TYSONS CORNER CENTER PROFFERS
RZ 2004-PR-044

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TYSONS CORNER CENTER PROFFERS
RZ 2004-PR-044

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicants for themselves and their successors and/or assigns (collectively referred to as the "Applicant") in this Rezoning application ("RZ") proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 29-4 ((1)) 35A and 35C and 39-2 ((1)) 2, 4 and 5 (the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application RZ 2004-PR-044 is granted. In the event that the Rezoning application is denied, these Proffers shall be immediately null and void and of no further force or effect. The proffered conditions are:

GENERAL

1. Conceptual/Final Development Plan. The Property shall be developed in substantial conformance with the Conceptual/Final Development Plan dated November 15, 2004, and revised through January 8, 2007, prepared by Patton, Harris, Rust & Associates and consisting of 63 sheets (the "Development With Rail CDP/FDP"), and/or the Conceptual/Final Development Plan dated March 31, 2006, and revised through January 8, 2007, prepared by Patton, Harris, Rust & Associates and consisting of 33 sheets (the "Development Prior to Rail CDP/FDP"), as further described below. Development of the Property under the Development With Rail CDP/FDP is sometimes referred to in these Proffers as the "Development With Rail," and development of the Property under the Development Prior to Rail CDP/FDP is sometimes referred to in these Proffers as the "Development Prior to Rail." The use of the term "CDP/FDP" in these Proffers shall mean the Development With Rail CDP/FDP or the Development Prior to Rail CDP/FDP or both, as applicable.

2. Minor Modifications. Minor modifications to the CDP/FDP may be permitted pursuant to Section 16-403(4) of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site engineering. 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 CDP/FDP are not reduced, the minimum building setbacks from the property lines (as shown on the CDP/FDP) are maintained, and the number of residential units and the building heights do not exceed the maximums indicated in the CDP/FDP and these Proffers.

3. Future Applications. Any portion of the Property may be the subject of a Conceptual Development Plan, Final Development Plan, Proffered Condition Amendment, Rezoning, Special Exception, Special Permit, Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 18-204 paragraph 6 of the Zoning Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property which are not the subject of such an application shall remain in full force and effect.

PROPOSED DEVELOPMENT

4. Development With Rail and Development Prior to Rail. Development of the Property may occur as described in Proffer 4 below and subject to Proffer #6.

A. Development With Rail. If a Full Funding Grant Agreement or a similar or equivalent funding mechanism ("FFGA") to finance the Metrorail extension through Tysons Corner has been executed by the time the Applicant intends to begin construction of any part of the new development, such new development of the Property shall be pursued under the Development With Rail CDP/FDP.

B. Development Prior to Rail. If a FFGA to finance the Metrorail extension through Tysons Corner is not executed at the time that the Applicant intends to begin construction of any part of the new development, the Applicant may only pursue development under the Development Prior to Rail CDP/FDP.

C. Transitions in Applicable Development Plans. If the Applicant has an approved site plan for the Development Prior to Rail CDP/FDP, but has not started construction at the time that a FFGA is executed, then the Applicant shall not be required to construct the Development With Rail, and may proceed with development under the Development Prior to Rail CDP/FDP. In addition, the Applicant reserves the right to begin construction under the Development Prior to Rail CDP/FDP and subsequently complete development of Phase 1 of the Development With Rail CDP/FDP if the FFGA is executed after the Applicant obtains an approved site plan for the Development Prior to Rail CDP/FDP. Alternatively, in that event, the Applicant may complete construction under the Development Prior to Rail CDP/FDP and proceed to Phases 2 and subsequent phases under the Development With Rail as further described in the Proffers.

5. Development With Rail CDP/FDP. The Property is approximately 78.65 acres in size and is currently developed with 2,517,057 square feet, which includes the existing Tysons Corner Center super-regional mall (the "Existing Shopping Center") and an up to 75,000 square foot un-built expansion of the Existing Shopping Center. The additional development proposed with this Development With Rail will supplement the uses and square footage existing on the Property. As contemplated by the CDP/FDP, approximately 42,922 square feet of the Existing Shopping Center will be removed, leaving 2,474,135 square feet in the Existing Shopping Center, including the 75,000 square foot un-built expansion; a maximum of 3,552,690 square feet gross floor area of development may be added to the 2,474,135 square feet of development in phases as indicated in the Development With Rail CDP/FDP and as follows:

Existing Shopping Center*	2,474,135 SF
<u>Development With Rail</u>	
Office**	Up to 1,347,328 SF
Multifamily Residential Units**	Up to 1,728,175 SF (minimum 950 units, maximum 1,385 units)
Hotel	Up to 266,513 SF (maximum 300 rooms)
New Retail and Other Non-Residential/Retail/Commercial Non-Office ("Retail/Commercial") Uses**	Up to 197,674 SF
South Entrance Pavilion	13,000 SF

*Including the 75,000 SF un-built expansion and removal of 42,922 SF of the Existing Shopping Center
**The square footage and number of units indicated includes the illustrative development for Phases 3 and 4 as indicated in the CDP/FDP. Per Proffer #6, this mix of uses will be further reviewed with a future Conceptual/Final Development Plan Amendment

6. <u>Phasing of the Development With Rail.</u> The Development With Rail (consisting of a total of 3,549,690 square feet of gross floor area in addition to the Existing Shopping Center) will occur in phases as further described below.

The buildings, plazas, uses and other improvements shown within Phases 1 and 2, and the road improvements and other improvements elsewhere on the property proffered in association with those Phases, including those portions of Sheets 1 through 31-A, Sheets 46 through 53, and Sheets 55 through 61, that pertain to Phase 1 and 2 improvements, may be constructed in accordance with the phasing outlined in Paragraphs A and B, below.

Approval of a Conceptual Development Plan Amendment and a Final Development Plan Amendment (CDPA/FDPA) by the Board of Supervisors and the Planning Commission, respectively, through the public hearing process shall be required prior to the approval of any site plan for any buildings and their associated improvements beyond that permitted by the preceding paragraph. The buildings, plazas and other improvements shown as Phases 3 and 4 of the Development with Rail are illustrative only with regard to the buildings, uses, plazas and other improvements shown on Sheets 32 through 45 and Sheet 54. Furthermore, the Building and Parking Schedule on Sheet 3 of the Development With Rail CDP/FDP, which allocates uses for Phases 3 and 4, is also for illustrative purposes only. As part of the review and approval of the CDPA/FDPA, the number of phases, how the gross floor area will be allocated, the mix of uses and the design, among other things, of these portions of the Property may be reviewed; however, the amount of gross floor area shall not be reduced below 1,099,300 sq. ft. unless a lesser amount is requested by the Applicant. The Applicant acknowledges that the County's review of the CDPA/FDPA will be based, among other things, on an analysis of the Comprehensive Plan recommendations in effect at the time of the CDPA/FDPA. Modifications to the proffers (including to transportation improvements, trails and transportation demand management, stormwater management among other things) may be necessary to address the adjusted development plan. Scoping and submission of an updated traffic analysis evaluating the impact of the development may also be necessary.

A. Phase 1: Phase 1 consists of a maximum of 1,385,600 square feet of gross floor area. The Applicant may submit and process a site plan or building plans at any time; however, the Applicant shall not obtain approval of any plans or permits, for Phase 1, including but not limited to, grading plans, site plans and/or building permits, until such time as (1) a FFGA is executed as set forth in Proffer #4 and (2) an agreement is executed between the Applicant and the Dulles Transit Partners, the Virginia Department of Rail and Public Transportation and/or their respective successors (jointly, the "Dulles Rail Project Entities") in accordance with Proffer #50, or the Applicant has been released from this condition pursuant to Proffer #50.C.

Phase 1 summary:

Residential Building 1-A (259-355 units)	499,275 SF
Office Building 1-B	551,638 SF
Hotel Building 1-C (up to 300 rooms & conference space)	266,513 SF
Hotel Building 1-C Residential (up to 40 units)	42,900 SF
Retail/Commercial Buildings 1-A, 1-C, 1-D	25,274 SF*
Total	1,385,600 SF

*Retail/Commercial square footage allocated to Phases 1 and 2 may be utilized in the South Entrance Pavilion.

B. Phase 2: Phase 2 consists of a maximum of 1,067,790 square feet of gross floor area.

i. The Applicant may submit and process a site plan or building plans at any time; however, the Applicant shall not obtain approval of any plans or permits for Phase 2, including but not limited to, grading plans, site plans and/or building permits, until such time as construction of the Metrorail extension through Tysons Corner has commenced.

ii. For the purposes of this proffer, commencement of construction of the Metrorail extension through Tysons Corner shall be deemed to have occurred upon the commencement of site work related to the construction of the track or any stations for the first phase of the Dulles Corridor Metrorail Project.

Phase 2 summary:

Residential Building 2-A (278-408 units)	518,000 SF
Office Building 2-B	488,290 SF
Retail/Commercial Buildings 2-B, 2-C, 2-D	48,500 SF*
South Entrance Pavilion (as identified on the CDP/FDP	13,000 SF*
Total	1,067,790 SF

*Retail/Commercial square footage allocated to Phases 1 and 2 may be utilized in the South Entrance Pavilion.

C. TDM Threshold After Phases 1 and 2. As part of the review of the CDPA/FDPA for any development subsequent to Phases 1 and 2, the Applicant shall demonstrate that any penalties related to the Transportation Demand Management Program that are due have been paid under Proffer #41.O.

The Applicant shall not obtain approval of any plans or permits, including but not limited to grading plans, site plans or building permits, for any development beyond Phase 2 if penalties related to the Transportation Demand Management Program have been paid under Proffer #41.O, unless (a) the AM and PM peak hour vehicle trips for all uses that have reached Stabilization at the time of the immediately preceding annual Trip Count are less than (b) the totals for Maximum Trips After Reduction during both AM and PM peak hour trips, respectively, for all such uses as contained in the applicable table in Proffer #41.A.ii. The terms Stabilization, Trip Counts and Maximum Trips after Reduction are defined in Proffer #41.

i. To illustrate the effect of this paragraph C, if development is occurring under the Development With Rail, then notwithstanding that penalties have been paid under Proffer #41, the Applicant may obtain approval of plans or permits, including but not limited to grading plans, site plans or building permits, for the next phase of development beyond Phase 2 only if the AM peak hour vehicle trips for all uses that have reached Stabilization in Phases 1 and 2 during the immediately preceding Trip Count were less than 1,351 in the AM peak hour and the PM peak hour vehicle trips for all uses that have reached Stabilization in Phases 1 and 2 during the immediately preceding Trip Count were less than 1,170 in the PM peak hour.

7. Development Prior to Rail CDP/FDP. In the Development Prior to Rail CDP/FDP, approximately 42,922 square feet of the Existing Shopping Center will be removed, leaving 2,442,057 square feet in the Existing Shopping Center, including an up to 75,000 square foot un-built expansion. The Applicant proposes to add an additional 1,305,638 square feet of gross floor area of development to the existing development under the Development Prior to Rail in the location where Phase 1 of the Development With Rail CDP/FDP is shown. The Applicant reserves the right to begin construction under the Development Prior to Rail and subsequently

complete development of the Property under the Development With Rail CDP/FDP as set forth in Proffer #4.

If the Applicant begins development under the Development Prior to Rail, at such time as the FFGA is executed by all appropriate parties, the Applicant may proceed with development of Phases 1, 2, and any subsequent phases, as described in Proffers #4 and #6. In that event, at such time as the Applicant constructs Phase 2 under the Development With Rail, the Applicant shall complete the improvements indicated in Proffers 38.C.ix and #43.A.iii, if such improvements have not already been completed.

The total square footage of the Development Prior to Rail is broken down as follows:

Proposed Development	
Residential Building 1-A (259-340 units)	480,875 SF
Office Building 1-B	490,076 SF
Hotel Building 1-C (up to 300 rooms & conference space)	266,513 SF
Hotel Building 1-C Residential (up to 40 units)	42,900 SF
Retail/Commercial Buildings 1-A, 1-C and 1-D	25,274 SF
Total	1,305,638 SF

8. Owners' Associations

A. Umbrella Owners' Association. Prior to the issuance of the first RUP or first Non-RUP under either the Development With Rail or the Development Prior to Rail, the Applicant shall establish an Umbrella Owners' Association, whose members will be each of the owners of land and/or buildings within the Property (the "UOA"). Tysons Corner Holdings LLC and Tysons Corner Property Holdings LLC, or any successor entities that are the owners of the Existing Shopping Center, shall be members of the UOA.

B. Homeowner and Condominium Owners' Associations. For each residential building in which units are held for sale, the Applicant shall cause either a homeowners' association and/or a condominium owners' association ("HOA/COA") to be formed for that building. Each of these associations shall be members of the UOA.

C. Disclosures. UOA and HOA/COA documents (including budgets provided in any offering or sale materials) shall specify the proffer and maintenance conditions and obligations set forth in these Proffers. Purchasers shall be advised in writing of these proffer conditions and obligations prior to entering into a contract of sale.

D. UOA TDM Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be

advised of the TDM Plan described in Proffer #41. All UOA and HOA/COA members shall be informed of any funding obligations for the TDM program prior to entering into a contract of sale, and all such obligations shall be included in UOA and HOA/COA documents.

9. The Existing Shopping Center and the Proffers. These Proffers and the CDP/FDP include a number of road and other improvements that shall be implemented in conjunction with the development of the new buildings and facilities. A 75,000 square foot un-built expansion to the Existing Shopping Center and/or other exterior or interior renovations or other improvements to the Existing Shopping Center may be carried out without requiring the construction or implementation of the phased road and other improvements that are specifically proffered herein.

Many of these proffers include references to contributions or improvements that are required following the issuance of a specific Residential Use Permit ("RUP") or Non-Residential Use Permit ("Non-RUP"). For the purpose of these proffers, when RUPs or Non-RUPs are referenced, the RUPs or Non-RUPs are not those associated with the Existing Shopping Center but are those associated with the proposed new office, residential, Retail/Commercial and/or hotel uses.

10. Mix of Uses. The Property shall consist of a mix of residential, office, retail, service and hotel uses and may include the following uses, subject to the limitation that the maximum square footage of the residential, office, new Retail/Commercial and hotel uses shall not exceed the square footages indicated in the CDP/FDP and the limitations of Proffer #6 and #7, as the same may be amended by a CDPA/FDPA or Proffered Condition Amendment. In addition, the following uses are permitted on the Property.

- Eating establishments
- Theatres
- Bank teller machines
- Amusement arcades
- Fast food restaurants (without drive-through)
- Quick-service food stores
- Vehicle rental establishments permitted with no more than twenty-five (25) total vehicles on the Property at any one time and with no individual vehicle rental establishment to exceed more than 10 cars on the site at any one time; the location of the storage spaces for the rental vehicles shall be shown on the applicable site plan.
- Billiard and pool halls
- Bowling alleys
- Commercial swimming pools, tennis courts and similar courts

- Health clubs
- Financial Institution
- Indoor archery ranges, fencing and other similar indoor recreational uses
- Miniature golf courses
- Skating facilities
- Community clubs, centers, meeting halls, swimming pools, archery ranges
- Swimming clubs, and tennis clubs/courts
- Dwellings as indicated on the CDP/FDP
- Institutional uses
- Child care centers and nursery schools with approval of a Special Exception unless shown on the proffered CDP/FDP or in accordance with Proffer #16.
- Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school of general or special education with approval of a Special Exception
- Colleges and universities
- Cultural centers, museums and similar facilities
- Independent living facilities with the approval of a Special Exception
- Private clubs and public benefit associations
- Private schools of general education with approval of a Special Exception
- Private schools of special education with approval of a Special Exception
- Personal service establishments
- Business supply and service establishments
- Garment cleaning establishments (restricted to an establishment that provides drop-off/pick-up service only with no on-site processing/cleaning)
- Public uses
- Repair service establishments

- Retail sales establishments

11. Community Space. The Applicant shall provide, at no cost to the County, a centrally-located space of not less than 1,700 square feet in the Existing Shopping Center or elsewhere on the Property for use by Fairfax County to serve the Fairfax County Police, the Fairfax County Fire Department and/or other users as coordinated by the County and the Applicant. The Applicant shall provide utilities, cleaning services and general maintenance for this space at no cost to the County. The Applicant shall also provide basic office furniture, including desks, chairs and tables.

12. Incubators. The Applicant shall provide opportunities for small and minority-owned businesses to obtain retail cart or kiosk space within the Existing Shopping Center and within other interior or exterior areas of the Property and will consider these businesses, if successful, as candidates for tenancy as in-line retail space becomes available in either the Existing Shopping Center or elsewhere on the Property. Upon request, the management of the Existing Shopping Center shall facilitate coordination between small and minority-owned businesses and third party organizations that may be able to provide assistance to these incubators.

13. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording residential condominium documents for any portion of the Property located within the Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.

14. Hours of Operation of the Existing Shopping Center Corridor and Elevated Pedestrian Bridges. To permit convenient access to and through the Property to the Tysons Central 123 Metro Station South Entrance Pavilion, the interior mall corridors (other than service corridors) of the Existing Shopping Center and the interior pedestrian circulation routes as indicated on the CDP/FDP (including the bridges proposed to the neighboring Towers Crescent Property per Proffer #29) shall be open at least one hour before to one hour after the hours of operation of the Tysons Central 123 Metro Station. This proffer shall take effect at the time the Tysons Central 123 Metro Station becomes operational for general public use. This proffer shall not preclude the Applicant from (A) altering the alignment of the interior corridors of the Existing Shopping Center as long as mall corridors as a whole provide substantially equivalent connectivity, (B) from temporarily limiting portions of the corridors, as necessary, for cleaning, tenant construction and/or other Existing Shopping Center operations as long as mall corridors provide substantially equivalent connectivity and appropriate signage is provided, or (C) exercising such other reasonable controls over such corridors and bridges to prevent the general public from acquiring rights of access that are inconsistent with the status of the Property as private property, as long as mall corridors as a whole provide substantially equivalent connectivity.

15. Grocery and Quick Service Food Store.

A. Grocery Store. In the Development With Rail, the Applicant shall provide a grocery store of at least 5,000 square feet and no more than 15,000 square feet on the Property, unless a grocery store of a similar or larger size has been opened for business within Land Units O or P (as identified in the Tysons Corner Urban Center Comprehensive Plan), and except as further described below.

This grocery store shall provide daily necessities and prepared foods to serve primarily the residents and tenants of the Property. As a neighborhood serving grocery store, it shall neither be a quick-service (convenience) food store nor a large-format destination supermarket.

At the time of submission of site plans for Phase 2, the Applicant shall identify a location on the Property where the grocery store described above may be located. The grocery store location may change as long as such change is reflected in subsequent site plans and the provision of the grocery store as required by this Proffer is fulfilled.

i. A Non-RUP shall be issued for the grocery store no later than five years after the date of issuance of the 250th RUP for Phase 2 except as indicated below.

a. The Zoning Administrator may extend the deadline for provision of this grocery store if the Applicant is in the site plan process or under construction for development beyond Phase 2, and the grocery store will be included within the area subject to the site plan or construction.

B. Quick Service Food Store. The Applicant shall provide a quick service food store on the Property prior to issuance of the 129th RUP for Phase 1 or the Non-RUPs for 275,000 square feet of office space for Phase 1, whichever occurs first. The existing CVS convenience store located within the Existing Shopping Center shall not satisfy this requirement. At such time as the Non-RUP for the grocery store as required by paragraph A has been issued, the quick service food store shall not be required.

16. Child Care Center. Prior to issuance of the 204th RUP for Phase 2 or the Non-RUPs for 244,000 square feet of Phase 2 office space, whichever occurs first, the Applicant shall provide at least one child care center on the Property.

A. The child care center shall accommodate a maximum daily enrollment of no fewer than 100 children and no more than 150 children, which may be modified with approval of a Special Exception without requiring a Proffer Condition Amendment.

B. The child care center shall be marketed primarily to the employees, tenants and residents on the Property. The Applicant reserves the right to modify this

requirement with approval of a Special Exception without requiring a Proffer Condition Amendment.

C. The child care center shall meet the applicable standards in the Zoning Ordinance current at the time of submission of the building plans, including those standards governing outdoor recreation areas.

BUILDING ARCHITECTURE & TELECOMMUNICATIONS EQUIPMENT

17. Architecture. Buildings shall be designed with high quality architecture and building materials. The exterior building materials used in the development of the new residential, office and hotel buildings and the South Entrance Pavilion shall consist of glass, steel, brick masonry, architectural pre-cast, stone masonry, architectural concrete and/or other materials of similar quality that are typically used on the exterior of Class A office buildings and residential and hotel buildings of a similar quality. No Exterior Insulation and Finish Systems (EIFS) shall be utilized on any of the new proposed residential, office or hotel buildings or the South Entrance Pavilion. At or prior to the time of submission of building plans to Fairfax County, the Applicant shall provide information on (i) the building architecture and materials (including the materials and design of the pedestrian bridge between Phases 1 and 2), (ii) the parapet walls or screening walls as specified in Proffer #18 and (iii) the animated façade areas as specified in Proffer #19 to the Planning Commission for review and comment after consultation with the Providence District Supervisor; no such building plans shall be approved by the County until the Planning Commission indicates support for the architecture. In the course of its architectural review, the Planning Commission shall consider, among other things, whether the building heights, building articulation and other architectural design characteristics of the proposed buildings are in furtherance of the objectives of the County's Comprehensive Plan in enhancing the Tysons Corner skyline.

18. Maximum Building Heights. The maximum heights of the proposed buildings shall not exceed the building heights indicated on the CDP/FDP. As indicated on the CDP/FDP, the Applicant is committed to maximum building heights and to a range of number of stories. This height limit does not include penthouses, elevators or mechanical equipment rooms covering less than 25% of the roof pursuant to Section 2-506 of the Zoning Ordinance. Penthouses shall be similar in material and color to the building, so the penthouse structure is consistent with the rest of the architecture of the building and is architecturally integrated with the building. No such penthouse structure shall exceed 25 feet in height, unless it can be demonstrated by the Applicant that such additional height is needed for the elevator the Applicant selects for that building; in which case, the maximum height of the penthouse structure shall not exceed 30 feet. The Applicant shall screen mechanical equipment located on the rooftops of the proposed buildings from ground level view, using opaque parapet walls and other screening walls, materials or devices.

19. Animated Façade Areas. The Applicant shall provide animated façade areas throughout the Property as identified on the CDP/FDP and which shall be indicated on the architectural/building plans submitted per Proffer #17.

A. External Streetscape Presence. The Applicant shall require new tenants located in the areas identified in the CDP/FDP as "Animated Façade Areas" to create an external streetscape presence through the use of transparent exterior storefront facades (as outlined below in paragraph C) and entries, landscaping, seating areas, canopy and awning shade elements and other techniques that create a building façade that provides interest to pedestrians and vehicles. When negotiating new leases with existing tenants located in the Animated Façade Areas, the Applicant shall require existing tenants to also create such external streetscape presence using the foregoing techniques.

B. Entry Elements. The Animated Façade Areas shall include functioning entry doors into the applicable Retail/Commercial space. Such entry elements shall not be separated by a distance of more than 75-feet on-center, unless a greater separation is needed to accommodate larger tenant spaces or as permitted by the Zoning Administrator. Should the layout of a larger tenant not be able to accommodate multiple entries with a maximum spacing of 75 feet, such tenant shall be required to design the façade with glazed elements that are no more than 25-feet apart, and of a size no smaller in area than 48 square feet.

C. Glazing Requirements and Transparency Levels. Along the Animated Façade Areas, a minimum transparency level of 45% of the overall area of the façade (as measured across the entire length of the façade and to a height of 15-feet from the lowest finished floor elevation) shall be provided through glazed windows and doors that allow views into the tenant space. Up to 20% of the above described transparent windows or glazing can be met with display windows or glazing that have reduced visibility through sandblasting, glass blocks or other similar methods, that allow for light to enter the interior space without providing direct visibility from outdoors, with the remaining glazing remaining fully transparent.

20. Retaining Walls Along Route 123. The Applicant shall design the walls along Route 123 to provide high-quality attractive facades. The primary material for the façade of the walls shall be high-quality architectural block, stone, stone-like material, colored pre-cast concrete or a comparable material. At the time of submission of site plans to Fairfax County for Phases 1 and 2, and after the Applicant has consulted with the Providence District Supervisor, the Applicant shall provide the proposed design, building materials and elevations of this wall to the Planning Commission for review and comment. Site Plan approval shall not be granted for either the Phase 1 or Phase 2 residential and office buildings without a positive recommendation about the wall from the Planning Commission.

A. Phase 1 Wall. The wall associated with Buildings 1-A and 1-B along Route 123 shall be no greater than 34' in height at any point (including the up to 5' sound attenuation wall), as shown on the CDP/FDP. The Planning Commission shall be permitted to review and comment on the quality of the proposed wall, the compatibility of the wall with the architecture proposed for Buildings 1-A and 1-B and with the rest of the site, the use of appropriate landscaping, and the relationship between the wall and the screening and plantings. In furtherance of

the foregoing, the Planning Commission's review shall include the following elements:

i. The Applicant shall integrate landscape screening and treatment of the wall to lessen the apparent mass of the wall. The Applicant shall incorporate architectural elements or themes from Buildings 1-A and 1-B into the façade of the wall to provide a high-quality, attractive street-level façade along Route 123.

ii. The wall shall be articulated through changes of plane, lighting, material, color or other architectural means to lessen the apparent mass of the wall. Consideration shall be given to the use of horizontal features that serve to reduce the apparent height of the wall.

iii. Landscaping, including deciduous and evergreen trees and shrubs, shall be utilized between the wall and Route 123 to provide visual interest. Shade trees shall be a minimum four-inch (4") caliper, and evergreen trees shall be a minimum of 8 to 10 feet in height at the time of installation. Final determination of the tree species and specific planting locations shall be approved by Urban Forest Management at the time of site plan review.

iv. Sheet 15 of the CDP/FDP includes images of walls that exhibit possible wall materials as well as the quality and visual interest proposed for this wall.

B. Phase 2 Wall. The Planning Commission shall be permitted to review and comment on the proposed Phase 2 wall to verify its compatibility with the Phase 1 wall, through the use of similar primary materials, architectural elements, colors and/or other elements.

21. Telecommunications Equipment. Telecommunications equipment serving the Property 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 setback sufficiently from the perimeter of the roof and penthouse such that they shall not be visible from the surrounding streets at street level. Screening measures may be used such as (i) including the facilities as part of the architecture of the building(s), (ii) employing telecommunication screening material, and (iii) flush-mounted antennas utilizing colors consistent with the building treatment in the area where the antennas are to be installed.

LIGHTING

22. Lighting. All on-site, outdoor and parking garage lighting shall meet or be less than that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. All parking lot and building mounted security lighting shall utilize full cut-off fixtures. Wall-washer type lighting shall use fixtures with shielding such that the lamp surface is not directly visible.

Lighting fixtures near the Semi-Private Court Activities on the future improved Parking Terrace A shall utilize full cut-off fixtures and appropriate heights to mitigate the lighting impact.

23. Parking Structure Lighting. The Applicant shall utilize full cut-off, low-intensity or recessed lighting directionally shielded to mitigate the impact on the adjacent residences for any lighting along the perimeter of a parking structure not constructed of solid walls. Such lighting shall meet the requirements of Article 14 of the Zoning Ordinance.

24. Construction Lighting. During construction, the Applicant shall attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies. Such measures as cut-off shields, lower intensity or lower number of light bulbs, dimming or extinguishing lighting after operating hours of the Existing Shopping Center will be presented to appropriate inspectors for their consideration. Additionally, during construction, the Applicant shall direct its contractor to erect opaque covering over windows that face The Regency at McLean and the Encore of McLean condominiums if the windows are illuminated after 10PM.

NOISE ATTENUATION

25. Noise Attenuation. To meet the noise limitations described in paragraphs A through E below, the Applicant shall provide appropriate noise attenuation measures as identified on the CDP/FDP as a "Sound Attenuation Wall" and as determined necessary based on the noise studies required below and as approved by DPZ.

At the time of submission of each site plan, the Applicant shall submit a noise study addressing the buildings shown on that site plan ("Noise Study") to the Department of Planning and Zoning ("DPZ") and the Department of Public Works and Environmental Services ("DPWES") for review and approval. The Noise Study shall indicate the traffic and transit-related noise anticipated from the Property ring road, I-495 (including the southbound entrance ramp adjacent to the Property), Route 123 (including transit related noise due to the Tysons Central 123 Metro Station and the associated Bus Plaza adjacent to the Property), Route 7, International Drive and the Westpark Bridge. The Noise Study shall include projected noise levels in the residential units, hotel rooms, office space and outdoor recreation areas shown on the submitted site plan and will be based on final site topography and conditions shown on the site plan rather than existing topography/conditions. The methodology of the Noise Study, including any noise measurement locations that may be required, shall be subject to the approval of DPZ and DPWES. The following information shall be included in this noise study: the affected buildings, the affected outdoor recreation areas, and the affected residential units, hotel rooms and/or office spaces (occupied spaces) and the noise attenuation measures to ensure that the affected outdoor areas meet the standards outlined below.

A copy of the applicable approved Noise Study shall be included with the submission of the building plans for the construction of each building on the site. The building plan shall identify the affected occupied spaces and the noise attenuation measures, including materials, to be provided to ensure that each such affected occupied space meets the standards outlined below.

Supporting information that documents that the proposed noise attenuation measures will be sufficient to attain the interior noise standards shall also be provided. The Applicant shall not obtain building permits until such time as the County has approved the study and the noise attenuation measures for each building.

Following installation of the noise mitigation measures, the Applicant shall test the interior noise levels of a representative sample of units (5-10 units in each building) to confirm that the actual noise levels do not exceed the maximum noise levels indicated in this Proffer. The Applicant shall make window or noise mitigation adjustments, as necessary, if the results of the noise measurement indicate noise levels in excess of the proffered maximums.

A. Outdoor Recreation Areas. The Applicant shall provide noise attenuation measures shown on the CDP/FDP as necessary to ensure that traffic-related noise in the outdoor recreation areas that are so identified in the CDP/FDP do not exceed 65 dBA Ldn. Adjustments to the noise attenuation measures that are in substantial conformance with those indicated on the CDP/FDP may be permitted subject to the approval of DPZ to ensure that the noise attenuation measures provide the necessary noise attenuation.

B. Noise Levels within Residential Units, Hotel Rooms and the Office Buildings. The Applicant shall provide noise attenuation measures in order to reduce interior noise in all residential units and hotel rooms to approximately 45 dBA Ldn or less. The Applicant shall provide noise attenuation measures to reduce interior noise in the office buildings to approximately 50 dBA Ldn or less.

C. Identification of Affected Buildings and Units. The buildings in which noise attenuation measures are required for some or all of the residential units, hotel rooms or office space contained therein shall be identified on the site plans. The specific units or areas requiring such attenuation, and the proposed measures to attenuate the noise, shall be indicated on the appropriate building plans, as determined by DPWES. This information shall also be disclosed in the UOA documents.

D. Residential Balconies. No balconies shall be provided in any areas of the residential buildings projected to exceed 75 dBA Ldn. The Applicant shall disclose in sales contracts/rental agreements that some of the residential balconies may be located in areas where noise levels exceed 65 dBA Ldn. HOA/COA documents shall identify the units with balconies with noise levels higher than 65 dBA Ldn.

E. Areas in Excess of 75 dBA Ldn. If the noise study reveals that there are residential units located within an area that exceeds 75 dBA Ldn projected to 2026, then the residential units in that location shall not be built, and the Applicant shall (i) pursue a proffered condition amendment to change the location of the residential units or (ii) replace the residential units with non-residential or office uses as long as the non-residential or office square footage as indicated in

Proffer #6 for the Development With Rail and Proffer #7 for the Development Prior to Rail is not exceeded.

PARKING

26. Parking.

A. Parking Management. The Applicant shall separate the parking associated with office, residential and Retail/Commercial uses (including the Existing Shopping Center) to ensure that each of these uses will have sufficient parking per the tabulations indicated in the CDP/FDP or any approved parking reduction. Parking tabulations shall be provided with each site plan. Parking provided for the office and residential uses shall be located in close proximity to the respective uses and will have controlled access. Spaces allocated for the residential uses shall not be accessible by patrons of the Existing Shopping Center or the new Retail/Commercial uses. Patrons of the Existing Shopping Center may utilize the parking spaces set aside for office use during hours other than normal business hours, as determined feasible by the Applicant and the office tenants.

i. The Applicant shall provide on-site signage to direct drivers to the appropriate parking locations and from there to the various uses on the Property. The Applicant shall provide signage to direct visitors from the parking terraces to the Existing Shopping Center. Clearly marked pedestrian routes or paths from the parking spaces available to Retail/Commercial patrons in the proposed parking structures to the Existing Shopping Center shall be provided. These routes shall be open and accessible the same hours as the Existing Shopping Center as described in Proffer #14. These routes shall not require patrons to walk through residential buildings.

B. Parking and Phasing. At the time that construction of any or all of the phases of the new development on the Property is completed, the parking provided in that phase or on the Property (taken as a whole) shall not exceed the Zoning Ordinance parking requirements, except as provided in this paragraph B and except as indicated on the Building and Parking Tabulations on Sheet 3 of the CDP/FDP. Notwithstanding the foregoing, the Applicant may provide more parking than required by the Zoning Ordinance (i) in any phase to the minimum extent necessary to avoid construction of partial floors of parking structures, and (ii) to the extent necessary to provide sufficient parking for future phases, subject to the qualification that the number of spaces provided does not exceed 110% of the number of spaces required by the Zoning Ordinance. In addition, prior to the demolition of Parking Terrace D and with the construction of additional parking on Terrace A, parking in excess of 110% of the Zoning Ordinance requirements will be provided during construction of Phase 2.

C. Existing Approved Parking Reduction for the Existing Shopping Center. Prior to approval of the site plan for Phase 1 of the Development with Rail or the Development Prior to Rail, the Applicant shall pursue a parking reduction for the Existing Shopping Center if Fairfax County determines that an amendment to the governing reduction (as approved by the Board of Supervisors on September 12, 2005 (6399-PKS-010-1)) is required. If such a study is required, and the County fails to approve a new parking reduction for the Existing Shopping Center, the Applicant shall provide the parking required by the Ordinance for the Existing Shopping Center.

D. Future Parking Reductions. Given (i) the proximity to the future Tysons Central 123 Metro Station, (ii) the bus facilities already located or to be located on the Property, (iii) the character of the Development With Rail as a mixed-use transit-oriented development, and (iv) the intended effects of the Transportation Demand Management Plan provided in accordance with Proffer #41, the Applicant shall evaluate and pursue parking reduction(s) for the uses associated with the Development With Rail other than the Existing Shopping Center at appropriate times as may be permitted by Article 11, Parking, of the Fairfax County Zoning Ordinance.

SIGNAGE

27. Signage.

A. Advertising/Store Signage. The Applicant shall provide signage as permitted by Article 12 of the Zoning Ordinance and SPA 89-P-034 until and unless SPA 89-P-034 is replaced with an approved Comprehensive Sign Plan or similar approval, at which time signage will be governed by such approval.

B. Wayfinding Signage. The Applicant shall provide DPZ Staff and the Planning Commission with a wayfinding sign plan at the time of review of each site plan. The Planning Commission shall be permitted to review and comment on the location of the signs proposed around the site, the size of the proposed signs and the information proposed to be provided on the signs. Such wayfinding sign plan shall depict the signs proposed within the area subject to the site plan and any modifications to signs outside the site plan area. The Applicant shall implement the wayfinding sign plan for each phase by installing all wayfinding signs for that phase prior to the issuance of the first RUP or Non-RUP for that phase. The wayfinding signage plan shall include provision of signage to direct those traveling on the Property to the parking locations associated with each of the uses on the Property. The wayfinding signage shall be limited to those signs as permitted by Article 12 of the Zoning Ordinance and any other governing signage regulations.

C. 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 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 to assist in the initial sale of residential units on the Property. Furthermore, agents and employees involved in the marketing and sale of the residential units on the Property shall be directed to adhere to this policy.

ELEVATED PEDESTRIAN CONNECTIONS TO NEIGHBORING PROPERTIES

28. Connections Across International Drive and I-495.

A. International Drive. Should the Applicant or others choose to provide an elevated pedestrian bridge across International Drive that would connect the Property and Land Unit O (as identified in the Comprehensive Plan), such a bridge may be provided as permitted by the Zoning Administrator.

B. I-495.

i. If the Dulles Rail Project Entities incorporate the widening of an elevated pedestrian bridge across Route 123 to a minimum width of 16' handrail to handrail, or if an option to route this pedestrian access underground is implemented, the Applicant shall allocate the $305,000 to be contributed to this bridge widening per Proffer #50 to the Fairfax County Board of Supervisors to establish a fund for future pedestrian and bicycle connections across I-495 in the vicinity of the Property. These connections could be elevated, at-grade or below-ground and would be generally located at or between the Rt. 123/I-495 interchange and the Rt. 7/I-495 interchange. This amount will be paid by the Applicant to Fairfax County prior to the issuance of the 130th RUP or Non-RUPs for 244,000 square feet of office space, whichever comes first, in Phase 2 of the Development With Rail.

ii. If an elevated pedestrian facility across I-495 that connects to the Property is funded for construction, the Applicant shall grant necessary easements to the County, at no cost to the County or the Commonwealth of Virginia, to permit construction of this facility and to provide pedestrian access from it to the on-site pedestrian network.

29. Towers Crescent Pedestrian Connections. The CDP/FDP depicts two pedestrian bridges labeled as "Towers Crescent Proffered Bridge" and "Alternative Bridge Alignment" to connect the Property and the property at Tax Map #39-2 ((20)) 1A1, 1E and 1F (the "Towers Crescent Property"); however, it is the Applicant's intent to participate in the construction of only one bridge except as discussed in paragraph C below.

A. Towers Crescent Proffered Bridge. The CDP/FDP depicts a "Towers Crescent Proffered Bridge," which would provide a pedestrian connection between the Towers Crescent Property and the westerly end of Parking Terrace C on the Property. This bridge connection is also indicated on the Generalized Development Plan associated with the Towers Crescent Property development (RZ 1998-PR-058). Proffer #24 of the proffers associated with RZ 1998-PR-058 (the "Towers Crescent Proffers") describes the commitment of Tycon Tower I Investment Limited Partnership, Towers Crescent LLC and Towers Crescent Land LLC (and their successors or assigns) (collectively, the "Towers Crescent Owners") to construct a pedestrian bridge connection between the Property and the Towers Crescent Property.

i. The Applicant shall (a) provide easements as necessary for the construction of the Towers Crescent Proffered Bridge from the centerline of Fashion Boulevard to Parking Terrace C at such time as the Towers Crescent Owners submit a site plan for this pedestrian bridge, and (b) provide funds to the Towers Crescent Owners necessary for the construction of the pedestrian bridge from the centerline of Fashion Boulevard to Parking Terrace C in accordance with the Towers Crescent Proffers, provided that the Towers Crescent Owners submit the design and final construction cost information for the pedestrian bridge to the Applicant for its review and approval, which shall not be unreasonably withheld. The Applicant shall provide funds for construction of the Towers Crescent Proffered Bridge as construction progress payments, such that funds shall be advanced to fund the construction of the bridge as it is completed.

ii. To permit convenient pedestrian access across the bridge and to and through the Property, the Towers Crescent Proffered Bridge shall remain open not less than the same hours as the mall corridor hours are open in the Existing Shopping Center. At such time as the hours of operation are extended in the mall corridors per Proffer #14, the hours of operation of the bridge shall be extended accordingly.

iii. If the Towers Crescent Owners have not begun construction of the Towers Crescent Proffered Bridge as of the time of the Applicant's submission of a site plan for Phase 2, the Applicant shall thereafter include the bridge in the site plan for Phase 2 and construct the bridge at such time as the Towers Crescent Owners provide (i) the necessary easements (at no cost to the Applicant), (ii) funding for the design of the bridge and (iii) all of the costs of construction of the bridge other than those costs that are to be paid by the Applicant under paragraph A.i. above. Prior to the approval of the site plan for Phase 2, the Applicant shall diligently pursue the three aforementioned items from the Towers Crescent Owners.

iv. If the Towers Crescent Owners fail to provide the easements and design and construction funding described in this proffer prior to the approval of a site plan for Phase 2, the Applicant shall provide the County with documentation of attempts to acquire such easements and funding. In such a case, the Applicant shall not be required to design and/or construct this bridge connection; however, the Applicant shall be obligated to (A) escrow funds in an amount approved by Fairfax County DPWES equal to the cost of constructing the Towers Crescent Proffered Bridge from the centerline of Fashion Boulevard to Parking Terrace C (including a safe pedestrian connection into the Existing Shopping Center) as indicated in the CDP/FDP, and (B) provide the necessary construction and access easements to permit the construction of the bridge connection to any party ready, willing and able to complete the construction of the bridge

connection (such as, but not limited to, Fairfax County). If ten years after the Applicant provides the escrow to the County, construction of the Towers Crescent Proffered Bridge has not begun, the escrow shall be returned to the Applicant.

B. Substitute Elevated Bridge Location. If, prior to the submission of the site plan for Phase 2, the Applicant and the Towers Crescent Owners reach a written agreement that provides for a substitute elevated pedestrian bridge connection between the Towers Crescent Property and the Property (such as, but not limited to, the Alternative Bridge Alignment indicated on the CDP/FDP), such that the alternate location shall be constructed instead of the Towers Crescent Proffered Bridge, provided that (1) the design, location and the schedule for the construction of the alternate elevated bridge are approved by the Zoning Administrator (including the pedestrian pathways across Parking Terrace C), and (2) such alternate elevated bridge is constructed in accordance with designs and plans and on a schedule as approved by the Zoning Administrator.

C. Additional Elevated Bridge Location. The Applicant reserves the right to construct another bridge in addition to the Towers Crescent Proffered Bridge (such as, but not limited to, the Alternative Bridget Alignment) so long as (1) the design and location of the alternate elevated bridge are approved by the Zoning Administrator (including the pedestrian pathways across Parking Terrace C), and (2) such alternate elevated bridge is constructed in accordance with designs and plans as approved by the Zoning Administrator.

LANDSCAPING

30. Landscape Plan. The CDP/FDP includes a conceptual landscape plan for the Property, consisting of an overall plan and details regarding streetscapes, plazas, the walls described in Proffer #20 and other features. As part of the site plan submission for each phase, the Applicant shall submit to Urban Forest Management of DPWES for review and approval a detailed Landscape Plan, which shall include, among other things, irrigation information; design details for tree wells and other similar planting areas above structures and along streets; the composition of the planting materials and/or structural soils used where plantings are to be located within or on top of structures and along streets and other methods to be used to ensure the viability of the proposed plantings; information demonstrating that the requirements of this Proffer have been met; and other information that may be requested by Urban Forest Management. Such Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on the CDP/FDP and Proffers 30-32. Adjustments to the type and location of vegetation and the design of the plazas, pocket parks and streetscaping shall be permitted subject to approval of the Zoning Administrator.

31. Streetscaping. Streetscaping shall be provided throughout the site and indicated on the site plans as shown on the CDP/FDP. The Applicant shall phase the planting of streetscaping as indicated in the CDP/FDP.

A. Prior to building permit approval, with Zoning Administrator approval, the Applicant may shift the location of trees within 15' of the proposed buildings to address final tenant programs and urban design. In some instances, said trees may be relocated or shifted to avoid conflicts and facilitate urban design elements such as outdoor cafes, entry doors and facilities/structures related to the buildings. However, those trees located in the row closest to the curb shall not be shifted as described in this paragraph.

B. After the approval of this rezoning, if the applicable streetscaping guidelines in the Comprehensive Plan are revised, the streetscaping to be installed thereafter shall be adjusted in submitted site plans to incorporate revisions to the streetscaping guidelines in the Comprehensive Plan. Such modifications shall be permitted subject to approval of the Zoning Administrator.

C. Brick pavers or tree grates shall be used for tree wells.

32. Structural Soil. For trees not planted within an 8-foot wide minimum planting area, or that do not meet the minimum planting area required by the Public Facilities Manual ("PFM"), the Applicant shall provide a minimum of 130 square feet of surface area of structural soil for Category 4 shade trees and 90 square feet of surface area of structural soil for Category 3 shade trees, as such trees are identified in the PFM. The structural soil shall have a minimum width of 8-feet and a minimum depth of 36-inches and such planting areas shall be interconnected to the extent feasible, as determined by Urban Forest Management. Geotextile fabric shall be provided between the structural soil and a layer of organic material located on top of the structural soil. At the time of site plan submission, the Applicant shall provide written documentation, including information about the composition of the structural soil, to Urban Forest Management indicating that a qualified and appropriately licensed company provided the structural soil. The Applicant shall provide 72-hour notice to Urban Forest Management and the Providence Supervisor's Office prior to installation of the soil to allow verification of the composition of the structural soil and verification that the structural soil is the correct mix and is installed correctly. The Applicant shall provide written confirmation from a certified arborist and/or landscape architect demonstrating and verifying installation of structural soil.

SANITARY SEWER AND STORMWATER MANAGEMENT

33. Sanitary Sewer Coordination. In connection with the development of the new residential, office and hotel buildings on the Property under the Development With Rail or the Development Prior to Rail, the Applicant shall upgrade portions of the sanitary sewer system that serve the site in accordance with the recommendations in the Preliminary Sanitary Sewer Capacity Analysis prepared by Patton, Harris, Rust & Associates and dated May 16, 2006 and as may be determined necessary by DPWES. The Applicant shall provide capacity analyses at the time of each site plan review for a new building, and additional copies shall be submitted afterward as necessary with revisions as determined by DPWES.

34. Stormwater Management Master Plan. At the time of review of the first site plan, the Applicant shall prepare and obtain approval from DPWES of a Stormwater Management Master Plan (the "Stormwater Plan") for the entire Property. At the time of site plan review for each subsequent site plan, if any, the Applicant shall update the Stormwater Plan as necessary as determined by DPWES. These updates shall include new computations supporting any modifications to the stormwater detention or stormwater quality treatment proposed since the County approval of the previous Stormwater Plan. This plan shall address water quality and quantity management and phasing of construction of the proposed stormwater mitigation measures in accordance with the CDP/FDP. This plan shall use computational methods acceptable to the County to demonstrate satisfaction of this proffer for the entire Property. The stormwater management described below is proposed for both the Development With Rail and the Development Prior to Rail. The stormwater management requirements indicated below for the Development Prior to Rail are the same as for Phase 1 of the Development With Rail. Portions of this runoff reduction are based on the illustrative mix of uses and design for Phases 3 and 4 as indicated in the Development With Rail CDP/FDP. The portions of the Stormwater Plan associated with the development of these areas of the Property shall be adjusted, as necessary, during the CDPA/FDPA process as described in Proffer #6.

A. Water Quantity Goals. As of the date of these Proffers, there is no on-site detention of water on the Property. Using underground detention methods similar to those shown in the Development With Rail CDP/FDP, the Stormwater Plan shall demonstrate at full build-out of the Development With Rail (including the illustrative development identified as Phases 3 and 4 on the CDP/FDP), a thirty percent (30%) reduction in the existing (at the time of rezoning) peak rate of stormwater discharge for the Property for the 10-year design storm, with phased reductions provided at each phase as indicated on Sheet 57 of the Development With Rail CDP/FDP. The Stormwater Plan shall demonstrate at full build-out of the Development Prior to Rail, a seven and one-half percent (7.5%) reduction in the existing (at the time of rezoning) peak rate of stormwater discharge for the Property for the 10-year design storm.

B. Best Management Practices ("BMP"). Sand filters, Filterra devices, and/or other such other low impact development ("LID") methods as may be approved for water quality treatment credit by the County, shall provide water quality treatment for the site. Using methods similar to those shown on the CDP/FDP, the Stormwater Plan shall demonstrate at full build-out of the Development With Rail (including the illustrative development identified as Phases 3 and 4 on the CDP/FDP) a net fourteen percent (14%) reduction from the existing (at the time of rezoning) stormwater phosphorous loading for the discharge leaving the Property with phased reductions provided at each phase as indicated on Sheet 57 of the Development With Rail CDP/FDP. The Stormwater Plan shall demonstrate at full build-out of the Development Prior to Rail a two and one-half percent (2.5%) reduction from the existing (at the time of rezoning) stormwater phosphorous loading for the discharge leaving the Property.

C. Low Impact Development ("LID"). In addition to the Best Management Practices in paragraph B. above, the Applicant shall incorporate the following

LID strategies to mitigate environmental impacts of existing and proposed development on-site. The LID facilities shown on the CDP/FDP are for the purpose of illustrating the application of the proposed LID techniques. In the event that either the Applicant or County staff deem it necessary to substitute another LID strategy for one of those listed below, the Applicant shall identify an alternate strategy acceptable to both parties, and if necessary as determined by Fairfax County, will seek administrative approval from the Zoning Administrator pursuant to the provisions of Sect. 16-403 of the Zoning Ordinance.

i. Porous Pavement. The Applicant shall install porous pavement in areas of pavement south of Parking Terrace C and near ShopTysons Boulevard, as shown in the CDP/FDP.

ii. Plaza Landscaping. The Applicant shall install landscaping on each of the plaza areas as designated on the CDP/FDP. The intent of this landscaping is to: (1) reduce the heat island effect on the plaza areas and (2) provide a natural aesthetically-pleasing sense of place consistent with the programming for these spaces. Details of these areas shall be included in the Landscape Plan to be provided pursuant to Proffer #30.

iii. Stabilized Turf. The Applicant shall install stabilized turf in the fire lane areas as indicated in the CDP/FDP.

iv. Intensive Green Roof. Under the Development With Rail, the Applicant shall install and maintain two intensive green roof areas over the parking structures as shown on the CDP/FDP, one of which shall be in Phase 3 (Community Green) and one of which shall be in Phase 4 (landscaped portions of the Sky Terrace). These two roofs shall include landscape plantings in a natural soil matrix over an under-drain system. The intent of these intensive green roofs is (1) to incorporate into otherwise impervious areas of the site a soil matrix and plantings intended to provide stormwater pollutant removal; (2) to reduce the heat island effect on site; (3) to naturalize and add aesthetically pleasing elements to be used by citizens; and (4) to function in conjunction with the programmed uses in these areas. Details concerning these areas shall be included on the Landscape Plan that will be provided pursuant to Proffer #30. The location and type of facility indicated on the CDP/FDP is subject to change with the future plans for development beyond Phase 2 per Proffer #6.

v. Cisterns. The Applicant shall install cisterns as shown on the CDP/FDP. The cisterns shall detain water for reuse on-site for irrigation and other appropriate uses.

vi. Infiltration. The Applicant shall install an infiltration facility on the site in the area generally north of the existing International Drive entrance to the Property and as indicated on the CDP/FDP.

D. Applicant Maintenance Responsibility.

i. Regular Maintenance. The Applicant shall assume responsibility for the perpetual maintenance of all of the stormwater management structures associated with this proffer and shall execute an agreement with the County in a form satisfactory to the County to this effect at the time of its first site plan approval (the "SWM Agreement") and with subsequent site plans as required. The Applicant shall be responsible for maintenance of the BMP and LID devices and underground detention devices. The Applicant shall be required to contract with one or more maintenance and management companies to perform regular routine maintenance of the stormwater management devices, and the Applicant shall provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES. The UOA documents shall include the UOA's maintenance responsibility for the stormwater management structures.

ii. County Agreement. The SWM Agreement for the underground detention facilities as indicated on the CDP/FDP shall address the following issues to the satisfaction of DPWES: (1) future replacement when warranted; (2) liability and insurance in an amount reasonably acceptable to Fairfax County; and (3) allowance for County inspection to ensure that the facilities are maintained by the Applicant in good working order.

TRANSPORTATION

35. High Occupancy Toll ("HOT") Lanes Coordination. The Applicant shall meet with representatives of any public or private entities that propose to design, construct and operate HOT lanes or similar transportation improvements to be located in the right-of-way of the Capital Beltway, and representatives or members of VDOT, FCDOT, DPZ, and the Board of Supervisors to discuss and evaluate the estimated impacts, benefits, connectivity, association and relation of the Property to such improvements, and if agreeable to the Applicant, allow a connection of the HOT lanes on or to the Property. The Applicant shall coordinate design and construction activities and schedules for the reconstruction of the Westpark Bridge as described in Proffer #37 with any public or private entities that propose to design, construct and operate HOT lanes or similar transportation improvements to the Capital Beltway, so as to ensure that the design and reconstruction of the Westpark Bridge will not conflict and is compatible with the location or schedule for construction of the HOT lanes improvements.

36. Road Improvements – Acquisition of Right-of-Way and Easements

A. At the time of submission of a site plan, the Applicant shall attempt to acquire, and then if successful, shall dedicate such off-site right-of-way and easements as are necessary to complete the improvements described on the CDP/FDP and referenced in the Proffers for each phase of the Development With Rail or the Development Prior to Rail. The Applicant shall use its good faith efforts to obtain such rights-of-way and easements at fair market value.

B. If, subsequent to the filing of each site plan, the Applicant is unable to bring about the dedication by others and the necessary rights-of-way and easements, or to acquire by purchase the rights-of-way or easements at fair market value, as determined by an MAI (Member of the Appraisal Institute) appraisal, then the Applicant shall request the Board of Supervisors condemn the necessary land and/or easements.

C. It is understood that the Applicant's request to the Board of Supervisors for condemnation will not be considered until it is forwarded in writing to the Division of Land Acquisition or other appropriate County official, accompanied by (1) plans, plats and profiles showing the necessary right-of-way or grading easements to be acquired, including all associated easements and details of the proposed transportation improvements to be located on said right-of-way property (2) an independent appraisal of the value of the right-of-way property to be acquired and of all damages to the residue of the affected property; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) a letter of credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by the County. It is also understood that in the event the property owner of the land to be acquired is awarded with more than the appraised value of the property because of the damages to the residue in a condemnation suit, the amount of the award in excess of the letter of credit amount shall be paid to the County by the Applicant within forty-five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within sixty (60) days of written demand. Notwithstanding the foregoing, with respect to any condemnation of property along the frontage of Route 123 that is pursued in furtherance of the improvements to be completed under Proffer 38.C.ix, only the provisions of clauses (1) through (3) of this subparagraph shall apply.

D. Except as specifically provided to the contrary, in the event the necessary rights-of-way and/or easements cannot be acquired voluntarily, and the County chooses not to exercise its right of eminent domain, the Applicant is then released from performing any obligations under the Proffers that cannot be performed without such acquisition. The Applicant, however, shall complete the proffered improvements for which acquisition of right-of-way or easements is not necessary. The Applicant shall escrow funds for the unbuilt portion in an

amount determined by DPWES as indicated in the proffers if condemnation does not occur. In the event the County elects to defer its exercise of eminent domain, then Applicant's proffer requiring such acquisition shall likewise be deferred to the extent that such acquisition is necessary to perform the proffer.

37. Westpark Bridge.

A. Westpark Bridge Pedestrian and Vehicular Improvements. The Applicant shall widen the existing Westpark Bridge and its approaches to VDOT standards for acceptance into the VDOT maintenance system. Such widening shall result in a total of four lanes undivided with a six-foot sidewalk on the east side of the road and a six-foot on-road bike lane on each side of the road while maintaining the existing 7.8-foot sidewalk on the west side of the road, as indicated in the CDP/FDP. Prior to the submission of a site plan that includes the bridge, the Applicant shall coordinate the design and construction of this bridge with FCDOT to ensure compatibility with the Dulles Rail Project design.

i. ShopTysons Boulevard/Westpark Bridge Traffic Signal. The Applicant shall design and adjust the traffic signal at the ShopTysons Boulevard/Westpark Bridge intersection or install a new signal to accommodate the widened bridge and intersection modifications as determined by VDOT. With the installation of the new signal or modifications to the existing signal, the Applicant shall install pedestrian-activated chirping countdown signal heads or a reasonable substitute (if a substitute is requested by VDOT or FCDOT), to facilitate the movement of pedestrians through the intersection and the movement of pedestrians and bicyclists along the trail.

ii. Westpark Drive/Galleria Drive Traffic Signal. As part of the widening of the Westpark Bridge, the Applicant shall coordinate with the owners of Tax Map 29-4 ((10)) 4B to permit installation of a traffic signal as proffered with PCA 84-D-049-5.

B. Phasing of Bridge Design and Construction. The Applicant shall design the new bridge and submit the appropriate plans and information to VDOT and DPWES no later than the time of submission of the first site plan for the Development With Rail or Development Prior to Rail. The Applicant shall construct and open the bridge for traffic and have the ShopTysons Boulevard/Westpark Drive traffic signal installed and operational prior to issuance of RUPs for 225 units or Non-RUPs for 400,000 square feet of the office space, whichever occurs first. Upon demonstration by the Applicant that, despite diligent efforts, due to the coordination required with other transportation improvements in the vicinity, the improvement has been or should be delayed, the Zoning Administrator may agree to a later date for completion of the improvement, including the traffic signal. Following acceptance of the bridge construction into the VDOT secondary road system, the Applicant shall provide FCDOT with a certified schedule of costs actually

paid or incurred in the design and construction of the bridge for use in determining the applicable credit toward the contribution to the Tysons Corner Transportation Fund per Proffer #39.

i. HOT Lanes. If the entities proposing to construct the HOT lanes project complete or become obligated to complete the Westpark Bridge widening project as part of any proposed HOT lanes improvements to the Capital Beltway, the Applicant shall pay $8,200,000 to the Tysons Transportation Fund, with $820,000 to be contributed prior to the first site plan approval for the Development With Rail or the Development Prior to Rail and the remaining $7,380,000 to be contributed prior to issuance of the first RUP or Non-RUP, whichever should occur first, in the Development With Rail or the Development Prior to Rail. The amount of this contribution to be made shall be adjusted yearly, based on changes in the Construction Cost Index published by the Engineering News-Record ("CCI"), from the base year of 2007 to the actual date of payment.

a. If the Applicant makes the foregoing payment, and it is later determined that the entities constructing the HOT lanes project are not obligated to construct the bridge widening (or if the Applicant makes the foregoing payment and at the time of the County's issuance of the building permit for the residential building 1-A, the entities proposing to construct the HOT lanes project have not started construction of the Westpark Bridge widening project), if directed to do so by the County, the Applicant shall construct this widening, provided the County refunds the $8,200,000, with escalator if any, to the Applicant. The County shall provide this refund as construction progress payments based on documentation satisfactory to FCDOT, such that funds shall be advanced to fund the construction of the bridge as it is completed. In the event that the Applicant takes over the completion of the widening of the Westpark Bridge under either of the foregoing circumstances, the Applicant will not be obligated to complete that project by the deadline set forth in paragraph B above, but by such later date that is mutually agreed upon by the Applicant and the County.

C. Right-of-Way/Easements. To complete this improvement, right-of-way and temporary and/or permanent easements may be required from off-site property owners and VDOT. The Applicant shall work diligently and in good faith to obtain any necessary right-of-way and/or easements at fair market value.

i. If Proffer #36 (Road Improvements-Acquisition of Right-of-Way and Easements) is triggered, and the County elects not to pursue condemnation, rather than making the improvements to the Westpark Bridge, the Applicant shall instead (1) provide to Fairfax County its completed design plans for this bridge, (2) receive a credit for the cost of this design incurred by the Applicant towards its Tysons Transportation

Fund commitment contained within Proffer #39 (Tysons Transportation Fund) based on review of actual invoices for legitimate expenses, and (3) in lieu of constructing this bridge, contribute all required, remaining funds to the Tysons Transportation Fund, per Proffer #39 within 60 days of County notification that the County is not pursuing condemnation.

38. Road Improvements.

A. Overview and Phasing. The Applicant shall construct road improvements with the phasing of the development as reflected on the CDP/FDP and in these proffers. The transportation improvements indicated for the development beyond Phase 2 are associated with the illustrative mix of uses and design indicated on the CDP/FDP. The transportation improvements associated with the development of these areas of the Property shall be determined during the CDPA/FDPA process and may be changed, as described in Proffer #6. Except as specifically provided below, each set of phased improvements shall be constructed and open for traffic, or shall be operating, as the case may be, not later than the date of the issuance of that number of RUPs or Non-RUPs set forth below. Upon demonstration by the Applicant that despite diligent efforts to complete the proffered improvement, the improvement(s) has been or should be delayed, the Zoning Administrator may agree to a later date for completion of the improvement(s).

Development Prior to Rail/Phase 1: 275,000 square feet of office space or 130 residential units, whichever occurs first.

Phase 2: 244,000 square feet of office space or 139 residential units, whichever occurs first.

The CDP/FDP and the Tysons Corner Center Intersection Improvement References graphic attached to these proffers as Exhibit A provides numeric references to the intersections specified below.

B. On-Site Traffic Signals. At the time of implementation of the below proffers that require installation of traffic signals on the Property or modification of existing signals, the Applicant shall provide VDOT with the requisite traffic signal plans for review and approval. If the County, upon request of the Applicant or on its own initiative, determines that such signal installations as proffered below will be detrimental to traffic operation, the Zoning Administrator may (1) agree to a later date for completion of the traffic signal installation or (2) permit the Applicant to proceed without the signal installations.

C. Development Prior to Rail and/or Phase 1 (Unless otherwise noted, for the purpose of this Proffer, Phase 1 shall also refer to the Development Prior to Rail)

i. Take the following actions with respect to Route 123 Frontage Improvements. (See Sheets 47, 49 and 50 of the Development With Rail CDP/FDP or Sheets 21, 22 and 23 of the Development Prior to Rail CDP/FDP).

a. Prior to site plan approval for Phase 1, or upon written request by Fairfax County, whichever occurs first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along Route 123 for roadway frontage improvements and future improvements to the I-495 southbound ramp, as indicated on the CDP/FDP.

b. The Applicant shall construct improvements along the Route 123 Property frontage to provide the following:

- Four northbound through lanes of travel transitioning to three through lanes and two ramp lanes accessing I-495. The width of the northbound lanes on Route 123 may be reduced to 11' in the vicinity of the Tysons Central 123 Metro Station if desired by the Dulles Rail Project and approved by VDOT;

- A separate northbound right turn lane into the Property entrance; and

- With Phase 1 of the Development With Rail, but not the Development Prior to Rail, the Applicant shall also provide three bus bays in the Bus Plaza for use in conjunction with the future Tysons Central 123 Metro Station (subject to the agreement further described in Proffer #50) as indicated on Sheet 47 of the Development With Rail CDP/FDP.

c. All of the improvements described in subparagraph b. shall be limited to the south side of the existing Route 123 median and shall be designed to accommodate, but shall not include, improvements on Tysons Boulevard to accommodate dual left turns from Route 123 to Tysons Boulevard to be provided by others.

d. The Applicant shall provide VDOT with verification of adequate sight distance with any future elevated pedestrian bridge that is intended to connect the Property to the Tysons Central 123 Metro Station.

ii. Reconstruct the on-site property/driveway intersection (Intersection #2) in the vicinity of the Route 123/Tysons Boulevard intersection to add three

lanes of stacking storage at the Route 123 egress and construct improvements to the existing Route 123 entrance to the Property as indicated on Sheet 47 of the Development with Rail CDP/FDP and Sheet 9 of the Development Prior to Rail CDP/FDP. To accommodate this new entrance configuration, and to better accommodate traffic volumes, the Applicant shall replace the existing traffic signal at the Route 123/Tysons Boulevard/Property driveway intersection (Intersection #2) with a new traffic signal, with the signal poles and signal heads located as appropriate for the adjusted intersection. This improvement to the Route 123/Tysons Boulevard/Property driveway intersection (Intersection #2) is an interim improvement until such time as the ultimate improvements are provided with Phase 2 per Proffer #38.D.iv. If the Applicant should construct Phases 1 and 2 concurrently, this improvement would be superseded by the improvement discussed in Proffer #38.D.iv.

iii. Install a traffic signal, including pedestrian-activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT), at the Fashion Boulevard/Ring Road/Nordstrom intersection, southwest of Parking Terrace "C" (Intersection #9). This improvement is to be coordinated with the Towers Crescent Owners, as necessary, regarding easements and/or letters of permission.

iv. Install a traffic signal, including pedestrian-activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT), at the Ring Road/Fashion Boulevard intersection located southeast of Parking Terrace "C" (Intersection #8).

v. Install a traffic signal on ShopTysons Boulevard east of the northeast corner of Lord & Taylor (Intersection #6).

vi. Add a southbound right-turn overlap phase to the signal at the Route 7/Property driveway intersection (Intersection #12) and add pedestrian-activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT) and painted crosswalks, subject to VDOT approval. If VDOT does not permit signal modifications in this location, the Applicant shall demonstrate to FCDOT that the Applicant diligently pursued such modifications. If the signal modifications are not permitted, the Applicant shall provide an escrow amount for this improvement, in an amount approved by the County, for future signal modifications or other improvements in the vicinity of the site.

vii. Design and construct pedestrian-activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT) and crosswalks at the intersection of International Drive and the Crate and Barrel entrance (Intersection #4) and at the intersection of International Drive/Fletcher Street (Intersection #10) to VDOT standards.

viii. As indicated on Sheets 52 and 53 of the Development with Rail CDP/FDP and Sheet 25 of the Development Prior to Rail CDP/FDP, construct an additional westbound lane along the Property's Route 7 frontage connecting the existing right-turn lane from Route 7 into the Mall Property at Fashion Boulevard (Intersection #12) to the proposed westbound lane west of the entrance. This additional westbound lane will provide four through travel lanes, with the additional westbound lane tying into the existing right turn lane at International Drive in the vicinity of Intersection #11. The existing 4' sidewalk will be replaced with a 5' interim sidewalk until the sidewalk improvement per Proffer #43.A.v.b. is constructed.

ix. Take the following actions with respect to the Route 123 Offsite Frontage Improvements (only with the Development With Rail except as discussed in Proffer #7). If others complete some of the below indicated Route 123 offsite frontage improvements, the Applicant shall work with FCDOT to ensure that the remaining indicated improvements are completed with Phase 1.

a. The Applicant shall design the roadway improvements to Route 123 along the frontage of Tax Map #29-4 ((1)) 16 and 17 to permit construction of an additional northbound through lane as indicated on Sheet 48 of the CDP/FDP as follows.

- Widen northbound International Drive to accommodate a right turn lane from northbound International Drive onto northbound Route 123 (Intersection #1).

- Adjust the Route 123 median to provide a 7' wide pedestrian sanctuary for pedestrians crossing Route 123 at International Drive. To accomplish this pedestrian improvement, the Route 123 left turn lanes and right turn lane lanes shall be narrowed to 11' in width, subject to VDOT approval. If VDOT does not approve lanes of 11' in width, the Applicant shall coordinate with FCDOT to construct an alternative alignment, which may result in a narrower median. The Applicant shall stripe pedestrian crosswalks in conformance with this design. All pedestrian improvements discussed in this Proffer #38.C.ix shall be subject to VDOT approval.

- Adjust as necessary the traffic signal at the Route 123/International Drive intersection (Intersection #1) to accommodate the changes in the configuration of the intersection, including but not limited to shifts in the traffic signal poles and relocation of utility connections to the traffic signal. The Applicant shall install pedestrian-activated chirping countdown signal heads (or reasonable alternative if

requested by VDOT or FCDOT) at the Route 123/International Drive intersection.

- Re-stripe the southbound International Drive right turn lane for shared through/right turn movements at the Route 123/International Drive intersection (Intersection #1). Irrespective of the reimbursement provisions in Proffer #38.C.ix.b, the Applicant shall not seek County reimbursement for the costs associated with the re-striping indicated in this paragraph.

b. The Applicant shall construct these off-site improvements if Fairfax County agrees in writing to reimburse the Applicant for the cost of these improvements, including land acquisition at fair market value, except for the re-striping as noted in the bulleted paragraph above. The Applicant shall not enter into any agreement to acquire land for these purposes without Fairfax County's prior written approval of the terms of acquisition. Except as may otherwise be agreed to between the County and the Applicant, reimbursement will be provided by the County in the form of monthly construction progress payments upon submission by the Applicant and approval by the County of all necessary documentation demonstrating the expenditures for the defined improvements that have been paid or incurred by the Applicant. The Applicant shall be entitled to obtain reimbursement for all of its third-party costs, such as engineering and design costs, except for legal fees incurred in connection with the acquisition of land or easements necessary for these improvements. The Applicant shall not be entitled to reimbursement for the Applicant's own overhead costs or profit.

c. The Applicant shall exercise diligent efforts to try to acquire all necessary off-site right-of-way and easements necessary for construction of these improvements in accordance with the procedures described in Proffer #36. The Applicant shall provide DPWES with documentation of such diligent efforts to demonstrate the Applicant's failed attempts to obtain off-site right-of-way.

d. If it is mutually determined by the Applicant and the County that the improvements cannot be constructed, the Applicant shall provide the County with the frontage improvement plans for use with future road widening.

x. Only with the Development Prior to Rail, make improvements to the at-grade pedestrian crossing at the Route 123/Tysons Boulevard/Property driveway (intersection #2) to include a painted crosswalk and pedestrian-

activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT).

xi. Only with the Development Prior to Rail, relocate the Ring Road at the southeast corner of Parking Terrace D to permit improvements to the Route 123/Property entrance as indicated on Sheet 22 of the Development Prior to Rail CDP/FDP.

D. Phase 2.

i. Install a traffic signal, including pedestrian-activated chirping countdown signal heads (or reasonable alternative if requested by VDOT or FCDOT), at the Fashion Boulevard/Ring Road/Bloomingdale's intersection (Intersection #13).

ii. Add northbound and southbound overlap phases and adjust signal timing at the Route 7/International Drive intersection (Intersection #11). If VDOT does not permit the installation of signal modifications at this location, the Applicant shall demonstrate to FCDOT that the Applicant diligently pursued such modifications. If the signal modifications are not permitted, the Applicant shall escrow funds with the County for future signal modifications or other improvements in the vicinity of the site. The amount of this escrow shall be determined by FCDOT and shall equal the cost of the signal modification.

iii. If required by the County, the Applicant shall design the Route 123/International Drive (Intersection #1) interchange, including both preliminary and detailed design plans for a proposed grade-separated single point urban interchange in accordance with the timing described in Proffer 38.A.

a. The Applicant shall meet with the FCDOT and VDOT to identify design requirements and formatting (so as to be able to turn over designs to FCDOT in a form usable to FCDOT) and shall generate a preliminary design plan for the interchange to include typical sections, plan design concept, preliminary grades, traffic information, preliminary hydraulic design, costs, and a concept for traffic maintenance.

b. Following a field inspection by VDOT, the Applicant shall update the preliminary design plans to provide detailed hydraulic, bridge design and traffic control information, as well as to identify initial right-of-way and easement needs for the project. The design of the Route 123/International Drive interchange will not include improvements to other nearby interchanges, including but not limited to the Route 7/Route 123 interchange, but shall include lane transitions as necessary. The Applicant will not be obligated

to conduct any VDOT public hearings or related procedures. Design efforts will not include final bridge plans or utility relocation plans.

c. Prior to or simultaneously with site plan submission for Phase 2, the Applicant shall request that the County determine whether the County will exercise its option to not require the Applicant to design this interchange. If the County notifies the Applicant prior to site plan approval for Phase 2 that it has elected to not require the Applicant to design this interchange, then the Applicant shall pay $1,200,000 to the Tysons Transportation Fund, with $120,000 due prior to site plan approval of Phase 2 and the remaining $1,080,000 due prior to issuance of the first RUP or Non-RUP in Phase 2, whichever should occur first. The amount of this contribution to be made shall be adjusted yearly, based on changes in the CCI, from the base year of 2007 to the actual date of payment.

iv. Construct improvements to the existing Route 123 entrance to the Property (Intersection #2) and realign the ring road as indicated on Sheets 24 and 26 of the CDP/FDP.

v. Complete frontage improvements along Route 123 to include a fourth bus bay in the Bus Plaza, as indicated on Sheet 49 of CDP/FDP.

vi. Subject to VDOT approval, at the Route 7 intersection with Fashion Boulevard (Intersection #12), construct an additional southbound lane on Fashion Boulevard to eastbound Route 7 to provide two exclusive left turn lanes, a shared left/through lane and an exclusive right-turn lane on Fashion Boulevard, as shown on Sheet 24 of the CDP/FDP. The Applicant shall make signal timing adjustments, as necessary.

vii. Subject to VDOT approval, construct improvements along Route 7 eastbound between International Drive/Gallows Road and Old Gallows Road to provide one additional eastbound shared/right through lane to provide a total of four through eastbound travel lanes, as indicated on Sheets #52 and 53 of the CDP/FDP.

a. The Applicant shall exercise diligent efforts to try to acquire all necessary off-site right-of-way and easements necessary for construction of these improvements in accordance with the procedures described in Proffer #36.

b. Construction of these Route 7 improvements between International Drive/Gallows Road and Old Gallows Road as described in paragraph vii. above, shall be completed prior to issuance of the first RUP/Non-RUP for Phase 2 of the Development With Rail.

Upon demonstration by the Applicant that, despite diligent efforts, the improvement has been or should be delayed, the Zoning Administrator may agree to a later date for completion of the improvement.

c. Prior to site plan approval, if it is mutually determined by the Applicant and the County that the improvements cannot be constructed or should be constructed by others, the Applicant shall provide the County with the frontage improvement plans (if such plans have already been completed) and contribute the amount estimated by FCDOT for the design (if the design is not yet complete) and for the construction of this frontage improvement, subject to review and approval by FCDOT, to the Tysons Transportation Fund to permit future construction of this improvement or other improvements in the vicinity. The frontage improvement plans and the amount to be contributed shall be delivered and paid by the Applicant to the County prior to the issuance of the first RUP or Non-RUP for Phase 2.

viii. Prior to site plan approval for Phase 2, the Applicant shall contribute $100,000 for future spot improvements in the Route 7 corridor of Tysons Corner or vicinity of Route 7 and International Drive. The contribution amount shall escalate on a yearly basis from the base year of 2007 and change effective each January 1 thereafter based on changes in the CCI.

E. Development Beyond Phase 2. The below transportation improvements indicated for the development beyond Phase 2 are associated with the illustrative mix of uses and design indicated in the Development With Rail CDP/FDP. The transportation improvements associated with the development of these areas of the Property, and the timing of such improvements shall be determined during the CDPA/FDPA process and may be changed, as described in Proffer #6.

i. Widen Fashion Boulevard to provide eastbound and westbound left-turn lanes at the Fashion Boulevard intersection with the internal Ring Road at Nordstrom (Intersection #9). With this improvement, the Applicant shall complete modifications as necessary to the traffic signal constructed at this intersection in Phase 1, including adjustments necessary to address construction of the above-grade pedestrian crossing in the immediate vicinity as shown on the CDP/FDP.

ii. Widen Fashion Boulevard to provide a second eastbound left-turn lane at the intersection with ShopTysons Boulevard (Intersection #8).

iii. Widen Fashion Boulevard to provide a northbound left-turn lane at the intersection with the internal Ring Road at Bloomingdale's (Intersection #13).

iv. Widen the eastbound and westbound outside travel lanes of Fashion Boulevard to 15-feet (including gutter) from Route 7 (Intersection #12) to ShopTysons Boulevard (Intersection #8) to accommodate bikes and vehicles as shown on Sheets 32, 34 and 35 of the CDP/FDP.

v. Construct frontage improvements along the Property's Route 7 frontage east of the Fashion Boulevard/Leesburg Pike intersection (Intersection #12) to provide an additional right-turn lane into the Property from westbound Route 7, as indicated on Sheet #53 of the CDP/FDP.

a. This roadway improvement may require off-site construction easements and public access easements from the adjacent properties to the east (identified on the Fairfax County Tax Map as 39-2 ((4)) 30 and 30A). Despite diligent and timely efforts on its part, should the Applicant not receive the requisite approvals and easements from all necessary parties by the time the applicable site plan is otherwise ready for approval by DPWES, the Applicant shall request the County to utilize the condemnation provisions as outlined in Proffer #36 to obtain the right-of-way and/or easements necessary to permit completion of this improvement. If the Applicant fails to obtain the off-site construction and/or public access easements, the Applicant shall demonstrate to FCDOT that the Applicant diligently pursued such modifications.

If the County elects not to pursue condemnation, rather than constructing the above described improvements to Route 7, the Applicant shall instead provide the County with the construction plans and escrow funds with the County, subject to FCDOT approval, in an amount sufficient to complete the construction or to be used for road or transit improvements elsewhere in Tysons Corner at the County's discretion at the time indicated in Proffer 38.A.

vi. Add a westbound right-turn overlap phase and adjust signal timings at the Route 7 intersection with Fashion Boulevard (Intersection #12). If VDOT does not permit the signal modifications in this location, the Applicant shall demonstrate to FCDOT that the Applicant diligently pursued such modifications. If the signal modifications are not permitted, the Applicant shall escrow funds with the County for future signal modifications or other improvements in the vicinity of the site. The amount of this escrow shall be determined by FCDOT and shall equal the cost of the signal modification.

vii. Prior to site plan approval for development beyond Phase 2 or upon demand by Fairfax County, whichever should occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along International Drive, as indicated on the CDP/FDP.

viii. As indicated on the CDP/FDP, widen the International Drive median from 4-feet wide to 7-feet wide north of Fletcher Street to provide a pedestrian refuge for use by pedestrians crossing International Drive at the intersection (Intersection #10).

ix. Widen International Drive along the site frontage to provide three 11-foot northbound travel lanes, subject to VDOT approval. If VDOT fails to approve these 11-foot lanes, the Applicant shall work with FCDOT to construct an alternative alignment as approved by FCDOT and VDOT.

x. Contribute $70,000 to FCDOT to be used for future spot improvements in the Route 7 corridor of Tysons Corner. The contribution amount shall escalate on a yearly basis from the base year of 2007 and change effective each January 1 thereafter, based on changes in the CCI.

F. Adjust Traffic Signal Timing. For the purpose of this proffer, data collection for the following corridor evaluations shall be conducted at the same time as the first Trip Count date after Stabilization of each phase as defined in Proffer #41. The Applicant shall submit the corridor evaluation to the County and VDOT within four months after the collection of data but no later than prior to the final bond release for the applicable phase. The purpose of each corridor evaluation, as indicated in subparagraphs i-iv below, is to determine appropriate signal timing modifications along each corridor. Such signal timing plans shall be subject to VDOT review and approval at each phase. Following each corridor analysis, the Applicant shall make such signal timing modifications as approved by VDOT based on the findings of the evaluation as soon as reasonably feasible but no later than final bond release for the applicable phase except as indicated as follows. If the County should determine that a signal modification is needed earlier than final bond release, the Applicant shall work with FCDOT and VDOT to provide such modification at an earlier date.

i. Following the Stabilization of either the Development Prior to Rail or Phase 1, the Applicant shall conduct and submit to VDOT, a corridor evaluation of existing signal timings along Route 7 from Old Gallows Road to the Dulles Toll Road (11 intersections) during the AM and PM peak hours.

ii. Following the Stabilization of Phase 2, the Applicant shall conduct and submit to VDOT, a corridor evaluation of existing signal timings along Route 123 from Anderson Road to Old Courthouse Road (seven intersections) during the AM and PM peak hours.

iii. Following the Stabilization of development beyond Phase 2, the Applicant shall conduct and submit to VDOT, a corridor evaluation of existing signal timings along Route 123 from Anderson Road to Old Courthouse Road (seven intersections) during the PM peak hour, along International Drive from Fletcher Street to Crate & Barrel (two intersections) during the PM

peak hour, and along Route 7 from Old Gallows Road to the Dulles Toll Road (11 intersections) during the AM and PM peak hours.

iv. Following the Stabilization of development beyond Phase 2, the Applicant shall conduct and submit to VDOT, a corridor evaluation of existing signal timings along Route 123 from Anderson Road to Old Courthouse Road (seven intersections) during the AM peak hour and along Route 7 from Old Gallows Road to the Dulles Toll Road (11 intersections) during the AM and PM peak hours.

39. Tysons Transportation Fund. The Applicant shall provide a contribution of $3.62 per new non-residential square foot and $804 for each new residential unit associated with the subject site plan to Fairfax County for the Tysons Transportation Fund. Prior to site plan approval, the Applicant shall contribute 10% of the aforementioned amount for the buildings subject to the site plan to the Tysons Transportation Fund, with the remainder of the contribution to be made prior to issuance of the first RUP or Non-RUP for the subject building. The amount due at each phase shall be adjusted to ensure that credits for all creditable expenditures are granted as further described below. The square foot and per unit amount of the contribution to be made shall be adjusted, as approved by the Board of Supervisors, based on changes in the CCI from the base year of 2007 to the actual date of payment.

The Applicant shall receive credits against the contributions that would otherwise be due to the Tysons Transportation Fund for the following actual or estimated costs: (a) costs incurred or to be incurred (or payments made or to be made) with respect to the design and construction of improvements to the Westpark Bridge as described in Proffer #37, and (b) costs incurred or to be incurred (or payments made or to be made) in the design of the Route 123/International Drive interchange as described in Proffer #38.D.iii. To the extent that any creditable amount exceeds the amounts that are due to the Tysons Transportation Fund with any site plan (including any site plans associated with a CDPA/FDPA for development beyond Phase 2), such excess shall be carried over and applied to amounts that may be due with any future site plan.

A. Westpark Bridge Design and Construction.

i. If the Applicant has performed the work specified in Proffers 37.A and 37.B, the amount of the Tysons Transportation Fund credit shall be determined by FCDOT, based on documentation acceptable to FCDOT, that describes in detail all design and construction costs actually paid or incurred by the Applicant.

ii. If the Applicant has not yet performed the work specified in Proffers 37.A and 37.B but has confirmed in writing its legal and binding obligation to perform such work by the date prescribed by Proffers 37.A and 37.B, the amount of the credit shall be determined by FCDOT based on detailed estimates of the costs to design and construct the bridge project as submitted by the Applicant. The amount of the credit shall be subject to final reconciliation and adjustment subsequent to completion and acceptance of the bridge project and submission of documentation

acceptable to FCDOT (providing in detail all design and construction costs actually paid or incurred by the Applicant).

iii. If entities other than the Applicant have performed or will perform the work specified in Westpark Bridge Proffers 37.A and 37.B, the Applicant shall contribute the amount specified in Proffer 37.B.i. to the Tysons Transportation Fund. As a result of this payment, the credit to the Tysons Transportation Fund shall equal the amount paid, which per Proffer 37.B.i. is the cost of the improved Westpark Bridge.

B. Route 123/International Drive Interchange Design.

i. If the Applicant has performed the design work in accordance with Proffer 38.D.iii.a., then the amount of the credit shall be determined by FCDOT, based on documentation acceptable to FCDOT, that describes in detail all design costs actually paid or incurred by the Applicant.

ii. If the Applicant does not perform or has been released from performing the design work in accordance with Proffer 38.D.iii.a., but makes or has confirmed its binding commitment to make the payment described in Proffer 38.D.iii.c, then the credit will be the amount specified in Proffer 38.D.iii.c. As a result of this payment, the credit to the Tysons Transportation Fund shall equal the amount paid, which per Proffer 38.D.iii.c. is the cost of the interchange design.

iii. If the Applicant has not yet performed the design work in accordance with Proffer 38.D.iii.a., but has confirmed in writing its legal and binding obligation to perform such work by the date prescribed by Proffer 38.D.iii.a, then the amount of the credit shall be determined by FCDOT based on detailed estimates of the costs to design the interchange in accordance with Proffer 38.D.iii.a. as submitted by the Applicant. The amount of the credit shall be subject to final reconciliation and adjustment subsequent to completion and acceptance of the interchange design and submission of documentation acceptable to FCDOT that provides in detail all design costs actually paid or incurred by the Applicant.

40. Congestion Management. The Applicant shall prepare and implement a construction congestion management plan during construction of each phase, as appropriate, through its development/construction manager and the Transportation Coordinator (as defined in Proffer #41), so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways adjoining the Property. The congestion management plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane closures, and/or other construction related activities to minimize disturbance on the surrounding road network.

The congestion management plan shall also require the Applicant to coordinate its construction activities throughout construction with VDOT, FCDOT, the Dulles Rail Project Entities and the entities constructing the HOT lanes project, and to monitor the off-site transit and roadway improvements (including, but not limited to, the Dulles Rail Project, the I-495 beltway and the HOT lanes project) and adjust the Applicant's congestion management plans accordingly. Such plans shall be prepared by a qualified professional and submitted for review and comment to the Providence District Supervisor and the Providence District Planning Commissioner, FCDOT and DPWES upon submission of the initial site plan for each phase. In addition, the Transportation Coordinator shall coordinate any adjustments to the TDM Plan (as defined in Proffer #41) as necessary to address the congestion management plan.

TRANSPORTATION DEMAND MANAGEMENT

41. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management plan (the "TDM Plan"). Initially, the TDM Plan shall be implemented and maintained by Tysons Corner Holdings LLC and Tysons Corner Property Holdings LLC, or the entities that are their successors as the owners or developers of the Property (jointly, the "Owner/Developer"). After the completion and Stabilization (as hereinafter defined) of the last phase of the development and satisfaction of the proffered goals described below for a period of two years, the TDM Plan shall be maintained by the UOA. For the purposes of this proffer, under no circumstances shall the UOA be deemed to be the Owner/Developer, and the provisions of this Proffer applicable to the Owner/Developer shall not apply to the UOA, except as specifically noted. As used in this Proffer, the term "Development" shall be deemed to refer to both the Development With Rail and the Development Prior to Rail.

The purposes of the TDM Plan are to (a) limit the number of vehicle trips generated by certain of the new uses constructed as part of the Development, and (b) encourage the use of transit (Metrorail and bus), other high occupant vehicle commuting modes, walking, biking and teleworking by employees, customers and residents who work or live in the buildings located in the Development and the Existing Shopping Center. The TDM Plan will be based on the "Transit-Oriented Development Transportation Demand Management Study and Strategic Plan" prepared by Strategic Transportation Initiatives, Inc., dated November 13, 2006 (the "TDM Strategic Plan"), the terms of which are hereby incorporated by reference. With the submission of the initial TDM Plan as described in Proffer #41.G, the Applicant shall provide the County with a copy of the approved proffers and the TDM Strategic Plan.

A. Vehicle Trip Objectives.

i. General. Implementation of the TDM Plan shall limit the number of vehicle trips generated by the Development through the use of mass transit, ride-sharing and other strategies. The Development shall be designed to create significant 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, easy access to Metrorail

and bus facilities, the capability for teleworking will provide commuting options other than the automobile to residents, employees and visitors to the Property.

ii. Maximum Trips After Reduction Limits. The objective of the TDM Plan shall be to limit the number of vehicle trips generated by the new on-site residential, office and hotel uses in the Development during weekday peak hours (as determined using methods based on ITE, 7th edition, Trip Generation rates and/or equations) (the "ITE Trip Generation Rate"). The number of vehicle trips generated by the proposed residential, office and hotel uses shall be separately measured so that appropriate remedial actions may be undertaken as required to address any excess trips associated with a specific type of use. The types of actions that will be undertaken are described in the TDM Strategic Plan and in these proffers. The number of vehicle trips generated by the new on-site residential, office and hotel uses in the Development during weekday peak hours shall not exceed the maximum trip limits for each of the defined uses ("Maximum Trips After Reduction") set forth in the following tables.

After rail is operational at the Tysons Central 123 Metro Station, the effect of the Maximum Trips After Reduction limits will be to reduce vehicle trips generated by the on-site uses during the weekday Peak Hours (as defined below) as indicated in the below tables. The Maximum Trips After Reduction is provided for Phases 1 and 2 in the tables below; however, maximum trips are not provided for Phases 3 and 4. At such time as a CDPA/FDPA is pursued for the areas of the Property that comprise Phases 3 and 4, the Maximum Trips After Reduction can be determined based on the mix of uses and the trip reduction percentages for each use indicated below, and this Proffer 41.A.ii shall be amended to include a table that incorporates the specific Maximum Trips After Reduction applicable to such phase of development.

Percentage Trip Reduction at Build-out of Each Phase After Rail is Operational

Use	AM Peak Hour	PM Peak Hour
Office	27%	31%
Residential	51%	68%
Hotel	24%	50%

The Maximum Trips After Reduction indicated in the following tables is based on the percentage reduction of total trips that would otherwise be generated by the Development according to methods in the ITE Trip Generation Rate. In the event that the buildings actually constructed by the Applicant in any phase have less than the maximum number of dwelling units or hotel rooms and/or less than the maximum square

footage of office gross floor area, then the Maximum Trips After Reduction set forth in the below charts shall still govern.

Maximum Trips After Reduction for the Development Under the Development With Rail

Phase 1 Before Rail is Operational

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	735	595	19%	697	509	27%
Residential	159	91	43%	190	93	51%
Hotel	166	126	24%	182	91	50%
Total	1060	797	25%	1069	700	35%

Phase 1 After Rail is Operational

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	735	537	27%	697	481	31%
Residential	159	78	51%	190	61	68%
Hotel	166	126	24%	182	91	50%
Total	1060	741	30%	1069	633	41%

Phases 1 and 2 After Rail is Operational

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	1464	1069	27%	1387	957	31%
Residential	318	156	51%	380	122	68%
Hotel	166	126	24%	182	91	50%
Total	1948	1351	31%	1949	1170	40%

*Trip Generation Before Reduction is based on the ITE Trip Generation Rates before the TDM and synergy reductions

Maximum Trips After Reduction for the Development if the Applicant Starts Development Under the Development Prior to Rail (Phase 1A for the purpose of this chart)

Because the Development Prior to Rail is an alternate development option that would be in place of Phase 1 under the Development With Rail, it is referred to as Phase 1A in the following tables.

Phase 1A (Before Rail is Operational)

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	669	542	19%	628	458	27%
Residential	154	88	43%	185	91	51%
Hotel	166	126	24%	182	91	50%
Total	989	741	25%	995	647	35%

Phase 1A (After Rail is Operational)

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	669	488	27%	628	433	31%
Residential	154	75	51%	185	59	68%
Hotel	166	126	24%	182	91	50%
Total	989	689	30%	995	583	41%

*Trip Generation Before Reduction is based on the ITE Trip Generation Rates before the TDM and synergy reductions

The trips indicated below provide the Maximum Trips After Reduction if development of the Development Prior to Rail (Phase 1A) is complete and the Applicant subsequently commences construction of Phase 2 under the Development With Rail as further described in Proffer #6.

Phase 1A and 2 After Rail is Operational

Component	AM PEAK HOUR			PM PEAK HOUR		
	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction	Trip Generation Before Reduction*	Maximum Trips After Reduction	Percent Reduction
Office	1398	1021	27%	1318	909	31%
Residential	313	153	51%	375	120	68%
Hotel	166	126	24%	182	91	50%
Total	1877	1300	31%	1875	1120	40%

*Trip Generation Before Reduction is based on the ITE Trip Generation Rates before the TDM and synergy reductions

B. Definitions.

i. Transportation Coordinator. The Owner/Developer, and subsequently the UOA, shall appoint a qualified transportation management professional to be the Transportation Coordinator ("TC") for the project. The TC's duties shall be to develop, implement and monitor the various components of the TDM Plan and revise the TDM Plan as appropriate. The TC shall oversee all elements of the TDM Plan and act as the liaison between the Owner/Developer and subsequently the UOA and FCDOT. The TC may be employed either directly by the Owner/Developer or by a property management company under a management contract with the Owner/Developer.

ii. Stabilization. The "Stabilization" of any phase of the Development, or of any building in a phase of the Development, shall be deemed to occur on the date when (a) initial RUPs have been issued for 100% of the units in a residential building in that phase, regardless of the physical occupancy in that phase, (b) initial Non-RUPs shall have been issued for 100% of the gross leaseable area in an office building in that phase, regardless of the physical occupancy, and (c) initial Non-RUPs shall have been issued for the hotel in that phase, regardless of the physical occupancy.

iii. 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 select locations within a cordon defined by Route 7, International Drive, Route 123 and I-495, the Kidwell Drive and Westpark Drive bridges 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 during a week between April 1 and May 31 (but not including a week containing a federal holiday or when public schools are not in session). The methodology for determining the peak hour may be modified, in agreement between the Owner/Developer (or the UOA after the end of the Owner/Developer Control Period) and FCDOT without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.

iv. Index. The term "Index" shall mean the Consumer Price Index for all urban consumers (CPI-U) 1982-1984=100 (not seasonally adjusted). All fixed amounts specified in this Proffer as being due to the TDM Account, the TDM Remedy Fund and the TDM Incentive Fund shall be adjusted annually to reflect changes in the Index over a 2007 base year, unless another base year is specified. All amounts payable to the TDM Penalty Fund, and the then-stated amount of the Letter of Credit, as defined below, shall be increased annually to reflect changes in the Index over a base

year, and shall be otherwise adjusted, as described in Proffer 41.B.vii and 41.O.

v. Owner/Developer Control Period. The term "Owner/Developer Control Period" shall be defined as the period starting upon the approval of this Rezoning and ending on the date when two consecutive annual Trip Counts conducted after Stabilization of the last phase of the development beyond Phase 2 shows that vehicle trips meet the trip reduction objectives and are equal to or less than the applicable Maximum Trips After Reduction.

vi. TDM Remedy Fund. The purpose of the "TDM Remedy Fund," as further described below, shall be to supplement the TDM Account in support of additional TDM strategies that may be determined to be necessary following any of the Trip Counts and for which sufficient funding is not immediately available through the then-existing TDM Account, including the TDM Budget Contingency (as hereinafter defined).

vii. TDM Penalty Fund; Letter of Credit. The TDM Penalty Fund is an account into which the Owner/Developer will deposit penalty payments as may be required to be paid pursuant to this Proffer (the "TDM Penalty Fund"). The County may withdraw funds from the TDM Penalty Fund for transportation improvements in the vicinity of the Property. To secure the Owner/Developer's obligations to make payments into the TDM Penalty Fund, the Owner/Developer will provide the County with letter of credit as further described below.

Prior to the issuance of the first RUP or Non-RUP for Phase 1, whichever comes first, the Owner/Developer (or its successor owner or developer, but not the UOA) shall (a) establish the TDM Penalty Fund and (b) deliver to the County a clean, irrevocable letter of credit in the stated amount of $2,000,000 issued by a banking institution approved by the County to secure the Owner/Developer's obligations to make payments into the TDM Penalty Fund as described in paragraph O (the "Letter of Credit"). The stated amount of the Letter of Credit shall be increased to $3,000,000 prior to issuance of the first RUP or Non-RUP, whichever comes first, for Phase 2 and shall be increased to a maximum of $4,000,000 for the development beyond Phase 2. Alternatively, the Owner/Developer may provide substitute or additional Letters of Credit that achieve the same result.

The Letter of Credit will name the County as the beneficiary and will permit partial draws or a full draw.

The foregoing stated amount(s) of the Letter of Credit (1) shall be reduced by the sum of any and all previous draws under the Letter of Credit and payments by the Owner/Developer into the TDM Penalty Fund, and (2)

shall be increased annually to reflect changes in the Index over a base year, which base year shall be the calendar year immediately following the earlier of either (i) the County's issuance of RUPs and/or Non-RUPs for 3,442,760 SF of new development or (ii) the year 2021.

If the results of any Trip Counts during the Owner/Developer Control Period show that, notwithstanding adjustments to the TDM Budget and TDM Plan over the time periods specified in paragraph M., the Maximum Trips After Reduction specified in Proffer #41.A.ii are being exceeded, then the penalty provisions of paragraph O shall apply. Thereafter, the Owner/Developer will make the payments required under paragraph O into the TDM Penalty Fund, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. Penalty funds paid to the County shall be applied to transportation improvements in the vicinity of the Property at the County's sole discretion.

At such time as the Owner/Developer is required to pay a penalty per paragraph O, if the Owner/Developer fails to make the required penalty payment to Fairfax County within 30 days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter of Credit.

C. Components of the TDM Plan. In order to meet the Maximum Trips After Reduction objectives, a TDM Plan shall be adopted and implemented by the Owner/Developer, 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 Owner/Developer (and subsequently the UOA) and FCDOT. All adjustments to the components of the TDM Plan contained in this Proffer shall be approved by FCDOT and will not require a PCA. The TDM Plan shall include provisions pertaining to the Development and the Existing Shopping Center as set forth in Proffer 41.C.i below and in Proffer #42. 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.

i. TDM Components Applicable to the Existing Shopping Center and the Development. At a minimum, the TDM Plan shall contain the following elements as applicable to the Existing Shopping Center and the Development, including residential building occupants, office building tenants and employees and hotel employees and guests:

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

b. Meetings with Stakeholders -- The TC shall attend meetings with community groups and organizations in the area that have a mutual interest in furthering the success of TDM programming and the effectiveness of mass transit and other non-SOV commuting (such as with TYTRAN and Dulles Corridor Rail Association).

c. Website -- Develop and maintain a TDM project website that includes targeted information on a building-by-building basis as well as for the Property as a whole, and that includes multi-modal transportation information, real-time travel and transit data, the possibility of online transit pass sales or value loading and connections to supporting links.

d. Personal outreach – In person outreach by the TC or the TC's representatives to all new commercial tenants to explain the TDM program and transit options.

e. Dissemination of information -- Dissemination of information in the TC's on-site office as well as in prominent locations throughout the Property, including in the Existing Shopping Center. This dissemination of information shall include information relevant to patrons and customers of the Existing Shopping Center and the Retail/Commercial uses, residents and office and hotel employees and guests about transit benefits programs, maps and schedules offered by WMATA, Fairfax Connector and other transit providers, through the electronic information kiosks that are described below, and/or displays at its mall customer/concierge service booths.

f. 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.

g. Telework programs and telework facility -- The Owner/Developer shall provide space for a telework facility for use by residents on the Property. The facility shall be located in the Development or in the Existing Shopping Center. The telework facility shall consist of a minimum of 600 square feet of gross floor area and shall have computers, 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.

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

i. Taxi stand -- A taxi stand shall be provided at the hotel in Phase 1.

j. Ridematching, carpools, vanpools and guaranteed ride home -- Vanpool and carpool formation programs, including ride matching services, and coordination with established guaranteed ride home programs.

k. Commuter Club -- The TC shall establish a Commuter Club, which will provide discounts and special incentives to members, who may be comprised of residents, office and hotel workers and employees of retail tenants in the Existing Shopping Center.

l. Parking management plan -- A parking management plan, which shall include the "un-bundling" of parking spaces from residential and office unit sales/leases, dedication of parking spaces for carpools/vanpools in the office parking areas and offering Commuter Club incentives/benefits to residential carpoolers.

m. Informational Kiosks -- The Owner/Developer shall provide space and a power supply within the Existing Shopping Center for electronic information kiosks that provide transit information if such kiosks should become available from WMATA, Fairfax County or other entities.

n. Vans and shuttles -- The Owner/Developer shall provide van and shuttle drop-off points or areas as shown on the CDP/FDP and shall allow and encourage employer, hotel and other shuttle services that are operating in the Tysons Corner area to stop at such points or areas to pick-up or drop off employees and patrons.

o. Rush hour pricing – The Owner/Developer shall provide incentives to residents, employees and visitors to remain on the Property during the PM peak such as by offering movie ticket and restaurant discounts during the afternoon/evening rush hour peak or other incentives. These discounts shall be subsidized through the TDM budget and/or TDM Incentive Fund.

ii. Additional TDM Components Applicable to Residential Buildings. In addition to the TDM program components described in Proffer# 41.C.i above, at a minimum, the TDM Plan shall also have the following components as applicable to residents:

a. 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.

b. 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 in the Development as well as a targeted marketing program

for office tenants to encourage on-site and nearby office workers to live in the on-site residential buildings. The Owner/Developer shall actively support the TC and Existing Shopping Center management in the efforts to encourage employees of the office tenants both on-site and elsewhere in Tysons Corner 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 Owner/Developer.

c. TDM incentives – One time distribution of fare media or other incentives to all initial residents of driving age as well as on select occasions as an incentive.

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

iii. Additional TDM Components Applicable to Office Buildings. In addition to the TDM program components described in Proffer# 41.C.i above, at a minimum, the TDM Plan shall also have the following components as applicable to the office building tenants and employees:

a. Matching On-Site Office Employees to On-Site Residential Units – Residential units shall be marketed to the on-site and off-site Tysons Corner Urban Center 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 Owner/Developer shall actively support the TC and Existing Shopping Center management 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 Owner/Developer.

b. Relocation program -- Coordination of a relocation program to bring new businesses to the Property, with the goal of the office tenants utilizing alternative commuting options.

c. Leasing Packages -- Integration of transportation information and education materials into office leasing packages.

D. Shuttle Bus/Bus Circulator System. In order to provide initial support for the development of a comprehensive Tysons Corner shuttle or circulator system, at FCDOT's option, prior to approval of the first site plan, the Owner/Developer shall (1) contribute $100,000 to Fairfax County to pay for the expenses of a feasibility study relating to the creation of a consolidated shuttle or circulator system in the Tysons Corner area, or (2) retain a qualified consultant at the

Owner/Developer's expense not to exceed $100,000 to perform such a study. If FCDOT chooses the second option, the scope of the study will be prepared by the Owner/Developer and will be subject to review and approval by FCDOT, and the selected consultant shall be approved by FCDOT. The purpose of the study will be to summarize and evaluate the various private shuttle services currently provided in the Tysons Corner area and make recommendations to the County about the possible ownership, organizational structure, routes, sources of revenue and start-up and on-going capital and operating budget requirements for a shuttle or bus circulator system that would be intended to consolidate and replace existing shuttle services.

i. In addition, upon receipt of a written request from Fairfax County indicating the County's intent to create a Tysons Corner shuttle or bus circulator system, the Owner/Developer shall make a one-time payment of $250,000 to the County to pay start-up expenses relating to the operation of such a consolidated system if the County decides to and proceeds to organize such a service. In addition, the Owner/Developer shall contribute $100,000 to the County during each of the initial ten years that the service is in operation in Tysons Corner; the contribution shall be made no later than April 15th of each year.

ii. The TC shall coordinate with the employers, hotels and automobile dealerships that run existing shuttles in Tysons Corner to provide access for those shuttles to the Property.

iii. In the event that after the completion of the feasibility study, a consolidated shuttle or bus circulator system is not created, the Owner/Developer may elect to operate a consolidated shuttle/circulator service itself.

iv. In the event that after the completion of the feasibility study, a consolidated shuttle or bus circulator system is not created, then starting on the tenth anniversary of the approval date for the Rezoning, the Owner/Developer shall pay $250,000 to the County for the purpose of operating or enhancing existing bus service to and in the vicinity of the Property and shall pay $100,000 per year on the following ten annual anniversary dates to further that service.

E. Transportation Coordinator. Within ninety (90) days after the approval of the Rezoning, the Owner/Developer shall appoint a TC for the project. The Owner/Developer shall provide written notice to FCDOT of the appointment of the TC within ten (10) days of such appointment and shall furnish FCDOT with evidence of such TC's qualifications and thereafter shall do the same within ten (10) days of any change in such appointment. Following the initial appointment of the TC, the Owner/Developer or the UOA, as applicable, shall continuously employ, or cause to be employed as specified above, a TC for the Development and the Existing Shopping Center.

F. TC Office. The Owner/Developer, and subsequently the UOA, shall provide a centrally-located office for the TC and space for TDM products, services and program offerings available to new residents, businesses, customers and visitors to the Property. The office may be located within the Existing Shopping Center or elsewhere on the Property.

G. TDM Plan and Budget. Within thirty (30) days after the TC has been appointed by the Owner/Developer, the Owner/Developer, through the TC, shall prepare and submit an initial TDM Plan to FCDOT for review and comment, including (i) the start-up components of the TDM Plan that will be put in place both before and after the commencement of operations at the Tysons Central 123 Metro Station 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"). 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. The TDM Budget shall include a contingency equal to a minimum of ten percent (10%) of the amount of the annual TDM Budget (the "TDM Budget Contingency"). If FCDOT has not responded with any comments to the Owner/Developer within sixty (60) days of receipt of the TDM Plan and TDM Budget, the TDM Plan and TDM Budget shall be deemed approved. The Owner/Developer shall provide written 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 TC shall re-establish the TDM Budget for each calendar year, which shall cover the costs of implementation of the TDM Plan for such year (including the TDM Budget Contingency). The TC shall furnish a copy of the TDM Budget and TDM Plan for each year to the FCDOT for review and comment not less than sixty (60) days before the beginning of each calendar year. A line item for the TDM Account shall be included in the UOA budget upon the establishment of the UOA. The association documents that establish and control the UOA shall provide that the TDM Account shall not be eliminated as a line item in the UOA 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 Owner/Developer until such time as assessments of residents and commercial owners are implemented as provided in the UOA documents.

H. TDM Account.

i. Initial Funding. Within thirty (30) days after the establishment of the initial TDM Budget, the Owner/Developer shall establish and fund an account (the "TDM Account") in the initial amount of the annual budget for the TDM program for the then current year. The purpose of the TDM Account shall be to fund the TDM Budget, including the TDM Budget Contingency. 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 Owner/Developer shall provide written documentation demonstrating the establishment of the TDM Account to FCDOT within ten (10) days of its establishment. Funds in the TDM Account shall be utilized by the TC 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 transferred to the TDM Remedy Fund, as further discussed in paragraph I, until such time as the TDM Remedy Fund has achieved a balance of $400,000 (this amount shall be adjusted annually based on changes in the Index from the base year of 2007). At such time as the TDM Remedy Fund achieves such a balance, any funds remaining in the TDM Account at the end of any given year shall remain in the TDM Account for use in transit incentives. In the event that the TDM Remedy Fund is drawn upon, then the TDM Remedy Fund shall be replenished during the next TDM Budget cycle (repeated for multiple budget cycles if necessary), as indicated above, until the TDM Remedy Fund achieves a balance of $400,000 (as such amount is or has been adjusted in accordance with the method described above).

iii. Annual Funding. The TDM Account shall be replenished annually following the establishment of each year's TDM Budget and any transfer of funds to the TDM Remedy Fund. The TDM Account shall maintain a starting balance at the beginning of each calendar year of not less than $200,000, or in such greater amount as may be required under the TDM Budget for such year.

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

I. TDM Remedy Fund. At the same time that the Owner/Developer creates and funds the TDM Account, the Owner/Developer 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 Fund purposes. Prior to issuance of the first RUP or Non-RUP, the Owner/Developer shall contribute to the TDM Remedy Fund to the extent necessary for the TDM Remedy Fund to have a $400,000 balance (as such amount has been adjusted at that time based on changes in the Index from a base year of 2007). Funds from the TDM Remedy Fund shall be drawn on only for purposes of immediate need of TDM funding, and may be drawn upon prior to any TDM Budget adjustments that may be required under paragraph M. At the end of the Owner/Developer Control Period, the Owner/Developer shall contribute to the TDM Remedy Fund to the extent necessary for the TDM Remedy Fund to have a balance of $400,000, as such

amount may have been adjusted annually based on changes in the Index from a base year of 2007. Following such payment into the TDM Remedy Fund, the Owner/Developer shall transfer the TDM Remedy Fund to the UOA. Thereafter, the UOA shall continue to replenish the TDM Remedy Fund per the requirements of Proffer# 41.H.ii.

J. TDM Incentive Fund. Prior to issuance of the first RUP or Non-RUP for the first building constructed as part of the Development, the Owner/Developer shall make a one time contribution of $400,000 to a segregated sub-account in the TDM Account to fund a transit incentive program. Such program shall be prepared by the Owner/Developer through the TC 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 mall customers. 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.

K. Annual Surveys and Reports. Commencing in 2007, the Owner/Developer, or the UOA after the end of the Owner/Developer Control Period, shall cause the TC to prepare and submit to the County the annual surveys and reports on the TDM Plan described below.

i. Annual Survey. An annual survey (the "Annual Survey") shall be completed in September of each year. The Annual Survey shall be conducted during a week without any Federal holidays when school is in session. The Annual Survey shall gather information on the effectiveness of the TDM Plan and shall be used by the TC to determine whether changes to the TDM Plan are needed to ensure that the vehicle trips are within the Maximum Trips After Reduction targeted goal. If the Annual Survey reveals that changes to the TDM Plan are needed, the Owner/Developer (and the UOA, as applicable) through the TC shall coordinate such changes with FCDOT and implement and adjust the TDM Budget accordingly. The TC shall coordinate the preparation of Annual Survey materials and the methodology for validating survey results with FCDOT prior to doing each year's Annual Survey, and shall collect and analyze the results. 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 in each building;

c. The results of any surveys taken during the survey period;

d. The number of residents, employees and/or others participating in the TDM programs displayed by category of participants and by mode of use;

e. An evaluation of the effectiveness of the TDM Plan and its program elements, including its effectiveness in achieving vehicle trip reduction objectives for each of the residential, office and hotel buildings, and, if necessary, proposed modifications to the plan and program elements; and

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

ii. Annual Report. The TC shall submit a written annual report on the TDM Plan to the FCDOT no later than sixty (60) days after the completion of the Annual Survey described in Proffer #41.K.i. (the "Annual Report"). 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 income and expense for such year, (c) a summary of the levels of occupancy in the buildings that have been completed in the 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 and (g) the amount of money then on deposit in the TDM Penalty, Incentive and Remedy Funds.

iii. Adjustments to Calendar and Due Dates. At the mutual agreement of the FCDOT and the Owner/Developer (and subsequently the UOA), the due dates for the delivery of the Annual Report may be altered by up to 60 days if changes have occurred, or appear to have occurred, in trip characteristics resulting from events such as an additional phase reaching Stabilization.

iv. Meetings with FCDOT. The Owner/Developer or UOA (as applicable) shall meet with FCDOT annually within 45 days 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. Trip Count Measurement Dates. For purposes of this Proffer, Trip Counts shall be measured on three consecutive days over a maximum two week period (but not including a week containing a federal holiday or when public schools are not in session); these dates are referred to as "Trip Count Measurement Dates." Trip Counts shall be conducted between April 1 and May 31 after Stabilization (as previously defined in Proffer# 41.B.ii) has occurred for the first phase of development and shall continue annually thereafter except as provided in Proffer 41.L. In accordance with Proffer #41.L.v, and during the times below, the Owner/Developer shall conduct interim trip counts at the request of FCDOT. At least thirty (30) days prior to conducting the Trip Counts, the Owner/Developer shall meet with FCDOT to review and reach agreement on the dates that will be the Trip Count Measurement Dates, the methodology for the Trip Counts, and the analyses to be done after the Trip Counts are complete.

ii. Trip Counts, Generally. Starting when the Stabilization of the first phase of the Development has occurred, the Owner/Developer shall measure separately the actual vehicle trips that are generated from the office, residential and hotel uses for all phases that have reached Stabilization in the Development (the "Trip Counts") on the Trip Count Measurement Dates to evaluate whether the vehicle trips are equal to or less than the applicable Maximum Trips After Reduction. Trip Counts provided to FCDOT shall include information about the occupancy levels for all surveyed uses at the time of the Trip Count Measurement Dates.

iii. Methods. Trip Counts shall include counts of vehicles entering and exiting the areas of the parking garages designated for residential, office and hotel parking, as well as those additional manual and mechanical counts as may be needed, as determined by FCDOT. Trip Counts shall be conducted at the garages so that the only trips generated by the separate office, residential and hotel uses are compared to the Maximum Trips After Reduction specified for each such use (that is, cut-through trips, Metro trips, retail trips, etc. are excluded).

iv. Calculations. For each residential, office and hotel use, the total number of peak hour vehicle trips shall be computed by summing the number of trips entering and exiting the parking garages for the individual uses (residential, office and hotel) on each of the three days that Trip Counts are taken during the AM and PM peak hours and dividing that sum by three. Values will be provided for each garage included in the Development, and a sum of the vehicle trips generated by the residential, office and hotel uses will be calculated separately.

v. Frequency of Trip Counts. Following the Stabilization of the first phase of the Development, the Owner/Developer shall conduct Trip Counts

annually until such time as two consecutive annual Trip Counts indicate that the trips generated in the AM and PM Peak Hours by all phases that have reached Stabilization are equal to or less than the applicable Maximum Trips After Reduction. After that time, the Owner/Developer shall conduct Trip Counts every two years, provided that at such time as the next phase reaches Stabilization, the Owner/Developer shall again conduct Trip Counts annually until such time as the provisions of this paragraph permit Trip Counts every two years. If the Owner/Developer is conducting Trip Counts every two years as permitted above, and if two consecutive biennial Trip Counts indicate that the trips generated in the AM and PM Peak Hours by all phases that have reached Stabilization are equal to or less than the applicable Maximum Trips After Reduction, then the Owner/Developer shall conduct additional Trip Counts at not greater than five (5) year intervals to determine whether the Maximum Trips After Reduction are continuing to be met, until such time as annual Trip Counts would otherwise be required due to the Stabilization of a subsequent phase. Notwithstanding the provisions of this paragraph, FCDOT may request counts be undertaken at any time to validate traffic data, but not more frequently than two times per calendar year. If such requests are made by FCDOT, the Owner/Developer shall conduct the requested counts.

vi. Evaluation of Trip Counts. The results of the Trip Counts shall be compared to the Maximum Trips After Reduction specified for each use to determine whether actual trips are equal to, less than or greater than the specified Maximum Trips After Reduction. In the event the trips generated by each of the uses in the phases that have reached Stabilization are equal to or less than the Maximum Trips After Reduction specified for each use, then the Owner/Developer and subsequently the UOA (as applicable) shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers. If the trips generated by each of the uses in the phases that have reached Stabilization are greater than the Maximum Trips After Reduction, the Owner/Developer and subsequently the UOA (as applicable) shall follow the provisions of paragraphs M, O and P below.

M. Adjustments to TDM Plan and Budget. In the event that any of the Trip Counts are greater than the applicable Maximum Trips After Reduction, then the TC shall convene a meeting with FCDOT within thirty (30) days after the completion of the Trip Counts to review the results of that report and the TDM strategies then in place for the Development. Thereafter, the TC shall develop modifications to the TDM Plan and the TDM Budget to address the surplus of trips, including any surplus caused by or related to a particular use or uses. The Owner/Developer shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting. If FCDOT has not provided comments to the Owner/Developer within sixty (60) days after receipt of the revised TDM Plan and revised TDM Budget, the Owner/Developer's revisions to the TDM Plan and

TDM Budget shall be deemed approved. If FCDOT provides comments, the Applicant shall work with FCDOT to incorporate mutually agreed upon revisions. Following approval of the revised TDM Plan and TDM Budget, the Owner/Developer shall (1) draw down on the TDM Remedy Fund, if it is determined to be necessary to do so, (2) increase the TDM Account with TDM Remedy Fund monies if necessary in order to cover any additional costs to implement the revised TDM Plan and TDM Budget, (3) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT, and (4) continue to conduct Trip Counts annually. In the event that Maximum Trips After Reduction are still being exceeded after two annual revision cycles, then the penalties set forth in paragraph O shall apply.

N. Subsequent Reporting After the Owner/Developer Control Period.

i. Owner/Developer Control Period. The Owner/Developer shall remain obligated under this Proffer until the end of the Owner/Developer Control Period. At the end of the Owner/Developer Control Period, the Owner/Developer shall be released from any further obligation under this Proffer, and the UOA shall bear the sole responsibility for continuing compliance with these Proffers. At the end of the Owner/Developer Control Period, the Letter of Credit as described in Proffers 41.B.vii and 41.0 shall be returned to the Owner/Developer for cancellation.

a. Continuation of TDM Plan. In the event the trips generated are equal to or less than the applicable Maximum Trips After Reduction, then the UOA shall continue to administer the TDM Plan in the ordinary course in accordance with the provisions of this Proffer #41, including the fact that through the TC, the UOA shall continue to submit the Annual Reports, including the results of the Annual Survey and any Trip Counts, to FCDOT, as prescribed in paragraph K.

b. Additional Trip Counts. If an Annual Report demonstrates that a change in commuting patterns has occurred that is significant enough to reasonably call into question whether the Maximum Trips After Reduction limits are continuing to be met, as determined by FCDOT, then FCDOT may require the UOA to conduct additional Trip Counts (pursuant to the methodology set forth in paragraph L) within 180 days to determine whether in fact such objectives are being met. If any such Trip Counts demonstrate that the Maximum Trips After Reduction are being exceeded, then the UOA shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips. Within sixty (60) days following such meeting, the UOA shall submit a revised TDM Plan and TDM Budget to FCDOT for its review and approval. If FCDOT provides no response within sixty (60) days after receipt

of the revised TDM Plan and TDM Budget, the UOA's revised TDM Plan and TDM Budget shall be deemed approved. If FCDOT provides comments, the Applicant shall work with FCDOT to incorporate mutually agreed upon revisions.

O. TDM Penalty Fund. If the results of any Trip Counts during the Owner/Developer Control Period show that the actual vehicle trips continue to exceed the Maximum Trips After Reduction after two annual testing cycles, then the Owner/Developer shall pay to the TDM Penalty Fund the amounts specified below, and FCDOT may thereafter withdraw such funds from the TDM Penalty Fund. If the Owner/Developer fails to pay what is due to the TDM Penalty Fund, FCDOT may draw against the Letter of Credit in the amount that was due to be paid. FCDOT may apply funds withdrawn from the TDM Penalty Fund, or drawn under the Letter of Credit for transportation improvements in the vicinity of the Property.

As indicated in Proffer #6.C, except as provided in the next sentence, the Applicant shall not obtain approval of any plans or permits (including but not limited to grading plans, site plans, and/or building permits) for any phase of development to be constructed after Phases 1 and 2 if penalties related to the Transportation Demand Management Program are due or have been paid under this Proffer. The Applicant is eligible to obtain County plan approval and permits, however, if the AM peak hour vehicle trips from the most recent Trip Count were less than the AM Maximum Trips After Reduction for all uses, and the PM peak hour vehicle trips from the most recent Trip Count were less than the PM Maximum Trips After Reduction for all uses, as set forth in the applicable table in Proffer #41.A.ii.

The maximum aggregate amount of all penalties to be paid under this Proffer #41.O is $4,000,000, and shall be $2,000,000 following Stabilization of the first phase (that is, either Phase 1 of the Development With Rail or the Development Prior to Rail), $3,000,000 following Stabilization of Phase 2, and a maximum of $4,000,000 following Stabilization of the development beyond Phase 2. In each case these maximum aggregate amounts shall be (1) reduced by the sum of any and all previous draws under the Letter of Credit and payments by the Owner/Developer to the TDM Penalty Fund and (2) shall be increased annually to reflect changes in the Index over a base year, which base year shall be the earlier of either (i) the calendar year immediately following the County's issuance of RUPs and/or Non-RUPs for 3,442,760 SF of new development or (ii) the year 2021.

To supplement the penalty information below, attached as Exhibit B to these Proffers are schedules that describe in detail these penalties. Illustrative examples demonstrating possible scenarios of the application of the TDM Penalty Fund provisions are depicted in Exhibit C.

i. If the volume of AM and/or PM peak hour vehicle trips generated by the (i) combined residential uses for all phases that have reached Stabilization, (ii) combined office uses for all phases that have reached Stabilization or (iii) hotel use after Stabilization exceeds the applicable Maximum Trips After Reduction limit for such use, the Owner/Developer shall make penalty payments as indicated below.

a. Failure up to 2%. If there is a failure in the reduction of trips for any of the uses listed in Proffer 41.O.i above in either or both of the AM and PM Peak Hours by up to 2%, the Owner/Developer shall pay to the TDM Penalty Fund $4,000 per vehicle trip for each trip by which such Maximum Trips After Reduction limit has been exceeded in the Peak Hour in which the limit has been exceeded. In the event that the limits for a use are exceeded in both the AM and PM Peak Hours, the payment amount will be based on the Peak Hour that results in a higher penalty amount.

b. Failure Greater than 2% but less than or equal to 5%. If there is a failure in the reduction of trips for any of the uses listed in Proffer 41.O.i above in either or both of the AM and PM Peak Hours by more than 2% but less than or equal to 5%, the Owner/Developer shall pay to the TDM Penalty Fund $6,000 per vehicle trip for each trip by which such Maximum Trips After Reduction limit has been exceeded in the Peak Hour in which the limit is exceeded. In the event that the limits for a use are exceeded in both the AM and PM Peak Hours, the payment amount will be based on the Peak Hour that results in a higher penalty amount.

c. Failure Greater than 5%. If there is a failure in the reduction of trips for any of the uses listed in Proffer 41.O.i above in either or both of the AM and PM Peak Hours by an amount greater than 5%, the Owner/Developer shall pay to the TDM Penalty Fund $12,000 per vehicle trip for the number of trips that would equate to a 5% failure in whichever Peak Hour would result in the higher penalty amount. In the event that the limits for a use are exceeded in both the AM and PM Peak Hours, the payment amount will be based on the Peak Hour that results in a higher penalty amount.

P. Enforcement. If the TC fails to appoint a Transportation Coordinator or submit any TDM Plan and Budget, Annual Report or Trip Count evaluation report to FCDOT within the timeframes required by this Proffer, Fairfax County may thereafter issue the TC a written notice providing the TC has sixty (60) days within which to cure such violation. If after such sixty (60) day period the TC still has not submitted the Annual Report or Trip Count evaluation report, then the Owner/Developer and/or UOA 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.

42. Transportation Demand Management Program Specific to the Existing Shopping Center. As provided in Proffer #41.C.i, certain components of the TDM Plan are applicable to and will benefit the Existing Shopping Center. Also, the Owner/Developer shall provide an additional TDM program that is tailored to specifically serve the Existing Shopping Center (the "Mall TDM Program"). The Mall TDM Program shall also be administered by the TC for the Owner/Developer, which shall retain financial and legal responsibility of this program even though the UOA will assume responsibility for the TDM Plan at the end of the Owner/Developer Control Period as described in Proffer #41.N.

A. Goals of the Mall TDM Program. Because tenants of the Existing Shopping Center 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 Mall TDM Program shall encourage Existing Shopping Center tenants and their 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 Mall TDM Program is for 25% of the Existing Shopping Center store tenants and their employees to use non-SOV modes of transportation to commute to and from the Existing Shopping Center on a regular basis.

B. Components of the Mall TDM Program. The Mall TDM Program shall include, at a minimum, the components applicable to the Existing Shopping Center that are described in Proffer #41.C.i and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Owner/Developer and FCDOT. All amendments to the components of the Mall TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Mall TDM Program components are further described in the TDM Strategic Plan.

i. Employee/Tenant Meetings -- The TC shall hold, at a minimum, annual TDM meetings with the Existing Shopping Center store tenants and their employees to review the available transit options, adequacy of bus schedules (including hours of service), changes in transit service and other relevant transit-related topics. The TC 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 TC 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 Existing Shopping Center tenants and their employees.

ii. Transit Incentives -- Utilizing the Mall TDM Incentive Fund (described in paragraph C below), the TC shall provide financial incentives to Existing

Shopping Center store tenants and their employees to utilize transit. These incentives shall include contests with fare card rewards, mall 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 Existing Shopping Center).

iii. Regional TDM Incentive Programs -- The TC shall make information available to Existing Shopping Center store tenants and their employees about programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.

iv. Ridesharing -- The TC shall assist Existing Shopping Center store tenants and their employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.

C. Mall TDM Incentive Fund. The Owner/Developer shall establish a Mall TDM Incentive Fund for use exclusively by the Owner/Developer with Existing Shopping Center store tenants and their employees. The Owner/Developer shall expend $25,000 per year to this fund for the provision of transit incentives, such as gift certificate awards, fare card contests and/or give-aways, transit fairs specific to the Existing Shopping Center store tenants and their employees and for similar inducements or incentive activities. This amount shall be adjusted annually based on changes in the Index from the base year of 2007. The Applicant shall start providing this funding at the time that the first TDM Budget is approved and funded per Proffer #41. At such time as a tenant elects to financially contribute to the Mall TDM Program, such contributions shall be utilized in addition to the Owner/Developer's annual contributions (that is, the Owner/Developer's annual contributions shall not be reduced or offset in any way).

D. Annual Surveys and Analysis. The TC shall monitor the success of the Mall TDM Program in reaching the goal set forth in Proffer 42.A above through tenant and employee surveys completed in September of each year ("Mall Surveys"). The TC shall review and analyze the Mall Surveys, and submit an analysis of survey results ("Mall Survey Analysis") to FCDOT as a supplement to the Annual Report required by Proffer #41.K.ii. The Mall Survey Analysis shall include the following information:

i. A description of the Mall TDM Program measures in effect for the survey period and a description of how such measures have been implemented;

ii. The number of tenants and/or employees surveyed and the number who responded;

iii. The results of the Mall Surveys taken during the survey period;

iv. The number of people participating in the Mall TDM Program, displayed by category of participants and by mode of use; and

v. An evaluation of the effectiveness of the Mall TDM Program in achieving the goal set forth in Proffer 42.A, including the effectiveness of the components in place and, if necessary, proposed modifications.

E. Adjustment to the Mall TDM Program Goal. At such time as the Metrorail has been in operation at the Tysons Central 123 Metro Station for a period of five years, the TC and Existing Shopping Center management shall review the non-SOV transportation goal stated above to determine if the goal should be adjusted to more accurately reflect the use of non-SOV modes of transportation for the employees in the Existing Shopping Center. The TC shall address this issue in the Mall Survey Analysis submitted with the next Annual Report. The Mall TDM Program goal shall be reviewed with FCDOT at the next annual TDM meeting. At the time of review, the Owner/Developer and FCDOT (in coordination with the Providence District Supervisor) shall determine by mutual agreement if the percentage of people utilizing non-SOV modes of transportation should be adjusted.

F. Mall TDM Program Participation Outreach. The TC and Existing Shopping Center management shall endeavor in good faith to encourage participation by Existing Shopping Center store tenants in the Mall TDM Program, including the encouragement of a financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the TC and Existing Shopping Center management in furtherance of this objective shall include dissemination of information to, and solicitation of participation from, the tenant's Existing Shopping Center in-store management and executives or officers at their headquarter's offices, at appropriate intervals.

G. Increasing Existing Shopping Center Store Tenant Commitments. In conjunction with the TC, the Owner/Developer and the management company for the Existing Shopping Center shall develop a long-range plan and schedule for endeavoring to incorporate covenants in leases that would require Existing Shopping Center store tenants to participate in the Mall TDM Program. This plan and schedule shall be submitted to the County at such time as the TDM Plan is submitted per Proffer #41.G, and shall include the following information. The TC may revise this plan with mutual agreement by FCDOT and the Owner/Developer.

a. A schedule for the dissemination of information and outreach efforts to be made or provided to tenants and their respective corporate ownership about the quality of life, financial and employee retention benefits from participation in and encouragement of the Mall TDM Program. The target of this

information exchange and outreach shall be the national level executives or officers of the Existing Shopping Center store tenants.

b. The Owner/Developer shall actively support the TC and Existing Shopping Center management in the efforts to encourage tenants and executives to support the Mall TDM Program. Such support shall include executives and officers of the Owner/Developer communicating with executives and officers with national tenants as necessary.

The TC shall provide a detailed report to the County with respect to the activities described in this Proffer 42.G as a supplement to the Annual Report that is to be filed with the county in accordance with Proffer #41. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants. The report shall also include information on how the TC and the Owner/Developer will address any lack of interest in, opposition to, or other issues posed by Existing Shopping Center store tenants with the Mall TDM Program.

PEDESTRIAN/BICYCLE IMPROVEMENTS

43. On-Site Trails. The Applicant shall complete the trails described in Proffer 43.A below and as indicated in the CDP/FDP, on a phase-by-phase basis, and in each phase, so the trails will be available for use on or before the date of issuance of that number of RUPs or Non-RUPs as meet the following thresholds:

- Development Prior to Rail or Phase 1 of the Development With Rail: 275,000 square feet of office space or 130 residential units, whichever occurs first
- Phase 2: 244,000 square feet of office space or 139 residential units, whichever occurs first
- Development Beyond Phases 1 and 2: The below improvements indicated for Phase 3 and 4 are associated with the illustrative mix of uses and design indicated on the CDP/FDP. The improvements associated with the development of these areas of the site shall be determined during the CDPA/FDPA process and may be changed, as described in Proffer #6.

Upon demonstration by the Applicant that despite diligent efforts, the improvement(s) has been delayed, the Zoning Administrator, may agree to a later date for completion of the improvement(s).

A. Due to the urban nature of the site, the Applicant may request modifications to the Public Facilities Manual design criteria for trails, such as shoulders or lane markings; such modifications shall be subject to approval by DPWES. The Applicant shall provide appropriate pedestrian/bicycle signage and lane markings.

i. Development Prior to Rail and/or Phase 1 – a 10-foot wide trail along the eastern side of ShopTysons Boulevard with crosswalks as indicated on Sheet 22 of the Development With Rail CDP/FDP or Sheet 18 of the Development Prior to Rail CDP/FDP.

a. This trail requires adjustment of grades over the Fairfax Water ("FW") water main, which FW indicated as acceptable in a letter from Donald Hume to Peter Braham dated June 29, 2006.

b. This trail requires VDOT approval to grade and construct a retaining wall. If VDOT fails to grant such permission, the Applicant shall provide this improvement via the "Phase One: Alternative Plan For Bike Trail" as indicated in the above noted pages of the CDP/FDP or pursue another reasonable alternative as approved by the Zoning Administrator and DPWES.

ii. Development Prior to Rail and/or Phase 1 – As indicated on Sheet 23 of the Development With Rail CDP/FDP (or Sheet 19 of the Development Prior to Rail CDP/FDP), the Applicant shall provide a 6-foot wide multipurpose trail adjacent to the Mall Ring road between Terrace A and International Drive to connect to existing sidewalks at Fletcher Street and the Crate & Barrel/Mall entrance (Intersection #4). This sidewalk will subsequently be replaced with a 12-foot shared pedestrian/bicycle path to be provided as further described in Proffer #43.A.v.c. below.

iii. Phase 1 – As indicated on Sheet 23 of the CDP/FDP, the Applicant shall provide a 10-foot wide trail along International Drive north of the Crate & Barrel/Mall entrance (Intersection #4) along the Property's frontage. This trail will subsequently be replaced with a 12-foot shared pedestrian/bicycle path to be provided as further described in Proffer #43.A.v.c. below.

This improvement is to be provided with Phase 1 of the Development With Rail only; however, if, as outlined in Proffers #4 and #6, after completing the Development Prior to Rail, the Applicant is permitted to proceed to Phase 2, this improvement shall be completed as part of Phase 2 in accordance with Proffer #7.

iv. Phase 2 – As indicated on Sheet 31-A of the CDP/FDP, the Applicant shall provide a 15-foot wide trail from International Drive to the Pedestrian Node and a 10' trail from the Pedestrian Node to the Bus Plaza.

v. Development Beyond Phases 1 and 2

a. As indicated on Sheet 35 of the CDP/FDP, the Applicant shall provide a 6-foot wide sidewalk on the south side of Fashion Boulevard adjacent to Towers Crescent (if the Towers Crescent Owners provide necessary grading, construction and pedestrian

access easements at reasonable cost to the Applicant). Prior to site plan approval for any development beyond Phases 1 and 2 that includes roadway improvements to Fashion Boulevard in the vicinity, the Applicant shall diligently pursue the necessary easements and provide DPWES with documentation of the efforts to coordinate with the Towers Crescent Owners. If the Towers Crescent Owners should grant the necessary easements, the Applicant shall provide this trail widening improvement prior to issuance of the first RUP or Non-RUPs, whichever occurs first, for any development beyond Phases 1 and 2.

Should the Applicant not receive the requisite approvals and easements from the Towers Crescent Owners at the time a site plan for development beyond Phases 1 and 2 is otherwise ready for approval by DPWES, the Applicant shall request the County utilize the condemnation provisions as outlined in Proffer #36 to obtain the easements necessary to permit completion of this improvement. In such case, the timing identified for completion of this improvement in this Proffer #43 shall be adjusted to a date mutually agreed to by the Applicant and the Zoning Administrator. The Applicant shall provide DPWES with documentation of diligent efforts to demonstrate the Applicant's failed attempts to obtain the necessary easements. If the County elects not to pursue condemnation, rather than constructing the above described trail widening, the Applicant shall escrow funds per the County of Fairfax Unit Price Schedule to permit the replacement of the 4-foot sidewalk sections with 6-foot sidewalk sections as determined by Fairfax County.

b. Development Beyond Phases 1 and 2 – As indicated on Sheets 34 and 35 of the CDP/FDP, the Applicant shall provide a 15-foot wide shared vehicle/bicycle lane and streetscaping on Fashion Boulevard and a 12-foot wide shared pedestrian/bicycle path and streetscaping along the Property's Leesburg Pike frontage as indicated on Sheet 37 of the CDP/FDP.

c. Development Beyond Phases 1 and 2 – As indicated on Sheets 44 and 45 of the CDP/FDP, the Applicant shall provide a 12-foot wide shared pedestrian/bicycle path and streetscaping along the Property's International Drive frontage.

B. Trail Adjustment. The trails shall be adjusted to incorporate changes to the bike trail guidelines in the Fairfax County Comprehensive Plan for the Tysons Corner Urban Center and/or the County's Trails Plan (including locating the trails along Leesburg Pike and/or International Drive on-road), without obtaining a Proffer Condition Amendment or an amendment to the CDP/FDP if approved by the Zoning Administrator. If the County revises the Comprehensive Plan trail

alignment along Leesburg Pike or International Drive to recommend that trails be located on-road, and the Applicant has not already built the subject trail(s) off-road, the Applicant shall work with FCDOT, VDOT and DPZ and shall locate a 5 foot trail on the roadway(s) in lieu of the trails along Leesburg Pike and International Drive as described above in Proffer 43.A.v.b and 43.A.v.c). To comply with the Comprehensive Plan or Trails Plan, such modification shall be subject to the approval of the Zoning Administrator in accordance with the provisions of Sect. 16-403, provided that the adjustments are in substantial conformance with the CDP/FDP and do not materially adversely affect other features shown on the CDP/FDP.

44. Loop Trail. With the Development with Rail, the Applicant shall provide a Loop Trail around the Property, as indicated in the Development With Rail CDP/FDP on Sheets 8, 9 and 10 (or an interim loop trail with the Development Prior to Rail or Phase 1 as indicated on Sheet 8 of the Development With Rail CDP/FDP). This trail shall be constructed in phases with the phases of the Development With Rail as indicated in the CDP/FDP and in Proffers #6 and #43. The Applicant shall provide trail-related signage and mileage markers to demarcate the loop trail around the Property.

45. Route 123 Sidewalk/Trail. In lieu of an 8' paved trail along the Route 123 frontage east of the Route 123 entrance to the Property, the Applicant shall contribute funds to the Providence District Trails Fund as determined by DPWES at the time of the first site plan approval (as per the then current Fairfax County Unit Price Schedule) for use by the County or others in constructing this portion of the trail and sidewalk at such time as a safe passage across I-495 is constructed through the interchange or in another location as determined by the County.

46. Bicycle Racks. The Applicant shall provide standard u/wave type bicycle racks, racks of equivalent quality, secure bike lockers or bike storage space convenient to the office, residential and Retail/Commercial uses, including, at a minimum, the below. To the extent possible, on-site bicycle racks shall be provided under cover. Specific locations of the bicycle racks, lockers or storage space shall be coordinated with FCDOT prior to site plan approval. The Applicant shall provide bicycle racks, lockers or storage space prior to the issuance of the first RUP or Non-RUP for each phase or building respectively.

A. The Applicant shall provide bicycle racks or lockers accommodating a minimum of 20 bicycles near the Elevated Plaza in Phase 1 as indicated on the CDP/FDP. In addition, with Phase 1 or the Development Prior to Rail, the Applicant shall provide bicycle racks or lockers in locations accessible to those traveling to the Existing Shopping Center from Route 123, Route 7 and International Drive, including a bicycle rack in a convenient location underneath the Phase 1/Development Prior to Rail Elevated Plaza or in Parking Terrace E.

B. The Applicant shall provide bicycle racks, lockers or storage space accommodating a minimum of 20 bicycles with each new parking garage and/or near each residential and office building in every phase prior to the issuance of the first RUP or Non-RUP.

C. With development beyond Phases 1 and 2, the Applicant shall provide bicycle racks accommodating a minimum of 20 bicycles near the Community Green. This improvement is associated with the illustrative mix of uses and design indicated on the CDP/FDP. The improvement associated with the development of this area of the site shall be determined during the CDPA/FDPA process and may be changed, as described in Proffer #6.

D. If demand for the bicycle racks provided throughout the Property exceeds the bicycle parking spaces provided, the Applicant shall provide additional bicycle racks, lockers or storage to ensure that the demand is met.

47. On-Site Shower and Locker Facilities. The Applicant shall provide shower and locker facilities to facilitate employees on the Property. At a minimum, a shower and locker facility for each gender shall be provided in each of the following buildings: (1) either Office Building 1-B or 2-B, (2) Office Building 3-B, and (3) either Office Building 4-B or 4-C. The improvements indicated in Phase 3 and 4 office buildings shall be further reviewed during the CDPA/FDPA process and may be changed, as described in Proffer #6.

PUBLIC TRANSPORTATION

48. Bus Shelters. The Applicant shall provide bus shelters in the following locations. Should FCDOT determine that a bus shelter in any of these locations is not warranted, the Applicant shall escrow $20,000 for construction of each such bus shelter to permit construction of a shelter in the vicinity of the Property. The contribution amount shall escalate on a yearly basis from the base year of 2007 based on changes in the CCI. The Applicant shall provide general maintenance of the bus shelter areas, including trash removal, and the UOA documents shall include this requirement.

A. Prior to issuance of the first RUP or Non-RUP, the Applicant shall install bus shelters in the following locations.

i. Shelters shall be installed on both sides of ShopTysons Boulevard in the vicinity of Buildings 1-A and 1-B to provide shelters for buses moving in each direction in a location to be coordinated with and subject to the approval of FCDOT.

ii. On the Property's International Drive frontage in a location to be coordinated with and subject to the approval of FCDOT.

B. Prior to issuance of the first RUP or Non-RUP for the development beyond Phases 1 and 2, the Applicant shall install a bus shelter along the Property's Route 7 frontage in a location to be coordinated with and subject to the approval of FCDOT.

49. Bus Shelter Contributions. In addition to Proffer 48 above, the Applicant shall make contributions to Fairfax County for bus shelters as further described below. The contribution amount shall escalate on a yearly basis from the base year of 2007 based on changes in the CCI.

A. The Applicant shall contribute $20,000 prior to site plan approval for development beyond Phases 1 and 2 to be used for the installation of a bus shelter on the west side of International Drive or in the vicinity of the Property.

B. The Applicant shall contribute $20,000 prior to site plan approval for development beyond Phases 1 and 2 to be used for the installation of a bus shelter on the south side of Route 7 or in the vicinity of the Property.

50. Metrorail Station-Related Facilities.

A. Project Agreements. As further described in Proffer #4, the Applicant shall not obtain approval of any plans or permits related to the Development With Rail until agreements are executed between the Applicant and the Dulles Rail Project Entities and/or the Washington Metropolitan Area Transit Authority ("WMATA") pertaining to the extension of Metrorail through and including the proposed Tysons Central 123 Metro Station. The Applicant shall provide these agreements to FCDOT for review and comment prior to execution. The agreements shall provide for the following:

i. The installation and operation of an elevated pedestrian bridge or underground pedestrian connection from the Tysons Central 123 Metro Station to the Property.

a. As indicated in Proffer # 28.B., if the final design for an elevated pedestrian bridge to be constructed by the Dulles Rail Project Entities does not incorporate a handrail-to-handrail walkway width of 16' or more, the Applicant will provide the funds necessary to increase the width of the pedestrian bridge from 12'± to 16', handrail to handrail. If the design incorporates a pedestrian bridge with a handrail-to-handrail walkway width of 16' or more, or an underground connection is provided, the Applicant shall not be responsible for the cost of the widening of this bridge and will instead contribute funds to Fairfax County as provided in Proffer #28.B.i.

ii. The construction and operation of the South Entrance Pavilion (as indicated on Sheet 47 of the Development With Rail CDP/FDP) on the Property on the south side of Route 123 in the vicinity of Parking Terrace D to accommodate a landing for the elevated pedestrian bridge.

iii. The construction and operation of a Bus Plaza on the Property on the south side of Route 123 in the vicinity of Parking Terrace D (as indicated with three bus bays on Sheet 46 of the Development With Rail CDP/FDP

and the ultimate configuration with four bus bays on Sheet 49 of the Development With Rail CDP/FDP).

a. The Applicant shall dedicate land area along Route 123 for the Bus Plaza in fee simple to the Board of Supervisors (without compensation to the Applicant).

b. The Applicant shall grant easements as may be needed to accommodate the exiting of buses from the Bus Plaza through the Property to the surrounding public street network (without compensation to the Applicant).

iv. The granting of reciprocal construction, access, utility and air rights easements pertaining to the foregoing facilities.

v. Maintenance of the foregoing facilities by the appropriate parties.

The CDP/FDP depicts the locations for the foregoing improvements. The Applicant shall cooperate with the Dulles Rail Project Entities to coordinate the final locations of such improvements and shall obtain approval from the Zoning Administrator for any changes in locations from those depicted on the CDP/FDP.

B. Rail Improvements Occurring Prior to Applicant's Development. The agreement with the Dulles Rail Project Entities shall also address the contingencies that the extension of Metrorail could occur (i) after the Applicant has constructed improvements under the Development Prior to Rail, (ii) after the Applicant has constructed Phase 1 under the Development With Rail but before construction of Phase 2, and (iii) before any construction under the Development With Rail or the Development Prior to Rail. Sheet 21 of the Development Prior to Rail CDP/FDP and Sheets 46 and 47 of the Development With Rail CDP/FDP show certain Metrorail-related improvements or conveyances that the Applicant shall construct or make prior to the operation of the Metrorail at the Tysons Central 123 Metro Station, including (1) land dedication areas (without compensation to the Applicant), (2) relocation of the Mall ring road adjacent to Parking Terrace D to permit the frontage improvements to accommodate the Metrorail bus area on Route 123, (3) construction of a pedestrian bridge from the Metrorail South Entrance Pavilion on the Property to the Development Prior to Rail or to Phase 1, (4) the widening of the Property's Route 123 frontage to accommodate the ultimate Route 123 northbound improvements, and (5) construction of a Bus Plaza area on the south side of Route 123.

C. Dedication on Demand. In accordance with an agreement between the Applicant and Dulles Rail Project Entities, if the Applicant fails to commence construction of the South Entrance Pavilion or the Bus Plaza in accordance with a construction schedule approved by the Dulles Rail Project Entities, or fails to dedicate the land or grant the easements described in Proffer #50.A or 50.B, then within sixty (60) days after it receives a written notice from Fairfax County demanding dedication,

the Applicant shall (i) dedicate in fee simple to the County the area of land necessary for the Bus Plaza as specified on Sheet 46 of the Development With Rail CDP/FDP and (ii) convey necessary easements to the County for construction and permanent operations of the South Entrance Pavilion and the Bus Plaza. No such written notice or demand for dedication shall be made unless an agreement has been signed as contemplated by Proffer 50.A and unless the FFGA has been executed by all requisite parties. Upon receipt of such a written demand and timely compliance with the terms thereof, the Applicant shall be released from its obligations under paragraphs A and B of this Proffer 50. The purpose of the foregoing will be to permit the Dulles Rail Project Entities to construct the Bus Plaza and South Entrance Pavilion using their project prototype designs and layouts.

i. The Applicant may proceed to Phases 1 and/or 2 even if the Dulles Rail Project Entities have already constructed the Bus Plaza and South Entrance Pavilion under this scenario. The Applicant shall work with the Dulles Rail Project Entities and the County to address modifications that may be required to the Bus Plaza, the South Entrance Pavilion and the Property to ensure that these facilities will function as generally indicated in the CDP/FDP. The Applicant shall complete the any additional proffered improvements as required with Phases 1 and 2, including but not limited to the dedication of land for use as a fourth bus bay in the Bus Plaza, as required with Phase 2 per Proffer #38.D.v.

D. South Entrance Pavilion. Based on modifications to the South Entrance Pavilion by the Dulles Rail Project Entities, the number of stories, footprint and square footage of the South Entrance Pavilion as indicated on the CDP/FDP is subject to change to reflect final design of the pedestrian bridge connection to the South Entrance Pavilion. The Applicant shall cooperate with the Dulles Rail Project Entities to coordinate the final design of this facility and shall obtain approval from the Zoning Administrator for any changes in locations from those depicted on the CDP/FDP

E. Use of Dedicated Land. Any dedication of land that occurs pursuant to this Proffer shall be subject to the reservation that such land area shall at all times be used solely for bus, transit, emergency and ancillary support purposes and shall expressly exclude the right of the Dulles Rail Project Entities, WMATA, Fairfax County and their successors and assigns to develop or re-develop such land area or any air rights relating thereto for any uses other than those approved by the Applicant, or uses in which the Dulles Rail Project Entities, WMATA or Fairfax County and the Applicant are joint venturers.

RECREATIONAL FACILITIES

51. On-Site Recreational Facilities Contributions.

A. Pursuant to Paragraph 2 of Section 6-209 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of $955 per market residential unit on on-site recreation facilities. In order to satisfy this obligation, the Applicant shall provide the on-site recreational facilities shown on the CDP/FDP. If the Applicant does not expend the prescribed amount in any phase of the development, and any such shortfall is not expended for these purposes in a subsequent phase, then any remaining balance shall be contributed at the time of completion of the last phase of development to the County Park Authority for the provision of recreation facilities located in the vicinity of the Property.

B. Prior to site plan approval for a residential building in any phase, if the County increases the standard contribution of $955 per market-rate unit, the Applicant shall increase the contribution to the County for that phase of development as indicated in paragraph A.

52. Public Amenities and Facilities. These facilities are proposed to serve or be used by members of the general public, subject to usual and customary rules and regulations governing their use. The Applicant shall complete the facilities as described in paragraphs A-E below, and as indicated in the CDP/FDP, on a phase-by-phase basis, on or before the date of issuance of that number of RUPs or Non-RUPs as set forth below for each phase.

- Development Prior to Rail/Phase 1: 275,000 square feet of office space or 130 residential units, whichever occurs first
- Phase 2: 244,000 square feet of office space or 130 residential units, whichever occurs first
- Development beyond Phases 1 and 2: These improvements are associated with the illustrative mix of uses and design indicated on the CDP/FDP. The improvements associated with the development of this area of the site shall be determined during the CDPA/FDPA process and may be changed as described in Proffer #6.

A. Changes to the Layout and Mix. The layout or mix of facilities indicated below may be altered, provided the proposed alterations substantially conform with and provide substantially equivalent recreation opportunities as that shown on the CDP/FDP as determined by the Zoning Administrator. The Applicant reserves the right to add public art to the site in areas not currently identified with public art on the CDP/FDP.

B. Children's Play Area. The Applicant shall provide one or more indoor children's play areas totaling not less than 1,700 SF within the Existing Shopping Center.

C. Phase 1 or the Development Prior to Rail. The Applicant shall provide the following facilities (or equivalent alternatives) as part of the Phase 1 development or the Development Prior to Rail (these facilities may be adjusted seasonally, and not all facilities are specifically indicated on the CDP/FDP):

i. Seasonal ice skating rink/interactive water feature

ii. Performance space

iii. Seating area adjacent to the ice rink and Retail/Commercial uses

iv. Public art in locations as generally depicted on the CDP/FDP, with flexibility in the locations permitted subject to administrative approval from the Zoning Administrator

v. Children's activity area

vi. Children's passive area (to include a reading area or space for children's entertainment)

vii. Shade structure(s) and/or shaded area(s)

D. Phase 2. The Applicant shall provide the following facilities as part of the Phase 2 development:

i. Entry water feature

ii. Seating adjacent to the proposed Retail/Commercial

iii. Dog exercise area/park, as identified on the CDP/FDP as "Dog Exercise Area"

iv. Shade structure(s) and/or shaded area(s)

E. Development Beyond Phases 1 and 2.

i. The Applicant shall provide a community green as part of the development beyond Phases 1 and 2 as shown on the CDP/FDP. This community green shall include the below facilities or amenities:

a. Central focal water element/interactive water feature

b. Walking paths with seating

c. Open events lawn/play area for special events

d. Shade structure(s) and/or shaded area(s)

ii. The Sky Terrace shall include the below facilities or amenities:

a. Walking paths with seating

b. Gardens

c. Children's active play area

d. Performance lawn with seasonal stage

e. Shade structure/pavilion

f. Small active/passive recreational area (e.g. bocce court, putting green, sculpture lawn)

53. Semi-Private Amenities and Recreation Facilities. Except where otherwise indicated, these facilities are proposed to serve or be used by residents and office workers living and/or working in the residential and office buildings, subject to usual and customary rules and regulations governing their use. The Applicant shall complete the facilities as described in paragraphs A-E below, and as indicated in the CDP/FDP on a phase-by-phase basis. Except as otherwise noted, these facilities shall be completed on or before the date of issuance of that number of RUPs or Non-RUPs as set forth below for each phase.

A. Changes to the Layout and Mix. The layout or mix of facilities indicated below may be altered, provided the proposed alterations substantially conform with and provide substantially equivalent recreation opportunities as that shown on the CDP/FDP as determined by the Zoning Administrator. Such alterations to the layout or mix of facilities may occur at any time, including after the facility has been constructed. The Applicant reserves the right to add public art to the site in areas not currently identified with public art on the CDP/FDP.

B. Health Club or Fitness Center. Each residential and office building in each phase shall have a limited service health or fitness center (providing equipment and facilities but not necessarily staffing) for use by the residents and employees, respectively living or working in those buildings, and having an appropriate size but in all cases not less than 1,000 square feet per building. The health club/fitness centers shall be open for use prior to issuance of RUPs or Non-RUPs as indicated below:

- Development Prior to Rail/Phase 1: 275,000 square feet of office space or 130 residential units, whichever occurs first

- Phase 2: 244,000 square feet of office space or 130 residential units, whichever occurs first

C. Phase 1 or the Development Prior to Rail. The Applicant shall provide the following semi-private facilities as part of Phase 1 or the Development Prior to Rail prior to the issuance of RUPs for the 130th residential unit.

i. Swimming pool for the residential building

ii. Swimming pool for the hotel building

iii. Seating that consists of either a seating element built into the development or actual chairs/benches, with a minimum number of seats that is not less than 5% of the number of residential units

iv. Shade structure(s) and/or shaded area(s)

D. Phase 2. The Applicant shall provide the following semi-private facilities as part of Phase 2 prior to the issuance of RUPs for the 130th residential unit. As indicated on the CDP/FDP, a structural barrier shall provide a visual separation between the below indicated semi-private amenities/facilities and the public amenities/facilities described above.

i. Semi-private terrace located between residential tower 2-A and office tower 2-B

ii. At least two court activities (with some combination of basketball, tennis or multi-use sport court) on the top level of the improved Parking Terrace A.

iii. Temporary sport court practice wall on the top level of the improved Parking Terrace A. This temporary practice wall will be removed at the time of construction of the Sky Terrace.

iv. 1,700 square foot Multipurpose Sport Court on the plaza between buildings 2-A and 2-B for use by on-site residents and office workers. This court may be used as a half-court basketball court or for other court activities.

v. Swimming pool for the residential building.

vi. Seating that consists of either a seating element built into the development or actual chairs/benches with a minimum number of seats that is not less than 5% of the number of residential units within Phase 2 and an additional minimum of 12 seats to serve the office tenants.

vii. Shade structure(s) and/or shaded area(s).

E. Development Beyond Phases 1 and 2. These improvements are associated with the illustrative mix of uses and design indicated on the CDP/FDP. The improvements associated with the development of this area of the site shall be determined during the CDPA/FDPA process and may be changed as described in Proffer #6.

i. Semi-private terrace and small active/passive recreational area (e.g. bocce court, putting green or sculpture lawn) located at residential tower 3-A

ii. Swimming pool for the residential buildings

iii. Seating that consists of either a seating element built into the development or actual chairs/benches with a minimum number of seats that is not less than 5% of the number of residential units

iv. Shade structure(s) and/or shaded area(s)

54. Off-Site Recreational Facilities Contributions.

A. Contribution for Off-Site Recreation Facilities. In addition to the recreation facilities and/or contribution required by Proffers #51, 52 and 53, the Applicant shall provide a contribution of $493 per residential unit (for a maximum possible contribution of $ 395,879 with Phases 1 and 2) to the Fairfax County Board of Supervisors at the time of site plan approval for each residential building. These funds are to be used for recreational facilities in the vicinity of the Property.

B. Potential Escalated Contribution. The contribution amount shall escalate on a yearly basis from the base year of 2007 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (CPI-U) 1982-1984=100 (not seasonally adjusted) ("CPI").

55. One-Time Field Contribution. The Applicant shall make a one-time contribution of $800,000 to the Fairfax County Board of Supervisors for athletic field improvements. The field(s) to be improved and/or the scope of the improvements shall be determined by the Providence District Supervisor in consultation with the Providence District Athletic Fields Task Force. Such contribution shall be made within 30 days of final, unappealable approval of this Application.

56. Oakton Community Park Contribution. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $100,000 to the Fairfax County Board of Supervisors for use in developing the Oakton Community Park on Hunter Mill Road.

57. South Railroad Street Park. The Applicant shall make a one-time contribution of $15,000 to the Fairfax County Board of Superivsors for use in developing the South Railroad Street Park. The Applicant shall make this contribution within 30 days of final, unappealable approval of this Application.

58. Nottoway Nights Contribution. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $10,000 to the Fairfax County Board of Supervisors for use with the Nottoway Nights Concert Series.

OTHER CONTRIBUTIONS

59. Fairfax County Tree Fund. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $10,000 to the Fairfax County Tree Fund for use in the Providence District.

60. Oakton Library Contribution. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $10,000 to the Fairfax County Board of Supervisors for use at the Oakton Library.

61. Volunteer Fire Departments Contributions. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a $25,000 one-time contribution to the Fairfax County Board of Supervisors for distribution to and use with the below specified volunteer fire departments.

A. Dunn Loring Station 13-$10,000 contribution

B. McLean Station 1-$5,000 contribution

C. Vienna Station 2-$5,000 contribution

D. Great Falls Station 12-$5,000 contribution

62. Bike Route Mapping Contributions. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $15,000 to the Fairfax County Board of Supervisors for use with the County-wide bike route mapping effort in the Tysons Corner area.

63. Stormwater/Watershed Projects. Prior to approval of the first site plan associated with Phase 1 or the Development Prior to Rail, the Applicant shall make a one-time contribution of $50,000 to the Fairfax County Board of Supervisors for use with stormwater and/or watershed projects in the vicinity of the Property.

GREEN BUILDING PRACTICES

64. The Applicant shall utilize green building practices for the office, residential and hotel buildings, including but not limited to the following:

a. Buildings to be designed by a design firm with at least one LEED (or equivalent program) accredited professional on the team;
b. Allocate space for storage of recyclables, including but not limited to, fluorescent light bulbs, paper, cardboard, aluminum and glass, and provide for collection of recyclables within each building;
c. Prohibit smoking in the public areas of the new residential, office and hotel buildings and provide designated smoking areas away from entries and operable windows;

d. Buildings shall be designed to use insulated, low-e glass, or equivalent functioning glass, in base building applications; and
e. Utilization of Energy Star (or equivalent) appliances in the new residential buildings.

The Applicant shall provide DPWES with documentation to satisfaction of the above five requirements prior to receiving building permits for any of the proposed office, residential or hotel buildings.

PUBLIC SCHOOLS CONTRIBUTION

65. Public Schools Contribution.

A. Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, effective January 7, 2003, at the time of issuance of the first building permit for each residential building, the Applicant shall contribute $11,630 per student generated by that building (based on an assumed rate of .076 students per multifamily high-rise unit in that phase) to DPWES for transfer to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements to schools in the Tysons Corner area that serve the development.

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

AFFORDABLE HOUSING

66. Affordably Priced Rental Units. This proffer sets forth the elements of a program that is intended to provide affordably priced rental housing units ("APRUs"), which will be affordable to future residents who have a median household income of 70% or less of the Washington D.C. Standard Metropolitan Statistical Area median household income ("MHI"), in order to preserve and expand the housing options available in the County to residents that have a moderate income. The Applicant shall follow the Affordable Dwelling Unit rental rates as established by Fairfax County for rental units affordable to residents with a median household income of 70% or less of the MHI as adjusted by the County.

A. Nine percent (9%) of the dwelling units actually constructed shall be APRUs. The APRUs shall be subject to the rental and other covenants and restrictions of these proffered conditions, and except as specifically set forth in this Proffer, shall not be subject to the rental and other restrictions applicable to Affordable Dwelling Units ("ADUs") as defined by Article 2 of the Zoning Ordinance. The

Applicant shall provide all of these units as either two (2) bedroom, one (1) bedroom, efficiency and/or studio units with one bathroom and a minimum size of 400 square feet per unit, a maximum size of 900 square feet and an average size of 550 square feet. The Applicant shall phase the provision of APRUs with each phase of development to provide a minimum of 9% APRUs within each phase of development.

B. The Applicant shall provide these APRUs as rental units within the Applicant's proposed residential buildings. The Applicant specifically reserves the right to provide APRUs as rental units within a rental building or within a condominium building (that is, the Applicant may either retain ownership of the building and rent all of the dwelling units, or the Applicant may create a condominium in order to sell market-rate units and nevertheless rent APRUs).

i. Notwithstanding the foregoing, the Applicant may provide up to 30% of the APRUs in each phase off-site in the Tysons Corner Urban Center Planning District, in one or more locations approved by the Zoning Administrator, provided that the Zoning Administrator determines that such substitute units are substantially equivalent to on-site units. In making such a determination, the Zoning Administrator may determine that the minimum size of the units located outside the immediate vicinity of a metro station shall be larger than the minimum size proffered above.

ii. Not less than ten percent (10%) of the APRUs provided in any phase (rounded to the nearest whole number) shall be designed and constructed as fully handicapped accessible units. In the event that APRUs are authorized off-site, no more than five of the handicapped accessible units may be provided off-site.

iii. All of the semi-private facilities and amenities that are available to market rate units shall also be available to APRUs on an equal access basis.

iv. Within any residential building, APRUs shall be dispersed among the market rate units.

v. In accordance with Section 2-812.6 of the Zoning Ordinance, prior to issuance of the first RUP for the APRUs in any building, the Applicant shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority that provides that for thirty (30) years from the date of issuance of the first RUP for the APRUs in that building, no such unit may be rented for an amount that exceeds the rental rates for ADUs as set by the County.

vi. In accordance with the transit-oriented development approach to this project, which encourages people to live, work, shop and play without using an automobile, the Applicant shall market the APRUs and give preference to prospective APRU residents that are working on the

Property or within the Tysons Corner Urban Center (as defined by the Comprehensive Plan). The Applicant shall work with the Fairfax County Department of Housing and Community Development to establish specific criteria to select renters of the APRUs, with the renter's employment location as an important component of such criteria. Such preference will not discriminate against any protected class.

vii. The Applicant maintains the ability to address the applications, resident selection and management of the APRU units or may assign or subcontract this responsibility to another entity, which may include a non-profit organization, the County or a management agency, as long as the County reviews the process and criteria for resident selection.

C. It is intended that the APRUs shall be administered in a manner that is similar to certain of the administrative procedures established for ADUs in Section 2-800 of the Zoning Ordinance in effect at the time of the execution of these proffers. The following specific provisions of the Zoning Ordinance shall apply to administration of the APRUs, except where such provisions directly conflict with this Proffer: (1) Section 2-811.2, (2) Section 2-811.3, (3) Section 2-812.1.D, (4) Section 2-812.6, (5) Section 2-812.7, (6) Section 2-813 and (7) Section 2-817. When this Proffer conflicts with the administrative sections of the Zoning Ordinance, this Proffer shall control.

WATER SERVICE

67. Water Service. At the time of site plan review for the new development, the Applicant shall meet with Fairfax Water to mutually assess the economic and engineering implications of utilizing Fairfax Water service to serve the new development. If the Applicant and Fairfax Water agree that connecting to Fairfax Water is desirable and can be accommodated in a manner that is reasonably feasible from both a financial and engineering perspective, then the Applicant shall serve the new development with Fairfax Water service.

TOWERS CRESCENT EASEMENTS

68. Towers Crescent Easement Coordination. To facilitate the development of the Property as illustrated herein, and to facilitate appropriate connections with the Towers Crescent Property, the Applicant shall deliver to the Towers Crescent Owners a fully executed (including lender approval/subordination) easement document to provide temporary and permanent easements necessary to facilitate the below-listed improvements.

The Applicant shall provide the Fairfax County Zoning Evaluation Division with proof of delivery of the fully executed deed of easements, including subordination from the Applicant's mortgage lender(s). If the Applicant fails to provide proof of delivery of these documents within 60 days of the approval of this rezoning, the Applicant shall provide Fairfax County with a contribution of $50,000 on the 61st day after approval of this rezoning and again every 30 days

thereafter until these documents are delivered. These funds are to be used to make pedestrian and transportation improvements in the vicinity of the Towers Crescent Property.

The easements the Applicant shall provide will facilitate the following improvements:

A. A shift in the Towers Crescent parking garage entrance to the west and construction of a right turn lane into the garage entrance (as indicated on Sheet 35 of the CDP/FDP);

B. A Sight Distance Easement relating to the new garage entrance described in para. A above;

C. Towers Crescent Owners provision of a sidewalk along the eastern side of Fashion Boulevard;

D. A Traffic Signal/Pedestrian Access Easement to be located at Intersection #9;

E. A Storm Drainage line in the vicinity of the area referenced in para. A above;

F. Construction of an elevated bridge to connect the Towers Crescent Building F plaza with the rooftop of Parking Terrace C on the Property;

G. Shift in a sanitary sewer lateral line in the vicinity of Intersection #9;

H. Grading and construction easements along the east side of Fashion Boulevard;

I. City of Falls Church Water Easement for an existing line in the vicinity of Intersection #9; and

J. Installation of a traffic signal at Shop Tysons Boulevard near Intersection #8.

MISCELLANEOUS PROFFERS APPLICABLE TO DEVELOPMENT WITH RAIL AND DEVELOPMENT PRIOR TO RAIL

69. Advance Density Credit. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all eligible dedications described herein.

70. Severability. Any of the phases and/or buildings may be the subject of a proffered condition amendment ("PCA"), Special Exception ("SE"), Special Permit ("SP"), or Final Development Plan Amendment ("FDPA") without joinder and/or consent of the owners of the other phases or buildings, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases or buildings. Previously approved zoning applications applicable to a particular land bay that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.

71. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

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

Signatures on following pages

TYSONS CORNER HOLDINGS LLC,
a Delaware limited liability company
Owner of Tax Map #39-2 ((1)) 2, 4 and 5

By: TYSONS CORNER LLC,
a Virginia limited liability company,
its sole member

By: MACW TYSONS, LLC,
a Delaware limited liability company,
its member

By:_____
Richard A. Bayer,
Executive Vice President, Secretary
and Chief Legal Officer

TYSONS CORNER PROPERTY HOLDINGS LLC,
a Delaware limited liability company
Owner of Tax Map # 29-4 ((1)) 35A and 35C

By: TYSONS CORNER PROPERTY LLC,
a Virginia limited liability company,
its sole member

By: MACW TYSONS, LLC,
a Delaware limited liability company,
its member

By:_____
Richard A. Bayer,
Executive Vice President, Secretary
and Chief Legal Officer