable Dwelling Units" ("ADUs") and ADU-related density, and (ii) Workforce Housing-related density, as presented in the tabulations on Sheet 2 of the CDPA/FDPA, but excluding Cellar Space as defined in the Zoning Ordinance ("Cellar Space"). A maximum of 1,442,712 square feet of GFA, exclusive of Cellar Space, shall be permitted within the PDC zone, and a maximum of 610,000 square feet of GFA, exclusive of Cellar Space, shall be permitted within the PRM zone. Cellar Space shall be limited to 175,000 SF for all permitted uses, except dwelling units. Cellar Space dwelling units shall be limited separately to 25,000 SF. Nothing herein shall be construed to limit the Applicant's ability to utilize Cellar Space for storage or other uses not occupied by humans.

4. **Parcel Allocation Chart**. Land uses and building heights shall be allocated in accordance with the "Parcel Allocation Chart" which appears on Sheets 6 and 7 (and subsequent sheets) of the CDPA/FDPA. The Applicant, in its sole discretion, shall determine the final allocation for each Development Parcel in accordance with the limitations set forth in those charts

5. **Non-Residential Gross Floor Area**. To provide the "synergy" of uses envisioned for the Town Center, the total non-residential uses within both the PDC and PRM Zoning Districts combined shall consist of a minimum of 460,000 square feet of GFA and a maximum total of 1,196,144 square feet of GFA (excluding Cellar Space), which shall be

allocated in accordance with the Site Tabulations on Sheet 2 and the "Parcel Allocation Chart" on Sheets 6 and 7 (and subsequent sheets) of the CDPA/FDPA generally as follows: 0 to 171,000 square feet of GFA in office and related uses; 10,000 to 120,000 square feet of GFA in theatre and related uses; 0 to 364,000 square feet of GFA in hotel and related uses; and 370,000 to 675,000 square feet of GFA (exclusive of any eating establishment/fast food or related uses provided in conjunction with the theatre, office, and/or hotel uses) in uses such as retail uses, accessory service uses, retail sales establishments, child care centers, eating establishments, financial institutions, health clubs, and other principal and secondary PDC and PRM uses that are neither residential, office/research, theatre and related uses, or hotel and related uses. For purposes of this proffer, the designation of a building as office or other employment use shall be construed to permit inclusion of fast food (e.g. delicatessen) financial institution, and other such accessory and personal service uses (as may otherwise be permitted in these proffers) on the ground and/or first floor level of such building. At ultimate build-out of the development, no more than fifty-five (55) percent of the overall project density shall consist of theatre, retail, eating establishments, service and related non-residential uses; (office and hotel uses and uses accessory to residential within residential buildings shall not be included within this fifty-five (55) percent cap). In no event shall the combined total maximum residential and non-residential GFA for the Property exceed 1,893,112 square feet of GFA.

6. **Residential Gross Floor Area**. The total residential uses within both the PDC and PRM Zoning Districts combined shall be a minimum of 550,000 square feet of GFA to a maximum of 1,205,112 square feet of GFA, including ADUs and ADU bonus density, and Workforce Housing Units and Workforce Housing bonus density, which shall be provided pursuant to Proffer IV.1 and IV.2 below. Said residential uses shall be allocated in accordance with these proffers and with the "Parcel Allocation Chart" listed on Sheets 6 and 7 (and subsequent sheets) of the CDPA/FDPA. In no event shall the combined total maximum residential and non-residential GFA for the Property exceed 1,893,112 square feet of GFA.

7. **Minimum Number of Dwelling Units**. A minimum of 500 residential units shall be constructed on the Property. Such total shall include all required "ADUs" and all "bonus" dwelling units attributable to the provision of ADUs, which shall be provided pursuant to Proffer IV.1 below, and all Workforce Housing and Workforce Housing "bonus" Units

provided pursuant to Proffer IV.2 below. Market-rate residential units constructed as part of the Proposed Development shall have an average gross unit size of approximately 1,100 square feet of gross floor area per dwelling unit (+/- 5%); provided, however, that nothing shall preclude the Applicant from constructing individual units of lesser or greater size than the average set forth herein.

8. **Allocation of Land Uses**. The allocation of dwelling units and residential and commercial gross floor area among the building parcels on the Property is represented on the CDPA/FDPA. The Applicant may reallocate dwelling units and/or gross floor area among the buildings depicted on the CDPA/FDPA without requiring a PCA or FDPA so long as (1) the total maximum FAR and residential square footage proffered above is not exceeded; (2) the Parcel Allocation Charts shown on Sheets 6 and 7 and subsequent sheets of the CDPA/FDPA is adhered to; (3) the minimum and maximum building heights shown on the CDPA/FDPA are adhered to; (4) the footprint and configuration of individual buildings do not exceed that shown on the CDPA/FDPA except to the extent such change is deemed a minor modification, as determined by the Zoning Administrator; and (5) the maximum FAR limitations within the PRM and PDC Zoning Districts shown on the CDPA/FDPA, respectively, and for the Property overall as set forth in Proffer II.3 above, are not exceeded, as proffered here and as determined by the Zoning Administrator.

9. **Build-out in Phases**. Build-out of the Property may proceed in phases. The FAR constructed within a respective site plan-approved portion of the project may exceed the maximum density limitation set forth in Proffer II.3, so long as such maximum density limitation is not exceeded over the entirety of the Property at any time, as shall be demonstrated pursuant to Proffer I.6, and is consistent with the Parcel Allocation Chart and the CDPA/FDPA.

10. **Location of Residential Uses**. As depicted on the CDPA/FDPA, residential use shall be located on the upper floors (i.e. above the ground floor) of buildings on Parcels "C" and "E," and on the ground (which, because of topography and "front door" access design, may be deemed "Cellar Space") and/or upper floors of "G;" however, this shall not be construed to prohibit retail and related uses on the second floor, in addition to the ground floor, of such buildings or uses ancillary to residential on the ground floor of such buildings. Residential use may also be provided, as determined by the Applicant in its sole discretion, on Parcel "F" in accordance with the CDPA/FDPA. Residential use will

be provided on Parcels H, I and J in accordance with the CDPA/FDPA. Parcel H will also be allowed, at the sole discretion of the Applicant, to provide retail and ancillary residential uses.

11. **Location of Hotel and Related Uses**. Up to 364,000 square feet of GFA of hotel and related uses may be located on Parcels A, B, F, and/or G, or on none of them, as determined by the Applicant in its sole discretion.

12. **Building Heights**. Heights of buildings shall be permitted up to the maximums listed for each building "Parcel" on the CDPA/FDPA and Parcel Allocation Chart. In its sole discretion, the Applicant may construct a maximum of three buildings that are up to 115 feet in height, within Parcels "A," "B," and/or "F," as set forth on the "Parcel Allocation Chart" listed on Sheets 6 and 7 (and subsequent sheets) of the CDPA/FDPA. Building height shall be measured as defined by the Zoning Ordinance and shall be exclusive of those structures that are excluded from the maximum height regulations as specifically set forth in the Zoning Ordinance such as, without limitation, penthouses and other roof structures used for common amenity space for residents of those multifamily buildings (rooftop pool facilities, exercise rooms, meeting/party rooms and such comparable uses).

    A. Mechanical penthouses shall be permitted to exceed said maximum heights listed on the CDPA/FDPA, provided that they meet the following standards as determined by DPWES:

        i. They comprise less than twenty-five (25) percent of the roof of the building.

        ii. They do not exceed twenty (20) feet in height.

        iii. They are architecturally integrated with materials and colors consistent with the building upon which they are situated.

    B. Notwithstanding the foregoing, however, nothing shall preclude the Applicant, in the Applicant's sole discretion, from constructing buildings to a lesser building height than the maximums depicted on the development plan and listed on the CDPA/FDPA "Parcel Allocation Chart," provided minimum heights are no less than the minimums shown on the CDPA/FDPA and Parcel Allocation Chart, and the configuration of the building envelope remains in substantial conformance with those shown on the CDPA/FDPA.

    C. Telecommunications equipment may be placed on the proposed building(s) rooftop(s); however, any such facilities must (a) comply with the Zoning

Ordinance and (b) be screened, designed and/or set back sufficiently from the perimeter of the roof and penthouse to minimize view from the street below. Screening measures may be used such as, but not limited to, (i) including the facilities as part of the architecture of the building(s), (ii) employing telecommunication screening material, and/or (iii) flush-mounted antennas utilizing colors consistent with the building treatment in the area where the antennas are to be installed.

13. **Parcel A Ground Floor Height**. In the event an office building is constructed at the corner of Lee Highway and Eskridge Road, as depicted for Parcel A Option 1 on Sheets 5 and 7 of the CDPA/FDPA, the Applicant shall provide a minimum clear height of 11 feet on the first floor to enable potential future use as ground-floor retail.

III. COMMUNITY SPACE

1. **Community Meeting Space**. Within one of the buildings located within Parcels G or H, a 1,000 square feet of GFA shall be provided to Fairfax County at no cost to the County to serve community needs, as coordinated with the County by the Owner of the Parcel it will be finally located in, in accordance with the following conditions:

   A. Said "Community Space" shall be limited to uses and events such as exhibit and/or activity space, or other uses and events as may be agreed to by the owner of the building on Parcel G or H where the 1,000 s.f. space is located.

   B. Within sixty (60) days following the receipt, of a building permit for said building that the 1,000 s,f. space is located in, or such later time as Owner of the said building, in its sole discretion, may choose prior to issuance of a Non-RUP for the building it is located in on G or H , the Owner shall request in writing that a Lease/License shall be prepared by the County Attorney and submitted to the Owner for review and approval. Said Lease/License shall include commercially reasonable terms substantially similar to other leases/licenses executed by the Board of Supervisors for leased space elsewhere in Fairfax County, except that there shall be no rent required of the County. Said Lease/License shall also provide that the Owner shall be permitted, in coordination with the County, to utilize said space on an agreed to basis for uses in conjunction with the building it is located in, and that the owner shall provide utilities, cleaning services and general maintenance for this space at no cost to the County.

C. In the event that Fairfax County fails to submit said Lease/License within 60 days of the request referenced above, fails to execute said Lease/License within 30 days after its language has been agreed upon by the County and the Owner of the building on G or H that the 1,000 square foot space is located, fails to occupy said "Community Space" within six months after execution of the said Lease/License and a Non-RUP has been issued for said space, or fails to utilize said space for six consecutive months once it has been "finished" and utilized by the County, then the Applicant's obligations under this Proffer shall automatically and completely expire, and the Applicant thereafter shall be permitted to market and lease said space as an accepted use within the building it is located in, in accordance with the square footage allocation listed on the CDPA/FDPA and the uses set forth in these Proffers.

D. All time-frames listed above may be subject to extension by mutual agreement of the parties.

2. **Satellite Police Office**. Provision shall be made in Applicant's security offices for desk and phone facilities dedicated for use by the Fairfax County Police, password secure internet access, as well as access to necessary support facilities, such as copiers and facsimile machines and private interview space, all at no cost to the County.

IV. AFFORDABLE HOUSING.

1. **Affordable Dwelling Units ("ADUs")**. The Applicant shall provide as Affordable Dwelling Units (ADUs), to be located in any residential building on the Property, the equivalent of twelve and one half (12.5) percent of all single family attached ("SFA") dwelling units built on the Property, as set forth in Part 8 of Article 2 of the Zoning Ordinance (the "ADU Ordinance"). Additionally, the Applicant shall provide a total of 4.27 percent of all multiple family residential units, excluding any SFA ADU's built as multiple family units, built on the Property, regardless of building construction type, as ADUs. The actual number of ADUs to be provided, attributable to multiple family residential units only, shall be determined at the time of site plan approval by applying 4.27 percent to the total number of multi-family residential units actually shown on the respective site plans, excluding any SFA ADU's or ADU's generated from other buildings but located within the subject building. The ADUs may be provided as for-sale or rental units, consistent with the market rate units in the same building, and shall be

administered in accordance with the requirements of the ADU Ordinance. Ten (10) (or more, in the Applicant's sole discretion) of the ADU units required under this Proffer shall be designed and constructed as fully handicapped-accessible units. RUPs shall not be issued for more than seventy-five percent (75%) of the total dwelling units approved on the Property until all of the RUPs have been issued for at least 75% of the ADUs required pursuant to this Proffer.

2. **Workforce Dwelling Units**. In addition to the ADUs required pursuant to this Proffer IV(1) above, the Applicant also shall provide 7.73 percent of all non-ADU, non–bonus density market rate multiple family dwelling units built on the Property as Workforce Dwelling Units ("WDUs"). The actual number of WDUs to be provided, attributable to multiple family residential units only, shall be determined at the time of site plan approval by applying 7.73 percent to the number of multi-family residential units (excluding all ADU's, ADU bonus density, and WDU bonus density) actually shown on the respective site plans. The WDUs shall be provided such that they are affordable to households with a maximum annual income of one hundred twenty (120) percent of the Area Median Income for the Washington Metropolitan Statistical Area ("AMI"). One-third of said units shall be affordable to future residents who have a household income of up to 80%, up to 100%, and up to 120%, respectively, of the AMI, regardless of building construction type. ADUs and/or Workforce Units (as defined in this Proffer) provided in any single Residential Building of the Proposed Development may be greater or less than twelve percent (12%) of the total residential units in such phase/building; provided, however, that the total number of ADUs provided upon completion of the Proposed Development shall satisfy, respectively, the above-defined twelve and one-half percent (12 ½%) of the total number of SFA units, and 4.27% of the total number of multiple family units (excluding any SFA ADUs provided as multiple family units), and the total number of WDUs provided upon completion of the Proposed Development shall be 7.73% of all non-ADU, non–bonus density multiple family dwelling units.

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

   i. Market-Rate Units. Dwelling units approved on the Property that are not subject to either the price/rental restrictions of Proffers IV(1) or IV(2);

   ii. Workforce Dwelling Units ("WDUs"). Dwelling units on the Property subject to the price/rental restrictions of this Proffer IV(2), but not subject

to those of Proffer IV(1) or the ADU Ordinance except to the extent specified in Proffer IV(2)(G), below; and

iii. Bonus Density. Applicant may provide bonus market rate dwelling units at a ratio (a) of one (1) bonus market rate dwelling unit per one (1) WDU provided; and (b) of seventeen percent (17%) ADU bonus density of the total multiple family dwelling units built on the Property (not including any SFA-attributable ADU's or SFA bonus units built as multiple family residential units).

B. Workforce Dwelling Units. Each WDU provided shall be made available by the Applicant on either a for-sale basis or rental basis to future residents who have a household income of up to 80%, up to 100%, or up to 120% of AMI, respectively, in accordance with Proffer IV(2) above. The Applicant shall direct its marketing of the WDUs with particular emphasis on bicyclists, one or no-car individuals/families, and employees of nearby employers (such as the INOVA Fairfax Hospital nurses, Exxon/Mobil, nearby police and fire units, Luther Jackson Middle School teachers); provided, however, that such marketing shall be conducted on a non-discriminatory basis in conformance with the Fair Housing Act and all other applicable laws and regulations.

C. Unit Size. WDUs shall have a minimum size of 450 net leasable square feet and a maximum size of 850 net leasable square feet and may be provided as efficiency and/or studio units and/or one (1) or (2) bedroom units, as determined by the Applicant in its sole discretion. The bedroom count for the 4.27% of multiple family ADUs generated per proffer IV(1) above shall be proportionate to the bedroom mix of the market rate units in the residential building in which they are located; in the event that ADUs in excess of 4.27% are provided in a given building, such excess ADUs shall be proportionate to the bedroom mix of the market rate units in the residential building in which they are located. The size of the multiple family ADUs shall be consistent with the size requirements included in the ADU Ordinance and published Specifications for Prototype ADUs.

D. Designation on Approved Site Plan. The approved site plans, record plats and building plans for the Residential Buildings shall designate the number of ADUs, WDUs, Market-Rate Units, and bonus Market Rate Units to be provided in each

respective building. The Applicant shall determine the interior amenities, including the number of bedrooms, for each WDU provided. Interior amenities shall not be less than that provided for the ADUs referenced in Proffer Paragraph IV(1) above. If the development of the Residential Buildings is phased or developed in sections, then the approved site plan(s) for each Residential Building shall also contain tabulations of the total number of ADUs by bedroom count, WDUs by bedroom count, and the number of Market-Rate Units by bedroom count on the Property. Whenever the calculation of the required ADU's and WDUs results in a fractional unit less than 0.5, then the number shall be rounded down to the next whole number, and any fractional unit of 0.5 or greater shall be rounded up to the next whole number.

E. Location Change. If there is to be any change in the location of WDUs after the original approval of a site plan, the Applicant shall be responsible for amending the approved plans and plats to reflect the designation of the alternate WDU location(s) prior to the issuance of a Residential Use Permit for the new WDUs. However, in the case of a multiple family rental building that is under single ownership, the WDUs need not be specifically identified. In such rental buildings, the site plans, record plats and building plans shall identify the building as a rental project and shall note the total number of WDUs and the number of market rate units provided. For all for-sale buildings, the floor area of each WDU shall be noted on the approved site plan, record plat and building plan.

F. Timing for Provision of the Work-Force Units. RUPs shall not be issued for more than ninety percent (90%) of the total dwellings units approved on the Property until all of the RUPs have been issued for all of the WDUs required pursuant to this Proffer.

G. Provisions of the ADU Ordinance. The WDUs shall be administered in a fashion similar to ADUs pursuant to the below-specified provisions of the ADU Ordinance in effect at the time of the execution of these Proffers. The following specific provisions of the Zoning Ordinance shall apply to administration of the WDUs: Sections 2-805, 2-807, 2-810, 2-811, 2-812 (with a control period of 50 years for rental units and recording covenants committing to the above-mentioned control periods), 2-813, 2-817, and 2-818, including the recordation of the appropriate restrictive covenants in the land records of Fairfax County, except

where such provisions directly conflict with these Proffers. Occupants of WDUs purchased or leased by the Board and/or HCD shall qualify for the household income tiers set forth above. There shall be no requirement that the WDUs provided shall be of proportional bedroom count to the market rate units within this development. When the provisions of Proffer IV(2)(1) and/or IV(2) conflict with any provision of the Zoning Ordinance or of the Board's WDU Administration Policy Guidelines, these Proffers shall control.

H. Alternative Administration. Notwithstanding the foregoing subparagraph G, 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. 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 subparagraph G above shall become null and void. Such an agreement and any modifications thereto, shall be recorded in the land records of Fairfax County. In addition, if, prior to site plan approval, the Fairfax County Zoning Ordinance is amended to provide specific requirements regarding WDUs, the Applicant reserves the right, in its sole discretion, to opt into the new Zoning Ordinance provisions regarding WDUs, and the administrative requirements of this Proffer IV(2)(G) and (H) shall be null and void. In any event, if this proffer conflicts with the administrative sections of the WDU provisions of the Zoning Ordinance, if any, this proffer shall control.

I. WDUs – Rental Rates. The maximum monthly rental, initially and for each year thereafter, at which each WDU may be offered shall be the rental rate for the Washington Standard Metropolitan Statistical Area published by the United States Department of Housing and Urban Development for the respective percentage of AMI designated for such unit. The initial AMI to determine such initial maximum monthly rent shall be determined from the date of the issuance of the first RUP for each respective WDU. The AMI and the maximum monthly rent, as calculated above, may be adjusted once a year, as published by HUD. A copy of such annual calculation shall be provided to the Fairfax County Department of

Housing and Community Development ("HCD"), or such other agency as may be designated by the County to oversee implementation of a Workforce Housing Program.

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

K. Compliance with Federal, State, and Other Local Laws/Severability. If it is found by a court of competent jurisdiction, that any portion of this Proffer related to providing WDUs violates any Federal, State or other local law, then the offending portion of this Proffer shall be deemed null and void and no longer in effect.

L. Condominium Conversion. If a residential building was initially operated as a rental project, then subsequently is converted to a condominium project, any existing WDUs shall be maintained as WDUs and shall be administered as WDU Sale Units as set forth herein. The restrictions on any such WDU Sale Units shall be disclosed in the condominium declaration creating the condominium. Should the Applicant choose to relocate any such WDU to another rental building, the Applicant shall be responsible for amending the respective approved site plans to reflect the designation of the alternate WDU prior to the issuance of a Residential Use Permit for the respective new WDU.

M. None of the ADUs or WDUs referenced above shall be required to be located within high-rise or single family attached residential buildings. As determined by the Applicant, the ADUs and WDUs for the entire 31-acre development may be located entirely within either the PDC or the PRM zone.

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

V. PARKING

1. **Parking Deck Heights**. Above-grade, structured parking decks each shall have a maximum height of 75 feet above average grade, with the exception of the Parcel A Parking Deck and the East Parking Deck (Parcel H Deck) (which may each have a maximum height of 85 feet above average grade). Building F may include at or above grade structured parking, but in no event shall such above grade parking exceed a maximum height of 75 feet above average grade. Said "maximum heights" shall be exclusive of elevator and stairwell structures at the top level. Below-grade parking may be provided with any or all buildings.

2. **Parking Tabulations**. Parking spaces shall be provided in accordance with the "Parking Tabulations" listed on Sheets 3, 8 and 9 of the CDPA/FDPA and parking provided for development parcels shown in the tabulations may be located within or outside of such development parcel. The Applicant may utilize on-street parking on the private streets within the development to meet the parking requirements, so long as such spaces are striped and meet the dimension requirements of the PFM, subject to receiving approval of any necessary waivers and/or modifications. The specific number of parking spaces represented on the CDPA/FDPA is based on preliminary estimates of the proposed mix of uses, unit count and unit type. The final number of parking spaces shall be determined at the time of each site plan approval based upon the uses shown on the respective site plans. The Applicant may provide parking for residential units in parking structures connected to the Unit's building and other, adjacent residential buildings, so long as the minimum total parking requirement for all residential uses is met at all times. Access to residential parking will be segregated from non-residential parking. The Applicant may provide parking for non-residential uses in parking structures (including the East deck) in or connected to other buildings containing non-residential uses, so long as the minimum total parking requirement for all non-residential uses is met at all times. The Applicant may construct parking in phases and may construct parking in advance of the use for

which such parking will ultimately be provided. The Applicant may relocate above-grade parking shown on the CDPA/FDPA to a subsurface location beneath those buildings; provided, however, that the building height, outdoor rooftop amenities and general ground floor configuration (footprint) of such building(s) remain in substantial conformance with that shown on the CDPA/FDPA, the Parcel Allocation Chart and these Proffers. The Applicant may locate parking below private streets, and park areas. The Applicant reserves the right, however, to provide parking spaces in addition to the total number of parking spaces shown on the CDPA/FDPA if (i) such additional spaces result from the final design of the parking structures for the Principal and Secondary Uses so as to avoid partial garage floors; or (ii) to the extent necessary to accommodate uses established on the Property that result in a higher parking requirement than is shown on the CDPA/FDPA (e.g., eating establishments), provided that the building heights set forth in these Proffers are not exceeded.

3. **Shared Parking Agreement**. Notwithstanding the above, the Applicant may request a parking reduction or approval of a shared parking agreement pursuant to Article 11 of the Zoning Ordinance. Any modification of the required parking as approved by such parking reduction or agreement may be accommodated without requiring a PCA, CDPA or FDPA, provided that the location of the parking remains in substantial conformance with that depicted on the CDPA/FDPA.

4. **Temporary Parking** The applicant will provide temporary parking on Parcel F in conjunction with its grand opening ceremony for the project. The applicant also reserves the right to provide temporary parking on any undeveloped parcel, excluding areas designated to be parks, as the applicant deems necessary until such time each parcel is developed. The area of South Park, in a temporary condition, after the final RUP of Parcel H , will be seeded and remain a seeded lawn until such time construction of Parcel G commences. . Any temporary parking, other than construction staging, on Parcel G will have a landscaping hedge and/or decorative fence along the North Street, Penny Lane and South Park sides.

5. **Parallel Parking Spaces Along Internal Streets**. The Applicant may establish surface parking spaces to be located along either or both sides of "Festival Street," "Festival Street Extended," "North Street," "Strawberry Lane," "South Theatre Drive", "Penny Lane", and "EYA Lane (Internal Townhouse Street)" generally as shown on the

Development Plan (the "Parallel Spaces"). The Parallel Spaces may be part of, or in addition to, the total number of required parking spaces to be provided with the Proposed Development. The Applicant may restrict the use of those Parallel Spaces, that otherwise are not required to satisfy the minimum parking requirements, through appropriate signage or such other means as the Applicant determines, for use as a (i) drop-off area or (ii) temporary loading area.

6. **Theatre Accessory Uses Parking Calculation**. Retail, restaurant and similar uses shall be accessory uses to the main theatre use and, as such, shall not require additional parking above and beyond that deemed required under the Ordinance for theatre use, provided that sole customer access to said accessory uses is via the theatre lobby.

VI. TRANSPORTATION – GENERAL

1. **Right-of-Way Dedication**. All road right-of-way ("ROW") dedicated in conjunction with these proffers and/or as depicted on the CDPA/FDPA shall be conveyed to the Board of Supervisors in fee simple at the time of recordation of the final record plat for the contiguous development area, or upon written demand by Fairfax County and/or VDOT, whichever occurs first. All ROW dedication shall be subject to the "Density Credit" proffer in Proffer I.4, regarding reservation of development intensity to the residue of the Property.

2. **Definition of "Construct"**. For the purposes of these proffers, "construct" shall mean that the committed road improvement is open to public traffic use whether or not accepted into the State road system.

3. **Condemnation**. To the extent off-site right-of-way or easements are required for the Applicant to construct any of the improvements in Proffer VII, and Applicant has been unable to acquire said right-of-way or easements after documented, reasonable efforts to do so, Applicant's obligation to construct such improvements for which right-of-way is not available shall be contingent upon the Board acquiring such right-of-way and/or easements through its powers of Eminent Domain after being requested to do so by the Applicant in writing. The Applicant shall pay all costs, including reasonable attorneys' fees for outside counsel (if applicable), necessary to condemn any such right-of-way or easement. The Applicant's request shall be forwarded, in writing, to the Director of Property Management accompanied by:

A. An independent appraisal, by an MAI appraiser who is not employed by the County, of the value of the land taken and damages, if any, to the residue of the affected property;

B. A sixty (60) year title search certificate of the land to be acquired; and

C. 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, if any, which can be drawn upon by Fairfax County. It is also understood that in the event the property owner is awarded more than the Letter of Credit in a condemnation suit, said excess amount of the award shall be paid to Fairfax County by the Applicant within five (5) days after said award has become final. It is further understood that all other costs incurred by Fairfax County, as defined above, in acquiring said land area shall be paid to Fairfax County by the Applicant upon demand.

4. **Private Streets**. Public access easements shall be provided on Festival Street, Festival Street Extended, Strawberry Lane, North Street, and South Theatre Drive within the limits of the Property. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Fairfax County Public Facilities Manual ("PFM") as may be approved by DPWES, except to the extent DPWES may approve a modified section (i) where parking structures are constructed under portions of private streets, or (ii) in areas where modification/elimination of curbs may occur to facilitate pedestrian circulation as depicted on Sheet 29 of the CDPA/FDPA. The above construction standard shall not apply to parking lots. The Applicant shall be responsible for the maintenance of all private streets.

5. **Strawberry Lane**. The Applicant shall be responsible for the maintenance of the dedicated portion of Strawberry Lane from Yates Way to the western edge of its intersection with Gallows Road, beginning at such time as that portion is ready to be accepted into the State system for maintenance and "Uniwest" has been released from its bond for said public improvement, which maintenance obligation shall be the subject of an executed Agreement with Fairfax County.

6. **Public Streets**. Any and all public streets shall be constructed in accordance with the PFM and/or VDOT standards, as determined by DPWES. Acceptance of public roads by VDOT into its roadway system shall be diligently pursued by the Applicant, and shall be accomplished prior to final bond release.

7. **Vacation/Abandonment**. Prior to final approval of any site plan and release of the record plat for recordation for any development section which includes development on an area of ROW to be abandoned/vacated, the Applicant shall obtain vacation and/or abandonment of the relevant portion of the Application Property, i.e., vacation and/or abandonment of the relevant portions of the areas identified as approximately 12,646 gross square feet of Hilltop Road and 2,314 gross square feet of Eskridge Road, as depicted on the CDPA/FDPA as the area to be vacated/abandoned. In the event the Board does not approve the requested vacation and/or abandonment of this portion of public roadway and failure to obtain such approval precludes development in substantial conformance with the CDPA/FDPA, the Applicant shall obtain a PCA to the extent necessary to develop that portion of the Property, which may result in a loss of density/intensity. The Applicant hereby waives any right to claim or assert (i) any vested right in any plan approved under the assumption of accomplishment of such vacation and/or abandonment, or (ii) a taking or any other cause of action that otherwise may have arisen out of a Board decision to deny in whole or in part the ROW vacation and/or abandonment request.

8. **Interparcel Access**. As shown on the CDPA/FDPA, North Street and the east-west service alley ("South Theatre Drive") located in the southeast corner of the site shall be designed and constructed to connect to adjacent parcels (Tax Map Parcels 49-4 ((1)) -13,) abutting such streets and to facilitate the ultimate construction by others of those private streets as through streets (public or private) connecting Gallows Road to Eskridge Road. The Applicant shall grant temporary grading and/or construction easements (up to twelve (12) feet from the respective property lines), as reflected on Sheets 6 and 7 of the CDPA/FDPA, to the extent needed to facilitate the construction by others of the referenced interparcel access connections.

9. **Future Retaining Walls**. As shown on the CDPA/FDPA, retaining walls may be needed by the respective property owners adjacent to the service alley behind Buildings C and E, along North Street, and along portions of South Theatre Drive. The Applicant shall grant temporary grading and/or construction easements (up to twelve (12) feet from the respective property lines), as reflected on Sheets 5, 6 and 7 of the CDPA/FDPA, if needed to facilitate the construction by others of the referenced future retaining walls.

10. **Temporary Access**. Temporary public access shall be provided across the northern portion of Parcel B, between Yates Way and the existing theater access at Route 29 (or

between Yates Way and the new Festival Street access to Route 29), consistent with, and for so long as required by, the terms of the Temporary Access Easement executed by NAI on August 31, 2007, as may be amended pursuant to direction of the Fairfax County Attorney, to be recorded among the Land Records of the Circuit Court of Fairfax County.

11. **Yates Way Access**. No site plan for development of uses on Parcel B providing for direct vehicular access between Parcel B and Yates Way shall be approved by DPWES until such time as the following conditions are satisfied: (i) Parcel B has a legal right of direct vehicular access to Yates Way in the manner proposed by such site plan via either public or private easement or right of way over that certain approximately 10-foot-wide landscape strip along Parcel B's eastern boundary north of Strawberry Lane, being part of Parcel 49-4 ((1)) 8A, which strip separates the existing public access easement for Yates Way from Parcel B; and (ii) the Board of Supervisors' has approved a Proffered Condition Amendment for Parcel 49-4 ((1)) 8A which allows, among other things, for the modification or elimination of such approximately 10-foot-wide landscape strip referenced above.

VII. TRANSPORTATION – ROAD IMPROVEMENTS

1. **Eskridge Road**. The Applicant shall reconstruct Eskridge Road as set forth in detail in Site Plan SP-0561-02, as it may be revised by the Applicant and approved by DPWES ("PI Plan"), from its intersection at Lee Highway to the southern end of the Property ("Eskridge Road"). Said improvement shall be constructed and open to traffic consistent with the approved PI Plan, as said PI Plan may be modified or amended to reflect such additional improvements as are shown on the CDPA/FDPA as set forth below, prior to issuance of any Non-Residential Use Permits ("Non-RUPs") or Residential Use Permits ("RUPs") for any new buildings associated with the CDPA/FDPA. Notwithstanding the aforesaid, those improvements to Eskridge Road reflected on the CDPA/FDPA but not on the approved PI Plan (which consist of modifications to the median on Eskridge Road between Strawberry Lane and Route 29, and the extension of a continuous right-turn lane, as approved by VDOT, from Strawberry Lane north to eastbound Route 29) shall be constructed and open to traffic prior to the issuance of a Non-RUP for any use on Parcel A.

2. **Extension of Eskridge Road to Williams Drive**. Within 120 days of approval of the rezoning application, the Applicant shall prepare and submit to the County a preliminary

design (as described below) of the extension of Eskridge Road from the southern Property boundary through to, and including, its the intersection with Williams Drive (PI Plan Station 28+57 through Station 32+50). Said extension shall be designed as a two lane, undivided section and shall include a transition from a three lane section at the southern Property boundary. Said preliminary design shall include horizontal and vertical alignment of the road, as well as an exhibit showing the impacts of said extension on existing parking, buildings, accessory structures on, and zoning compliance of, the parcels through which said road is to be extended. At the same time, the Applicant also shall provide to the County a preliminary construction cost for said extension, including its estimate of right-of-way acquisition cost. If, prior to Applicant's having completed construction (as defined in Proffer VI.2) of Eskridge Road, sufficient funds for engineering design, approval, permitting, land acquisition, and construction of this extension of Eskridge Road to Williams Drive be made available by Fairfax County, and should all necessary right-of-way and easements be provided by others and all approvals prerequisite to beginning construction of said extension have been issued, then Applicant shall construct such connection and shall replace 14 parking spaces lost due to the construction of the connection on Parcel 49-3-((22))-3D. Regardless of whether the Applicant or others construct the said extension, so long as it is constructed in an alignment causing the loss of the aforesaid 14 parking spaces, those 14 parking spaces shall be replaced by the Applicant consistent with the CDPA/FDPA; however, it is to be understood that the Applicant shall regain control of said 14 replacement parking spaces referenced above at such time Parcel 49-3-((22))-3D redevelops and/or if the extension of Eskridge Road is redesigned into an alignment which does not, per se, require the loss of said 14 parking spaces. The Applicant shall respond with a legitimate, viable proposal to any County RFP for the construction of said extension, should an RFP be deemed necessary by the County.

3. **Lee Highway (Route 29 Property Frontage)**. Subject to VDOT approval, the Applicant shall design and construct the ultimate southern curb line of Route 29 and the adjacent right turn lane (collectively the "Ultimate Southern Curb Line") from the eastern terminus of Eskridge Road along the Property frontage to station 77+00 as shown on Sheet 7 of the CDPA/FDPA. The Ultimate Southern Curb Line shall be approximately 12' (plus or minus) south of the proposed curb line of the VDOT Route 29/Gallows Road Project #0029-029-119 (the "VDOT Project") in order to facilitate provision of a

continuous right turn lane along the Property's frontage. From approximately station 77+00 to the Yates Way intersection, the Applicant shall continue the continuous right turn lane to and including the Yates Way intersection to match the existing conditions of Route 29.

A. Design. The Applicant shall provide said design on a Site Plan (or Site Plans if filed separately) for the development of Parcel A and Parcel B. Such design shall tie the Ultimate Southern Curb Line into the existing Route 29 conditions. The Applicant shall also, subject to VDOT approval (which shall be diligently pursued), redesign VDOT's road plans for its VDOT Project, and shall be responsible for the actual cost incurred, up to a maximum of $30,000, for time and material for Applicant to effectuate said redesign to interface the VDOT Project with said Ultimate Southern Curb Line (the "Redesign").

B. Construction. If the Applicant's construction timing for Parcel A and/or Parcel B precedes the VDOT Project, the Applicant shall construct the Ultimate Southern Curb Line consistent with the Redesign, to include the 42-inch storm drain pipe and the relocation of a 10-inch water line along the aforesaid frontage improvement. The pavement constructed by the Applicant shall tie into the existing Route 29 condition. Said construction shall be accomplished simultaneous with construction of the improvements on, respectively, the adjacent Parcel A and/or Parcel B, prior to issuance of a Non-RUP or RUP for the respective Parcel. If construction of the VDOT Project has begun on Route 29 west of Gallows Road prior to the development of Parcel A and/or Parcel B, the Applicant shall contribute $300,000 for VDOT to construct the Ultimate Southern Curb Line as part of the VDOT Project, in accordance with the Redesign.

4. **Lee Highway (Route 29) Offsite**. As referenced in Proffer VII.9. below and as shown on Sheet 7 of the CDPA/FDPA (the "Yates Way" connection") the Applicant shall contribute $200,000 toward the construction of an additional right turn lane as shown on Sheet 7 of the CDPA/FDPA from Yates Way to Gallows Road. Said contribution will be made at the time of the first site plan approval.

5. **Strawberry Lane**. Strawberry Lane shall be constructed by the Applicant as a private street in substantial conformance with that depicted on the CDPA/FDPA; east of Festival Street to the western edge of Yates Way, the Applicant shall construct a roadway measuring 49 feet face of curb to face of curb, including parallel parking in select

locations as reflected on the CDPA/FDPA. Generally, west of Festival Street, the Applicant shall construct a roadway measuring 37 feet face of curb to face of curb. These improvements shall be constructed prior to issuance of the first Non-RUP or RUP for any of the Applicant's buildings located within Parcel (A) or Parcel (B).

6. **Loading Restrictions on Strawberry Lane**. No tractor-trailers shall be permitted to ingress or egress the loading areas serving Parcel A from Strawberry Lane (i) on weekdays between the hours of 6:00 a.m. and 9:00 a.m., and between the hours of 4:00 p.m. and 7:00 p.m.; or (ii) on Saturdays between the hours of 11:00 a.m. and 2:00 p.m. Prior to execution of leases, tenants located within Parcel A who will require deliveries by tractor trailer shall be informed in writing by the Applicant of said loading restrictions and the Applicant also shall post signs on Strawberry Lane stating the above loading restrictions.

7. **Festival Street and Festival Street Extended**. Both Festival Street (north/south) and Festival Street Extended (east/west) shall be constructed by the Applicant as private streets varying in width from a minimum of 24 feet to up to a maximum of 44 feet in width face of curb to face of curb with on-street parking provided at select locations as reflected on the CDPA/FDPA. Parking within the first four (4) spaces located on the west side of Festival Street immediately north of Strawberry Lane will be prohibited during PM peak hours (4:00 to 7:00 p.m. weekdays) in order to facilitate right-turn traffic; the Applicant shall post signs in said area stating the aforesaid restrictions. That portion of Festival Street necessary for ingress and egress from each respective building on the Property shall be constructed prior to issuance of the first Non-RUP or RUP for each of the Applicant's respective buildings which have direct vehicular access onto Festival Street. Festival Street Extended shall be constructed prior to issuance of the first RUP for Parcels G, H, I or J. Both Festival Street and Festival Street Extended shall be constructed in general accordance with the cross-sections shown on the CDPA/FDPA.

8. **North Street**. North Street shall be constructed by the Applicant as a private street varying in width from a minimum of 22 feet to up to a maximum of 30 feet in width face of curb to face of curb with on-street parking provided at select locations as reflected on the CDPA/FDPA. Parking within the first four spaces located on the south side of North Street east of Eskridge Road will be prohibited during PM peak hours (4:00 to 7:00 p.m. weekdays) in order to facilitate right-turn traffic; the Applicant shall post signs in said area stating the aforesaid restrictions. That portion of North Street necessary for ingress

and egress to Buildings E, F and/or G shall be constructed, prior to issuance of the first Non-RUP or RUP for the respective buildings which, at that time, have no other access except by way of North Street, in general accordance with the cross-sections on the CDPA/FDPA. The Applicant shall provide an interparcel access easement, including temporary grading and/or construction easements not to exceed 12 feet in width, along the eastern property line as depicted on the CDPA/FDPA to facilitate ultimate construction of a private street connection by others to extend North Street eastward.

9. **Yates Way Extended**. Subject to provision of the necessary right-of-way and/or easements by others and in reliance upon finalization of the preliminary approval granted by FCDOT and VDOT, the Applicant shall extend Yates Way off-site, from its ultimate terminus as built by Uniwest, to and including a right-in/right-out intersection with eastbound Route 29 in accordance with VDOT requirements. The Applicant shall substantially complete construction of such extension prior to the issuance of the first Non-RUP or RUP associated with Parcel B, if such rights-of-way and/or easements are made available to the Applicant by others; notwithstanding the aforesaid, should VDOT require an interim condition that is less than a full right-in/right-out intersection, then Applicant shall substantially complete construction of such extension and such interim condition to the extent permitted by VDOT prior to the issuance of the first Non-RUP or RUP associated with Parcel B, if such rights-of-way and/or easements are made available to the Applicant by others.

10. **Service Alleys**. The alleys parallel to the eastern and western property line of the Property, which provide service and access to the loading areas and parking structures serving the principal and secondary uses in the buildings adjacent to them, shall be constructed by the Applicant consistent with the sections shown on the CDPA/FDPA prior to the issuance of the initial RUP or Non-RUP for the respective building adjacent to said alley.

11. **Traffic Signals**.

    A. Applicant shall submit a traffic signal warrant study to VDOT concurrent with submission of to the final site plan for the Property. If not deemed warranted, Applicant shall grant such easements as may be required for installation of said signal in the future by others and shall otherwise be relieved of any obligation as to this signal. If warranted, the Applicant shall design, equip and construct said

traffic signal subject to the availability of all rights-of-way and easements as outlined in Proffer VI.3.

B. The Applicant shall further modify the existing signal at Route 29 and Merrilee Drive to accommodate the construction of Eskridge Road at this location. Said signal modifications shall be designed to accommodate the ultimate improvements proposed by VDOT, the Applicant and others, including, but not limited to, signals for dual eastbound and westbound left-turn lanes, and a mast arm of sufficient length to accommodate the ultimate location of the signal. The traffic signal modifications shall be constructed prior to the issuance of the first Non-RUP for the Property. The Applicant may utilize those funds proffered or made available by others for this signal.

C. At build-out, but before final bond release, the Applicant shall confirm the appropriateness of the timing of the traffic signal previously installed by others at the Gallows Road/Strawberry Lane intersection.

D. Each traffic signal installed or modified by the Applicant shall include pedestrian countdown and audible features as may be approved by VDOT.

12. **Dual Left Turn Lanes on Lee Highway at Eskridge Road**. In conjunction with the revision to the VDOT road plan outlined in Proffer VII.3.A above, if approved by VDOT, the Applicant shall also provide the design of the ultimate (i) dual westbound left turn lanes and (ii) traffic signal pole locations on Lee Highway at its intersection with Eskridge Road. During the construction of Eskridge Road, the Applicant will construct signal poles in their locations for the ultimate intersection configuration, and shall provide signal modifications for only a single westbound left turn from Lee Highway onto southbound Eskridge Road until such time as VDOT shall remove the striping limitation to enable dual lefts. All improvements shall be provided to the satisfaction of VDOT and FCDOT.

13. **Sight Distance Profiles**. To the extent required by VDOT and/or DPWES at the time of site plan review, the Applicant shall provide sight distance profiles at all public street connections.

14. **Unreasonable Delay**. Upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of an improvement has been unreasonably delayed by others or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement.

VIII. PEDESTRIAN AND BICYCLE CIRCULATION SYSTEM

1. **Internal Circulation Plan**. The Applicant shall construct a comprehensive pedestrian system throughout the Property, generally as shown on Sheet 15 of the CDPA/FDPA. Such system shall be constructed concurrent with the phasing of development of the Property and shall include sidewalk connections extending to the property line. Each on-site sidewalk shall be constructed to the width shown on the CDPA/FDPA for such sidewalk and shall be maintained by the Applicant. Sidewalk improvements within existing or proposed VDOT right-of-way shall be in accordance with VDOT requirements. At the time of site plan approval for each respective phase of development the Applicant shall grant public access easements over the private sidewalks located within such phase.

2. **Route 29 Trail**. Subject to DPWES approval, the Applicant shall construct a ten-foot wide sidewalk/bike trail within the ROW across the Route 29 frontage of the Property, as generally shown on the CDPA/FDPA. The Applicant and its successor UOA (as defined below) shall maintain such sidewalk.

3. **Crosswalk at Future Eskridge Road/ Route 29 Intersection**. The Applicant shall provide pedestrian cross-walk striping as shall be approved by VDOT for each VDOT-designated pedestrian crossing of the Eskridge Road/Route 29 intersection.

4. **Pedestrian Connection to Luther Jackson Middle School**. A direct pedestrian access, which provides safe and convenient access for students residing within the subject Property during school hours, shall be provided generally as depicted on the CDPA/FDPA. The Applicant shall retain the right to restrict said access outside of school hours.

5. **Areawide Pedestrian Enhancements**. The Applicant shall contribute $10,000 towards other areawide pedestrian enhancements to be used by the County within the area bounded by Route 50 to the south, Prosperity Avenue to the west, Gallows Road to the east and Lee Highway to the north.

6. **Bicycle Storage**.

   A. Office. For office uses, secure bicycle storage shall be provided in the same location as the vehicular parking for the respective office building. Such storage shall be provided at a rate of one (1) storage space per 20,000 square feet of office GFA.

B. Residential. For residential uses, secure bicycle storage shall be provided in the same location as the vehicular parking for the respective multi-family residential building. Such storage shall be provided at a rate of one (1) storage space per eight (8) dwelling units.

C. Single Family Attached Residential. For Town Houses secure bicycle storage will be provide in the garage.

D. On-Street. "Public bike racks" shall be provided in the general locations shown on Sheet 40 of the CDPA/FDPA, although additional locations may be provided at the Applicant's sole discretion. The exact type and number of bike racks shall be determined at final engineering and design, but in no event shall each CDPA/FDPA location provide secure storage for fewer than eight (8) bicycles.

IX. TRANSPORTATION DEMAND MANAGEMENT PROGRAM

1. **Transportation Demand Management.** This Proffer and the Applicant's "Merrifield Town Center Mixed Use Development TDM Strategic Plan" dated September 10, 2007 prepared by UrbanTrans Consultants (the "TDM Strategic Plan") set forth the programmatic elements of a transportation demand management plan (the "TDM Plan") for the residential and office uses proposed as part of Merrifield Town Center. The Merrifield Town Center is envisioned by the County's Comprehensive Plan as a mixed-use, urban environment which should include retail, office, residential and theatre uses. One of the key objectives of the Town Center is to encourage alternative modes of transportation other than the single occupant vehicle. To help achieve this objective, the Comprehensive Plan recommends a mode split of at least 15% within suburban centers such as proposed with the Town Center. The greatest level of attainment would occur on those properties proximate to the Dunn Loring - Merrifield Metro rail station and is then tiered downward relative to a property's distance from the transit station platform. According to the Comprehensive Plan, the trip reduction objective for the Merrifield Town Center is 15%, given its distance from the Metro platform. As outlined in Proffer IX.3.A.i and ii, the Applicant has committed to a significantly higher reduction for the Property at Build Out than is recommended by the adopted Comprehensive Plan.

Initially, the TDM Plan shall be implemented and maintained by the Applicant and subsequently, as appropriate, the UOA/HOA/COA. For the purposes of this Proffer IX, under no circumstance shall the UOA/HOA/COA be deemed to be the Applicant, and the

provisions of this Proffer applicable to the Applicant shall not apply to the UOA/HOA/COA, except as specifically noted.

The purpose of the TDM Plan is to encourage the use of transit (Metrorail and bus), other multiple occupant vehicle commuting modes, walking, biking and teleworking by employees, customers and residents who work and/or live in the buildings located on the Property. The TDM Plan shall complement the synergies expected from the Property and the numerous transportation systems management programs and improvements referenced elsewhere in these proffers.

2. **Definitions.**

A. Applicant Control Period. The term "Applicant Control Period" shall be defined as the period starting upon the approval of this Rezoning Application and ending on the date when two (2) consecutive annual Trip Counts conducted starting at least one (1) full year after build out of the Property, as defined in Proffer IX.2.B below, shows that the trip reduction percentages listed in Proffer IX.3.A.i and/or ii have been met. The implementation of the TDM Plan may not be assigned to the UOA/HOA/COA until the Applicant Control Period has expired. Upon expiration of the Applicant Control Period, the Applicant shall have no further obligation under this Proffer IX, after which the on-going implementation of the TDM Plan and funding of the TDM Budget (and 10% contingency) shall be the responsibility of the UOA/HOA/COA as outlined in Proffer IX.4.L.

B. Build Out. For purposes of this Proffer IX and the TDM Plan, "Build out" of the Proposed Development shall be defined to occur upon the issuance of (a) 100% of all RUPs for the residential units site plan approved and constructed on the Property in its entirety, (b) Non-Residential Use Permits ("Non-RUPs") representing 100% of the maximum floor area for the office uses site plan approved and constructed on the Property in its entirety, and (c) Non-RUPs representing 80% of the floor area for the retail and theatre uses constructed on the Property in its entirety.

C. Peak Hour. The relevant weekday AM or PM "peak hour" shall be that 60-minute period during which the highest volume of mainline through volumes occurs between 6:00 and 9:00 AM and 4:00 to 7:00 PM, respectively, as determined by mechanical and/or manual traffic counts conducted by a qualified traffic engineering firm at two select locations on Gallows Road between Routes 29 and

50 and on Route 29 between Prosperity Avenue and Gallows Road, and as approved by FCDOT. To determine the peak hour, such counts shall be collected beginning on a Monday at 2400 hours and continuing to the following Thursday at 2400 hours at a time of year that reflects typical travel demand conditions (e.g., September to November, not including a week containing a county/state/federal holiday or when area public schools are not in session). The methodology for determining the peak hour may be modified, in agreement between the Applicant (or the UOA/HOA/COA after the end of the Applicant Control Period) and FCDOT without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.

D. Pre-shuttle. For purposes of this Proffer IX and the TDM Plan, "Pre-shuttle" shall be the term used to define any time prior to operation of a shuttle/van system, by the Applicant or through a service provider contracted by the Applicant (the "Shuttle"), and providing service between the Property and the Dunn Loring Merrifield Metro Station as set forth in Proffer VI.10.

E. Post-shuttle. For purposes of this Proffer IX and the TDM Plan, "Post-shuttle" shall be the term used to define any time after the issuance of the first RUP for the third residential building constructed on the Property and after the initiation of operation of a shuttle/van system, by the Applicant or through a service provider contracted by the Applicant, and providing service between the Property and the Dunn Loring Merrifield Metro Station as set forth in Proffer VI.10.

F. Areawide Circulator. For purposes of this Proffer IX and the TDM Plan, "Areawide Circulator" shall be the term used to define a shuttle and/or bus/van system that is owned/operated/maintained by ~~a~~ third party (i.e., the County, a Transportation Management Association or others) and that provides service to, and circulation within, the greater Merrifield Suburban Center Area.

G. TDM Program Manager. The Applicant, and subsequently the UOA/HOA/COA, shall appoint a qualified individual to be the Program Manager ("PM") for the TDM program. The PM's duties shall be to develop, implement and monitor the various components of the TDM Plan, and to revise the TDM Plan as appropriate. The PM shall oversee all elements of the TDM Plan and act as the liaison between the Applicant, and subsequently the UOA/HOA/COA, and FCDOT. The PM may be employed either directly by the Applicant/UOA/HOA/COA or by a

management company under a management contract with the Applicant/UOA/HOA/COA. The PM position may be part of other duties assigned to the individual.

H. TDM Account. The TDM Account shall be an interest bearing account established by the Applicant with a banking or financial institution qualified to do business in Virginia and used by the PM each year to implement the TDM Plan in accordance with the TDM Budget as defined in Proffer IX.2.I below.

I. TDM Budget. The "TDM Budget" is defined as the estimated costs plus 10% (the "TDM Budget Contingency") needed to implement the TDM Plan in any given calendar year. The TDM Budget may be less than, but in any event shall be no more than $236,300 (including the 10% TDM Budget Contingency and including approximately $90,000 as the projected annual cost of the Shuttle) per full calendar year (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) as required by the FCDOT. However, the Applicant may, at its sole discretion, increase the TDM Budget (including the 10% Budget Contingency) for any calendar year if necessary in order to achieve the trip reduction goals outlined in Proffer IX.3.A.i and/or ii.

J. TDM Remedy Fund. The "TDM Remedy Fund" shall be an interest bearing account, separate and distinct from the TDM Account, established by the Applicant with a banking or financial institution qualified to do business in Virginia and used to supplement additional strategies which may be required to achieve the goals established in Proffer IX.3.A.i and/or ii, and for which funding is not immediately available in the TDM Account.

K. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the Applicant shall deposit penalty payments as may be required in accordance with Proffer IX.4.M.

3. **Trip Reduction Goals.** The goal of the TDM Plan is to reduce the number of weekday peak hour vehicle trips generated by the residential and office uses on the Property through the use of mass transit, ride-sharing and other strategies. The Property shall be designed to maximize interactions among the various uses on the Property such that fewer automobile trips will occur within the site and on the external road network through the creation of synergistic relationships among the uses within the Property. In addition, the implementation of the Shuttle Service, as well as enhanced pedestrian and

bike facilities will provide convenient and safe access to nearby Metrorail and bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.

A. Percentage Reductions. The objective of the TDM Plan shall be to reduce the number of baseline vehicle trips (as defined in Proffer IX.3.B below) generated by the residential and office uses on the Property during weekday peak hours as set forth in the following tables and as estimated in accordance with Proffer IX.3.B below. The number of vehicle trips generated by the proposed residential and office uses shall be separately measured so that appropriate remedial actions may be undertaken as required to address the trip generation associated with a specific type of use. The types of actions that will be undertaken at each phase are described in the TDM Strategic Plan and in these proffers.

i. Residential Goals.

	Percent Reduction
Phase 1	
- Pre-shuttle	7%
Phase 2	
- Post-shuttle/Pre-build out	13%
Phase 3	
- Post-shuttle/Post build out	26%
Phase 4	
- Post-shuttle/Post Areawide circulator	30%

ii. Office Goals.

	Percent Reduction
Phase 1	
- Pre-build out	9%
Phase 2	
- Post build out	20%

B. Baseline Vehicle Trips. The baseline number of weekday peak hour vehicular trips to be reduced from the proposed new residential and office uses will be based on the percentage reduction (shown in the table above for the respective use and phase of development) of total peak hour trips otherwise generated by the Property according to methods set forth in the ITE, 7th edition, Trip Generation manual for Land Use Codes 230 and 710 for the residential and office uses respectively. The number of residential units and office floor area for each phase will be based on those amounts reflected on individual approved site plans for the specific residential and office uses. In the event at Build Out the Applicant has constructed fewer than 749 residential units and/or 150,000 gross square feet (GSF) of office uses, respectively, then the baseline trip generation at Build Out shall be calculated as if 749 residential units and 150,000 GSF of office uses had actually been constructed.

4. **Components of the TDM Plan.** In order to meet the Trip Reduction Goals set forth in Proffer IX.3.A.i and ii, a TDM Plan shall be adopted and implemented by the Applicant, subject to FCDOT approval. The minimum components of the TDM Plan are specified in this Proffer and may be subsequently adjusted by mutual agreement between the Applicant (and subsequently the UOA/HOA/COA, as applicable) and FCDOT. All adjustments to the components of the TDM Plan contained in this Proffer IX.4 shall be approved by FCDOT and will not require a PCA. The TDM Plan shall include, at a minimum, those provisions pertaining to the residential and office uses on the Property as listed below, as well as those listed below pertaining to the retail and hotel uses, as qualified by Proffer X below. The minimum TDM Plan components are further described in the TDM Strategic Plan. The TDM Strategic Plan also includes information about possible supplemental TDM Plan components. In addition to the timing, phasing and implementation information in this Proffer, more detail is provided in the TDM Strategic Plan.

A. Shuttle Component Applicable to the Property. The Applicant shall provide the following in conjunction with the TDM Plan

i. *Shuttle* -- Prior to the issuance of an initial RUP for the 400th dwelling unit or the 1st RUP within the third residential building to be constructed on the Property, whichever first occurs, the Applicant, individually or in conjunction with other property owners and/or developers within the

Merrifield Town Center and the Dunn Loring Transit Station Area, shall operate or contract with a third party to operate and maintain the Shuttle for use by the residents and employees of the Property to provide access to and from the Dunn Loring Metro Station. Such service shall be available, excluding Sundays, national holidays and snow emergency days, during the morning peak (6:00 a.m. to 10:00 a.m.) and evening peak (3:00 p.m. to 7:00 p.m.) hours on weekdays, and may (in the Applicant's sole discretion) run on Saturdays between 11:00 a.m. and 6:00 p.m. Seating capacity of such Shuttle vehicle and the frequency of trips shall be adjusted to reasonably meet demand as determined by periodic surveys/evaluations and in consultation with FCDOT. Adequacy and success of the Shuttle service shall be evaluated as part of the Annual Report submitted in accordance with Proffer IX.4.J.ii. The on-site Shuttle program may be adjusted or discontinued, as deemed appropriate after consultation with FCDOT and based upon usage and effectiveness as demonstrated by the respective Annual Report. The Applicant shall work with FCDOT and other property owners and/or developers within the Merrifield Town Center and Dunn Loring Transit Station Area to develop methods whereby usage of the Shuttle by others than residents and employees of the Property may be facilitated so long as no cost, beyond that necessary to satisfy Applicant's obligation towards residents and employees of the Property, shall be incurred by the Applicant in the provision of such expanded service.

ii. *Pro Rata Shuttle Contribution* -- Should an Areawide Circulator (as defined in Proffer IX.2.F) be established to link uses within the Merrifield Suburban Center, including the Dunn Loring Metro Station and locations within the Property, then the Applicant may discontinue, or may be relieved from the burden of establishing and continuing, the Shuttle service described in Proffer VI.10, but in lieu thereof shall contribute to said Areawide Circulator on a pro rata basis (Applicant's pro rata share shall be determined annually by applying to the annual cost of operating and maintaining the Areawide Circulator, the percentage derived by dividing into the GFA of residential and non-residential square feet

developed on the Property for which occupancy permits have been issued, the total square feet of GFA of residential and non-residential uses for which occupancy permits have been issued on all of the properties within the Merrifield Suburban Center served by said Areawide Circulator). Further, Applicant may, in lieu of establishing the Property's own Shuttle (as committed in Proffer IX.4.A above) assist, at a cost not to exceed $50,000, in establishing said Areawide Circulator by funding acquisition of the initial Circulator Vehicle or otherwise, so long as the Areawide Circulator's ongoing operation and expense beyond Applicant's pro rata share of said cost is provided by others, such as through a Pro Rata contribution system or a Business Improvement District.

B. TDM Components Applicable to the Property. In addition to the Shuttle proffers outlined in Proffer IX.4.A. above, at a minimum, the TDM Plan shall contain the following elements:

i. *TDM Network* -- Establishment of a network of designated on-site TDM contacts among the Applicant, the UOA/HOA/COA, office building tenants, property managers and FCDOT through which to coordinate the implementation of the TDM Plan.

ii. *Meetings with Community Groups* -- The PM shall organize and attend meetings with community groups and/or other organizations within the greater Merrifield Suburban Center that have a mutual interest in furthering the success of TDM programming and the effectiveness of mass transit and other non-SOV commuting measures.

iii. *Website* -- Develop and maintain a TDM website for the Property that includes multi-modal transportation information, real-time travel and transit data, and links to transportation and telework sites.

iv. *Personal outreach* -- Personal outreach by the PM to all new commercial/residential tenants to explain the TDM program and transit options.

v. *Dissemination of information* -- Dissemination of information relevant to patrons and customers of the proposed new retail/commercial uses, residents, and office and hotel employees and guests about transit benefits

programs, maps and schedules offered by WMATA, Fairfax Connector, the on-site shuttle provider and/or other transit providers.

vi. *Transit benefits* -- Encouragement of employers to offer employee benefit options, including parking cash out, pre-tax/payroll subsidies for transit and vanpool fares, flex-time and alternative work schedule programs and live-near-work incentives.

vii. *Telework programs and telework facility* -- The Applicant shall provide space on the Property for a business center for use by residents of the Property. The facility shall consist of a minimum of 500 square feet of gross floor area and shall have copier facilities, a fax machine and access to lap-top hook up stations with secure internet access, private space for phone calls, and access to a washroom. Dwelling units in all residential buildings shall include wiring and access ports capable of carrying broadband internet access.

viii. *Car sharing* -- Car sharing program(s) subject to agreement with third-party vendor(s) (such as ZipCar or FlexCar).

ix. *Ridematching assistance, carpools, vanpools and guaranteed ride home* -- Vanpool and carpool formation programs, including Fairfax County ride matching services, and coordination with established local and regional guaranteed ride home programs.

x. *Parking management plan* -- A parking management plan, which shall include dedication of convenient parking spaces for carpools/vanpools and shared car services throughout the Property, as generally reflected on Sheet 40 of the CDPA/FDPA, as well as incentives/benefits to residential carpoolers.

xi. *Vans and shuttles* -- The Applicant shall provide van and shuttle pick-up and drop-off points on the Property as generally reflected on Sheet 40 of the CDPA/FDPA, and shall allow and encourage employer, hotel and other shuttle services that are operating in the Merrifield Suburban area to stop at such points to pick-up or drop off employees and patrons.

xii. *Pedestrian Connections* -- The applicant shall provide an integrated system of on-site sidewalks and trails within the Property as reflected on the CDPA/FDPA. The PM shall provide information to residents and

employees as to the best pedestrian route(s) to take to and from the Dunn Loring Metro.

xiii. *Bicycle Facilities* -- The Applicant shall provide bicycle racks along the internal streets and within residential and office buildings and parking structures as designated on Sheet 40 of the CDPA/FDPA and in Proffer VIII.6. The PM shall coordinate with the Halsted, Dunn Loring Metro, and Wilton House HOAs to encourage those residents to bike to the Property.

C. Additional TDM Components Applicable to Residential Buildings Only. In addition to the TDM program components described in Proffer IX.4.A.i through xiii above, at a minimum, the TDM Plan shall also have the following components as applicable to residents of the Property.

i. *In-Unit Internet Access* -- All residential units shall be pre-wired to provide Internet access (or other technology that may become available) to permit residents to access the Internet from home.

ii. *Sales/leasing marketing program* -- A targeted marketing program for residential sales/leases that encourages and attracts TDM-oriented people such as one and no-car individuals and families to live on the Property as well as a targeted marketing program to encourage on-site and nearby office workers to live in the on-site residential buildings. The Applicant shall actively support the PM in efforts to encourage employees of office tenants both on-site and elsewhere in Merrifield to live in the residential units on the Property through discussions between executives and officers of the office tenants and executives and officers of the Applicant.

iii. *TDM incentives* -- One time distribution of fare media or other incentives to all initial residents of driving age as an incentive to occupancy.

iv. *Transportation advising* -- "Personalized transportation advising" integrated into new unit walk-throughs, including appropriate training of sales/leasing agents.

D. Additional TDM Components Applicable to Office Building Only. In addition to the TDM program components described in Proffer IX.4.A.i through xiii above, at a minimum, the TDM Plan shall also have the following components as applicable to the office building tenants and employees:

i. *Matching On-Site Office Employees to On-Site Residential Units* -- Residential units shall be marketed to on-site office employers and workers, including providing information in prospective tenant packages and possible discounts or financial incentives to those employees who live and work on the Property. The Applicant shall actively support the PM in the efforts to encourage office tenants and their employees to live in the residential units on the Property through discussions between executives and officers of the office tenants and executives and officers of the Applicant.

ii. *Leasing Packages* -- Integration of transportation information and education materials into office leasing packages, including outreach efforts to tenants and their respective corporate management about the quality of life, financial and employee retention benefits associated with participation in the program.

E. TDM Program Manager (PM). Within 30 days after the issuance of the building permit for the first residential or office building on the Property, the Applicant shall appoint, as provided in Proffer IX.2.G, a PM for the project whose responsibilities shall include development and implementation of the TDM Plan. The PM position may be part of other duties assigned to the individual. The Applicant shall provide written notice to FCDOT of the appointment of the PM within fourteen (14) days after such appointment and shall furnish FCDOT his/her qualifications, and thereafter shall do the same within fourteen (14) days of any change in such appointment. Following the initial appointment of the PM, the Applicant or the UOA/HOA/COA, as applicable, shall continuously employ, or cause to be employed as specified above, a PM for the Property.

F. PM Office. The Applicant, and subsequently the UOA/HOA/COA, shall provide a centrally-located office for the PM and space for TDM products, services and program offerings available to residents, businesses, customers and visitors to the Property. The office may be located within a Property Management office, designated business center, or elsewhere on the Property.

G. TDM Plan and Budget. Within sixty (60) days after the PM has been appointed by the Applicant and no later than ninety (90) days after issuance of the building permit for the first residential or office building on the Property, the Applicant,

through the PM, shall prepare and submit an initial TDM Plan to FCDOT and shall request in writing the County's review and comment. The TDM Plan shall include (i) the start-up components of the TDM Plan that will be put in place both before and after the commencement of the Shuttle as outlined in Proffer IX.4.A and (ii) an initial budget sufficient to implement the TDM Plan for the remainder of the year and for the next calendar year (the "TDM Budget") plus ten (10) percent, which amount shall not be more than $236,300 for each full calendar year (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) unless increased at the sole discretion of the Applicant. With the submission of the initial TDM Plan, the Applicant shall provide the County with a copy of the approved proffers and the TDM Strategic Plan. If FCDOT has not responded with any comments to the Applicant within sixty (60) days of receipt of the initial TDM Plan and TDM Budget, the TDM Plan and TDM Budget shall be deemed approved. The Applicant shall provide written final plan and budget documentation demonstrating the establishment of the TDM Budget to FCDOT no later than thirty (30) days after FCDOT's response to the proposed TDM Budget and Plan or following the sixty (60) day period described above.

Thereafter, the PM shall re-establish the TDM Budget for each successive calendar year, which shall cover the costs of implementation of the TDM Plan for such year (including the TDM Budget Contingency). The PM shall furnish a copy of the TDM Budget and TDM Plan for each year to the FCDOT and shall request in writing the County's review and comment in conjunction with the submission of the Annual Report as outlined in Proffer IX.4.J.ii A line item for the TDM Account shall be included in the UOA/HOA/COA budget upon the establishment of the same. The association documents that establish and control the UOA/HOA/COA shall provide that the TDM Account shall not be eliminated as a line item in the UOA/HOA/COA budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies. The TDM Account shall be funded solely by the Applicant until such time as assessments of residents and commercial owners are implemented as provided in the UOA/HOA/COA documents.

H. TDM Account

i. Initial Funding. Within thirty (30) days after FCDOT's response to the initial TDM Budget and TDM Plan or following the sixty (60) day process described above, 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 purpose of the TDM Account shall be to fund the TDM Budget as defined in Proffer IX.2.I. The TDM Account shall be established as an interest bearing account with a banking or other financial institution qualified to do business in Virginia. All interest earned on the account principal shall remain in the TDM Account and shall be used for TDM Plan purposes. The Applicant shall provide written documentation demonstrating the establishment of the TDM Account to FCDOT within fourteen (14) days of its establishment. Funds in the TDM Account shall be utilized by the PM each year to implement the TDM Plan in accordance with the TDM Budget.

ii. Excess Funds in TDM Account. Any funds remaining in the TDM Account at the end of any given year shall be carried over into the following year's TDM Budget or transferred, in the Applicant's sole discretion, in whole or in part to the TDM Remedy Fund and/or Incentive Fund, as defined, respectively, in Proffers IX.4.H and IX.4.I, below.

iii. Annual Funding. The TDM Account (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) shall be replenished annually, following the establishment of each year's TDM Budget and any transfer of funds, as described in this Proffer IX, solely by the Applicant, in such amount as is necessary to achieve the respective year's TDM Budget as approved by FCDOT, until such time as assessments of residents and commercial owners are implemented as provided in the UOA/HOA/COA documents.

iv. Transfer to UOA. The TDM Account shall be managed by the Applicant (and not the UOA/HOA/COA) until the Applicant Control Period has expired. Thereafter, management of the TDM Account will become the responsibility of the UOA/HOA/COA as appropriate.

I. TDM Remedy Fund. At the same time that the Applicant creates and funds the TDM Account, the Applicant shall establish a separate interest bearing account referred to as the "TDM Remedy Fund." All interest earned on the principal in this account shall be added to the principal in the TDM Remedy Fund and shall be used for TDM Remedy purposes. The Applicant shall provide an initial contribution to the TDM Remedy Fund at the time said fund is established in the amount of $50,000 (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008). Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need of TDM funding to serve the Property, and may be drawn upon prior to any TDM Budget adjustments that may be required under Proffer IX.4.K.iv.b.ii. Upon expiration of the Applicant Control Period, the Applicant shall transfer the TDM Remedy Fund to the UOA/HOA/COA for TDM purposes.

J. TDM Incentive Fund. Prior to the issuance of the initial RUP for each Residential Building and the initial Non-RUP for the office uses site plan approved and constructed on the Property, the Applicant shall make a one time contribution (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008) of $50 per unit in each respective residential building and $0.10 per gross square foot of office use for which an initial Non-RUP is issued, to a segregated sub-account in the TDM Account to fund a transit incentive program for, respectively, initial purchasers and/or lessees of the residential units or office uses. Such program shall be prepared by the Applicant through the PM and 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 and office tenants on the Property. The TDM Incentive Fund shall be established as an interest bearing account with a banking or other financial institution qualified to do business in Virginia. All interest earned on the account principal shall remain in the TDM Incentive Fund and shall be used for TDM incentive purposes only.

K. Monitoring and Reporting.

i. Annual Surveys. Between September and November, beginning one year after the issuance of the first building permit for the first residential or the first office building on the Property, whichever first occurs, and

continuing annually thereafter until the Applicant Control Period expires, the PM shall conduct a survey of residents and/or 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 adjustments to the TDM Plan. The PM shall coordinate the draft Annual Survey materials and the methodology for validating the Survey results with FCDOT at a minimum sixty (60) days prior to each year's Survey. If an Annual Survey reveals changes to the TDM Plan are needed or advisable, then the PM shall coordinate such changes with FCDOT and, as necessary, adjust the following year's Budget and implement the revisions. The PM shall submit to FCDOT as part of each Annual Report (as outlined in Proffer IX.4.J.ii) an analysis of the Annual Surveys. 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.

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 to the Plan.

f. A description of the uses constructed and occupied on the Property at the time the Survey was conducted.

Notwithstanding the aforesaid, no such annual survey or analysis shall be required until there exists on the Property a threshold critical mass (400 occupied dwelling units) to conduct a meaningful survey and analysis, or as determined by FCDOT. Additionally, upon expiration of the Applicant Control period, the PM shall conduct such surveys every three years for inclusion in the Annual Report.

ii. Annual Report. The PM shall report annually on the TDM Plan to the FCDOT (the "Annual Report") no later than January 31st of each calendar

year after completion of the Annual Survey described in Proffer IX.4.J.i. The Annual Report shall include (a) a description of the TDM strategic efforts for the year, including, as applicable, sample marketing materials, (b) a financial statement that includes the TDM Budget for the year and a detailed summary of actual TDM Plan revenues and expenditures for the preceding year, (c) a summary of the levels of occupancy in the buildings that have been completed in the Proposed Development, (d) an analysis of the results of the Annual Survey, (e) a compilation and analysis of the results of any Trip Counts that were conducted during the year, (f) discussion of any changes proposed to the TDM Plan, (g) the amount of money then on deposit in the TDM Penalty, Incentive and Remedy Funds, and (h) utilization of the on-site shuttle service if available and operational.

iii. Adjustments to Calendar and Due Dates. At the mutual agreement of the FCDOT and the PM, the due dates for the delivery of the Annual Report may be altered by up to sixty (60) days if changes have occurred, or appear to have occurred, in trip characteristics resulting from other events.

iv. Meetings with FCDOT. The PM shall meet with FCDOT annually, or as mutually agreed upon, after submission of the Annual Report to discuss the results of the Trip Counts, the Annual Survey, the Annual Report and the TDM Plan.

L. Trip Counts

i. Annual Trip Counts. The PM shall conduct a Trip Count annually between September 1st and November 30th (excluding weeks containing a county, state or federal holiday or when County public schools are not in session such as Thanksgiving week) beginning with the year following the issuance of the 100th RUP for the first residential building or Non-RUP for the first 50,000 square feet of office use constructed on the Property, whichever first occurs. The purpose of such Trip Count is to measure the actual vehicle trips generated by the residential and 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 level of

development completed and whether the point in time is pre-or post shuttle) set forth in Proffer IX.3.A.i and .ii 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) days over a maximum two-week period (but not including a week containing a county, state or federal holiday or when area public schools are not in session) between September 1 and November 30 of each calendar year, or such other time as the PM and FCDOT shall mutually determine. At least sixty (60) days prior to conducting the Trip Counts, the PM shall meet with FCDOT to review and reach agreement on the dates and methodology for the Trip Counts and the analyses to be done after the Trip Counts are complete. The Trip Counts shall include Peak Hour counts of vehicles entering and exiting driveways to residential and office buildings on the Property. 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, transit trips, retail/hotel trips, etc., shall be excluded). Values will be provided for each residential and office building included on the Property, and a sum of vehicle trips generated by the residential and the office uses on the Property will be calculated by use. Residents and tenants ***shall not*** be advised of the date Trip Counts will be conducted.

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 Property reaches Build Out as defined in Proffer IX.2.B show that vehicle trips generated by the residential units and office uses are less than or equal to the Phased TDM Goal as applicable. If the results of two (2) consecutive Trip Counts reveal that the TDM Goal after Build Out has been met, then the Applicant Control Period shall expire as provided in Proffer IX.2.A above, and the Applicant shall have no further responsibility under Proffer IX. Thereafter, the UOA/HOA/COA shall be responsible for the

on-going implementation of the TDM Plan pursuant to Proffer IX.4.L and shall conduct additional Trip Counts as set forth in Proffer IX.4.L. 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 once per calendar year. If such requests are made by FCDOT, the PM shall conduct the requested Trip Counts within sixty (60) days after the County's request or as may be agreed up with FCDOT.

iv. Evaluation. The results of each Trip Count shall be compared to the trip reduction goals established in Proffer IX.3.A above for the then-applicable phase of development on the Property to determine whether actual traffic counts are equal to, less than or greater than the maximum allowed trips for the then-applicable TDM Goal as calculated in accordance with Proffer IX.3.v

a. Pre-Build Out

i. In the event the trips generated by the residential units and office uses prior to Build Out, as defined in Proffer IX.2.B, are equal to or less than the maximum allowed trips established in accordance with Proffer IX.3.A.i and i or ii and IX.3.B above, as determined for the then-applicable development phase of the Property, then (i) no penalty is owed, and (ii) the Applicant or the PM shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers, until Build Out is reached, after which Proffer IX.4.K.iv.b below shall apply.

ii. In the event the trips generated by the residential units and/or office uses prior to Build Out, as defined in Proffer IX.2.B are greater than the maximum allowed trips set forth in Proffer IX.3.A.i and/or .ii above, as determined for the then-applicable development phase of the Property, then the PM shall (i) develop modifications to the TDM Plan and the TDM Budget and/or implement certain of the supplemental strategies as outlined in the TDM Strategic

Plan to address the surplus of trips, (ii) submit any such revisions to the TDM Plan and TDM Budget to FCDOT as part of the Annual Report as outlined in Proffer IX.4.J.ii and request in writing the County's review and concurrence, and (iii) pay no penalties. If no written response is provided by FCDOT within sixty (60) days after receipt of the Annual Report, 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 or after the sixty (60) day period outlined above, the PM shall (a) increase the TDM Account with TDM Remedy Funds, if necessary and in the Applicant's sole discretion, in order to cover any proportional additional costs to implement the updated TDM Budget; and (b) implement the provisions of the revised TDM Plan

b. Build Out.

i. In the event the trips generated by the residential units and the office uses at the time of the initial or subsequent trip counts after Build Out reveal that the applicable trip reduction goals outlined in Proffer IX.3.A have not been met, then the Applicant shall (a) pay into the TDM Penalty Fund in accordance with Proffer IX.4.M below and (b) (i) develop modifications to the to the TDM Plan and the TDM Budget and/or (ii) implement one or more of the supplemental strategies outlined in the TDM Strategic Plan to address the surplus of trips. The PM shall submit any such revision to the TDM Plan and TDM Budget to FCDOT as part of the Annual Report as outlined in Proffer IX.4.J.ii and request in writing the County's review and concurrence. If no written response is provided by FCDOT within sixty (60) days of receipt of the Annual Report, 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 or after the sixty (60) day period outlined above, the PM shall (a) increase the TDM Account with TDM Remedy Funds at the applicant's sole discretion, if necessary, in order to cover any proportional additional costs to implement the updated TDM Budget; and (b) implement the provisions of the revised TDM Plan.

ii. If two (2) consecutive annual Trip Counts conducted in accordance with this Proffer reveal that the trip reduction goals outlined in Proffer IX.3.A have been met after Build Out of the Property, as defined in Proffer IX.2.B, then (i) no penalty is owed, (ii) the PM shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers, and (iii) the Applicant Control Period Expires, after which Proffer IX.4.L below shall apply.

M. Ongoing Implementation of TDM Plan. Once the Applicant Control Period has expired, the UOA/HOA/COA shall be responsible for ongoing implementation of the TDM Plan. The PM shall conduct additional Trip Counts at five (5) year intervals to determine whether the relevant Phase 3 (or Phase 4) TDM Goal, as established by Proffer IX.3.A, continues to be met. In the event that an Annual Report submitted by the PM demonstrates significant enough reason to question whether the relevant Phase 3 or Phase 4 TDM Goal is met, 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 relevant Phase 3 or Phase 4 TDM Goal is being met.

i. Continuation of TDM Plan. In the event subsequent Trip Counts conducted after the Applicant Control Period has expired reveal that the actual trips generated remain equal to or less than the maximum number of trips permitted under the relevant Phase 3 or Phase 4 TDM Goal, then the PM shall continue to implement the TDM Plan and to make Annual Reports to FCDOT.

ii. Further Revisions to TDM Plan. In the event any subsequent Trip Counts conducted after the Applicant Control Period has expired reveals that the actual number of trips generated by the residential and office uses are greater than the maximum number of trips permitted under the relevant Phase 3 or Phase 4 TDM Goal, as established by this Proffer, then the PM shall convene a meeting with FCDOT within forty-five (45) days of the completion of the respective 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 forty-five (45) days following this meeting and shall request in writing the County's review and concurrence. If no written response is provided by FCDOT within sixty (60) days upon receipt of the Annual Report, 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 and available; (b) increase the TDM Account with TDM Remedy Funds, if necessary and available, in order to cover any proportional additional costs to implement the updated TDM Budget; and (c) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT. The PM shall repeat the process above (including annual trip counts, additional adjustments to the TDM Plan, additional funding and additional monitoring) annually until the relevant Phase 3 or 4 TDM Goal has been met for two (2) consecutive years, whereupon the PM shall then be required to conduct Trip Counts and surveys only at five (5) year intervals, as described above.

N. TDM Penalty Fund. Prior to the issuance of the first RUP for the first residential building or Non-RUP for the first office building on the Property, whichever first occurs, the Applicant (or its successor owner or developer, but not the UOA/HOA/COA) shall establish the TDM Penalty Fund.

i. Funding of TDM Penalty Fund: During the Applicant Control Period, if the results of any consecutive annual Trip Counts conducted starting at least one (1) full calendar year after the Property reaches Build Out reveal

that the actual vehicle trips generated by the residential units and office uses exceeds the maximum number of trips permitted under the relevant Phase 3 or Phase 4 TDM Goal as outlined in Proffer IX.3.A, then the Applicant shall pay into the TDM Penalty Fund the amounts specified below, for each such failed annual Trip Count, for additional transportation incentives which will directly serve the Property. Such incentives shall include enhancements to the Shuttle, increased incentives, and/or a contribution to the establishment of the Areawide Circulator. The maximum aggregate amount of all penalties to be paid under Proffer IX.4.L.iv.b.i and Proffer IX.4.N. is $100,000 (as such amount may have been adjusted annually based on changes in the "CPI" from a base year of 2008). No penalties shall be imposed while the Phase 1 and Phase 2 TDM Goals are applicable.

a. Failure up to 10%. A failure in the reduction of trips in either or both of the Peak Hours by ten percent (10%) or less requires the Applicant to make a payment to the TDM Penalty Fund of $10,000.

b. Failure Greater than 10% but less than or equal to 15%. A failure in the reduction of trips in either or both of the Peak Hours by more than ten percent (10%) but less than or equal to fifteen percent (15%) requires the Applicant to make a payment into the TDM Penalty Fund of $15,000.

c. Failure Greater than 15%. A failure in the reduction of trips in either or both of the peak hours by an amount greater than fifteen percent (15%) requires the Applicant to make a payment into the TDM Penalty Fund of $30,000.

O. Enforcement. If the PM fails to timely submit the Annual Report to FCDOT as required by this Proffer, the County may thereafter issue the PM a notice stating that the PM has violated the terms of this Proffer IX.4.J and providing the PM sixty (60) days after receipt of said notice within which to cure such violation. If after such sixty (60) day period the PM has not submitted the delinquent Annual Report, then the Applicant and/or UOA/HOA/COA, as applicable, shall be subject to a penalty of $200 per day payable to Fairfax County to be used for

transit or transportation related improvements in the vicinity of the Property until such time as the report is submitted to FCDOT.

P. Notice to Owners. All residents, tenants and employers of the Merrifield Town Center shall be advised of the TDM Plan. UOA/COA/HOA members will be informed of their funding obligations pursuant to the requirements of this Proffer IX prior to the purchase of units, or execution of leases, and the requirements of the TDM Plan, including annual contributions (as provided herein) shall be included in all purchase/lease documents and within the UOA/COA/HOA documents.

X. TRANSPORTATION DEMAND MANAGEMENT PROGRAM SPECIFIC TO THE RETAIL/HOTEL USES.

1. **Transportation Demand Management for Retail/Hotel Uses.** As provided in Proffer IX.4.A, certain components of the TDM Plan are applicable to and will benefit the proposed retail/hotel uses on the Property. Also, the Applicant shall provide an additional TDM program that is tailored to specifically serve the Retail/Hotel Uses (the "Retail/Hotel TDM Program"). Solely for purposes of this Proffer X, "Retail" shall be defined as all non-residential and non-office uses on the Property.

2. **Goals of the Retail/Hotel TDM Program.** Because tenants of the Retail stores and Hotels and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Property during the Peak Hours. Given this, the Retail/Hotel TDM Program shall encourage Retail tenants, Hotel Guests and the Retail/Hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Property rather than focusing on the specific trip reductions during the AM or PM Peak Hours. The goal of the Retail/Hotel TDM Program is for 5% of the Retail store tenants, Hotel Guests and the Retail/Hotel employees to use non-SOV modes of transportation to commute to and from the Retail/Hotel uses on a regular basis.

3. **Components of the Retail/Hotel TDM Program.** The Retail/Hotel TDM Program shall include, at a minimum, the components applicable to the Property that are described in Proffer IX.4.A and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Retail/Hotel TDM Program

contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Retail/Hotel TDM Program components are further described in the TDM Strategic Plan.

A. Employee/Tenant Meetings. The PM shall hold, at a minimum, annual TDM meetings with the Retail owners and/or tenants and Hotel Managers, and their respective 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 from time to time to speak to the group(s) about these and related subjects. 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 the Property tenants and their employees.

B. Transit Incentives. Utilizing the Retail/Hotel TDM Incentive Fund (described in paragraph C below), the PM shall provide financial incentives to Retail store tenants, Hotel guests and the Retail/Hotel employees to utilize transit. These incentives may include contests with fare card rewards, retail gift certificates and the like (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 Retail uses).

C. Regional TDM Incentive Programs. The PM shall make information available to Retail store tenants, Hotel Guests and the Retail/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.

D. Ridesharing. The PM shall assist Retail store tenants and the Retail/Hotel employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.

4. **Retail/Hotel TDM Incentive Fund**. The Applicant shall establish a Retail/Hotel TDM Incentive Fund for use exclusively by the Applicant with Retail and Hotel employers and their employees. Such incentives could include gift certificate awards, fare card contests and/or give-aways, transit fairs specific to the Retail tenants, Hotel Guests, and the Retail/Hotel employees and for similar inducements or incentive activities. The Applicant shall make a one-time contribution to this fund at the time that the first TDM

Budget is approved and funded per Proffer IX in the amount of $10,000. At such time as a Retail/Hotel employer elects to financially contribute to the Retail/Hotel TDM Program, such contributions shall be utilized in addition to the Applicant's contribution (that is, the Applicant's contribution shall not be reduced or offset in any way).

5. **Retail/Hotel TDM Program Participation Outreach**. The PM and the Applicant or Retail Manager shall endeavor in good faith to encourage participation by Retail tenants and Hotel Management in the Retail/Hotel TDM Program, including the encouragement of a financial participation by such Retail/Hotel employers through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the PM and Property management in furtherance of this objective shall include dissemination of information to, and solicitation of participation from, the Retail/Hotel employer in-store management and executives or officers at their headquarters offices, at appropriate intervals.

   The PM shall provide a report to the County with respect to the activities described in Proffer X.5 as a supplement to the Annual Report to be filed with the County in accordance with Proffer IX.4.J.ii. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants.

XI. ENVIRONMENTAL

1. **Stormwater Management Master Plan.** Concurrent with the submission and approval of the first site plan for the Proposed Development, the Applicant shall submit to and obtain approval from DPWES of an Overall Master Stormwater Management Plan ("SWM Plan") for the Proposed Development. Following approval by DPWES of the SWM Plan, the Applicant thereafter shall submit an updated SWM Plan to DPWES for approval concurrent with all subsequent site plans submissions for the Proposed Development. These updated plans shall include any modifications to the stormwater detention or stormwater quality treatment program since the initial approval of the SWM Plan.

   A. Stormwater Quantity Goals. The Property currently is served by two (2) stormwater detention ponds, which provide peak flow reduction for the 10-year storm, and serve 10.71-acres (northern pond) and 18.3-acres (southern pond), respectively, and which shall be replaced as follows. Upon the completion of the Proposed Development, there will be a minimum of two (2) underground facilities

providing stormwater detention for the property. As is demonstrated in the calculations on the CDPA/FDPA, the peak flow rates in the new post-developed condition shall be reduced to the pre-developed "good forested" condition, as outlined in the PFM, and no credit for flow rates currently being generated by the subject property/detention facilities as currently developed shall be taken. The reduction of total discharge from the Property, as outlined above, shall apply to the sum of all stormwater flow from the Property at buildout and shall include Eskridge Road Improved. The control of runoff from the Eskridge Road Improved site shall include the increase in impervious area proposed in Fairfax County Plan #0561-PI-001 relative to the existing impervious area in said plan. The peak reduction will be on each facility combined. The discharge at either facility may vary from "good-forested" flows, so long as the reduction for the entire Property as a whole is achieved. A waiver to allow for underground detention, which includes an installation/maintenance cost burden estimate, has been submitted to Fairfax County DPWES. Development of the Property may be phased; the stormwater management quantity controls for each development phase shall provide detention capacity for the area proposed to be developed in the subject phase as well as for any other development phase for which control was previously provided. The location and size of these facilities shall generally conform to that shown in the CDPA/FDPA.

B. Best Management Practices. As part of the stormwater management associated with the Property, Best Management Practice (BMP) techniques will be utilized to improve the water quality of the runoff from the Property in the post-developed condition. Through the use of BMP facilities, such as sand filters, storm filters, other Fairfax County approved methodologies, or any combination thereof, the phosphorous removal rate on the subject property in the post-developed condition shall be a minimum of 40%. The Applicant shall make best efforts to provide phosphorous removal efficiency between 40% and 47%. (It should be noted that the PRM portion of the subject property qualifies as re-development, and therefore is subject to a phosphorous removal rate as low as 10%, but a minimum of 40% removal for the Property as a whole at buildout shall be achieved.) Prior to approval, the SWM Plan shall demonstrate the entire Property shall achieve a minimum of 40% phosphorous removal rate as opposed to any re-development

reduction credits. Development of the Property may be phased, thus the BMP controls for each development phase shall provide phosphorous removal at a minimum 40% rate for the area within the development phase, as well as any other development phase for which removal was previously provided. The location and type of BMP facilities shall generally conform to those shown in the CDPA/FDPA.

C. Green Roof. In addition to the above-referenced proffered minimum phosphorous removal, an "extensive green roof" shall be provided generally as shown on the CDPA/FDPA, which is to be designed in accordance with PFM requirements regarding green roof design. No credit toward the proffered minimum 40% phosphorous removal efficiency shall be taken for the design and implementation of said green roof. Said green roof shall be approximately 20,000 gross square feet in size and, at Applicant's discretion, shall be distributed across either Parcel A, B, or D, and provided generally in accordance with the details on Sheet 38 of the CDPA/FDPA.

Additionally, in the event that Parcel G is developed with a two-story structure, a minimum 5,000 s.f. green roof will be provided as long as Fairfax County provides storm water quality and quantity credits for such a green roof assembly at the time of site plan approval for said building. If Parcel G is developed with a building of three or more stories, no green roof will be required for that Building.

D. Maintenance Responsibility.

i. *Regular Maintenance*. Prior to initial site plan approval for the Proposed Development, the Applicant shall execute an agreement with the County in a form satisfactory to the County Attorney (the "SWM Agreement") providing for the perpetual maintenance of all of the elements of the SWM Plan, including the BMP, Green Roof, and underground detention facilities (collectively, the "SWM Facilities"). The SWM Agreement shall require the Applicant (or a successor UOA/HOA/COA) to contract with one or more maintenance/management companies to perform regular routine maintenance of the SWM Facilities and to provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DWPES. The UO/HOA/COA documents shall

specify the maintenance responsibilities of the owners under the SWM Agreement.

ii. *SWM Maintenance Fund*. Prior to issuance of the initial RUP for the first residential building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Maintenance Account") to be used for the on-going maintenance of the SWM Facilities located on or serving the Property. The SWM Maintenance Account shall be an interest-bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for on-going maintenance of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/OCA(s) established for the Proposed Development, and the fees collected for such purposes by the UOA/HOA/COA shall be deposited in the SWM Maintenance Account semi-annually. The association documents that establish and control the UO/HOA/COA shall provide that the SWM Maintenance Account shall not be eliminated as a line item in the UO/HOA/COA budget, and that funds in the SWM Maintenance Account shall not be utilized for purposes other than to fund the maintenance of the SWM Facilities. Prior to issuance of first RUP for the first residential building, the Applicant shall make an initial contribution to the SWM Maintenance Account of $44,464. The SWM Maintenance Account shall be funded through pro-rata assessments of the subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.

iii. *SWM Replacement Fund*. Prior to issuance of the initial RUP or Non-RUP or the first building to be constructed as part of the Proposed Development, the Applicant shall establish an account (the "SWM Replacement Account") to be used as an escrow account for the eventual replacement of the SWM Facilities located on or serving the Property. The SWM Replacement Account shall be an interest bearing account held by a financial institution authorized to do business in Virginia. As applicable, a line item for future replacement of the SWM Facilities shall be included in the budget(s) for any UOA/HOA/COA(s) established for the Proposed Development, and the fees collected for such purposes by the

UOA/HOA/COA shall be deposited in the SWM Replacement Account annually. The association documents that establish and control the UO/HOA/COA shall provide that the SWM Replacement Account shall not be eliminated as a line item in the UOA/HOA/COA budget, and that funds in the SWM Replacement Account shall not be utilized for purposes other than to fund the replacement of the SWM Facilities. Prior to issuance of final RUP for the third residential building, the Applicant shall make a contribution to the SWM Replacement Account of $27,000. The SWM Replacement Account shall be funded through pro-rata assessments of subsequent owners of the Proposed Development as set forth in the UOA/HOA/COA documents, as applicable.

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

2. **Lighting**. All on-site outdoor and parking garage lighting fixtures, except as may otherwise be permitted in conjunction with a comprehensive signage program, shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Lighting within the stair towers shall be designed to contain light within the tower and minimize light from spilling outward on adjacent residential properties. Light poles in surface parking lots and on the top level of parking decks shall use shielded cutoff fixtures and be directed inward and downward.

3. **Potential Hotel Noise Attenuation**. In the event a hotel and/or residential use are located within Parcels A or B, the following proffer shall be applicable.

A. In order to reduce interior noise to a level of approximately 45 dBA Ldn, for hotel rooms and/or residential units that are demonstrated, by a refined acoustical analysis as set forth in Paragraph B below, to be impacted by highway noise from Lee Highway (Route 29) having exterior façade noise levels projected to be above 60 dBA Ldn, such rooms/units shall be constructed with the following acoustical measures:

i. Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39.

ii. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above.

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

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

B. The Applicant shall submit a refined acoustical analysis prior to the submission of building plans for Parcels A or B, whichever occurs first, showing a hotel and/or residential units in order to determine the affected rooms/ units (if any), and shall provide such appropriate interior noise attenuation measures as may be required based on the noise impact from Lee Highway (Route 29) on such building. Such analysis shall be submitted to and approved by DPZ and shall be based on the accepted methodology contained said refined analysis. Any changes to the hotel and/or residential use premised on the conclusions of such a refined acoustical analysis shall be in substantial conformance with the CDPA/FDPA and these proffers, as determined by the Zoning Administrator.

C. Building plans for the hotel and/or residential buildings shall depict the final noise contours and all locations of the respective building/rooms/units, if any, that are subject to noise mitigation as provided herein.

XII. LANDSCAPING AND OPEN SPACE

1. **Minimum Open Space**. As depicted on the CDPA/FDPA, within the PDC portion of the Application Property a minimum of 23 percent open space shall be provided, and within the PRM portion of the Property a minimum of 35 percent landscaped open space shall be provided in accordance with Zoning Ordinance requirements. Provision of the open space areas and improvements may occur in phases, concurrent with the phasing of development/construction of the Application Property. As such, the total area of open space provided at any given phase of development shall not be required to be equivalent to the minimum overall open space specified herein. Site plans (and subsequent revisions

as may be applicable and relevant to landscaping) submitted for the respective phases of development shall include a landscape plan showing the open, streetscape and landscaping appurtenant to that respective phase of development, as generally shown on the CDPA/FDPA.

2. **Landscape Design**. Landscaping shall be generally consistent with the quality, quantity and the locations shown on CDPA/FDPA Sheets 10 through 14 entitled "Landscape Plan." Actual types, quantities and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of the first and all subsequent submissions of the site plans for each respective section, for review and approval by Urban Forest Management. Such landscape plans shall provide tree coverage and species diversity consistent with the PFM criteria, as determined by Urban Forest Management. Landscaping shown on the CDPA/FDPA may be modified, if in substantial conformance with that shown on the CDPA/FDPA as approved by the Zoning Administrator and Urban Forest Management, to allow for final engineering considerations, such as final utility locations, low impact development facilities, sight distance requirements and other requirements. The Applicant shall coordinate the location of any utilities within open space areas to allow sufficient planting depth for trees and other landscaping as shown on the CDPA/FDPA. As a priority, where reasonably feasible as determined by Urban Forestry Management, DPWES, the Applicant shall install water, sanitary sewer and storm sewer utility lines within the street network to avoid conflicts with open space areas and streetscape elements shown on the CDPA/FDPA.

3. **Tree Size**. All shade trees provided as a part of the streetscape shall be minimum of 3 to 3.5 inches in caliper at the time of planting; all new flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting, subject to the review and approval of the Urban Forester as shown on the CDPA/FDPA.

4. **Non-Invasive Plant Materials**. Only non-invasive plant materials, including street trees, shall be used within the streetscape and open space areas, subject to approval by the County Urban Forest Management Division.

5. **Public Access Easements**. The Applicant shall grant public pedestrian access easements over those specific open space areas identified on the CDPA/FDPA as "Public Open Space Areas." Such right of public access shall be subject to the right of the Applicant and the successor UOA and/or HOA/COAs, as applicable, to establish reasonable rules

and regulations pertaining to hours of public access, maintenance, repairs and the like; provided, however, that hours for such public access shall be at least 6 a.m. to 1:00 a.m. on weekdays and 8 a.m. to 2:00 a.m. on weekends and holidays, subject to Applicant's right to temporary closures for necessary maintenance, repairs, safety, and public welfare considerations, and programmed events.

6. Alternative Planting Width Details: Site Plans submitted for the respective phases of development that are subject to the Alternative Planting Widths shall include a landscape plan for that phase of development in conformance with the PCA/FDPA. Tree Spcidies and planting sites are set forth on the PCA/FDPA, subject to revision as may be approved by the Urban Forest Management Division for those trees counting toward Tree Canopy Coverage. Where minimum planting widths of 8 feet can not be provided, the Applicant shall use Structural specifications for all planting sites that are:

- A minimum of 4' open surface width and 16 square feet open surface area for Category III and IV trees, with the tree located in the center of the open area;
- A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below Pavement), with no barrier to root growth within four feet of the base of the tree;
- Soil volume for Category II and IV trees shall be a minimum of 700 cubic feet per tree for single trees. For two trees planted in a contiguous planting area, a total volume of at least 1200 cubic feet shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal to at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area.
- Soil specifications in planting sites shall be provided in the planting notes to be included in all subsequent site plan submissions.

XIII. UTILITIES

1. **Underground Utilities**. The Applicant shall coordinate with utility companies (gas, power, telephone, cable etc.) to co-locate utilities where reasonably feasible. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall place all utilities serving the Property underground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground

without approval of a PCA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from third-parties that, despite having been diligently pursued by the Applicant, are not available.

2. **Sewer Coordination**. At the time of submission of a site plan for any building other than the theatre and its appurtenant parking structures, the Applicant shall provide DPWES with an analysis of the capacity of the sanitary sewer lines serving the Property. If the County determines that any sewer line serving the Property is inadequate, the Applicant shall upgrade or improve offsite sanitary sewer lines, as necessary and subject to a reimbursement agreement pursuant to County policy, to accommodate each phase of the Proposed Development at the time of issuance of Building Permits for the respective buildings.

XIV. RECREATIONAL FACILITIES

1. **On-Site Amenities and Facilities for Residents**. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance, the Applicant shall expend a minimum of $955.00 per market-rate residential unit and $1,600.00 per single family attached market-rate residential unit on on-site developed recreation facilities, as described herein. Prior to final bond release for the Proposed Development, the balance of any funds not expended on-site for the items listed below and for the construction of the North and South Parks identified in Proffer XI(2) below, shall be contributed to the Fairfax County Park Authority ("FCPA") for the provision of recreation facilities located in proximity to the Property. To satisfy the above Zoning Ordinance requirement, the Applicant shall make the following facilities or amenities available for each multi-family residential building, provided that a substantially-comparable level of amenities are provided in each building or are shared among the buildings:

   A. Swimming pool;

   B. Interior courtyard areas, which may be located on the top deck of the parking structure(s) in the open area, shall include informal seating areas, landscaping, hardscape areas and passive recreation areas;

   C. One (1) bike storage space per every eight residential units in a building for use by residents of the building, which may be provided in the Cellar Space as defined in these Proffers;

D. A fitness center, which is a minimum of 1,200 gross square feet in size and includes equipment such as stationary bikes, treadmills, weight machines, free weights, etc; and

E. A business center, which is a minimum of 500 gross square feet in size and includes broadband or high-speed data connections (including "secure" voice and/or data connections), computers, facsimile machine and similar items.

2. **On-Site Parks**. Two parks (described both below and also in the "Design Guidelines" referenced in "Urban Design" Proffer XVI.7 below) shall be provided on the Property and shall be interconnected through the use of a pedestrian-oriented promenade and an attractive streetscape system lined with special landscape treatments, water features, outdoor seating and entertainment areas. Said parks, while retained in ownership by the Applicant, shall be subject to public access easements, which shall reserve to the Applicant the right to restrict access for special events or out of security and/or safety concerns. "North Park" shall be subject to programmatic access by the Park Authority pursuant to a separate "Memorandum of Understanding" between the Park Authority and the Applicant, which shall be executed by February 8, 2012. These parks shall be designed to enhance and complement land uses sited along "Festival Street," which shall serve as the "main street" of the development and may include both hardscape and softscape elements, generally as depicted on the CDPA/FDPA but subject to final engineering and architectural design changes by Applicant. These parks and associated linear walkway system shall be owned, programmed and maintained by the Applicant, which shall grant public access easements as described below:

A. "North Park" shall consist of at least twenty-seven thousand square feet which, when combined with the 16,561 square feet in the adjacent "Uniwest" park, shall provide a minimum of a one-acre park and shall be designed to be integrated with the adjacent "Uniwest" park, which may be redesigned by the Applicant in accordance with a separate "Memorandum of Understanding" between the Park Authority and the Applicant, resulting in a large, active open space at a main entrance into the "Town Center." Water features and lawn space may be used to provide a casual backdrop to the first floor commercial uses which shall front on this park. North Park will function as a community-serving park and programmed with community oriented activities such as concerts, exhibits, seasonal festivals

and other cultural events as programmed by Applicant pursuant to the previously mentioned Memorandum of Understanding

B. "South Park," located on Parcel G and H between North Street and South Theater Drive, shall consist of approximately 22,000 square feet connecting District Avenue to the LJMS Ball Fields. The park will function as a community-serving park planned for family oriented uses to include lawn areas and seating areas.

"

C. Pocket Parks. The Applicant shall provide a minimum of one small "pocket park," which shall be directly accessible to pedestrians from Festival Street, and shall include, but not be limited to, seating, planting, shaded areas and/or outside dining.

3. **Parcel I and J Facility Use:** The single family attached residents on Parcels I and J will have full access to the Parcel H multi-family building's pool and fitness facility, which will provide recreational alternatives to both the residents living in the multi-family building on Parcel H, as well as the townhouse residents living on Parcels I and J. Should the Hotel option for Parcel H be developed, a pool and fitness facility will be made available to the same townhouse residents living on Parcels I and J.

XV. SCHOOLS CONTRIBUTION

1. **Public Schools Contribution**. The Applicant shall contribute $9,378 per student for students projected to be generated by this development to the Board of Supervisors for transfer to Fairfax County Public Schools ("FCPS") to be utilized for capital improvements and capacity enhancements at the schools that students generated by the Residential Buildings will attend. Said contribution shall be based on student yield ratios of .047, .013 and .027 per unit for elementary, middle and high school, respectively for multi-family and .204, .057, and .118 per unit for elementary, middle, and high school, respectively for single-family attached. Such contribution shall be made at the time of final approval of the site plan for each residential building triggering the FCPS contribution for the students generated by that respective residential building.

2. **Escalation in Schools Contribution**. If, prior to site plan approval for the respective residential buildings, Fairfax County should increase the accepted ratio of students per

subject multifamily unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution for that building to reflect the current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the reduced amounts.

3. **Luther Jackson Middle School Improvements**. In accordance with specific terms set forth in a separate "Memorandum of Understanding" between FCPS and the Applicant (the "MOU"), and in accordance with the approved Special Exception Amendment Application 99-P-008 (the "SEA") and SEA Plat as to the below parking spaces, the Applicant shall provide, respectively, natural turf ball-field(s), graded to meet FCPA grading standards for such ball-field(s), on approximately 4.50 acres in the general location of the existing athletic fields on the Middle School site, and the below parking spaces and associated features. Site plan approval for, and construction of said improvements associated with the natural turf ball-field(s) and parking spaces shall be provided by the Applicant at no cost to FCPS. As specified below, said improvements, or a cash contribution to the Board of Supervisors in lieu of certain of said improvements, shall be completed prior to issuance of the RUP for the first residential building on the Property and shall consist of the following:

   A. Grading for both the below parking spaces and for improvement of the approximately 4.5 acres as natural turf ball-field(s) in accordance with FCPS requirements;

   B. Construction of a minimum of 64 new parking spaces located along the Middle School's common boundary with the Property, which new parking spaces shall be counted towards the required parking for the Property (a system to ensure adequate access to these spaces for FCPS, the Property, and FCPA and in support of use of the ball-field(s), shall be provided in the MOU). The Applicant shall be responsible for all costs associated with requesting and obtaining all County approvals requisite to the construction and use of the new parking lot. Use of said 64 parking spaces by the Applicant shall not occur in advance of Applicant's completion of the natural turf ball-field(s), or cash contribution in lieu of certain of said ball-field improvements as specified in Paragraph E below.

   C. Subject to approval by FCPS, provision of an access gate on the eastern entrance, as depicted on the proposed SEA Plat, which shall be controlled by FCPS;

D. Provision of a landscaped berm between the new parking lot and the ball-field(s) area, including the provision of two pedestrian access points which connect said parking spaces to the closest field. The exact type, extent and location of landscape elements and of the two access points shall be provided in accordance with the MOU, with the Concept Plan referenced below, and with that shown on the approved SEA Plat; and

E. Ball-field improvements performed by the Applicant shall be in substantial conformance with one of the two following alternatives identified, respectively, as "Alternative One" and "Alternative Two" on the October 10, 2007 "Athletic Field Concept Plans" prepared by VIKA and attached as Exhibit 1 to the MOU, which alternative shall be selected by FCPS and the Providence District Supervisor at any time after sixty (60) days following Rezoning (but no later than April 1, 2008) in accordance with these proffers and with the terms set forth in the MOU. In the event no election is made, then the Applicant shall proceed with "Alternative One" unless otherwise agreed upon in the MOU.

i. In "Alternative One", the Applicant shall be responsible for providing (a) three overlapping, natural turf athletic fields (one sixty (60) foot baseball diamond; one sixty-five (65) foot baseball diamond; and one "full-size" rectangular field); (b) grading and hydro-seeding the 4.5-acre area; (c) installing an irrigation system to the satisfaction of FCPS and consistent with that detailed in the MOU; (d) four soccer goals; and (e) two permanent baseball backstops, the location of which shall be determined by FCPS;

ii. In Alternative Two (depicted conceptually on MOU "Exhibit 1" as one sixty (60) foot, diamond-shaped natural turf field and one rectangular-shaped synthetic turf field), the Applicant shall be responsible for (a) grading and hydro-seeding the 4.5-acre area, (b) providing, relative to the diamond-shaped natural turf field only, installation of an irrigation system to the satisfaction of FCPS and consistent with that detailed in the MOU, (c) providing four soccer goals, and (d) providing one permanent baseball backstop. In addition, under Alternative Two only, the Applicant shall make a one time cash-in-lieu of materials and construction contribution towards the synthetic turf field of $45,000.00, which shall be paid to the

Board of Supervisors at the time of final site plan approval for the ball-field improvements. This cash-in-lieu amount may be supplemented by the value, agreed upon by FCPS and this Applicant, of whatever other of the Alternative One or Alternative Two materials and improvements FCPS and the Providence District Supervisor shall determine, pursuant to the MOU, that Applicant shall not provide.

XVI. OTHER COMMUNITY CONTRIBUTIONS.

1. **Providence District Contributions**. At the time of approval of the final site plan for the first residential building, the Applicant shall contribute $5,000.00 to each of the following entities or funds (up to a rnaximum of $25,000.00 in total contributions) to support their activities and programs:

   A. Providence District Tree Fund;

   B. Dunn Loring Volunteer Fire Department;

   C. Merrifield Fire Department;

   D. Nottoway Nights; and

   E. Providence District Library.

XVII. URBAN DESIGN

1. **Architectural Treatments**.

   A. The architectural treatment of this "Merrifield Town Center" development shall create a sense of identity and place and preserve human scale through the use of unifying elements, such as materials, textures, colors, window treatments, decorative details, lighting, landscaping, and roof pitches. All building facades/elevations shall be designed to incorporate architectural elements and/or decorative details, except for those locations where a building façade: faces a parking structure; is located less than ten feet from a property line; or is "wrapped" by, or otherwise shielded by immediate adjacency to, the exterior of another building (such as the north and west façades of the East Deck) or an element of the same building. This proffer shall not be interpreted to preclude the ability of individual users and tenants to use architectural themes that incorporate corporate logos and identities. Signage and architectural elements shall be used to create a festive and vibrant atmosphere. If the building on Parcel G is 7 stories in

height, the 7th floor will be stepped back along the western Penny Lane frontage at a minimum distance of 15'.

B. The single family attached units within Parcel I and Parcel J will be developed in substantial conformance with the attached documents titled "Conceptual Elevations," and dated July 13, 2011 consisting of two (2) sheets representing the intended color and material patterns and distribution for the single family attached units within those Parcels (See Attachment A). This attachment will serve as a guideline for the colors and materials only. Copies of these "Conceptual Elevations" will be provided in each Building Permit submission to Fairfax County, with a corresponding Architect's statement that the Building Permit submission is in substantial conformance with the "Conceptual Elevations." Minor changes or deviations from the "Conceptual Elevations" may be granted by the Department of Planning and Zoning in response to a written request from the developer/applicant. As outlined in Attachment A, the materials for the single family attached units within Parcel I and Parcel J shall be brick, Fiber-Cement "Hardie-Panel" and Fiber-Cement "Hardie-Trim". The railings will be painted steel.

2. **Streetscapes**. To create a high quality, street-level activity zone, a mix of retail shops, restaurants and multifamily uses shall be oriented along "Festival Street," which shall serve as a central spine connecting the two commercial anchors at either end of the development. Outdoor eating may be provided in front of each restaurant, as long as a clear and direct pedestrian access is maintained. A street-level activity zone shall be established along Strawberry Lane, where retail and/or restaurant uses shall be oriented and designed to enhance the "North Park" and create an animated street edge at this main entrance to the Town Center.

3. **Street Sections**. Streetscapes shall be provided generally as shown on the cross-sections on Sheets 29 through 33 of the CDPA/FDPA.

4. **Building Elevations**. The architectural design of commercial retail, office, hotel and multi-family buildings shall be consistent with the quality of the elevations shown on Sheets 16 through 27 of the CDPA/FDPA. The Applicant reserves the right to revise the elevations as a result of final architectural and engineering design, provided the quality of design remains consistent with those shown, as determined by DPWES.

5. **Building Materials**. Buildings shall consist of high quality materials, a combination thereof including, but not limited to, stone, cast stone, masonry, glass, precast, metal, cementitious fiber board, asphalt shingles, clay tiles, slate, wood or comparable materials. EIFS shall be limited solely to use on mechanical penthouses and architectural detailing not to exceed five percent of a building's façade.

6. **Parking Garage Façade Treatments**. Facades of above-grade garages facing Eskridge Road, Festival Street, Festival Street Extended and Strawberry Lane shall be treated with materials consistent with those materials used on companion buildings in accordance with the CDPA/FDPA and the "Design Guidelines" referenced below.

7. **Design Guidelines**. The overall concepts presented in the Merrifield Town Center Design Guidelines, prepared by RTKL and dated September 6, 2007, shall be used generally as a guide in the creation of architectural, landscape, street section, building elevation, North Park and South Park features and design elements.

8. **Security**. In consideration of security concerns along the southern property boundary, transitional screening shall be provided as depicted on Sheets 10, 11 and 33 of the CDPA/FDPA, and lighting shall be provided in this area to address safety concerns. Contingent upon the provision of diligently pursued off-site grading easements, the Applicant shall grade-out this property line and the immediately adjacent Middle School property to minimize or eliminate the need for a retaining wall in this area. In the event said off-site grading easements are not timely provided by the Fairfax County School Board, then the Applicant shall have the right to construct a retaining wall in this area.

9. **Green Building Principles**. The Applicant shall work with its architect to incorporate, in Applicant's sole discretion, environmentally sustainable attributes into its building program which may include, but not necessarily be limited to, such elements as high-efficiency mechanical systems, water efficient fixtures, CO2 sensors and air filters, and storage and collection of recyclables.

   In addition to the above commitment the following green building commitment shall only apply to the single-family attached uses shown on the CDPA/FDPA, and shall not apply to other uses on the Property. Compliance with this green building proffer shall not prohibit the development and construction (including issuance of site plans, building permits and other related permits) of other uses on the Property consistent with these proffers and the CDPA/FDPA. For this green building commitment, the applicant shall

have the option, in its sole discretion, to utilize any of the choices identified below. Further, in addition to the choices identified herein, the applicant may submit an alternative third party certification for the single-family attached uses shown on the CDPA/FDPA that meets the substantive intent of the choices identified below. Such alternative third party certification must be reviewed and approved by DPZ prior to construction that utilizes such alternative certification.

A. LEED for Homes Proffer (single family)

If the applicant selects the LEED for Homes option, the approval of the 1st Single Family attached Building Permit, the applicant will execute a separate agreement and post a "green building escrow," in the form of cash or a letter of credit or other financial surety from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of $4,000 per unit based on an average square footage of 2,000 per unit. This escrow will be in addition to and separate from other bond requirements and will be released as a total sum, and not an individual dwelling unit basis, upon demonstration of attainment of certification for each dwelling unit, by the U.S. Green Building Council, under the current version at the time of project registration with the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that each dwelling unit has attained LEED certification will be sufficient to satisfy this commitment. If the applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification for each dwelling unit within one year of issuance of the final RUP, a proportion of the escrow related to the number of units failing to achieve certification will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the applicant provides to the Environment and Development Review Branch of DPZ, within one year of issuance of the final RUP, documentation demonstrating that LEED certification for any dwelling unit(s) has not been attained but that the dwelling unit(s) has been determined by the U.S. Green Building Council to fall within three points of

attainment of LEED certification, 50% of the escrow proportionate to the dwelling unit(s) failing to achieve certification will be released to the applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the applicant fails to provide, within one year of issuance of the final RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that any dwelling unit(s) has fallen short of certification by three points or less, the entirety of the escrow proportionate to the dwelling units failing to achieve certification will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification for any dwelling unit(s) application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame shall be extended until such time as evidence is obtained, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

LEED-AP

The applicant will include a LEED®-accredited professional as a member of the design team. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of having the project attain LEED certification. At the time of site plan submission, the applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional.

Checklist

The applicant will include, as part of the 1st Single Family Attached Building Permit submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system that the applicant anticipates attaining. A professional engineer or licensed architect will provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification of the project.

Green Building Manual

Prior to approval of the final RUP, the applicant will provide to the Environment and Development Review Branch of DPZ a letter from a LEED®-accredited professional certifying that a green building maintenance reference manual has been prepared for use by future residents, that this manual has been written by a LEED-accredited professional, that copies of this manual will be provided to all future residents and that this manual, at a minimum:

- provides a narrative description of each green building component, including a description of the environmental benefits of that component and including information regarding the importance of maintenance and operation in retaining the attributes of a green building;
- provides, where applicable, product manufacturer's manuals or other instructions regarding operations and maintenance needs for each green building component, including operational practices that can enhance energy and water conservation;
- provides, as applicable, either or both of the following: (1) a maintenance staff notification process for improperly functioning equipment; or (2) a list of local service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants, and caulks; and
- provides contact information that building occupants can use to obtain further guidance on each green building component.

- Prior to approval of the final RUP, the applicant will provide an electronic copy of the manual in pdf format to the Environment and Development Review Branch of the Department of Planning and Zoning.

LEED Online – DOES NOT APPLY TO LEED for Homes

B. EarthCraft:

Prior to issuance of the non-RUP/RUP for the proposed building, the Applicant shall provide documentation to DPWES and DPZ that the building has been awarded certification in accordance with the EarthCraft House Program.

XVIII. SIGNAGE

1. **Site Signage**. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance, or pursuant to a Comprehensive Sign Plan as may be approved by the Planning Commission. In either event, however, a coordinated signage system, including free-standing signs, way-finding signs (including those for sidewalks/trails) and potential retail awning signage, shall be provided for all residential and non-residential uses. Building mounted signage shall be compatible in terms of height, color, illumination and letter sizing, but may vary from retailer to retailer. If lighted, signage may be internally lighted, neon or lighted via downward-directed lights.
2. **Ticker "Sign"**. As generally depicted on Sheet 17 of the CDPA/FDPA and subject to Planning Commission approval in a Comprehensive Sign Plan, a ticker element shall be permitted as an architectural feature integrated into the retail building façade located along the Festival Street and Strawberry Lane street frontages within either Parcel A or Parcel B in the PDC zoning district. Said ticker element shall not exceed two feet in height.
3. **Temporary Signs**. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale or rental of residential units on the Property. Furthermore, the

Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Property to adhere to this proffer.

XIX. OWNERS' ASSOCIATIONS

1. **Umbrella Owners' Association**. Prior to the issuance of the first Non-RUP or RUP for any phase of the development/construction of the Application Property, except temporary transportation facilities and/or parking uses, if any, the Applicant shall establish an Umbrella Owners' Association ("UOA") in accordance with Virginia Law.

2. **Homeowner and Condominium Owners' Associations**. Prior to the issuance of the first RUP for any residential phase of the development/construction of the Application Property, the Applicant shall cause either a homeowners' association and/or a condominium owners' association ("HOA/COA") to be formed for that phase in accordance with Virginia law. The HOA/COA documents shall include a notification/statement that there shall be ball-fields accessible for use by the general public on the adjacent Luther Jackson Middle School property.

3. **Membership in UOA**. At a minimum, each HOA/COA and the owner(s) of the office building(s) shall be member(s) of the UOA.

4. **HOA/COA Maintenance Obligations**. Each HOA/COA shall have specific areas of the Application Property within its boundaries, and each shall assume all maintenance and other obligations required by these proffers for common space and common infrastructure within those boundaries except for those maintenance obligations to be assumed by the UOA pursuant to Proffer 18.e. below. Maintenance obligations of the HOA/COAs for the various phases of the Application Property may be shared by agreement among the HOA/COAs.

5. **UOA Maintenance Obligations**. The Applicant, and then the subsequent UOA, shall have maintenance responsibilities that shall include, but not necessarily be limited to the following:

   A. Maintenance of private streets, all sidewalks, plazas, open-space, stormwater management facilities (as set forth in Proffer Section IX above), recreational facilities and other common areas within the Application Property including standard cleaning and lawn/landscaping maintenance and removal of snow from streets and all sidewalks (including VDOT sidewalks) with the Application

Property. The UOA shall incorporate into its lawn maintenance contracts a prohibition against mowing with gas-powered equipment on Code Red days.

B. Repair of surfaces and site furnishings.

C. Replacement of dead, dying, or diseased trees and landscaping within the Application Property with the same size and similar species as originally approved on the landscape plan.

D. The TDM Program. The respective UOA and HOA/COA documents shall specify the maintenance obligation as set forth herein. Purchasers shall be advised in writing prior to entering into a contract of sale, and in the UOA documents and the HOA/COA documents, that the UOA/HOA/COA shall be responsible, respectively, for the maintenance obligations as set forth herein.

XX. OTHER

1. **Unreasonable Delay**. Upon demonstration by the Applicant that, despite diligent efforts by the Applicant, provision of an improvement set forth in these proffers has been unreasonably delayed by others or by circumstances beyond the control of the Applicant, the Zoning Administrator may agree to a later date for the completion of each such improvement.

2. **Administrative Review**. Concurrent with the submission to DPWES of site plans, and any major inserts or revisions to said site plans, the Applicant shall submit copies of the same to the Providence District Supervisor and Planning Commissioner for the purpose of administrative review and comment.

3. **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, developer(s) of the site or any portion of the site, and the respective Owners' Associations described in Proffer XIV.

4. **Counterparts**. To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

5. **Board of Supervisors Signature**. The Board of Supervisors is a signatory to this Proffer Statement solely in its capacity as owner of the Hilltop Road and Eskridge Road right-of-

way included in the Application area and, by so signing, assumes no responsibility nor obligation as to these Proffers.

[SIGNATURES ON FOLLOWING PAGES]

ESKRIDGE (E&A), LLC
Title Owner of Fairfax County Tax Map Parcels 49-3-((1))-80E, 80F 81A, 82A & 82B

By: _____
Name: Steven C. Boyle
Title: Managing Director

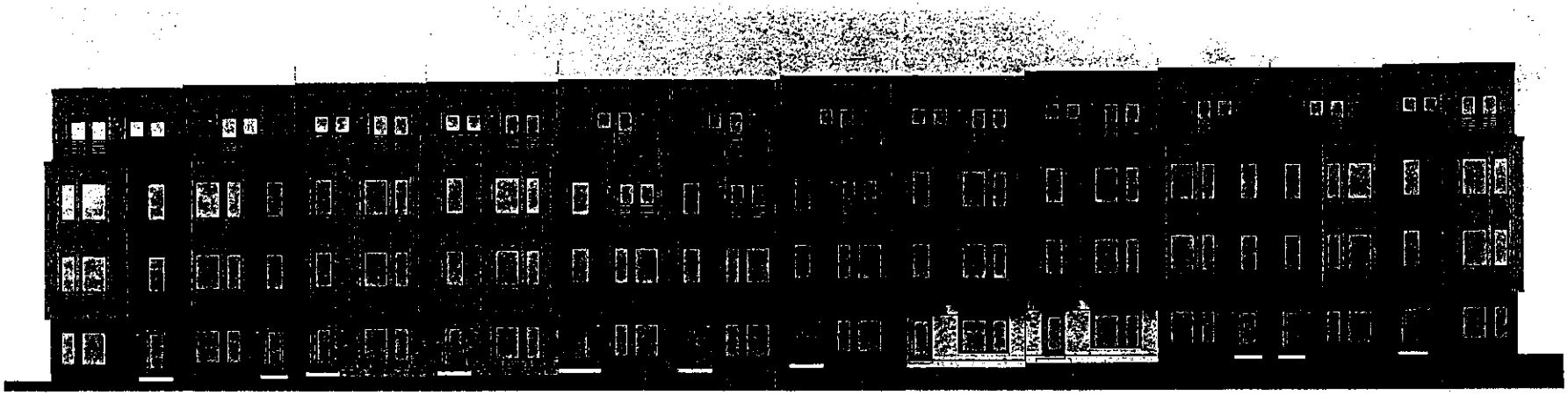
EYA DEVELOPMENT LLC
Contract Purchaser of Fairfax County Tax Map Parcels 49-3-((37)) G(pt), J(pt)

By: _____
Name: Robert D. Youngentob
Title: Manager

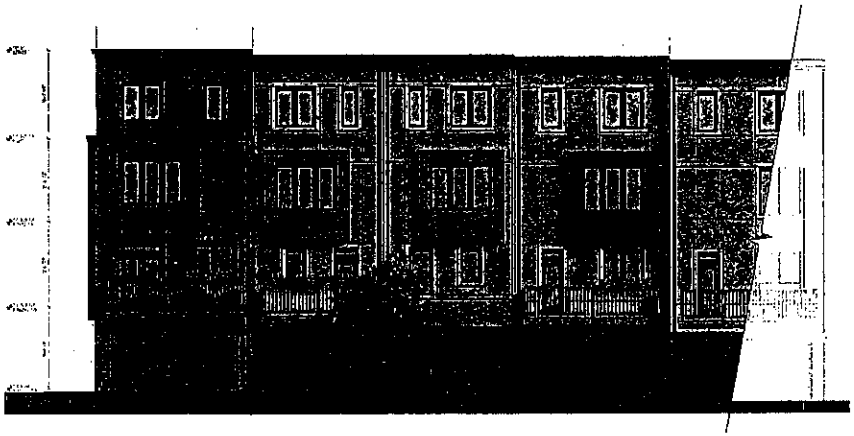
AND

By: _____
Name: LeRoy Eakin, III
Title: Manager

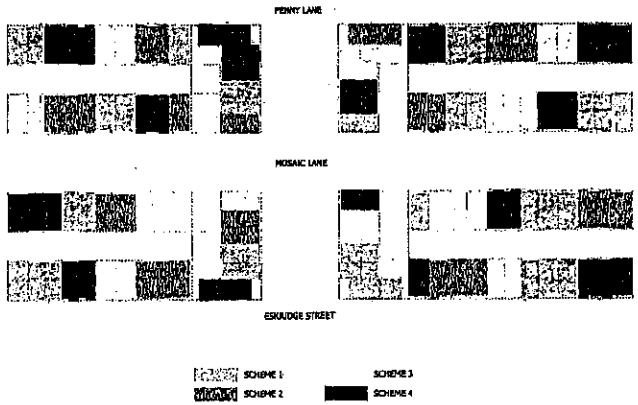
ATTACHMENT A



FRONT ELEVATION Scale : N.T.S.



REAR ELEVATION Scale : N.T.S.



COLOR KEY PLAN Scale : N.T.S.

LESSARD Design
Architecture | Planning | Interiors
1861 Canyon Commons Drive | Suite 103 | Reston, VA 20191
T: 703.596.4486 | F: 703.596.0147
www.lessarddesign.com

CONCEPTUAL ELEVATIONS

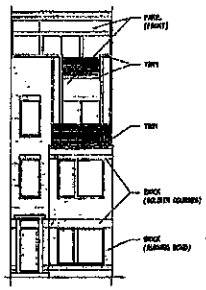
MOSAIC TOWNHOMES
FAIRFAX COUNTY, VIRGINIA

JUL. 13, 2011 EYA.006A.00D

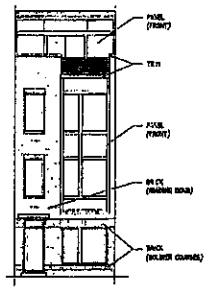
THE NEIGHBORHOODS OF EYA

SCALE: 1/8" = 1'-0"

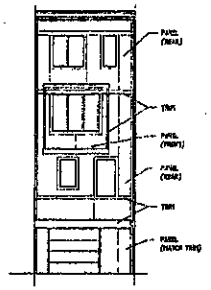
A-01



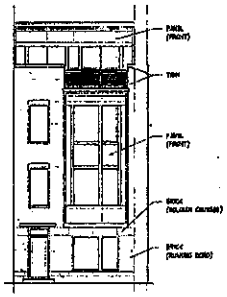
1 A-02 Front Elevetion - A1



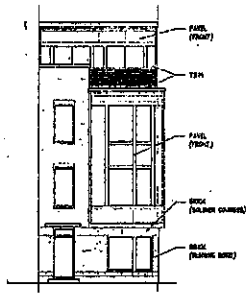
2 A-02 Front Elevation - A2



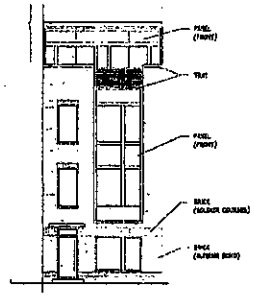
3 A-02 Sample Raar Elevation



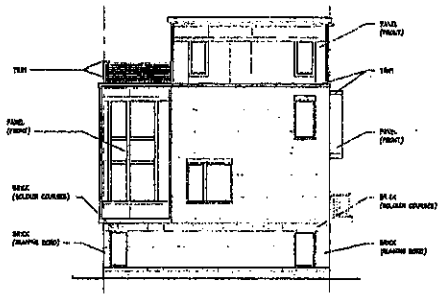
4 A-02 Front Elevation - B1



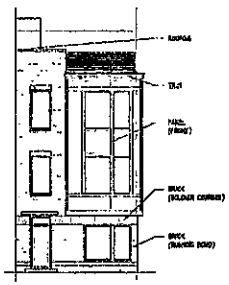
5 A-02 Front Elevation - B1 End



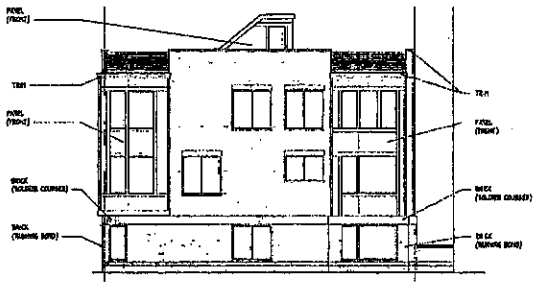
6 A-02 Front Elevation - B2



7 A-02 Front Elevation - B1 Side



8 A-02 Front Elevation - A1



9 A-02 Front Elevation - A2

	FRONT PANEL	REAR PANEL	BRICK	BASE BRICK	TRIM
SCHEME 1	SW6194 BASIL	SW7015 DOVETAIL	CAROLINA CERAMICS: CHESTNUT VELOUR	N/A	SW7675 SEALSKIN
SCHEME 2	SW7047 PORPOISE		CONTINENTAL BRICK: #490 - STRAIGHT RANGE WINE COLONIAL		
SCHEME 3	SW7591 RED BARN		CONTINENTAL BRICK: #597 - WALNUT BLEND	HARMAR: #880 DUSTY GREY MATT	
SCHEME 4	SW7604 SMOKY BLUE		PALMETTO: DARK RED WIRECUT	N/A	

NOTES:
1. PANEL MATERIAL TO BE FIBER-CEMENT "HARDIE-PANEL," 5/8" THICK
2. TRIM MATERIAL TO BE FIBER-CEMENT "HARDIE-TRIM," OR SIMILAR
3. ALL PAINT COLORS ARE SHERWIN WILLIAMS

A-02 Material Legend

LESSARD Design
Architecture | Planning | Interiors
1802 Campus Commons Drive | Suite 160 | Reston, VA 20191
T: 703.326.6646 | F: 703.326.8147
www.lessarddesign.com

CONCEPTUAL ELEVATIONS

MOSAIC TOWNHOMES
FAIRFAX COUNTY, VIRGINIA

JUL. 12, 2011 EYA.006A.00D

THE NEIGHBORHOODS OF EYA
SCALE: 1/8" = 1'-0"

A-02

FINAL DEVELOPMENT
PLAN AMENDMENT CONDITIONS

FDPA 2005-PR-041-2

June 22, 2011

If it is the intent of the Planning Commission to approve FDPA 2005-PR-041-2 for a mixed-use development located at Tax Maps 49-3 ((37)) C, D, F, G and J, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions, which supersede all previous conditions (those conditions carried forward from previous approval that apply to the subject property are marked with an asterisk*):

1. Development of the property shall be in substantial conformance with the CDP/FDP entitled "Merrifield Town Center" consisting of sixty-seven sheets prepared by VIKA Inc, Edens & Avant, and RTKL Associates, dated January 10, 2011, as revised through June 17, 2011.

2. Stormwater Management for the subject property shall be provided in conformance with the Waiver Conditions associated with the Public Facilities Manual Waiver #0561-WPFM-002-3.* (see Attachment A)

3. If development of North Park occurs in conformance with the Memorandum of Understanding referenced in proffer XIV.2, an FDPA will not be required.

4. Temporary parking (referenced in Proffer V4) shall include appropriate signage in accordance with Article 12 of the Zoning Ordinance.*

5. Any building on Parcel G that results in more than 7 stories in height shall be subject to the review and approval of a Final Development Plan Amendment (FDPA) to ensure that the building design is compatible with the surrounding buildings.

6. The residential portion of the PDC District in the original rezoning development shall not exceed 63% as a result of the proposed residential square footage in PDC portion of the FDPA application.

The above proposed conditions are staff recommendations and do not reflect the position of the Planning Commission unless and until adopted by the Planning Commission.

ATTACHMENT A

Attachment A

Waiver #0561-WPFM-002-3 Conditions

Merrifield Town Center
RZ 2005-PR-041
November 30, 2006

1. The underground facilities shall be constructed in accordance with the development plan, these conditions and as determined by the Director of the Department of Public Works and Environmental Services (DPWES).

2. To provide greater accessibility for maintenance purposes, the underground facilities shall have a minimum interior height of 72" and be located as close to the edge of the building perimeter as possible, as determined by DPWES. The underground facilities shall not be located within the open space areas of the proposed development.

3. The underground facilities shall be constructed of reinforced concrete products only and incorporate safety features, including locking manholes and doors, as determined by DPWES at the time of construction plan submission.

4. The underground facilities shall be privately maintained and shall not be located in a County storm drain easement.

5. A private maintenance agreement, as reviewed and approved by the Fairfax County Attorney's Office, shall be executed and recorded in the Land Records of the County. The private maintenance agreement shall be executed prior to final plan approval.

   The private maintenance agreement shall address:
   - County inspection and all other issues as may be necessary to insure that the facilities are maintained by the property owners (e.g. Condominium Association or Owners Association) in good working condition acceptable to the County so as to control stormwater generated from the development of the site.
   - A condition that the applicant, property owners, their successors or assigns shall not petition the County to take future maintenance or replace the underground facilities.
   - Establishment of a reserve fund, for future replacement of the underground facilities.
   - Establishment of procedures to follow to facilitate inspection by the County, i.e. advance notice procedure, whom to contact, who has the access keys, etc.
   - A condition that the property owners provide and continuously maintain, liability insurance. The typical liability insurance amount is at least $1,000,000, against claims associated with underground facilities.
   - A statement that Fairfax County shall be held harmless from any liability associated with the facilities.

6. Operation, inspection and maintenance procedures associated with the underground facilities shall be incorporated in the site construction plan, private maintenance agreement, and property owner association documents which insure safe operation, inspection and maintenance of the facilities.

7. A financial plan, for the property owner association, to finance regular maintenance and full life cycle replacement costs, shall be established prior to final subdivision plat approval. A separate a line item in the property owner association annual budget for operation, inspection and maintenance shall be established. A reserve fund for future replacement of the underground facilities shall also be established to receive annual deposits from the members of the property owners association based on the initial construction costs and an estimated 50-year lifespan for concrete products.

8. Prior to final construction plan approval, the applicant shall escrow sufficient funds for the benefit of the property owner association which will cover a 20-year maintenance cycle of the underground facilities. These monies shall not be made available to the property owner association until after final bond release.

9. All future purchasers of any of the residential units shall be advised prior to entering into a contract of sale, as well as within the recorded property owner association documents, that the property owner association is responsible for the operation, inspection, maintenance and replacement of the underground facilities.

10. The owner and its successors and assigns shall disclose, as part of the chain of title, to all future property owners, the presence of the underground stormwater facilities and the umbrella owner association's responsibility for operation, inspection, maintenance and replacement of such facilities, by including the following language within the deed for each lot and the record plat:

    "The owner and its successors and assigns are responsible for the operation, inspection, maintenance and replacement of the underground stormwater facilities as set forth in the property owners association documents and a private maintenance agreement entered into with the County."

CONCEPTUAL DEVELOPMENT PLAN AMENDMENT CONDITIONS

CDPA 2005-PR-041-2

June 22, 2011

1. Up to an additional $50,000 shall be provided to VDOT to be applied toward the offsite right-of-way acquisition and construction of the offsite southern curb line, between the application property's eastern boundary and Gallows Road, of the VDOT Route 29/Gallows Road intersection improvements.